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STATUTORY INSTRUMENTS

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**1997 No. 171**

**The Courts-Martial (Royal Air Force) Rules 1997**

**PART VI**

**SENTENCING**

**Pre-sentence report and previous convictions**

**75.**—(1) Where the court administration officer has arranged for a pre-sentence report to be prepared in advance of the trial, he shall serve a copy on the accused and the Judge Advocate General (or his deputy) before the time appointed for the trial.

(2) Where the prosecutor has obtained a record of the accused's previous convictions in advance of the trial, he shall serve a copy on the accused and the court administration officer before the time appointed for the trial.

**Evidence before sentencing**

**76.**—(1) This rule applies where the court has recorded a finding of guilty or a special finding on any charge.

(2) Where practicable, the prosecutor shall present to the court information concerning—

- (a) the accused's age and rank;
- (b) the accused's service record;
- (c) any recognised acts of gallantry or distinguished conduct on the part of the accused and any decoration to which he is entitled;
- (d) particulars of any offence (whether under the Act or otherwise) of which the accused has been found guilty (during his service or otherwise), provided that any convictions treated as spent for the purposes of the Rehabilitation of Offenders Act 1974(1) shall be clearly marked as such;
- (e) particulars of any formal police caution administered to the accused by a constable in England and Wales or Northern Ireland;
- (f) particulars of the length of time the accused has been under arrest awaiting trial or in custody under a current sentence;
- (g) details of the accused's pay, terminal benefits and future pension entitlements; and
- (h) whether the commanding officer of the accused wishes to retain the accused in his unit.

(3) Unless the accused requires otherwise, the matters referred to in paragraph (2) above need not be adduced in compliance with the strict rules of evidence.

(4) The court shall consider any pre-sentence report concerning the accused in the possession of the court administration officer.

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(1) 1974 c. 53; sections 2 and 6 were amended, and the Schedule was inserted, by the Armed Forces Act 1996, section 13 and Schedule 4.

(5) A record of antecedents signed by the accused may be accepted in evidence by the court under paragraph (2)(d) above where the accused has admitted that he has been found guilty of each offence listed in the record and has had explained to him the purpose for which such admission was sought.

#### **Evidence on behalf of the accused**

77.—(1) The accused may—

- (a) give evidence on oath and call witnesses in mitigation of sentence and as to his character;
- (b) produce to the court any document or written report; and
- (c) address the court in mitigation of sentence.

(2) Unless the prosecutor requires otherwise, any document or report referred to in paragraph (1) (b) above need not be adduced in compliance with the strict rules of evidence.

#### **Postponement of deliberation on sentence**

78. Where two or more accused are tried separately by the same court upon charges arising out of the same circumstances, the court may, if the judge advocate thinks that the interests of justice so require, postpone its deliberation on the sentence to be awarded to any one or more of such accused until it has recorded its findings in respect of all the accused.

#### **Deliberation on sentence**

79.—(1) Subject to section 118A(3) of the Act and to paragraph (2) below, the court shall award one sentence in respect of—

- (a) all the offences of which the accused has been found guilty; and
- (b) all the offences taken into consideration in accordance with rule 74 above.

(2) The sentence may include a direction that such deductions shall be made from the pay of the accused as may have been made if the accused had been found guilty by the court of an offence taken into consideration as well as any offence of which he has been found guilty.

#### **Announcement of sentence**

80.—(1) The sentence shall be recorded in writing, dated and signed by the president and the judge advocate.

(2) The reasons for sentence shall be given by the judge advocate.

(3) The sentence, and any direction as to postponement or suspension of sentence, shall be announced by the president.

(4) If the court makes a recommendation to mercy, the reasons for making it shall be given by the president.

#### **Conclusion of the trial**

81.—(1) When each charge on the charge sheet or sheets has been disposed of, the president shall announce in open court that the trial is concluded.

(2) The judge advocate shall dissolve the court.