STATUTORY INSTRUMENTS

1997 No. 171

The Courts-Martial (Royal Air Force) Rules 1997

PART V

PROCEEDINGS AT COURT-MARTIAL

The judge advocate

32.—(1) The judge advocate shall conduct the court-martial in accordance with the law of England and Wales.

(2) The judge advocate shall ensure that a proper record of the proceedings is made, in sufficient detail to enable the reviewing authority to follow the course of the proceedings.

The president

33.—(1) Subject to rule 32 above, the president shall be responsible for ensuring that the trial befits the traditions and standards of the Royal Air Force.

(2) It shall be the duty of the president to ensure that any person present during the proceedings for instruction takes no part in the proceedings and expresses no opinion to the court, on any matter relating to the trial, before the conclusion of the trial.

Sittings and adjournment

34.—(1) If it appears to the judge advocate necessary in the interests of justice, a court-martial may adjourn from time to time.

(2) A court-martial shall not sit on Saturday, Sunday, Christmas Day or Good Friday unless in the opinion of the court it is necessary to do so.

(3) A court-martial shall sit at such times and for such periods each day as seem to the court to be reasonable in the circumstances.

Record of proceedings

35.—(1) The record of proceedings of a court-martial shall include—

(a) the record of findings; and

(b) the record of sentence, if any.

(2) A certified transcript or note of evidence given at the court-martial and any preliminary proceedings shall be kept with the record of proceedings.

(3) Any transcript of a shorthand note shall be signed by the shorthand writer.

(4) Any transcript of a mechanical record shall be signed by the person who transcribed it.

(5) At the conclusion of the trial, the record of proceedings shall be signed by the judge advocate and the president.

Closed court

36. Where a court-martial sits in closed court, any person under instruction is permitted to be present.

Pre-trial hearing

37.—(1) The judge advocate may direct the court administration officer to order a hearing to take place at the court-martial before the commencement of the trial of an accused—

(a) of his own motion; or

(b) on the application of the prosecutor or accused for such a hearing;

and such a hearing shall be referred to in these Rules as a pre-trial hearing.

(2) An application for a pre-trial hearing shall—

(a) be made to the judge advocate in the form set out in Schedule 2 to these Rules; and

(b) specify the reason for which it is made.

(3) An applicant shall serve notice in writing of the application with a time estimate of the length of the pre-trial hearing on every other party to the proceedings and the court administration officer.

(4) Before directing the court administration officer to order a pre-trial hearing, the judge advocate shall afford each party to the proceedings the opportunity of making written representations to him.

(5) Paragraph (4) above shall not oblige the judge advocate to afford any party the opportunity of making representations where it appears to him that it would be impracticable to do so, or would cause unnecessary delay.

(6) On receipt of a direction from the judge advocate under paragraph (1) above, the court administration officer shall—

(a) issue an order convening the court-martial; or

(b) if the order convening the court-martial has already been issued, amend the order;

so that the order shall specify—

(i) the date and time at which the pre-trial hearing before the judge advocate shall take place; and

(ii) the date and time at which the officer members of the court shall convene for the trial.

(7) Nothing in this rule shall prevent the judge advocate from ordering a pre-trial hearing after the full court has assembled.

Challenges and oaths at a pre-trial hearing

38.—(1) Where a pre-trial hearing takes place, rules 40 and 41 below shall be complied with at the beginning of the pre-trial hearing, except that—

(a) the accused may not state his objection to any member of the court other than the judge advocate; and

(b) the judge advocate shall not administer an oath or affirmation to any officer member of the court,

until after the full court has convened.

(2) When paragraph (1) above applies, the application of rules 40 and 41 below in respect of court members not present at the pre-trial hearing shall be modified accordingly.

Substance of a pre-trial hearing

39.—(1) At a pre-trial hearing the judge advocate may make an order or ruling on—

(a) any question as to the admissibility of evidence;

(b) any other question of law, practice or procedure relating to the case.

(2) An order or ruling made under this rule shall have effect until the conclusion of the court-martial trial unless it appears to the judge advocate on application made to him at any stage during the proceedings that in the interests of justice it should be varied or discharged.

(3) If the judge advocate allows any application such that there is no charge remaining to which the accused can be required to plead, he shall direct the court administration officer to dissolve the court.

Challenges by the accused

40.—(1) This rule applies subject to rule 38 above.

(2) When the full court has assembled, the order convening the court-martial (including the name of any officer specified therein) and the names of the judge advocate and any interpreter shall be read to the accused.

(3) The accused may object to any person whose name is read out and to any interpreter appointed after the commencement of the trial.

(4) If more than one person is objected to, the objection to each shall be considered in the following order—

(a) the judge advocate;

(b) the president;

(c) the other members of the court;

(d) any waiting member; and

(e) any interpreter.

(5) The determination of the judge advocate on any objection shall be announced in open court.

(6) If an objection to an officer member other than the president is allowed, any waiting member in respect of whom no objection has been made or allowed shall take his place.

(7) Where a court-martial is convened to try two or more accused separately and one accused objects to the president or to any other member of the court, the judge advocate may, if he thinks fit, adjourn the trial of that accused and proceed with the trial of the other accused only.

Administration of oaths and affirmations

41.—(1) This rule applies subject to rule 38 above.

(2) After the accused has been given the opportunity to challenge the members of the court, oaths or affirmations shall be administered in the presence of the accused.

(3) The judge advocate, or any other member of the court on his behalf, shall administer an oath or affirmation to—

(a) the president;

(b) each officer member of the court;

(c) any person in attendance for instruction;

(d) any interpreter;

(e) any witness.

Commencement of the trial

42.—(1) For the purposes of the Act and these Rules the trial of an accused commences immediately after the last court member has been sworn.

(2) If after the commencement of the trial the judge advocate allows any challenge, objection, plea or application such that there is no charge remaining to which the accused can be required to plead, he shall dissolve the court.

Judge advocate sitting alone

43.—(1) Where—

(a) the accused makes a submission of no case to answer; or

(b) for any reason the judge advocate is of the opinion that he should rule on a question in the absence of the other members of the court,

the judge advocate may direct the other members of the court to withdraw.

(2) If, while the judge advocate is sitting alone in accordance with these Rules, a person commits an offence under section 57 or 101 of the Act, the judge advocate may report the occurrence to—

(a) the president; or

(b) if the offence is committed during preliminary proceedings and the person is subject to air force law, the commanding officer of that person.

Severance

44.—(1) Where—

(a) an accused is charged with more than one offence; or

(b) two or more accused are charged in the same charge sheet;

and the judge advocate rules that the fair trial of an accused may be prejudiced if the charges are not severed or that for any other reason it is desirable that the charges are severed, he may—

(i) order the court to try only one or more charges;

(ii) order the court to try only one or more accused;

(iii) leave any charge or any accused to be tried by a new court.

(2) Where an accused is charged in more than one charge sheet and the judge advocate rules that for any reason it is desirable that the court tries only the charge or charges set out in one charge sheet, he may leave the charge or charges set out in any other charge sheet to be tried by a new court.

Arraignment

45.—(1) The accused shall be arraigned by the judge advocate after the commencement of the trial.

(2) The accused need not be arraigned on all the charges in the charge sheet at the same time.

(3) Before the accused is arraigned on any charge, the judge advocate shall pass to each member of the court a copy of the charge sheet which shall set out only the charge or charges on which the accused is to be arraigned and any charge which is stated to be an alternative to a charge on which the accused is to be arraigned.

(4) The accused shall be required to plead separately to each charge on which he is arraigned.

Guilty plea

46.—(1) If the accused pleads guilty to a charge, the judge advocate shall, if it appears necessary to him and before the court accepts the plea, satisfy himself that the accused understands—

(a) the nature of the charge;

(b) the general effect of the plea; and

(c) the difference in procedure following pleas of guilty and not guilty.

(2) The court shall not accept a plea of guilty if—

(a) the judge advocate, having regard to all the circumstances, considers that the court should not accept the plea; or

(b) the accused is liable, if convicted, to a sentence of death.

(3) Where—

(a) a plea of guilty is not accepted by the court; or

(b) the accused does not plead to the charge or does not plead to it intelligibly,

the court shall enter a plea of not guilty.

Alternative charges

47.—(1) Where an accused pleads guilty to the first of two or more alternative charges, the court, if it accepts the plea, shall record a finding of guilty in respect of that charge and shall give the prosecutor leave to discontinue proceedings in respect of any alternative charge or charges.

(2) Where an accused pleads guilty to any other of two or more alternative charges, the court shall—

(a) if the prosecutor gives his consent—

(i) record a finding of guilty on any charge to which the accused has pleaded guilty,

(ii) record a finding of not guilty on any alternative charge placed before it on the charge sheet, and

(iii) give the prosecutor leave to discontinue proceedings in respect of any further alternative charge or charges; or

(b) if the prosecutor does not give the consent referred to in sub-paragraph (a) above, proceed as if the accused had pleaded not guilty to all the charges.

(3) If the court records a finding of guilty under paragraph (1) or (2)(a) above and subsequently allows the accused to change his plea under rule 54 below, the court may reinstate and arraign the accused on any alternative charge which was discontinued.

Additional charges during trial

48.—(1) If after the commencement of the trial the prosecutor intends to seek the leave of the court to prefer an additional charge, he shall, unless the accused waives the requirement, serve notice in writing of such intention on the accused before the application is made.

(2) Where notice is served on the accused in accordance with paragraph (1) above, he may apply for an adjournment of the trial.

Changes to the charge sheet during trial

49.—(1) If after the commencement of the trial the prosecutor intends to—

(a) amend, or substitute another charge or charges for, a charge;

(b) discontinue proceedings on a charge;

(c) prefer an additional charge;

the prosecutor shall seek the leave of the court.

(2) Where the court gives leave to discontinue proceedings on a charge, it shall consider whether to give the direction provided for in section 83B(14) of the Act.

Changes to the charge sheet by the court

50. If after the commencement of the trial it appears that, with due regard to the fairness to the accused, it is desirable in the interests of justice to amend a charge, the court may do so.

Procedure after guilty plea

51.—(1) This rule applies where—

(a) the court has accepted only a plea or pleas of guilty; or

(b) the court has accepted a plea or pleas of guilty and the prosecutor does not proceed to the trial of any charge to which an accused has pleaded not guilty.

(2) This rule applies whether the charge sheet is in respect of one or more than one accused.

(3) After the court records a finding of guilty, the prosecutor shall address the court on the facts of the case.

Pleas of guilty and not guilty on one charge sheet

52.—(1) This rules applies where in respect of one charge sheet—

(a) the court has accepted a plea or pleas of guilty;

(b) a plea or pleas of not guilty have been entered; and

(c) the prosecutor proceeds to the trial of any charge on which a plea of not guilty has been entered.

(2) This rule applies whether the charge sheet is in respect of one or more than one accused.

(3) Unless the judge advocate directs otherwise, the trial of any charge on which a plea of not guilty has been entered shall proceed in accordance with these Rules before the court considers any guilty plea.

(4) After the court has announced its finding on each charge in respect of which a plea of not guilty has been entered, the court shall consider any guilty plea.

(5) After the court records a finding of guilty in respect of each charge to which the accused has pleaded guilty, the prosecutor shall address the court on the facts of the case.

Dispute on facts after finding of guilty

53.—(1) Where after the court has recorded a finding of guilty in respect of any charge there are disputed facts in the case, any issue of fact may be tried.

(2) Where an issue of fact is being tried in accordance with this rule—

(a) the judge advocate may direct the prosecutor to call any witness to give evidence, and

(b) the prosecutor and the accused may, with the leave of the judge advocate, adduce evidence.

(3) The court shall sit in closed court while deliberating on its finding on the issue of fact.

(4) The finding of the court on the issue of fact shall be determined by a majority of the votes of the members of the court and announced in open court.

(5) In the case of an equality of votes on the finding on the issue of fact, the president shall have a second or casting vote.

Change of plea

54.—(1) At any time before the court closes to deliberate on its finding on a charge, an accused who has pleaded not guilty to the charge may, with the leave of the judge advocate, withdraw his plea and substitute a plea of guilty.

(2) At any time before the court closes to deliberate on its sentence on a charge, an accused who has pleaded guilty to the charge may, with the leave of the judge advocate, withdraw his plea and substitute a plea of not guilty.

(3) Where an accused changes his plea, the court shall proceed so far as is necessary as if the initial plea to that charge were the plea substituted.

Procedure after not guilty plea

55. Before calling the witnesses for the prosecution, the prosecutor may make an opening address.

Additional evidence during trial

56.—(1) If after the commencement of the trial the prosecutor intends to adduce evidence additional to that referred to in the prosecution papers, he shall where practicable serve notice in writing of such intention together with the particulars of the additional evidence on the accused and the judge advocate before it is adduced.

(2) Where notice and particulars are served on him in accordance with paragraph (1) above, or where evidence is adduced without such notice being given, the accused may apply to the judge advocate for an adjournment of the trial.

Expert evidence

57.—(1) Expert evidence shall not be adduced at trial without the leave of the judge advocate unless the party proposing to rely on it has served on every other party and the court administration officer, not less than 14 days before the date appointed for the trial, a statement of the substance of the expert evidence.

(2) The statement referred to in paragraph (1) above shall be in writing unless every other party consents to it being made orally.

Exhibits

58.—(1) Any exhibit admitted in evidence shall be marked sequentially with either a number or a letter.

(2) Each exhibit or a label attached to each exhibit shall be signed by the judge advocate.

(3) Each exhibit shall be retained with the record of proceedings, unless in the opinion of the judge advocate having regard to the nature of the exhibit or for other good reason it is not expedient to retain the exhibit with the record.

(4) Where an exhibit is not retained with the record of proceedings, the judge advocate shall ensure that proper steps are taken for its safe custody.

Presence of witnesses

59.—(1) Except for the accused and any expert or character witness, a witness as to fact shall not, except by leave of the judge advocate, be in court while not under examination.

(2) If while a witness is under examination, a question arises as to the admissibility of a question or otherwise with regard to the evidence, the judge advocate may direct the witness to withdraw until the question is determined.

(3) The judge advocate may direct any expert or character witness present in court to withdraw if the judge advocate considers in the interests of justice that his presence is undesirable.

Evidence through television link

60.—(1) Any application by the prosecutor or an accused for leave under section 32 of the Criminal Justice Act 1988(**1**) for evidence to be given by a witness through a live television link shall be made as soon as is practicable after the commencement of the trial.

(2) An application may not be made under paragraph (1) above without the leave of the judge advocate unless not less than 28 days before the date appointed for the trial the party making the application has served a notice in the form set out in Schedule 2 to these Rules on every other party, the court administration officer and the Judge Advocate General (or his deputy) stating—

(a) the grounds of the application;

(b) the name of the witness;

(c) where the witness is under the age of 18, the date of birth of the witness;

(d) the country and place where it is proposed the witness will be when giving evidence; and

(e) the name, occupation and relationship to the witness of any person proposed to accompany the witness and the grounds for believing that person should accompany the witness.

(3) Where the court gives leave for a witness under the age of 14 to give evidence through a live television link, the witness shall be accompanied by a person acceptable to the court and, unless the court otherwise directs, by no other person.

Video recordings of testimony from child witnesses

61.—(1) Any application by the prosecutor or an accused for leave under section 32A of the Criminal Justice Act 1988(**2**) for evidence to be given by a witness by means of a video recording shall be made as soon as is practicable after the commencement of the trial.

(2) An application may not be made under paragraph (1) above without the leave of the judge advocate unless not less than 28 days before the date appointed for the trial the party making the application has served a notice in the form set out in Schedule 2 to these Rules together with a copy of the video recording to which the application relates on every other party, the court administration officer and the Judge Advocate General (or his deputy) stating—

(a) the grounds of the application;

(b) where the witness is under the age of 18, the date of birth of the witness;

(c) the name of the witness;

(d) the date on which the video recording was made;

(**1**) 1988 c. 33; section 32(1)—(3) applies to proceedings before courts-martial by virtue of the Criminal Justice Act 1988 (Application to Service Courts) (Evidence) Order 1996 (SI.I. 1996/2592) subject to the modifications specified therein.

(**2**) Section 32A was inserted by the Criminal Justice Act 1991 (c. 53), section 54. Section 32A applies to proceedings before courts-martial by virtue of the Criminal Justice Act 1988 (Application to Service Courts) (Evidence) Order 1996 subject to the modifications specified therein.

(e) that in the opinion of the applicant the witness is willing and able to attend the court-martial for cross-examination; and

(f) the circumstances in which the video recording was made.

Examination of witnesses

62.—(1) The judge advocate may allow a request that the cross-examination or re-examination of a witness be postponed if he is satisfied that there is a good reason for such a request and that there is no injustice to the accused in doing so.

(2) The judge advocate may question any witness and, if he thinks it appropriate to do so, may put to the witness a question from any other member of the court.

(3) Any other member of the court may, with the judge advocate's permission, question any witness after the court's finding on the charge has been announced.

(4) If in the opinion of the judge advocate it is in the interests of justice to do so, the court may at any time—

(a) call any witness whom it has not already heard;

(b) recall a witness;

(c) permit the accused or the prosecutor to recall a witness.

Submission of no case to answer

63.—(1) At the close of the case for the prosecution the accused may submit, in respect of any charge, that the prosecution has failed to establish a prima facie case for him to answer.

(2) If the submission is allowed, the judge advocate shall direct the court to find the accused not guilty of the charge to which the submission relates.

(3) If the submission is not allowed, the court shall proceed with the trial.

Finding of not guilty before conclusion of the defence

64. The court may at any time after the close of the case for the prosecution find the accused not guilty of a charge, provided that the prosecutor has been given an opportunity to address the court on such a finding.

The case for the defence

65.—(1) After the close of the case for the prosecution, the judge advocate shall satisfy himself that the accused understands—

(a) that he may give evidence in his defence if he so wishes but he is not obliged to do so;

(b) the consequences of choosing to remain silent at trial;

(c) that, if he chooses to give evidence, he will be liable to be cross-examined by the prosecutor and questioned by the judge advocate; and

(d) that he may call witnesses on his behalf.

(2) Where the accused intends to call a witness to the facts of the case, other than himself, he may make an opening address outlining the case for the defence before the evidence is given.

Witnesses for the defence

66. Except with the leave of the judge advocate, if the accused elects to give evidence he shall be called before any other witness for the defence.

Further evidence

67. With the leave of the judge advocate the prosecutor may call or recall a witness to give evidence on any matter raised by the accused in his defence which the prosecutor could not—

(a) properly have dealt with before the accused disclosed his defence; or

(b) reasonably have foreseen.

Closing addresses

68.—(1) Subject to paragraph (4) below, the prosecutor and the accused may each make a closing address to the court.

(2) The accused shall be entitled to make his closing address after the prosecutor.

(3) Where two or more accused are represented by the same legal adviser, he may make only one closing address.

(4) Where the accused is not represented by a legal adviser and has called in person no witnesses as to fact other than himself, the prosecutor shall not make a closing address.

Summing up

69. After the closing addresses, if any, the judge advocate shall direct the court upon the law relating to the case and summarise the evidence.

Deliberation on finding

70.—(1) After the summing up, the judge advocate shall withdraw and the court shall close to deliberate on its finding on each charge before it.

(2) If the court requires further direction on the law during its deliberation on a finding on any charge, it shall suspend its deliberation to seek and be given further direction by the judge advocate in open court.

(3) During its deliberation on a finding, the court shall not separate until the finding has been reached unless the judge advocate directs that in the interests of justice the court may separate.

(4) The vote of each member of the court on the finding on each charge shall be given orally in reverse order of seniority.

Special finding

71.—(1) For the purposes of these Rules a special finding is, where the particulars proved or admitted at the trial differ from those alleged in the charge but are sufficient to support a finding of guilty of the like offence as that charged, a finding of guilty subject to exceptions or variations specified in the finding.

(2) The court may not reach a special finding unless it appears that the difference is not so material as to have prejudiced the accused in his defence.

Record of finding

72.—(1) The finding of the court on a charge shall be recorded in writing and dated and signed by the president.

(2) Each finding shall be announced separately by the president.

(3) If the court reaches a finding of guilty or a special finding and the judge advocate is of the opinion that such a finding is contrary to the law relating to the case, he shall direct the court on the findings which are open to it and the court shall retire to reconsider its finding.

(4) If the judge advocate is satisfied that the findings are not incorrect in law, he shall sign the record of the findings.

Inquiry into finding

73. Where the interests of justice require it, the judge advocate may in open court question the court on any finding of fact reached during its deliberation on the finding on any charge.

Offences taken into consideration

74.—(1) Where the court has recorded a finding of guilty on any charge or a special finding, the accused may request the court to take into consideration any other offence committed by him of a similar nature to that of which he has been found guilty or in respect of which a special finding has been reached, and, upon such a request being made, the court may agree to take into consideration any such offence as to the judge advocate seems proper.

(2) A list of the offences which the accused admits having commmitted and which the court agrees to take into consideration shall be signed by the accused and attached to the record of proceedings.