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STATUTORY INSTRUMENTS

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**2007 No. 3443**

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

**PART 11**

**SENTENCING**

**Sentencing procedure after guilty plea**

**77.**—(1) This rule applies where the judge advocate has accepted a plea or pleas of guilty.

(2) Before presenting the information required under rule 79, the prosecuting authority shall address the court on the facts of the case.

**Pre-sentence report and previous convictions**

**78.**—(1) Where the court administration officer has arranged for a pre-sentence report to be prepared in advance of the sentencing hearing, he shall serve a copy on the accused and send the report to the judge advocate before the time appointed for the hearing.

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

**Evidence before sentencing**

**79.**—(1) Where practicable, the prosecuting authority shall present to the court information concerning—

- (a) the accused's age and rank or rate;
- (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, if known, 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<sup>(1)</sup> shall be clearly marked as such;
- (e) particulars, if known, of any formal police caution administered to the accused by a constable in England and Wales or Northern Ireland;
- (f) particulars, if known, of the length of time the accused has been in custody awaiting trial or in custody under a current sentence;
- (g) details of the accused's pay, terminal benefits and future pension entitlements;
- (h) whether the commanding officer of the accused wishes to retain the accused in his unit; and

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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 (c. 46), section 13 and Schedule 4.

- (i) whether the accused elected trial by court-martial.
- (2) Unless the accused requires otherwise and the judge advocate so directs, the matters referred to in paragraph (1) need not be adduced in compliance with the strict rules of evidence.
- (3) The court shall consider any pre-sentence report concerning the accused.
- (4) A record of antecedents signed by the accused may be accepted in evidence by the court under paragraph (1)(d) 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**

**80.**—(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 prosecuting authority requires otherwise and the judge advocate so directs, any document or report referred to in paragraph (1)(b) need not be adduced in compliance with the strict rules of evidence.

#### **Deliberation on sentence**

**81.**—(1) Subject to paragraph (5), the court shall award one sentence in respect of all the offences of which the accused has been found guilty and all the offences taken into consideration in accordance with rule 76.

(2) Subject to paragraph (4), the vote of each member of the court as to the sentence shall be given orally —

- (a) in reverse order of seniority; or
- (b) for a board with civilian members, in the order determined by the president of the board, save that he shall vote last.

(3) The judge advocate shall vote last and the president of the board shall vote immediately before him.

(4) In the case of an equality of votes on sentence, the president of the board shall have the casting vote.

(5) 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 the offence taken into consideration as well as of the offence or offences of which he has been found guilty.

(6) While the court sits in closed court to deliberate on sentence, persons under instruction are permitted to be present but shall take no part in the proceedings.

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

**82.** 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.

#### **Announcement of sentence**

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

(2) The legal reasons for the sentence shall be announced in open court by the judge advocate.

(3) Subject to paragraph (4) the formal pronouncement of sentence, and any direction as to postponement or suspension of sentence, shall be announced in open court by the president of the board.

(4) Where the president of the board has been chosen under rule 52(4), the formal pronouncement of sentence, and any direction as to postponement or suspension of sentence, shall be announced in open court by the judge advocate.

(5) With leave of the judge advocate, the president of the board may make additional remarks to the accused about the effects of his offending on the Service and the effects of the sentence on his Service career.

### **Conclusion of the proceedings**

**84.**—(1) When each charge on the charge sheet has been disposed of, the president of the board shall announce in open court that the proceedings are concluded.

(2) The judge advocate shall dissolve the court.