
STATUTORY INSTRUMENTS

2005 No. 1535

The Courts-Martial (Amendment) Rules 2005

Amendments to the Royal Navy Rules

3.—(1) The Royal Navy Rules are amended as follows.

(2) In rule 2—

(a) after the definition of “the Act” there is inserted—

““the 2003 Act” means the Criminal Justice Act 2003;” and

(b) for the definition of “the prosecutor” there is substituted—

““the prosecutor” means the prosecuting authority or any prosecuting officer or other person appointed by the prosecuting authority to appear on his behalf;”.

(3) After rule 4 there is inserted—

“Formal preliminary examination

4A.—(1) Where a case in respect of an accused has been forwarded to the prosecuting authority but he has not preferred any charge, the prosecutor may order an examination under this rule and such an examination shall in these Rules be referred to as a formal preliminary examination.

(2) The order for a formal preliminary examination shall—

(a) appoint the date, time and place at which the formal preliminary examination shall take place;

(b) state the nature of the allegations against the accused;

(c) list the witnesses whom the prosecutor seeks to examine orally; and

(d) list the witnesses whose written statements or other record of evidence are to be read out.

(3) The order shall be served on the accused and the court administration officer not less than 24 hours before the time appointed for the formal preliminary examination.

(4) On receipt of the order, the court administration officer—

(a) shall summon to attend the formal preliminary examination—

(i) the witnesses listed in the order whom the prosecutor seeks to examine orally; and

(ii) such additional witnesses as the accused may request;

(b) may arrange for the attendance at the formal preliminary examination of a court recorder and interpreter.

Conduct of formal preliminary examination

4B.—(1) A formal preliminary examination shall be conducted by the prosecuting authority or a prosecuting officer appointed by him (“the conducting officer”).

(2) Subject to paragraph (4) below, each witness whom the prosecutor seeks to examine orally shall be examined by the conducting officer, after which the accused shall be entitled to cross-examine the witness.

(3) A signed written statement or other record of the evidence of each witness listed under rule 4A(2)(d) above shall be read out by the conducting officer, unless the accused consents to their inclusion in the record of the examination without being read out.

(4) If the case being investigated concerns behaviour of a violent, cruel or sexual nature and the relevant witness is a person under the age of 17, then—

- (a) the conducting officer may read out any written statement made by or taken from the witness which would be admissible if given orally; and
- (b) the accused may not cross-examine the witness in person.

(5) During the formal preliminary examination the conducting officer may summon any witness to attend the examination and give oral evidence.

(6) After paragraphs (2) and (3) above have been complied with, the conducting officer shall explain to the accused—

- (a) that he may give evidence if he so wishes, but he is not obliged to do so;
- (b) the consequences of choosing to remain silent; and
- (c) that he may call witnesses on his behalf.

(7) Any witness for the accused (including the accused himself) may give evidence orally but shall not be subject to cross-examination, except that the conducting officer may ask a question where it is necessary to resolve an ambiguity or to enable the evidence to be recorded in a coherent form.

(8) Except where the witness is a person under the age of 14, any evidence given orally during the formal preliminary examination shall be given on oath, administered by the conducting officer.

(9) Any evidence given orally during the formal preliminary examination shall be recorded by the conducting officer or a court recorder.

(10) Where the evidence is recorded in writing, the record of his evidence shall be read back to the witness at the conclusion of his evidence, corrected where necessary and signed by him.

(11) A copy of any statement read out in accordance with paragraph (3) or (4) above and the transcript of any shorthand note or mechanical record shall be included in the record of the examination.

(12) After the conclusion of the formal preliminary examination, the conducting officer shall deliver the record of the examination to the prosecuting authority.”.

(4) After rule 21 there is inserted—

“Procedure for the admission of evidence of bad character

21A.—(1) Where a party to the proceedings wishes to obtain the leave of the court under section 100(4) of the 2003 Act to adduce evidence of the bad character of a person other than an accused, he shall apply in the form set out in Schedule 2 to these Rules and the application must be received by the court administration officer and all other parties to the proceedings—

- (a) where that party is an accused or co-accused, not more than 14 days after service on him of prosecution papers by his commanding officer in accordance with rule 10; or
- (b) where that party is the prosecuting authority, not more than 14 days after the preferment of a charge or charges pursuant to section 52I of the Act; or

(c) where the application concerns a person other than an accused who is invited to give (or has given) evidence for an accused, as soon as reasonably practicable.

(2) A party to the proceedings who receives a copy of an application under paragraph (1) may oppose that application by giving notice in writing to the court administration officer and all other parties to the proceedings not more than 14 days after receiving that application.

(3) Where a prosecutor wishes to adduce evidence of an accused's bad character he shall give notice in the form set out in Schedule 2 to these Rules to the court administration officer and all other parties to the proceedings not more than 14 days after preferment of a charge or charges pursuant to section 52I of the Act.

(4) Where a co-accused wishes to adduce evidence of an accused's bad character he shall give notice in the form set out in Schedule 2 to these Rules to the court administration officer and all other parties to the proceedings not more than 14 days after service on him of prosecution papers by his commanding officer in accordance with rule 10.

(5) Where an accused wishes to apply under section 101(3) of the 2003 Act to exclude evidence of his bad character, he shall apply in the form set out in Schedule 2 to these Rules and the application must be received by the court administration officer and all other parties to the proceedings not more than 14 days after the accused receives a notice under paragraph (3) or (4).

(6) An accused entitled to receive a notice under this rule may waive his entitlement by so informing the court administration officer and the party who would otherwise have given the notice.

(7) The judge advocate may—

(a) allow a notice or application required under this rule to be given or made in a different form, or orally; or

(b) reduce a time limit under this rule, or extend it whether or not it has expired,

if it is in the interests of justice to do so.

(8) Where this rule requires a notice or application to be given or made, it may be given or made by fax or other means of electronic communication.

Procedure for the admission of hearsay evidence

21B.—(1) Where a party to the proceedings wishes to adduce hearsay evidence on one or more of the grounds in section 114(1) of the 2003 Act, he shall give notice in the form set out in Schedule 2 to these Rules and such notice must be received by the court administration officer and all other parties to the proceedings—

(a) where that party is an accused or co-accused, not more than 14 days after service on him of prosecution papers by his commanding officer in accordance with rule 10; or

(b) where that party is the prosecuting authority, not more than 14 days after the preferment of a charge or charges pursuant to section 52I of the Act.

(2) A party to the proceedings who receives a notice under paragraph (1) may oppose the admission of the hearsay evidence by giving notice in the form set out in Schedule 2 to these Rules to the court administration officer and all other parties to the proceedings not more than 14 days after receiving that notice.

(3) A party entitled to receive a notice under this rule may waive his entitlement by so informing the court administration officer and the party who would otherwise have given the notice.

(4) The judge advocate may—

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- (a) dispense with the requirement to give notice of an intention to adduce hearsay evidence;
 - (b) allow a notice required under this rule to be given in a different form, or orally; or
 - (c) reduce a time limit under this rule, or extend it whether or not it has expired,
- if it is in the interests of justice to do so.
- (5) Where this rule requires a notice to be given it may be given by fax or other means of electronic communication.

Application of rules 21A and 21B

21C. Rules 21A and 21B shall only apply in relation to proceedings in which no charge has been preferred before 1 July 2005.”.