

2000 No. 2375

DEFENCE

**The Courts-Martial (Royal Air Force) (Amendment) Rules
2000**

<i>Made - - - -</i>	<i>4th September 2000</i>
<i>Laid before Parliament</i>	<i>7th September 2000</i>
<i>Coming into force</i>	<i>2nd October 2000</i>

The Secretary of State, in exercise of the powers conferred on him by sections 75(2) and 103 of the Air Force Act 1955(a), hereby makes the following Rules:—

Citation and commencement

1. These Rules may be cited as the Courts-Martial (Royal Air Force) (Amendment) Rules 2000 and shall come into force on 2nd October 2000.

Amendments to Rules

2.—(1) The Courts-Martial (Royal Air Force) Rules 1997(b) shall be amended in accordance with following provisions of this rule.

(2) In rule 2 (interpretation) the following definition shall be inserted after the definition of “the judge advocate”—

““preliminary charge” means the charge which would have been dealt with summarily had the accused not elected court-martial trial;”.

(3) For rule 4 (referring a case to the prosecuting authority) there shall be substituted—

“4. Where the higher authority refers a case in accordance with section 76A(1) of the Act, he shall forward to the prosecuting authority—

(a) all documents and any other materials forwarded to him by the commanding officer in accordance with regulations made by the Defence Council under section 83 of the Act;

(b) any other information in his possession which may be material to the prosecutor’s consideration of the institution of proceedings; and

(c) where the accused has elected trial by court-martial, notification of that fact.”.

(4) After rule 4 (referring a case to the prosecuting authority) there shall be inserted—

(a) 1955 c. 19; section 103(3A) was inserted by the Armed Forces Discipline Act 2000 (c. 4), section 13 and Schedule 2.

See section 143(1) of the Air Force Act 1955 for the definition of “prescribed” as used in section 75(2).

(b) S.I. 1997/171.

“Withdrawal of election in a multiple charge case

4A. Where—

- (a) an election for court-martial trial relates to two or more preliminary charges; and
- (b) that election is withdrawn with the leave of the prosecuting authority,

section 83B(2) of the Act shall have effect as if it required the prosecuting authority to refer back to the appropriate superior authority or, as the case may be, the commanding officer of the accused each of the preliminary charges to be dealt with summarily.”.

(5) After rule 6 (conduct of formal preliminary examination) there shall be inserted—

“Referring back in a multiple charge case before charges are preferred

6A.—(1) Where—

- (a) an election for court-martial trial relates to two or more preliminary charges; and
- (b) the prosecutor considers that a charge or charges different from or additional to a preliminary charge should be preferred,

section 83BB(1) of the Act shall have effect as if it required the prosecuting authority to refer back to the commanding officer of the accused any additional preliminary charge as well as the charge or charges which he would otherwise be required to refer back under that section.

(2) In paragraph (1), the reference to any additional preliminary charge is to any preliminary charge which is different from the preliminary charge referred to in paragraph (1)(b) above.”.

(6) After rule 13 (description of the court-martial) there shall be inserted—

“Referring back in a multiple charge case after charges already preferred

13A. Where—

- (a) an election for court-martial trial relates to two or more preliminary charges; and
- (b) the prosecutor considers that a charge which has already been preferred (“the original charge”) should be amended, or that a charge should be preferred in additional to or in substitution for the original charge,

section 83BB(1) of the Act shall have effect as if it required the prosecuting authority to refer back to the commanding officer any charge (other than the original charge) which has already been preferred, as well as the charge or charges which he would otherwise be required to refer back under that section.”.

(7) In rule 76(2) (evidence before sentencing)—

- (a) at the end of sub-paragraph (g) the word “and” shall be omitted; and
- (b) after the word “unit” in sub-paragraph (h) there shall be inserted—
 - “; and
 - (i) whether the accused elected trial by court-martial”.

(8) Rule 85 (periodic review of arrest) shall be revoked.

4th September 2000

Symons of Vernham Dean
Minister of State,
Ministry of Defence

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Courts-Martial (Royal Air Force) Rules 1997 (“the 1997 Rules”). The amendments are for the most part consequential on the changes made by the Armed Forces Discipline Act 2000 to the functions of the prosecuting authority where an accused elects to be tried by court-martial.

Rule 2(3) substitutes a new rule 4 in the 1997 Rules. The substituted rule 4 specifies the information to be provided by the higher authority referring the case to the prosecuting authority. The new rule requires the higher authority to notify the prosecuting authority where the accused has elected court-martial trial.

Rule 2(4) to (6) inserts rules 4A, 6A and 13A in the 1997 Rules. Rule 4A makes provisions as to the exercise by the prosecuting authority of its functions in relation to referring back a case on withdrawal of an election for court-martial trial, where the election relates to two or more charges. Rules 6A and 13A similarly make provision as to the exercise by the prosecuting authority of its functions under section 83BB of the Air Force Act 1955 (which deals with the power of the prosecuting authority to refer cases back to the commanding officer) where the election for court-martial trial relates to two or more charges.

Rule 2(7) amends rule 76 of the 1997 Rules so as to require the sentencing information to be provided to a court-martial to include notice of whether or not the accused elected court-martial trial.

Rule 2(8) revokes rule 85 of the 1997 Rules (which relates to the periodic review of arrest). The revocation of rule 85 is consequential on the changes made to section 75 of the Air Force Act 1955 (which relates to custody after arrest) made by the Armed Forces Discipline Act 2000.

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