STATUTORY INSTRUMENTS

1977 No. 86

DEFENCE

The Courts-Martial (Evidence) Regulations 1977

Made - - - - - - - 19*th January* 1977

Laid before Parliament - - - 4*th February* 1977

Coming into Operation in accordance with Regulation 1

The Secretary of State, in exercise of the powers conferred on him by section 99A of the Army Act 1955(a), section 99A of the Air Force Act 1955(b) and section 12 of the Criminal Justice Act 1967(c), and of all other powers enabling him in that behalf, hereby makes the following Regulations:—

Citation and commencement

1. These Regulations may be cited as the Courts-Martial (Evidence) Regulations 1977 and shall come into operation on such date as section 11 of the Armed Forces Act 1976(d) comes into force.

Interpretation

2.—(1) In these Regulations—

"the Act of 1967" means the Criminal Justice Act 1967(c);

"the Regulations of 1967" means the Courts-Martial (Evidence) Regulations 1967(e).

(2) Any reference in these Regulations to section 9 of the Act of 1967, or to a part of that section, is a reference to that section or to that part of it as applied with modifications in relation to proceedings before army and air force courts-martial by section 99A of the Army Act 1955(a) and section 99A of the Air Force Act 1955(b) respectively, and, in particular, as applied with the modifications to the said section 9 contained in the Regulations of 1967, being regulations referred to in section 99A(3)(*a*) of each of those Acts.

(3) Any reference in these Regulations to section 11 of the Act of 1967, or to a part of that section, is a reference to that section or to that part of it as modified in relation to proceedings before courts-martial by the Regulations of 1967.

(4) Any reference in these Regulations (including their preamble) to an enactment shall be construed as a reference to that enactment as amended by any subsequent enactment, whether passed before, on or after the coming into effect of these Regulations.

(5) The Interpretation Act 1889(f) shall apply for the interpretation of these Regulations as it applies for the interpretation of an Act of Parliament.

(a) 1955 c. 18. (b) 1955 c. 19. (c) 1967 c. 80.
(d) 1976 c. 52. (e) S.I. 1967/1807 (1967 III, p. 4830).
(f) 1889 c. 63.

Further modifications of sections 9 and 11 of the Act of 1967

3.—(1) In their application to proceedings before army and air force courts-martial, sections 9 and 11 of the Act of 1967 shall be further modified in accordance with the provisions of the Schedule to these Regulations.

(2) The modifications in the Schedule are modifications appearing to the Secretary of State to be necessary or proper for the operation of sections 9 and 11 of the Act of 1967 in relation to such proceedings.

Dated this 19th day of January, 1977.

Fred Mulley,
One of Her Majesty's Principal
Secretaries of State.

Regulation 3 SCHEDULE

FURTHER MODIFICATIONS OF SECTIONS 9 AND 11 OF THE ACT OF 1967

1. In section 9(2)—

(*a*) there shall be added at the end of the proviso the words "or if the hearing at which the statement is to be so tendered is a hearing before an army or air force court-martial by way of appeal from a Standing Civilian Court, and the statement was admitted in evidence by the lower court."; and

(*b*) there shall be added at the end the following further proviso—

"And provided further that, in relation to a statement which is to be tendered in evidence before an army or air force court-martial in a case where the accused has elected to be tried by such a court instead of by a Standing Civilian Court, the conditions specified in paragraphs (*c*) and (*d*) of this subsection shall apply only insofar as the equivalent conditions for the lower court were not satisfied before the election was made; and in this proviso "the equivalent conditions for the lower court" means the conditions specified in paragraphs (*c*) and (*d*) of this subsection as modified and applied in relation to Standing Civilian Courts by order under paragraph 12 of Schedule 3 to the Armed Forces Act 1976.".

2. In section 9(8), there shall be added at the end the words "and 'Standing Civilian Court' means a court established under section 6 of the Armed Forces Act 1976.".

3. In section 11, there shall be added at the end the following subsection—

"(10) Notwithstanding the foregoing provisions of this section—

(*a*) an accused who appeals to an army or air force court-martial from a Standing Civilian Court and who, in the proceedings below, gave notice of particulars of an alibi in accordance with the equivalent provisions for the lower court, or adduced evidence in support of an alibi in that court, shall not be bound to give notice specifying the same particulars of the same alibi in relation to the appeal proceedings; but subject thereto, the foregoing provisions of this section shall apply in relation to such appeal proceedings with the following modifications, namely—

(i) as if subsection (3) were omitted;

(ii) as if, in subsection (6), for the words "commanding officer of the accused" there were substituted the words "convening officer";

SCHEDULE—*continued*

(iii) as if, in subsection (8), in the definition of "the prescribed period", there were substituted for the words "was remanded for a trial by court-martial" the words "gave notice of appeal", and as if there were added at the end of that subsection the following definitions—

"convening officer" has the same meaning as that assigned to it in section 143 of the Army Act 1955 and section 143 of the Air Force Act 1955; and

"accused" includes appellant;

(*b*) where an accused elects to be tried by an army or air force court-martial instead of by a Standing Civilian Court, the foregoing provisions of this section shall apply in relation to the proceedings before the court-martial only insofar as the equivalent provisions for the lower court were not observed before the election was made;

and in this subsection, "the equivalent provisions for the lower court" means the provisions of this section as modified and applied in relation to Standing Civilian Courts by order under paragraph 12 of Schedule 3 to the Armed Forces Act 1976.".

EXPLANATORY NOTE

(This Note is not part of the Regulations)

These Regulations further modify in relation to the proceedings of army and air force courts-martial sections 9 and 11 of the Criminal Justice Act 1967 (proof by written statement, and notice of alibi).

General modifications of these sections for court-martial proceedings are contained already in the Courts-Martial (Evidence) Regulations 1967. The present further modifications are consequent upon the provisions in the Armed Forces Act 1976 about Standing Civilian Courts, and provide that where an accused elects to be tried by army or air force court-martial instead of by a Standing Civilian Court, or appeals to such a court-martial from a Standing Civilian Court, it is not necessary to repeat in relation to the court-martial proceedings any procedures under sections 9 and 11 of the 1967 Act which have already been carried out in relation to the proceedings of the lower court.

These Regulations are to come into operation when section 11 of the Armed Forces Act 1976 comes into force. The provisions in that Act about Standing Civilian Courts are to come into force at the same time.

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