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STATUTORY INSTRUMENTS

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**2007 No. 3443**

**The Courts-Martial (Royal Navy) Rules 2007**

**PART 4**

**WITNESSES**

**Notification of witnesses**

**19.**—(1) Where any person is required to give evidence in any proceedings before a court-martial, the court administration officer shall notify that person of the time and place at which he is required to attend.

(2) If the accused requests the court administration officer to notify a witness on his behalf under rule 17(4), the accused shall provide to the court administration officer sufficient information in sufficient time to enable notification to be made.

(3) If the court administration officer is unable to notify a witness under this rule or if, in his opinion, it is not reasonably practicable to notify a witness, he shall inform the judge advocate and the party seeking to call that witness in writing.

**Witness not called by the prosecuting authority**

**20.**—(1) This rule applies where the prosecuting authority does not intend to call as a witness—

- (a) any person whose statement or record of evidence has been served on the accused as part of the evidence for the prosecution; or
- (b) any person in respect of whose evidence he has served notice under rule 60.

(2) Where this rule applies, unless the accused waives the requirement, the prosecuting authority shall—

- (a) serve notice in writing on the accused that he does not intend to call that person; or
- (b) tender that person at trial for cross-examination by the accused.

**Issue of witness summons on application to a judge advocate**

**21.**—(1) This rule applies where a judge advocate is satisfied that—

- (a) a person is likely to be able to give evidence likely to be material evidence, or produce any document or thing likely to be material evidence, for the purpose of any proceedings before a court-martial, and
- (b) it is in the interests of justice to issue a witness summons under this rule to secure the attendance of that person to give evidence or to produce the document or thing.

(2) In such a case, the judge advocate shall, subject to the following provisions of this rule, issue a witness summons directed to the person concerned and require him to—

- (a) attend before a court-martial at the time and place stated in the witness summons, and
- (b) give the evidence or produce the document or thing.

(3) A witness summons may only be issued under this rule on an application; and the judge advocate may refuse to issue the witness summons if any requirement relating to the application is not fulfilled.

(4) A party who wants the judge advocate to issue a witness summons must apply as soon as practicable after becoming aware of the grounds for doing so.

(5) The party applying must—

(a) identify the proposed witness;

(b) explain—

(i) what evidence the proposed witness can give or produce,

(ii) why it is likely to be material evidence, and

(iii) why it would be in the interests of justice to issue a witness summons.

(6) The application may be made orally unless—

(a) rule 22 applies; or

(b) the judge advocate otherwise directs.

(7) An application in writing must be in the form set out in Schedule 2, containing the same declaration of truth as a witness statement.

(8) The party applying must serve the application—

(a) in every case, on the court administration officer and as directed by the judge advocate; and

(b) as required by rule 22, if that rule applies.

### **Application for witness summons to produce a document, etc: special rules**

**22.—**(1) This rule applies to an application under rule 21 for a witness summons requiring the proposed witness—

(a) to produce in evidence a document or thing; or

(b) to give evidence about information apparently held in confidence,

that relates to another person.

(2) The application must be in writing in the form required by rule 21(7).

(3) The party applying must serve the application—

(a) on the proposed witness, unless the judge advocate otherwise directs; and

(b) on one or more of the following, if the judge advocate so directs—

(i) a person to whom the proposed evidence relates,

(ii) another party.

(4) The judge advocate must not issue a witness summons where this rule applies unless—

(a) everyone served with the application has had at least 14 days in which to make representations, including representations about whether there should be a hearing of the application before the witness summons is issued; and

(b) the judge advocate is satisfied that he has been able to take adequate account of the duties and rights, including rights of confidentiality, of the proposed witness and of any person to whom the proposed evidence relates.

(5) This rule does not apply to an application for an order to produce in evidence a copy of an entry in a banker's book for the purposes of rule 89.

### **Application for witness summons to produce a document, etc: judge advocate's assessment of relevance and confidentiality**

**23.**—(1) This rule applies where a person served with an application for a witness summons requiring the proposed witness to produce in evidence a document or thing objects to its production on the grounds that—

- (a) it is not likely to be material evidence; or
- (b) even if it is likely to be material evidence, the duties or rights, including rights of confidentiality, of the proposed witness or of any person to whom the document or thing relates outweigh the reasons for issuing a witness summons.

(2) The judge advocate may require the proposed witness to make the document or thing available for the objection to be assessed.

(3) The judge advocate may invite—

- (a) the proposed witness or any representative of the proposed witness; or
- (b) a person to whom the document or thing relates or any representative of such a person, to help the judge advocate assess the objection.

### **Power to require advance production**

**24.**—(1) A witness summons which is issued under rule 21 and which requires a person to produce a document or thing as mentioned in rule 21(2) may also require him to produce the document or thing—

- (a) at a place stated in the witness summons, and
- (b) at a time which is so stated and precedes that stated under rule 21(2),

for inspection by the person applying for the witness summons.

### **Issue of witness summons of the judge advocate's own motion**

**25.**—(1) For the purpose of any proceedings before a court-martial, the judge advocate may of his own motion issue a witness summons directed to a person and require him to—

- (a) attend before the court at the time and place stated in the witness summons, and
- (b) give evidence, or produce any document or thing specified in the witness summons.

(2) The judge advocate may withdraw a witness summons issued under this rule if one of the following applies for it to be withdrawn—

- (a) the witness, on the grounds that—
  - (i) he cannot give or produce evidence likely to be material evidence, or
  - (ii) even if he can, his duties or rights, including rights of confidentiality, or those of any person to whom the evidence relates outweigh the reasons for the issue of the witness summons; or
- (b) any person to whom the proposed evidence relates, on the grounds that—
  - (i) that evidence is not likely to be material evidence, or
  - (ii) even if it is, his duties or rights, including rights of confidentiality, or those of the witness outweigh the reasons for the issue of the witness summons.

### **Witness summons no longer needed**

**26.**—(1) If—

- (a) a document or thing is produced in pursuance of a requirement imposed by a witness summons under rule 24,
- (b) the person applying for the witness summons concludes that a requirement imposed by the witness summons under rule 21(2) is no longer needed, and
- (c) he accordingly applies to the judge advocate for a direction that the witness summons shall be of no further effect,

the judge advocate may direct accordingly.

### **Application to withdraw a witness summons**

**27.**—(1) The judge advocate may withdraw a witness summons if one of the following applies for it to be withdrawn—

- (a) the party who applied for it, on the ground that it no longer is needed;
- (b) the witness, on the grounds that—
  - (i) he was not aware of any application for it, and
  - (ii) he cannot give or produce evidence likely to be material evidence, or
  - (iii) even if he can, his duties or rights, including rights of confidentiality, or those of any person to whom the evidence relates outweigh the reasons for the issue of the witness summons; or
- (c) any person to whom the proposed evidence relates, on the grounds that—
  - (i) he was not aware of any application for it, and
  - (ii) that evidence is not likely to be material evidence, or
  - (iii) even if it is, his duties or rights, including rights of confidentiality, or those of the witness outweigh the reasons for the issue of the witness summons.

(2) A person applying under this rule must—

- (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so, explaining why he wants the witness summons to be withdrawn; and
- (b) serve the application on the court administration officer and as appropriate on—
  - (i) the witness,
  - (ii) the party who applied for the witness summons, and
  - (iii) any other person who he knows was served with the application for the witness summons.

(3) Rule 23 applies to an application under this rule that concerns a document or thing to be produced in evidence.

### **Issue etc of witness summons and variation of requirements**

**28.**—(1) The judge advocate may issue or withdraw a witness summons with or without a hearing.

(2) A hearing under this Part must be in private unless the judge advocate otherwise directs.

(3) The judge advocate may—

- (a) shorten or extend (even after it has expired) a time limit under this Part; and
- (b) where a rule or direction requires an application under this Part to be in writing, allow that application to be made orally instead.

(4) Someone who wants the judge advocate to allow an application to be made orally under paragraph (3)(b) must—

- (a) give as much notice as the urgency of his application permits to those on whom he would otherwise have served an application in writing; and
- (b) in doing so explain the reasons for the application and for wanting the judge advocate to consider it orally.

**Service of witness summonses**

**29.**—(1) A witness summons issued under rule 21(2) or rule 25(1) shall be served on a witness—

- (a) by delivering it to him personally;
- (b) by leaving it for him with a person at the witness's usual place of abode;
- (c) by post in a letter addressed to him at his last known or usual place of abode;
- (d) transmitting it to him by fax or other electronic means, but only if he has agreed to accept service by that method; or
- (e) where the witness is subject to the Act or military or air force law, through his commanding officer.