ROYAL NAVY

1957 No. 2225

The Naval Courts-Martial (Procedure) Order, 1957

Made - - - - 20th December, 1957
Laid before Parliament 31st December, 1957
Coming into Operation in accordance with Section 2

At the Court at Buckingham Palace, the 20th day of December, 1957

Present,

The Queen's Most Excellent Majesty in Council

Whereas there was this day read at the Board a Report of the Judicial Committee of the Privy Council, dated the 2nd day of December, 1957, in the words following:—

"Whereas by Order in Council of the 31st day of October, 1957, there was referred unto this Committee a Memorial of the Lords Commissioners of the Admiralty dated the 23rd day of October, 1957, praying that the General Orders for regulating the procedure and practice of Naval Courts-Martial contained in the Schedule to the said Memorial be approved:

"The Lords of the Committee, in obedience to the said Order of Reference have taken the said Memorial and the said General Orders into consideration and Their Lordships do this day agree humbly to report to Your Majesty in Council as their opinion that the General Orders regulating the procedure and practice of Naval Courts-Martial set out in the Schedule annexed to this Report ought to be approved."

Now, therefore, Her Majesty, having taken the said Report into consideration, and in exercise of the powers conferred upon Her by subsection (4) of section 58 of the Naval Discipline Act, 1957(a), and of all other powers Her enabling, is pleased, by and with the advice of Her Privy Council, to order and it is hereby ordered as follows:—

1. The General Orders aforesaid as set out in the Schedule to this Order are hereby approved.

2. This Order shall come into operation on such date as may be appointed for the coming into force of the Naval Discipline Act, 1957, and may be cited as the Naval Courts-Martial (Procedure) Order, 1957.

And the Right Honourable the Lords Commissioners of the Admiralty are to give the necessary directions herein accordingly.

W. G. Agnew.

(a) 5 & 6 Eliz. 2. c. 53.

SCHEDULE

REVISED GENERAL ORDERS REGULATING THE PROCEDURE AND PRACTICE OF NAVAL COURTS-MARTIAL

These General Orders supersede the General Orders regulating the procedure and practice of naval courts-martial contained in the Naval Courts-Martial (Procedure) Order, 1953(a).

In these General Orders, unless the context requires otherwise, the words "the Act" mean the Naval Discipline Act 1957 and any Naval Discipline Act for the time being in force; the words "convening authority" mean an authority having power to order courts-martial, or, when a court-martial has been ordered, the authority who ordered that particular court-martial or his successor in command; and the words "open court" include periods during which the public is excluded under section 61 (2) of the Act.

PROCEDURE PREPARATORY TO TRIAL

2102. *Application for Trial.* An application for the trial by court-martial of any person on any charge shall be made as follows. There shall be forwarded to the convening authority through the usual channels a letter, hereinafter called the circumstantial letter, reporting the circumstances on which the charge or charges are founded in the order of their occurrence, and in sufficient detail to show the real nature and extent of the offence; when words constitute the substance of the offence, they are to be fully and exactly set out. The letter is not to refer in any way to the previous character, conduct or convictions of the accused, or to contain any reference to facts prejudicial to him other than such as bear directly on the charges.

2. When a charge is drawn under section 19 of the Act, the circumstantial letter must contain specific details of every respect in which it is alleged that the accused was at fault. (On evidence of negligence arising during the trial but not alleged in the circumstantial letter, see 2256.)

3. Statements made by the accused in the course of enquiries or during an investigation or after he has been charged are not to be included in the circumstantial letter (unless they constitute an essential part of the alleged offence, such as in a charge of perjury). They should be forwarded as an annex to the circumstantial letter in a separate document and reference should be made in the circumstantial letter itself to the fact that such statements were made and to their inclusion in the annex.

2105. *Documents to accompany Circumstantial Letter.* There shall also be forwarded at the same time as the circumstantial letter a further letter enclosing—

(*a*) The charge or charges drawn in accordance with the prescribed forms in the very words in which the offence is described in the section of the Naval Discipline Act or other Act under which it falls, and signed by the officer who signed the circumstantial letter. Such charges may be in addition to or substitution for charges which were put to the accused during the course of any investigation.

(*b*) A list of witnesses for the prosecution.

(*c*) A summary of evidence in support of the charges.

(*d*) A list of the exhibits which the prosecutor proposes to put in evidence.

And when the offender is below the rank of officer:—

(*e*) A certified extract of all entries of offences and punishments in the Record of Offences Sheet prior to the date of the offence charged but subsequent to his joining his present ship, with his character assessed from the previous 31st December to the date of the offence with which he may be charged but excluding all consideration of that offence.

(*f*) A certified copy of the accused's certificate of service.

(a) S.I. 1953/594 (1953 II, p. 1487).

2108. *Opportunity to Prepare Defence.* An accused person, for whose trial by court-martial an application has been made, shall be afforded as full an opportunity as is consistent with the exigencies of the Service of preparing his defence and of free communication with his witnesses or with any adviser whom he may wish to consult.

2109. *Friend of the Accused.* Unless the person charged desires to conduct his own case, he may have a person or persons to assist him during the trial, whether an officer, rating or legal adviser. He may request and is to be afforded at the earliest possible moment the assistance of any officer or rating in his ship whose assistance is reasonably available. Should no such request be made or should an accused person be unable to obtain assistance, it shall be the duty of such officer as the convening authority may direct to assist him.

2. Where the accused person is not otherwise legally represented and the trial is expected to give rise to complexities, the convening authority shall consider whether it is desirable to appoint as the accused's friend, subject to his consent, an officer who has undergone legal training.

Duties of the Convening Authority

2115. *Sufficiency of Charges and Evidence.* When it is proposed to try a person on any charge, the convening authority shall not order a court-martial to assemble until he has satisfied himself that the charges are correct and sufficient, and that they are properly framed and carefully drawn up, and until he has also satisfied himself that the evidence, if uncontradicted or unexplained, will probably suffice to ensure a conviction. He shall then countersign the charge sheet to indicate his approval of the form in which the charges are to be brought and shall transmit it to the officer who is to prosecute.

2119. *Documents to President and Members.* The convening authority shall issue to the officer nominated by him to preside at the court-martial a warrant under his hand in the prescribed form, directing him to assemble a court-martial.

2. He shall transmit to the president and members a copy of the charge sheet but shall not send them a copy of the circumstantial letter. When evidence is to be given on the navigation of any of Her Majesty's ships, vessels or aircraft he may send to the president but not to the other members a copy of those parts of the circumstantial letter containing navigational data and, when the accused is charged under section 19 of the Act, a note of the information referred to in article 2102 (2) (see also 2161 (4)).

2120. *Appointment of officials at courts-martial.* The convening authority or such officer as he may direct may, by warrant under his hand in the prescribed form, appoint a person to officiate as judge advocate at the trial, and shall in that case send to him (or, in a sealed envelope, to the president for him) a copy of the circumstantial letter, and any statement(s) annexed thereto, a list of the officers constituting the court, the names of the officers nominated as spare members and the documents mentioned in article 2105 (*a*), (*b*), (*c*) and (*d*).

2. The convening authority or such officer as he may direct may, by warrant under his hand in the prescribed form, appoint a person to officiate as clerk of the court at the trial and shall forward to him (or, in a sealed envelope, to the president for him) a list of the officers constituting the court, the names of the officers nominated as spare members, a copy of the circumstantial letter and any statement(s) annexed thereto, copies of the documents mentioned in article 2105 and the list of persons who have been tried by court-martial or disciplinary court, or a certified extract therefrom.

3. *Appointment of Provost Marshal.* The convening authority or such officer as he may direct shall, by warrant under his hand in the prescribed form, appoint a provost marshal to take the accused into his custody and keep him safely until he shall have been delivered in due course of law.

4. *When to Appoint a Prosecutor.* It is the duty of the Captain of the ship to which the accused belongs to act as prosecutor in ordinary cases, but if for any reason it is undesirable or impossible for the Captain or Executive Officer of that ship to conduct the prosecution, the convening authority shall appoint a competent person to undertake the duty.

Duties of the President

2123. *Appointment of Judge Advocate and Clerk of the Court* (*N.D.A.s* 55). If the judge advocate or the clerk of the court is appointed by the president, the president shall forward to him with his warrant under article 2120 (1) or (2) the documents furnished by the convening authority.

2. *Responsibility in regard to Accused.* The president shall satisfy himself before or at the beginning of the hearing that the accused has been furnished, at the earliest possible moment, with a copy of the charge sheet and of the circumstantial letter, a list of officers from whom the court may be formed and of witnesses for the prosecution, the summary of evidence in support of the charge(s), and a copy of Form S. 268 on the rights of persons on trial by naval court-martial.

3. *When less than 24 hours' notice.* If, in pressing circumstances, where delay would be very inconvenient to the public service, the above-mentioned documents shall not have been furnished to the accused 24 hours before trial, this fact shall be set out in the record of the proceedings, together with a statement of the pressing circumstances which prevented their being so furnished. Any representations made by or on behalf of the accused should be considered at or before the trial.

4. *In case of Mutiny.* Notwithstanding anything contained in these regulations, in the case of mutiny the trial may take place immediately after the commission of the offence.

5. *Appointment of Officer of the Court.* The president shall appoint an officer to be officer of the court, and shall give him such orders as may be necessary for the due transaction of the business of the court.

6. *Administration of oath.* As soon as the court has been sworn, the president shall administer to the judge advocate an oath or affirmation in the form set out in 2164.

7. *Responsibility as to Trial.* The president shall be responsible for the trial being held and conducted in accordance with the provisions of the Act, with these general orders and with any supplementary orders given by the Admiralty.

8. *Judge Advocate's advice.* Where the court does not accept the advice of the judge advocate on a point of law (see 2126 (8)) the president shall cause the fact to be set out in the record of proceedings together with the court's reasons for rejecting the advice.

Duties of the Clerk of the Court

2124. *Duty to Accused and to Prosecutor.* The clerk of the court shall give the accused notice in writing of the time and date of the trial and a copy of Form S. 268 (Rights of Accused Persons). He shall also cause the accused to be furnished with a list of the officers constituting the court and of those nominated as spare members, the name of the judge advocate and the documents mentioned in articles 2102 and 2105 (*a*), (*b*), (*c*) and (*d*); and, if the prosecutor should at a later stage desire to call any further witnesses or to produce further exhibits, the clerk of the court shall as soon as practicable give the accused notice of his intention to do so, together with the summary of the evidence to be given by such witnesses or a list of the exhibits, as the case may be. He shall also inform the accused that any witnesses whom he may desire to call whose attendance can reasonably be procured shall be summoned on his behalf. He shall inform the president before the trial that he has performed the duties described above. The clerk of the court shall inform the prosecutor of the date and time of the court-martial and ask him for certified copies (in the case of an officer) of any of the documents mentioned in article 2192 (1) (*a*) (ii) and (in the case of a person below the rank of officer) the documents mentioned in article 2192 (1) (*b*) (ii) and (iii). He shall arrange for the accused's friend to be furnished with copies of the documents mentioned in article 2192 (1) (*a*) or (*b*).

2. *Notice to Produce Documents.* At the request of the prosecutor, or of the accused or his friend, the clerk of the court shall serve on the accused (and, if practicable, on his friend) or on the prosecutor (as the case may require) notice to produce at the trial any specified documents which are in his possession and which may be material evidence in the case.

3. *Attendance of Witnesses* (*N.D.A. s.* 64). The clerk of the court shall prepare and arrange for the service of a summons upon each witness whom the prosecutor or the accused may desire to call, and whose attendance can reasonably be procured. Should it appear that any witness has been summoned without due cause, the person requiring the attendance of such witness may, at the discretion of the Admiralty at home, or Commander-in-Chief abroad, be required to refund the cost of such attendance.

4. *Administration of oaths.* The clerk of the court shall administer to the shorthand-writer(s) or any other person(s) employed to record or transcribe the proceedings, to every witness (except as provided by section 60 (3) of the Act) and to any interpreter an oath or affirmation in the form set out in article 2164.

5. *Payment of witnesses.* The clerk of the court shall repay to witnesses and others their reasonable expenses in accordance with the regulations on expenses and allowances of civilians.

6. *Duties after trial.* When the duties of the judge advocate at the trial have been performed by a civilian lawyer, or where the exigencies of the Service would cause undue delay if the judge advocate were to prepare and transmit the proceedings, the clerk of the court is responsible for the preparation and transmission of the record of proceedings.

Duties of the Judge Advocate

2126. *Duties before the Trial.* The sole duty of the judge advocate before the trial shall be to inform the convening authority of any defect in the constitution of the court.

2. *Administration of Oaths.* The judge advocate shall administer to the president, to each other member of the court separately, to the clerk of the court and to any officers in attendance for instruction in the duties of judge advocate or clerk of the court an oath or affirmation in the form set out in article 2164.

3. *Advice to Court.* The judge advocate shall, whether his opinion is asked or not, advise the court to the utmost of his knowledge and ability, not only on questions relating to naval law and to the procedure of courts-martial, as they arise, but also on every question of doubt or difficulty with reference to common and statute law, to the law and rules of evidence, and to the rules and regulations of the Service generally.

4. *To be Impartial and Protect Accused.* The judge advocate shall maintain an entirely impartial position. He shall take care that the accused does not suffer any disadvantage in consequence of his position or of his ignorance, or of his incapacity to examine or cross-examine witnesses, or of any other cause. He may, with the permission of the president, put such questions to any witness as may appear necessary to elicit the truth, and may, with the permission of the court and consent of the accused, call witnesses.

5. Before the closing of the court for consideration of the finding the judge advocate shall advise the court on all legal issues arising out of the trial and shall deal in particular with the burden of proof, the ingredients of the offence(s) with which the accused is charged and, where necessary, the question of corroboration; he shall, where appropriate, advise the court of and concerning any legal issue(s) raised by the evidence which will require to be determined to enable the court to reach a proper decision; if he considers that there is no evidence which could, in law, support the charge(s) or any of them, he shall inform the court accordingly; he shall advise the court whether there is any, and if

so what, evidence which could, in law, amount to corroboration; and he shall, if necessary, also advise the court on the powers to convict of mitigated or alternative offences conferred on it by section 67 and 68 and, if relevant, of its power under section 69 of the Act.

6. Any information, advice or opinion given by the judge advocate in open court shall be entered in the record of proceedings.

7. The judge advocate shall retire when the court is closed for consideration of the finding, and should his further advice be required, the court shall be reopened and the advice shall be requested in open court. When the court is closed for consideration of the sentence or any matter other than the finding, the judge advocate may remain with the court.

8. The court shall be guided by the advice of the judge advocate on all points of law. Where, however, the court does not accept his advice on a point of law, it shall be the duty of the president to cause the fact to be set out in the record of proceedings, together with the court's reasons for rejecting the advice.

9. When any question of the admissibility of evidence is raised or when in a joint trial of more than one person application is made for a separate trial, or where application is made that one or more charge(s) out of multiple charges should be tried separately, or when the court cannot without injustice decide whether a member of the court summoned as a witness has been so summoned with sufficient cause, the judge advocate may request, and if he does the president shall grant, permission to hear the arguments, in the court room or such other convenient place as may be decided by the president, in the absence of the court, the judge advocate taking for the time being the powers and duties of the president and other members of the court. The hearing by the judge advocate of the arguments shall form part of the proceedings of the court and take place and be recorded in the normal manner except for the absence of the court. After hearing such arguments and evidence on the admissibility of the evidence in question, the judge advocate shall inform the court of his ruling as to the admissibility of the evidence or as to the desirability of a separate trial, or as the case may be. Rulings of this kind on matters heard in the absence of the court must be followed by the court and the procedure referred to in (8) above does not apply to them. (See 2142 (7), 2152 and 2153).

10. *Record of Proceedings.* The judge advocate shall be responsible for the due recording of the proceedings in the prescribed form. He shall be responsible for the recording, so far as is reasonably practicable, of the questions put to, and the answers given by each witness. He shall, when required to do so, read the same or cause the same to be read or repeated in the hearing of the witness, in order that any mistakes may be corrected. All words spoken in open court, whether by way of argument, objection, submission, decision, or in any other way, are to be recorded, so far as may be reasonably practicable, so that the record shall contain a full account of all that is said and done in open court. No erasures are to be made in the record and all corrections or interlineations are to be verified by the initials of the judge advocate or the clerk of the court. When the record is transcribed, all questions, answers and other matters are to be numbered consecutively.

2127. *Advice to Prosecution and Defence.* If any officer with legal experience other than the judge advocate and clerk of the court is available to give advice to the prosecution or defence on questions of law before the trial, such officer may be consulted by the prosecution or the defence or by both, and if such officer be available neither the judge advocate nor the clerk of the court may be consulted.

Sitting and Dissolution of the Court

2131. *Summoning the court.* Whenever a court-martial is ordered, such timely notice as may be practicable, which as a general rule should be not less than 24 hours, shall be given in general orders or by signals to the ships present, so that the proper officers may be prepared to attend at the place and hour appointed.

2. *Dissolution of the court.* The convening authority has power to dissolve a court-martial. If circumstances arise during the proceedings of the court which render such action necessary in his opinion, the convening authority should so inform the president and the president is to declare in open court that the accused is discharged from the custody of the court and that the court is dissolved by order of the convening authority.

Procedure at the Trial

2138. *Deliberations of the Court.* The court may be closed to deliberate upon its findings or sentence in accordance with article 2184 (1) or article 2201 and may also be closed to deliberate in private upon any other matter arising out of the trial. Otherwise the court-martial shall sit in open court.

2. *Trial in Camera.* If the court makes an order under section 61 (2) of the Act, the findings or such parts of the findings as will not adversely affect the purpose of making the order and the sentence, if any, shall always be read in public. The record of proceedings must include any order so made, together with any submission made in connection therewith and the grounds on which the court made the order; they must also indicate during what part or parts of the trial the public or any portion thereof was excluded.

2139. *Opening Court.* As soon as the court has been assembled the accused shall be brought in and the prosecutor and audience admitted. The judge advocate, or clerk of the court shall read the warrant for assembling the court.

2140. *Shorthand Writer etc.* At all trials an impartial person or persons shall be employed to record the proceedings, whether by shorthand or by mechanical or other means, and such person, and any person who will be employed to operate or transcribe the mechanical recording, shall be duly sworn, but no trial shall be invalidated by reason of the absence of a shorthand writer or of mechanical means of recording.

2. *Reading over notes.* The evidence, or any part thereof, given by a witness shall, if the court so decides, be read or played over to him before he leaves the court by the shorthand writer or other person who has recorded the evidence in the absence of a shorthand writer.

2141. *Interpreter.* At any time during the trial, should the court think it necessary, or should either the prosecutor or the accused request it on any reasonable ground, an impartial person shall be employed to act as interpreter and sworn in due course.

2142. *Challenges.* Any objection shall be dealt with as in section 59 of the Act and the following provisions of this article.

2. *Objections to members.* The judge advocate or clerk of the court shall read the names of the officers nominated to form the court, and shall ask the prosecutor whether he objects to any of them trying the case. If the prosecutor shall have made no objection, or after any objection made by the prosecutor has been disposed of, the judge advocate or clerk of the court shall ask the accused if he objects to being tried by any of these officers.

3. Any member may be objected to on any ground which affects his competency to act as an impartial judge or which makes it appear that he may not be able so to act.

4. Objections to members shall be decided separately, that to the officer lowest in rank being taken first.

5. On an objection being allowed, the member is at once to retire, and his place is to be filled up before an objection against another officer is considered.

6. *No objections to the judge advocate or clerk of the court.* Neither the prosecutor nor the accused can object to the judge advocate or the clerk of the court.

7. *Member summoned as a witness.* Should a member be objected to on the ground of being summoned as a witness, and should it be found that the objection has been made in good faith, the objection shall be allowed. Should, however, it be found that the officer was summoned to give evidence without a sufficient cause, and merely to disqualify him from sitting, the court is to exercise its discretion in regard to allowing the objection. Unless the court is satisfied that the question of sufficient cause can, without injustice, be decided by the court, the procedure in article 2126 (9) shall be followed.

8. *Objection to Constitution.* After any objections to individual members of the court have been dealt with, the judge advocate or clerk of the court shall ask the prosecutor as well as the accused whether he has any other objection to make respecting the constitution of the court. Should either raise any objection it shall be decided by the court.

9. *Objections to Interpreter or to person recording or transcribing the proceedings.* Before a person appointed to act as interpreter or to record or transcribe the proceedings is sworn for that purpose, the prosecutor and the accused shall be informed of the person whom it is proposed to employ, and may object to such person ; and the court, should it think such objection reasonable, shall obtain the services of some other person.

2143. *Members and Officers of Court Sworn.* If the prosecutor and the accused should have no further objection to make to the constitution of the court, the members, judge advocate, clerk of the court and shorthand-writer (or other person(s) employed to record or transcribe the proceedings) and any officers in attendance for instruction in the duties of judge advocate or clerk of the court shall take the oaths in the manner laid down in Article 2164.

2145. *Production of Charts in certain cases.* At all trials at which evidence is to be given on the navigation of H.M. ships, vessels or aircraft the Captain shall, before the commencement of the trial, make available the chart(s) or map(s) by which the ship, vessel or aircraft was navigated, or a copy or tracing of the chart or map if the original is not available (see 2161 (4) and 2252 (1)).

2146. *Friend of the Accused.* A person assisting an accused person may advise him on all points, examine him if he desires to give evidence, cross-examine the witnesses for the prosecution and examine those for the defence. He may make any submissions that the accused might make and address the court on his behalf in accordance with articles 2172, 2178 and 2192 (4). In every case in which the accused conducts his own defence, the person assisting the accused may advise him on all points, suggest to him questions to be put to witnesses, and may read the accused's statement of defence and/or statement in mitigation of punishment.

2150. *Commencement of Trial—Proof of Jurisdiction.* The trial shall commence by the judge advocate or clerk of the court reading the heading of the charge sheet and asking the accused whether he is the person named therein and whether he admits that he is, and was at the time of the alleged offence, subject to the Naval Discipline Act. Admission by the accused of these matters shall be evidence that the accused is under the jurisdiction of the court.

2152. *Application for Separate Trials.* When more than one person is charged jointly and any of the accused submit that the fair trial of one or more of the accused may be prejudiced if the accused are tried together, the judge advocate shall hear the arguments in the absence of the court as laid down in article 2126 (9). The court shall, in accordance with the ruling of the judge advocate, decide:—

(*a*) to continue with the joint trial ; or

(*b*) to try the accused, or some of them, separately ; or

(*c*) to try the accused, or some of them, and leave the other, or others, of the accused to be tried by a new court ; or

(*d*) to exercise the powers given under article 2153 and try the accused, or some of them, on some charges, severing the other charges.

2153. *Application to Sever Charges.* When the accused, or one or more of several accused, is charged with more than one offence and the defence submits that the fair trial of the accused may be prejudiced if the charges are not severed, the judge advocate shall hear the arguments in the absence of the court as laid down in article 2126 (9). The court shall, in accordance with the ruling of the judge advocate, decide:—

(*a*) to try all the charges together; or

(*b*) to try a charge or charges separately from another or others; and/or

(*c*) to leave a charge or charges to be tried by a new court.

2155. *Trial by another court.* If any of the accused or any of the charges are left to be tried by another court, the president shall immediately after the trial report the fact to the convening authority, who shall be competent to decide whether to convene a separate court-martial for the trial of the accused on any charges left untried under article 2153.

2. Should the accused or any of them have been convicted, any decision not to try him or them on the remaining charges shall be deferred until either

(*a*) the time limit for making an application for leave to appeal has expired, or

(*b*) the accused's appeal has been finally determined.

If on expiry of the period at (*a*) any such accused has made no appeal and the convening authority decides not to order him to be tried on the remaining charges, the convening authority shall inform him that the untried charges are withdrawn. If, however, any such accused has appealed the decision whether to withdraw the remaining charges and the notification of such accused shall rest with the Admiralty.

2156. *Reading the charges.* After proving the jurisdiction of the court or, in the event of an application under article 2152 or 2153, after such application has been disposed of, the judge advocate shall read such of the charges as the court is to try at that stage.

2157. *Unfitness to plead or to stand trial by reason of insanity.* If when the accused is about to be called upon to plead to the charges it is brought to the notice of the court that, by reason of insanity, he may be unfit to stand his trial, in that he may be unable to understand the charges, to comprehend the course of the proceedings so as to make a proper defence, to understand the details of the evidence or adequately to instruct his friend, it shall proceed to try that issue before the accused is actually called upon to plead.

2. Medical evidence and any other relevant evidence should be called by the prosecutor or the defence (as may be appropriate) or by the court. If, after hearing the evidence, the court considers that the accused is unfit to stand his trial, the court shall find to that effect and order him to be kept in custody until effect is given to the directions of the Admiralty in his case. If, after hearing the evidence, the court considers that he is fit to plead, it shall proceed with the trial.

2159. *Pleading.* The accused shall be required to plead guilty or not guilty personally and separately to each charge. If he refuses to plead, or pleads in any manner which does not amount to an unqualified plea of guilty, the trial shall proceed as if he had pleaded not guilty.

2. Before a plea of guilty is recorded the judge advocate shall ensure that the accused understands each charge to which he has pleaded guilty and the difference of procedure which will result from the plea of guilty. The court shall, if requested by the judge advocate, adjourn to enable him to satisfy himself on this point. If from the summary of evidence, or from anything that the accused informs the judge advocate that he proposes to advance to the court in mitigation of punishment, or from any other circumstance, it appears that the accused should not plead guilty, the judge advocate shall advise him to withdraw the plea, and if the accused does not do so, the judge advocate shall advise the court to proceed as if he had pleaded not guilty.

3. Where the accused has pleaded guilty to one or more of the charges (or to an offence of which the court could convict him on such charges), the prosecutor should consider whether justice will be done without his proceeding on one or more of the other charge(s) to which the accused has pleaded not guilty, as, for example, where there is a group of alternative charges to one of which the accused has pleaded guilty. In such cases it might be proper for the prosecutor to propose to the court that he should accept such plea and not proceed further on the charge(s) or some of the charges to which the accused has pleaded not guilty. Such a course would not prevent the prosecutor proceeding on charge(s) of a different nature to which the accused has also pleaded not guilty. Where the prosecutor considers that any such questions may arise he should if possible consult the convening authority on the matter before the trial. The court may hear the circumstantial letter before deciding whether to agree to the prosecutor's request.

4. Nothing in clause 3 shall prevent the accused's being tried by another court on charges with which the prosecutor has not proceeded, should circumstances justify such a course.

2161. *Reading of Circumstantial Letter.* If the accused has pleaded guilty to all charges, or if no evidence is to be offered on any other charges to which he has not pleaded guilty, the judge advocate shall read the circumstantial letter, but before doing so he is to warn the court of the ex parte nature of this document. The judge advocate shall ask the accused's friend if he disputes the admissibility of the statement(s) in any annexe to the circumstantial letter (see 2102(3)); if he does, the statement(s) shall not be read unless the prosecutor asks that the court should decide the question of the admissibility of the statement(s) on the ground that the court cannot properly do justice in the case without hearing the statement(s); such request may be made either before or after the statement in mitigation of punishment.

2. If the accused has pleaded not guilty to any charges which the court is about to try, the judge advocate shall ask him whether he disputes the admissibility of the statement(s) in any annexe to the circumstantial letter (see 2102 (3)). The judge advocate shall then read the circumstantial letter, but before doing so he is to warn the court of the ex parte nature of this document and no such statement the admissibility of which is disputed shall be read at this stage.

3. Copies of the circumstantial letter are not to be made available to members of the court except as provided in the following clause.

4. *Navigational Trials.* In trials at which evidence is to be given on the navigation of any of Her Majesty's ships, vessels or aircraft, a copy of those parts of the circumstantial letter containing navigational data and, in the case of charges under section 19 of the Act, the information referred to in article 2102 (2) may be given to each member after the reading of the charge(s) and immediately before the circumstantial letter is read. Copies of the chart(s) or map(s) mentioned in article 2145 may also be given to the court at the same time.

2162. *Procedure on pleas of guilty.* If the accused has pleaded guilty to all charges, or if the court has agreed that the prosecutor should not proceed on the remainder of the charges to which the accused has pleaded not guilty, and the plea(s) of guilty has been recorded (see 2159 (2)), the following procedure should be followed:

(*a*) after the reading of the circumstantial letter, the court shall follow the procedure laid down in article 2192 and, if necessary 2193, unless it is of opinion that the circumstances of the case are such that a proper sentence cannot be awarded if the facts are not investigated.

(*b*) if after the statement in mitigation of punishment the court considers that the accused has failed to understand the charge or the effect of his plea of guilty, or that the accused has put forward anything which is capable in law of amounting to a defence to a charge to which he has pleaded guilty, or (either before or after the statement in mitigation) that an investigation

of the facts is necessary (see paragraph (*a*) above) the court shall order that plea(s) of not guilty shall be recorded in lieu of the plea(s) of guilty and proceed with the trial accordingly, withdrawing any permission that may have been given to the prosecutor not to proceed on any charge(s).

(*c*) if the court, after hearing the statement in mitigation of punishment, decides that it would be proper to accept the plea(s) of guilty the court shall proceed to convict the accused on the charge(s) to which he has pleaded guilty, and either to order that no further action should be taken on any other charge(s) to which he has pleaded not guilty without the order of the Admiralty or to acquit on such other charges.

2. If there are charges to which the accused has pleaded not guilty, and evidence is to be offered on such other charges, the court shall proceed to try such other charges before deciding whether to convict the accused on the charge(s) to which he has pleaded guilty, and before the accused is called upon for his statement in mitigation.

3. When the court has decided on its finding on the charges to which the accused has pleaded not guilty, the procedure set out in article 2192 and, if necessary, article 2193 shall be followed in relation to all the charges to which the accused has pleaded guilty and on which he has been found guilty. If as a result of the statement in mitigation the court is of opinion that a plea of guilty should not have been recorded, it shall proceed in accordance with 1 (*b*) above; and any evidence already given in the trial shall be evidence in such further hearing without fresh proof.

2163. *Calling of Witnesses.* If the accused does not plead guilty, or if his plea of guilty is not accepted, the trial shall proceed, and the witnesses for the prosecution shall be called. Without prejudice to the right of the prosecution to call evidence in rebuttal and the right of the court to permit the calling of further witnesses under article 2166 (5) no witness whose name was not included in the original list of witnesses shall be called by the prosecutor, unless the clerk of the court has given notice to the accused that it is intended to call such witness, and has supplied him with a summary of the evidence of such witness not less than 24 hours before the opening of the trial (unless the court should decide that the accused has not been prejudiced by a shorter period).

2164. *Oath or affirmation* (N.D.A. s. 60). The oaths referred to in section 60 (1) and (2) of the Act shall be sworn in the following manner:

The person to be sworn shall hold the New Testament, or if a Jew the Old Testament, in his uplifted right hand and shall say or repeat after the person administering the oath the following words:—

If a member of the court:

I swear by Almighty God that I will duly administer justice according to law without partiality, favour or affection; and I do further swear that I will not on any account, at any time whatsoever, disclose the vote or opinion of any member of this court-martial, unless thereunto required in due course of law.

If judge advocate:

I swear by Almighty God that I will to the best of my ability carry out the duties of judge advocate according to law and without partiality, favour or affection: and I do further swear that I will not on any account at any time whatsoever disclose the vote or opinion of any member of this court-martial, unless thereunto required in due course of law.

If clerk of the court or officer under instruction:

I swear by Almighty God that I will not on any account, at any time whatsoever, disclose the vote or opinion of any member of this court-martial, unless thereunto required in due course of law.

If a shorthand-writer (or other person employed to record or transcribe the proceedings):

I swear by Almighty God that I will truly record (record and transcribe) (transcribe) to the best of my power the evidence to be given before

this court-martial and such other matters as may be required of me (and will deliver to the court a true transcript of the same when required).

If a witness:

I swear by Almighty God that the evidence I shall give shall be the truth, the whole truth, and nothing but the truth.

If an interpreter:

I swear by Almighty God that I will, to the best of my ability, truly interpret, translate and explain, as I shall be required to do touching the matter before this court-martial.

2. A person permitted under section 60 (4) of the Act to make a solemn affirmation instead of taking an oath shall say or repeat after the person administering the affirmation:

I solemnly, sincerely, and truly declare and affirm . . . .

proceeding with the words of the appropriate oath, but omitting the words "I swear by Almighty God".

2165. *Witnesses—Attendance in court.* Unless by permission of the court, witnesses must not be present in court during any part of the proceedings except when under examination and when the court reopens for reading the finding and the sentence. Expert witnesses whose evidence, or part of whose evidence, may be dependent on the evidence given by other witnesses or on the demeanour of the accused should usually be allowed to be present during the whole or part of the proceedings.

2. *Prosecutor or members of court as witnesses.* The prosecutor is a competent witness. A member of the court, other than the president, whether previously objected to or not by either side, is not necessarily disqualified from being examined as a witness should it be found in the course of the proceedings that he can give material evidence, but thereafter he is disqualified from acting as a member of the court, unless his evidence has been given after conviction, and has been directed to the good character of the accused. If a member becomes disqualified by this or any other means from acting as a member of the court, the trial shall proceed before the remaining members provided that, should the members be thus reduced below four, the trial shall be terminated and the court dissolved (section 57 of the Act and 2131 (2)).

2166. *Examination of witnesses.* Unless otherwise expressly provided the examination of all witnesses shall be oral, and except in the cases mentioned in articles 2126 (9) and 2167, shall be taken in the presence of the court. Unless a strong reason to the contrary exists, the evidence of witnesses shall be taken at one examination in regard to all the charges then being tried before the court.

2. *Order of Examination, etc.*—

(*a*) All witnesses shall be examined by the persons calling them; after which, they may be cross-examined by the opposite party should he desire to do so; then re-examined by the person calling them but only on matter arising out of the cross-examination; and, finally, the court and judge advocate may, if necessary, ask questions of them.

(*b*) If the court is satisfied that a person calling or cross-examining a witness has inadvertently omitted to ask a question or questions that he should have asked, he should be allowed to remedy such omission, subject to the normal rights of cross-examination and re-examination on the new matter. A similar course should be followed if questions by the court or judge advocate have raised fresh matter.

3. *Postponement of Cross-Examination.* On the application of the accused, the court may allow his cross-examination of a witness to be postponed, if it is satisfied that there is a good reason for such a request.

4. *Questions by court and judge advocate.* In addition to exercising the right of examination above conferred, the court and the judge advocate may put

questions to any witness at any period of his examination for the purpose of elucidating any answers previously given by him.

5. *Recall of witness and calling of additional witnesses.* The court may—

(*a*) at any time during the trial grant to the judge advocate, the prosecutor or the accused permission to recall a witness, or to call a fresh witness whose evidence is necessary to prove or put in evidence a formal document, or whose evidence might prove or disprove some issue raised by the defence which could not reasonably have been foreseen, or

(*b*) before the accused gives evidence or is called on for his defence, call and examine any other person whose evidence they may deem necessary for the furtherance of the ends of justice, or

(*c*) after the close of the case for the defence, permit the calling and examining of any person if the accused shows the court that such evidence might be material in his behalf.

6. *When prosecutor must call witnesses.* The prosecutor is not bound to call all the witnesses whose names are on the list given to the accused, but he shall call such of them as the accused may desire to be called, in order that the accused may cross-examine them, if he wishes to do so. Such witness or witnesses shall be called before the prosecution is finally closed.

2167. *Witness unable to appear.* If any material witness should be in hospital, or otherwise unable from sickness to appear before the court, the court shall adjourn, and his evidence shall be taken on oath before the judge advocate in the presence of the accused, the accused's friend or, if he is not available, other adviser, the prosecutor and the clerk of the court; and full opportunity shall be afforded of cross-examining and re-examining the witness. The evidence shall be taken down by a shorthand writer, if one be reasonably available, or by some other person appointed for the purpose (and any such shorthand writer or other person shall be duly sworn if he has not already been sworn in the trial) or by the judge advocate or clerk of the court or by mechanical or other means. On return to the court the notes of the evidence shall be read to the court by the person making them or, if the presence of such person cannot reasonably be obtained, by the judge advocate, and such notes (or the transcript of the notes if they were made in shorthand), duly signed and certified, shall be attached to the minutes.

2169. *Contempt of court.* If at any time it appears to the court that any person subject to the Act is committing an offence against section 38 of the Act, the president shall, unless the offence is a serious one against paragraph (*e*) or paragraph (*f*) of subsection (1) of that section, warn him of the powers of the court under that section; and this warning shall be set out in the record of proceedings.

2. If such a person commits a serious offence against paragraph (*e*) or paragraph (*f*) of subsection (1) of section 38, or persists after such a warning in committing any other offence against section 38, he may be removed from the court and may be tried for the offence by a separate court-martial or in the case of a rating, by his commanding officer. If, however, the court is of the opinion that it is expedient to deal with him summarily under subsection (3) of the section, the court may, after announcing its findings, recall the person, state the grounds of complaint against him and, should he offer no satisfactory explanation, sentence him to any punishment allowed by that subsection. Any such sentence shall be read in open court in the presence of the offender at the same time as the sentence, if any, awarded to the accused, or at the time of his acquittal as the case may be and shall be recorded as part of the proceedings.

3. If at any time it appears to the court that any person not subject to the Act is committing an offence against section 65 of the Act, the president shall, unless the offence is a serious one against paragraph (*e*) or paragraph (*f*) of subsection (1) of section 38 as applied by paragraph (*b*) of subsection (1) of section 65 or an offence against paragraph (*c*) of subsection (1) of section 65, warn him of the provisions of subsections (1) and (2) of section 65; and this warning shall be set out in the record of proceedings.

4. If the person commits a serious offence of the kind described in clause 3 above or persists after such a warning in committing any other offence against section 65 of the Act, he may be removed from the court, if the court decides that that is the proper course to take, but he may not be held in custody. Whether he is removed from the court or not, he should be told that he will be given an opportunity at the first convenient moment before the conclusion of the court-martial to explain his conduct before that conduct is certified to a civil court. Should he offer no satisfactory explanation when informed of the grounds of complaint against him, his conduct should, if the court thinks fit, be certified to a civil court in accordance with subsection (1) of section 65 of the Act. What occurs in court in pursuance of this clause shall be recorded as part of the proceedings of the court-martial.

5. Should a member of Her Majesty's military or air forces who is not subject to the Act commit an offence against section 57 of the Army Act 1955 or of the Air Force Act 1955 respectively in relation to a naval court-martial, his conduct should be certified to the appropriate military or air force authority; in all other respects the procedure in clause (4) should be followed.

6. If the court should desire to draw attention to the conduct of any person in court, an entry to that effect should be made in the record of proceedings.

7. Sections 38 and 65 of the Act apply when the judge advocate sits alone as provided for in section 58 (2) (*b*) of the Act and in articles 2126 (9) and 2167.

2170. *Defence—Time for preparation.* The prosecution being closed, and the witnesses, if any, called by the court having been examined, the accused shall be called on for his defence, and shall, on his application, be granted a reasonable time for its preparation. The court shall adjourn during that time and may adjourn again from time to time on the application of the accused if he satisfies the court that the time granted him has not been sufficient for the due preparation of his defence.

2172. *Defence—opening speech.* If the defence calls witnesses other than the accused or other than witnesses as to character, the defence shall have the right to make an opening speech.

2174. *Defence—Witnesses for.* The witnesses for the defence shall be examined, cross-examined and re-examined as mentioned in article 2166 (2).

2175. *Unsworn statement by accused.* If the accused does not desire to give evidence on oath he may, whether assisted by a friend or not, make a statement as to the facts from his place. The statement may be either oral or in writing; if in writing it shall be signed by the accused and attached to the record of proceedings. If he desires to make such a statement and is not calling witnesses (other than witnesses only as to character) he shall make his statement before the prosecutor sums up. He may not be cross-examined, either by the court or prosecutor, but the prosecutor may, if the court thinks fit, be permitted to call witnesses to rebut the accused's account. Permission should only be given if the statement raises important new matter not previously dealt with in evidence which could not reasonably have been foreseen or met by the prosecutor, and the evidence in rebuttal must be limited to the matter so raised.

2178. *Summing Up.*

For the Defence. The accused or his friend on his behalf may, if the accused so desires, sum up the case for the defence in a written or oral statement. On the time of such summing up see clause 2 below.

2. *For the Prosecution.* The prosecutor shall, unless with the concurrence of the court he considers this unnecessary, sum up orally or in writing the case for the prosecution—

(*a*) If the accused calls no witnesses, immediately after the closing of the case for the prosecution and before any summing up for the defence.

(*b*) If the accused alone gives evidence for the defence or makes a statement not on oath and/or calls witnesses only as to character, immediately after such evidence and/or statement and before any summing up for the defence.

(*c*) If—

(i) any witness is called for the defence other than the accused or witnesses as to character, or

(ii) (notwithstanding section 42 (1) of the Criminal Justice Act, 1948) the accused puts in evidence an affidavit or statutory declaration relating to relevant facts under articles 2241 or 2254,

immediately after the summing up for the defence (if any) or in the absence of such summing up after the conclusion of the evidence for the defence.

2179. *Advice to court.* After the prosecutor and the defence have summed up, the judge advocate shall advise the court in accordance with 2126 (5).

2180. *Amendment of charge.* If at any time after the court has been sworn, but before the finding, the court is satisfied:—

(*a*) that the charge or any one of several charges is defective or that there is a variance in some matter not going to the real substance of the alleged offence between the charge or any of several charges and the evidence adduced in support thereof; or

(*b*) that a charge drawn under section 36 of the Act would in the circumstances disclosed by the evidence have been more appropriately drawn under section 39 of that Act, which latter section empowers the court to pass a less sentence than that prescribed by the former section;

the court may direct the judge advocate to amend the charge or charges accordingly, provided always:—

(*c*) that the court is satisfied that the accused cannot be substantially prejudiced in the conduct of his defence by the making of such an amendment; and

(*d*) that the court shall, if so requested by the accused, adjourn for such time as is reasonably necessary to enable him to meet the charge or charges as so amended.

2. All such amendments shall be noted in the record at the point at which such amendments shall be made and shall be verified on the charge sheet by the signature of the president.

3. No amendment (other than one under (1) (*b*) above) shall be made which has the effect of formulating a charge of a different offence from that with which the accused was first charged.

Ascertaining Opinion of the Court

2182. *Voting.* When the opinion of the court is taken on any question, the junior member shall vote first, and then the other members, in inverse order of seniority, all voting orally, and the votes of the majority shall decide the question except for a sentence of death or for a finding when the only sentence is death (for which cases special provision is made in section 62 (4) and (5) of the Act). Should the members disagree upon any other question, and on a division the votes be equal, the view most favourable to the accused shall prevail. (See 2201.)

The Finding

2184. *Finding of court.* When the evidence has been closed and the prosecutor and the accused or his friend have, if they so desire, addressed the court and the judge advocate has advised the court, the accused shall be removed and the court cleared, so that the president and members of the court remain alone. The court shall then consider its decision(s) and shall record its decision with regard to each charge in the charge sheet. All members of the court shall

sign the record of the decisions by way of attestation (notwithstanding any differences of opinion there may have been between them). On the court being re-opened, the judge advocate, clerk of the court, accused, prosecutor, shorthand-writer, witnesses and audience having been re-admitted, the recorded decision(s) shall be scrutinized by the judge advocate and then, unless the judge advocate advises the court as in clause 3 of this article, counter-signed by the judge advocate and read aloud by him, whereupon they shall become the findings of the court.

2. *Findings on alternative charges.* Where an accused is charged with more than one offence in the alternative, the court shall consider the offence of greater gravity before it decides to convict of an offence of lesser gravity. Where the court decides to convict the accused of offences of greater gravity than, and inconsistent with, any other charges (whether the accused has pleaded guilty to such other charges or not) the court should not proceed to a vote on such other charges and the findings shall contain a statement in the form "having found him guilty on charge . . . , the court did not proceed further with charge. . . ." (viz. the lesser and inconsistent charge).

3. *Advice on finding.* If, in the opinion of the judge advocate, any decision in respect of any charge is contrary to the law relating to the case, the judge advocate before countersigning the decision(s) shall, once more, but not more than once more, advise the court in open court what finding(s) are in his opinion open to it on such charge(s), and the court will then reconsider its decision(s) in respect of such charge(s) after the court has again been cleared.

2190. *Findings under N.D.A. s. 19.* In all findings of guilty of charges brought under section 19 the court is to state the particular respects in which it considers that the accused was at fault.

2191. *Honourable acquittal.* It is competent for a court, whether the accused be an officer or rating, to record a verdict of honourable acquittal, but only in exceptional cases and where the professional conduct or personal honour of the accused is in issue.

2192. *Conviction—Evidence of previous character.* If the accused is found guilty or has pleaded guilty, the court, before proceeding to deliberate on the sentence, shall take into consideration the documents set out at (*a*) or (*b*) below, which shall be read in open court, and any oral or other evidence of character or qualifications that may be adduced by the accused or the prosecution; it may also call evidence as to the previous character and qualifications of the accused.

(*a*) For an officer—

(i) Any entries against him in the list of officers who have been tried by court-martial or disciplinary court, except such as are mentioned in clause 2 of this article.

(ii) Any previous entries against him in the official records of the ship to which he belonged at the time of the offence for which he is under trial. In addition any other documents containing a warning or censure by a superior authority on the accused's conduct sent to or to be conveyed to the accused and relating to a definite offence; the original of such a document or a copy sent to an officer for conveyance to the accused shall be admissible in evidence without further proof and shall be prima facie evidence that the warning or censure was conveyed to the accused.

(iii) Any certificates or other documentary evidence of character which the accused may produce.

(*b*) For any other person—

(i) Any entries against him in the list of those who have been tried by court-martial, except such as are mentioned in clause 2 of this article.

(ii) The entries against him in the Record of Offences Sheet before the date of the offence charged, but after his joining the ship to which he

belonged when the offence or offences for which he is being tried were committed, with character assessed from the previous 31st December to the date of the offence for which he is under trial, but excluding all consideration of that offence.

(iii) His certificate of service or other documentary evidence of character which he may produce.

2. The words "any entries against him" at (*a*) (i) and (*b*) (i) of clause 1 of this article are to be construed to exclude acquittals, and charges on which the accused was found not guilty. Where an entry records that the accused was convicted on some charge and acquitted on another, only so much of the entry shall be read as relates to the charge on which he was convicted. So also, where the Admiralty or the Courts-Martial Appeal Court have quashed a conviction whether as a whole or as regards any charge, only such portion of the entry as relates to the charge not so quashed shall be read; and where the Admiralty or the Courts-Martial Appeal Court have substituted another finding or sentence for the original finding or sentence of the court-martial or disciplinary court, the finding or sentence substituted by the Admiralty or the Courts-Martial Appeal Court alone shall be read.

3. Evidence of character as set out in the preceding clauses of this article, given after the finding, need not be strictly proved unless disputed by the prosecutor or the accused.

4. If the accused has been found guilty or has pleaded guilty, he may, before the court proceeds to deliberate on the sentence, call witnesses as to character and make a statement in mitigation of punishment.

5. If the accused in his statement in mitigation disputes any of the allegations in the circumstantial letter relating to charges to which he has pleaded guilty or raises any other fresh matter and the court considers that the disputed parts or fresh matter may influence the sentence to be awarded, the court may direct that (unless the prosecutor is prepared to accept the accused's version) evidence shall be called in the normal manner on the points in dispute.

2193. *Finding of guilty—Calling further witness.* If the accused has been found guilty, the court, before proceeding to deliberate on the sentence, may also call any medical officer or other person whose knowledge or opinion, whether as to the state of health or background of the accused or as to other circumstances connected with him, might aid the court to arrive at a just conclusion as to the measure of his culpability.

The Sentence

2201. *Voting on sentence.* After hearing evidence of the accused's character, any statement in mitigation he may wish to make and any medical evidence under article 2193, the court shall be cleared, and, in the presence of the judge advocate and the clerk of the court, the members shall consider and determine on the punishment proper to be inflicted in conformity with the finding. All the members of court, whether they have voted for a conviction or not, shall vote on the question of what punishment is proper to be awarded for the offence(s) of which the accused has been found guilty. In the event of the votes varying so considerably as not to give an actual majority in favour of the award of any particular punishment, the president shall call on the members to reconsider their votes (but see section 62 (4) and (5) of the Act in regard to sentences of death).

2215. *Drawing up, signature and pronouncement of sentence.* The judge advocate shall draw up the sentence in the prescribed form; it shall be signed by every member of the court by way of attestation, notwithstanding any difference of opinion there may have been among the members, and shall be countersigned by the judge advocate. The court shall be reopened, and the accused brought in, and the judge advocate shall, by direction of the court, pronounce the sentence. Either before or after the reading of the sentence the president may, if he sees fit in exceptional cases, address the accused in explanation of the sentence. The accused shall then be removed and the court dissolved.

Representations and Reports by the Court

2218. *Representations by the court.* Except for representations made under article 2169 (6), all representations which the court may desire to make with reference to matters arising out of the court-martial, are to be made the subject of a separate letter signed by the president before the court has been dissolved, and are not to form part of the recorded proceedings of the court.

2219. *Report to Commander-in-Chief.* As soon as the court has been dissolved, unless the president receives directions to the contrary he is to wait upon the Commander-in-Chief or Senior Officer present with a letter reporting the finding and the sentence of the court-martial.

Execution of the Sentence

2222. *Legality of sentence.* The Commander-in-Chief or Senior Officer present, before he takes any step to give effect to the sentence, either by committal order, or otherwise, or before he orders the suspension of the sentence under section 90 of the Act, shall satisfy himself, by a careful examination of the record of proceedings, that no error has been committed in the conduct of the court-martial likely, in his opinion, to invalidate the finding of the court-martial. If he doubts the correctness of the finding, in fact or in law, or the legality of the sentence, he shall not put the sentence into execution pending reference to the Admiralty. In such circumstances the accused may be retained in custody, or the sentence may be suspended under section 90 of the Act at the discretion of the Commander-in-Chief or the Senior Officer as the case may be.

Record of the Proceedings

2230. *Transcript.* The shorthand writer's notes, if any, shall be transcribed by the shorthand writer and signed by him; if there is no shorthand writer the notes of evidence shall be signed by the person who recorded them, or by the person who transcribed them from any mechanical record. Such transcript or notes shall be certified by the judge advocate (or clerk of the court where the judge advocate is not reasonably available) who may mark on them such corrections, additions and notes clearly distinguished from the original as he may deem necessary before certifying. Such certified transcript or notes shall constitute the record of proceedings of the court.

Special Directions as to Evidence

2240. *Documents admissible in evidence.* The Queen's Regulations and Admiralty Instructions, the Navy List, Admiralty Fleet Orders, signal books, books of reference, manuals, sailing directions and other publications and documents which are issued officially for the information of the Naval and Royal Marine service are admissible in evidence without formal proof in all trials under the Act.

2. The official returns of officers and ratings tried by court-martial and by disciplinary court, an accused officer's certificates (Form S. 450) and the accused's Certificate of Service (Form S. 1243) and Record of Offences Sheet (Form S. 239A), if otherwise admissible, may be received in evidence without formal proof in all trials under the Act.

3. Any documents which would have been admissible in any proceedings under the Army Act 1955 by virtue of section 198 of that Act or under the Air Force Act 1955 by virtue of section 198 of that Act or any Acts enacted in substitution, amendment or extension of those Acts shall in like manner and for the same purpose be admissible in evidence under the Naval Discipline Act.

4. *Orders and instructions.* A document purporting to be issued by order of the Admiralty or other naval authority and to contain instructions or regulations given or made by the Admiralty or by the said naval authority, or a copy of any such document purporting to be certified as a true copy by a person stated

in the certificate to have custody of the document, may be received without formal proof as prima facie evidence of the giving of such instructions or the making of such regulations and of their contents.

5. *Other official documents.* Any record, voucher, receipt, account, muster, ship's book or other document made or kept in pursuance of

(*a*) any Act of Parliament;

(*b*) the Queen's Regulations and Admiralty Instructions;

(*c*) Admiralty Fleet Orders; or

(*d*) any other regulations or instructions issued by the Admiralty or other naval authority

or by the custom of the service, purporting to be signed by the Commanding Officer of the ship or establishment in which the same was made or by any person whose duty it was to make the document, or a copy of such document or part thereof (including the signature thereto) purporting to be certified to be a true copy by a person stated in the certificate to have the custody of the document, may be received without formal proof in all trials under the Act as prima facie evidence of such documents and of matters, transactions and accounts therein recorded.

2241. *Statutory declarations and affidavits.* Subject to the following clauses, evidence of formal matters and of facts unlikely to be disputed may be given by the prosecution or the defence by statutory declaration or affidavit.

2. Either party proposing to use a statutory declaration or affidavit shall serve a copy thereof on the other party not less than seven days before the day on which the stautory declaration or affidavit is to be given in evidence. Notwithstanding this provision, a statutory declaration or affidavit of which a copy has been served on either party less than seven days before the day on which the statutory declaration or affidavit is to be given in evidence shall be admissible in evidence if the party on whom the copy is served consents.

3. Except as provided in article 2254 and article 2243 (5) no statutory declaration or affidavit shall be admissible if, within four days of being served with a copy thereof, the party on whom it is served gives notice in writing to the party who served it that he objects to its admission.

4. If the court considers that it is desirable in the interests of justice that any evidence which has been, or is to be, tendered by statutory declaration or affidavit should be given orally before it and if the deponent to such statutory declaration or a witness or witnesses who can give the like evidence are reasonably available, the court may refuse to accept such evidence by statutory declaration or affidavit provided that a reasonable opportunity is given for the attendance of such witnesses as may be requisite to give such evidence.

2243. *Orders under the Bankers' Books Evidence Act* 1879. Where access is required to the bankers' books before the charges or the circumstantial letter can be accurately drafted, an application for trial by court-martial must first be made in sufficient detail to enable the convening authority to decide whether to order trial by court-martial. If the convening authority is satisfied that a court-martial should be held, he is to order the trial, and after he has done so it is competent for him to issue to the prosecutor or to the defence an order under clause 2 of this article. The circumstantial letter may in any case be amended by the prosecutor as necessary after inspection of the bankers' books.

2. Where in connection with any court-martial either the prosecution or the defence wish to inspect and take copies of any entries in bankers' books, either the court or the authority who has ordered the court-martial may, on the application of the prosecution or the defence, make an order that the party on whose application the order is made, or another person acting on his or their behalf, may inspect and take copies of any entries in bankers' books. Such an order may be made either with or without summoning the bank or any other party. It must be served on the bank three clear days before the order is to be obeyed, unless the court or the convening authority otherwise directs.

3. On presentation of an order purporting to be made under this article the competent authorities of any bank named in the order upon whom the order is served shall permit the person(s) named in the order or anyone acting on his or their behalf to inspect and take copies of any entries in any books in their possession.

4. The competent authorities of such bank shall, if called upon to do so and if reimbursed in the proper cost thereof, cause an officer of such bank to make an affidavit setting out the entries in any such account, the description thereof, whether such book was at the time of making the entry one of the ordinary books of the bank and is in the custody or control of the bank and whether the entry was made in the usual and ordinary course of business, and such facts concerning such bank as are set out in section 9 of the Bankers' Books Evidence Act, 1879, or section 432 (1) of the Companies Act, 1948.

5. At trials held outside the United Kingdom an affidavit of the kind described in clause 4 shall be evidence of the matters stated therein provided that a copy of the affidavit has been served on the other party not less than seven days before the date on which it is to be given in evidence (or such less time as the court may decide to be reasonable in all the circumstances). At trials held in the United Kingdom, however, such an affidavit shall not be admissible if, within four days of being served with a copy thereof, the party on whom it is served gives notice in writing to the party who served it that he objects to its being admitted.

2248. *Scene of alleged offence.* The court may decide that it should view a scene described in the evidence in order that it may understand the evidence more clearly. If the court decides to view the scene it should do so in the presence of the judge advocate and the clerk of the court and, wherever practicable, the prosecutor, the accused, and the accused's friend. If necessary the court may ask a witness or prospective witness to identify any place or object or point out the course taken by a person or thing, but that may only be done in the presence of the prosecutor, accused, and accused's friend, who should also be given the opportunity to ask similar questions, or to point out places or objects as to which they will be asking or have asked questions. Such questions should be kept to the minimum and used solely for such purposes as indicated. If the witness has already been sworn he should be reminded, before he answers questions at the scene, that he is on oath; otherwise he should be asked, after he has been sworn in court, to confirm on oath what he said at the scene. The judge advocate should note the questions asked and should, on return to court, ask the witness to confirm that the notes accurately record a description of what took place.

2. If it is likely that the court may wish to view the scene of any incident, the prosecution (or defence if the court is to be requested by the defence to view the scene) should be prepared to prove a plan or sketch plan of the scene. If the necessity for such a view arises unexpectedly the court should call a witness to prove such a plan or sketch plan and give the prosecutor and the accused or his friend an opportunity to question him; but if it is not possible to prepare and prove such a plan or sketch plan without undue delay or for any other reason, the judge advocate shall prepare a plan or sketch plan and attach it to the minutes.

Evidence on Navigational Matters

2252. *Documents to be made available in navigational cases.* At all trials at which evidence is to be given on the navigation of one of Her Majesty's ships or vessels the Captain is to make available such of the following documents as exist and apply to the case—

(*a*) the ship's log book;

(*b*) the rough and fair engine room registers;

(*c*) control room log;

(*d*) the chart or charts (see 2145) and sailing directions by which the ship was navigated;

(*e*) the last table of compass deviations;

(*f*) the navigational data book and the gyro compass log;

(*g*) the Captain's night order book; and

(*h*) the Navigating Officer's note-book and work-book.

2. *Evidence by navigation experts.* Before a trial at which evidence is to be given on the navigation of one of Her Majesty's ships or vessels the president shall, unless he considers the circumstances so exceptional that such procedure would be a waste of time, order the documents referred to in clause 1 above to be handed to one or more Navigation Direction or other competent officers who shall work up the ship's reckoning throughout the material time; the result, together with such other details as may be required, is to be delivered to the court in the prescribed form completed in all relevant respects and attested by the signature of the officer or officers so directed, and he or they are to be sworn and to be subject to cross-examination by both prosecution and defence as to its accuracy. The president is to endorse such report as approved if the court concurs, and if not, an expression of its dissent is to be added, signed by the president, showing in what respects and for what reasons it dissents. With the said report such officer or officers shall also deliver to the court a copy or tracing of the chart by which the ship was navigated on which the positions of the ship so determined have been laid off, and also the determined position when ashore or in danger, as noted in the log book. The rate and direction of the current and of the tidal stream and the state of the tide should also, if possible, be ascertained, stated, and verified on oath.

3. These documents, viz., the report in the prescribed form and the prepared chart, as well as an attested copy of the ship's log book and the engine room register or of the control room log, commencing from at least 48 hours before the ship took the ground or was endangered, if so long from a known anchorage, are to accompany the minutes.

4. *Navigation of aircraft.* At trials at which evidence may be required on the navigation of an aircraft such documents as exist and may be available to serve a similar purpose to those set out in clause 1 shall be made available by the captain of the aircraft and the court may follow, with such variations as may be necessary or desirable, the procedure prescribed in this article.

2254. *Affidavits by local navigation experts.* At trials at which evidence may be required on the navigation of a ship, affidavits or statutory declarations made by officers or others having special local knowledge of navigation may be put in evidence by the person or persons on trial, but not by the prosecutor. The provisions of article 2241 shall not apply to such affidavits or statutory declarations, but due allowance may be made for the fact that such statements have not been tested by cross-examination.

2255. *Navigation Direction Officers—examination and cross-examination.* The examination and cross-examination of the officer or officers who have been directed to perform the duty mentioned in article 2252 (2) is to be limited to ascertaining the accuracy or inaccuracy of the document thus laid before the court. Nevertheless, if no other navigational experts are reasonably available and it is desired to have further evidence from such experts, the court may recall these officers and permit them to be questioned on other navigational matters by both the prosecution and the defence.

2256. *Evidence of negligence not alleged in circumstantial letter.* If the court, at any time during the trial, consider that the accused has been negligent in any way not specifically detailed in the circumstantial letter (see 2102 (2)), they should formulate a fresh allegation and inform the accused that they hold this view at that particular stage of the trial, and invite him to deal with the fresh allegation in his defence, adjourning the court if necessary to give him time to meet it. Any witness for whom the accused asks should, if practicable, be called or recalled. If he is a prosecution witness, he should be cross-examined by the

accused's friend and re-examined by the prosecutor. If he is a defence witness, he should be examined by the accused's friend, cross-examined by the prosecutor and re-examined by the accused's friend. If the charge is found proved, any such additional heading indicating a form of negligence, if finally established to the satisfaction of the court, should be included in the finding.

EXPLANATORY NOTE

(This Note is not part of the Order but is intended to indicate its general purport).

This Order approves General Orders of the Admiralty under section 58 of the Naval Discipline Act, 1957, superseding the General Orders approved by the Naval Courts-Martial (Procedure) Order, 1953 (S.I. 1953/594) under the Naval Discipline Act, 1866, and re-enacting their provisions with certain amendments. The numbers of the Articles, which are not consecutive, are those which will be allocated to them in the new edition, now being prepared, of Chapters 21 and 22 of the Queen's Regulations and Admiralty Instructions. Most of the amendments are consequential on changes brought about by the new statute, but the opportunity has been taken to make certain other minor changes and certain drafting amendments.

2. Some of the changes brought about by the new Act affect the General Orders in a number of places; for example, the new provision in section 54 that all members of the court shall be nominated by the convening authority has led to changes in Articles 2119, 2120, 2124 and 2131. Again, section 55 of the Act gives a formal status to the clerk of the court, thus enabling certain functions to be performed by him which formerly had to be performed by the judge advocate; for example, the clerk of the court can now summon witnesses (2124(3)) and administer oaths to shorthand-writers, interpreters and witnesses (2124(4)).

3. Some provisions which used to appear in General Orders have been dropped, because the power is now given by the statute itself. For example, Article 2138 used to contain authority for the holding of trials in camera, but this now derives from section 61(2); Article 2142 used to lay down the procedure to be followed in the event of an objection to the president of the court, which is now to be found in section 59(3); Article 2164 used to refer to the Children and Young Persons Act, 1933, but section 60(3) of the Act now makes the necessary provision for the receipt of children's evidence. Conversely, whereas section 63 of the Act laid down the forms of certain oaths used at courts-martial, section 60 of the new Act leaves all the oaths to be prescribed by General Orders (Article 2164).

4. The other main changes in the General Orders are as follows:—

(1) A list of the exhibits which the prosecutor proposes to put in evidence is to accompany the circumstantial letter when sent to the convening authority by the prosecutor, to the judge advocate and the clerk of the court by the convening authority, and to the accused by the clerk of the court (Articles 2105(d), 2120, 2124(1)).

(2) The accused's friend is in future to be a member of the Services or of the legal profession (Article 2109).

(3) The clerk of the court is to pass on to the accused's friend any evidence of the accused's character which the prosecutor intends to produce in the event of a conviction (Article 2124(1)).

(4) The power of the convening authority to dissolve the court, if it seems to him necessary to do so, has been stated (Article 2131).

(5) The court has been given power to deliberate in private on any matter arising out of the trial and not merely on the finding or sentence; and the judge advocate may retire with them except when they are considering the finding (Articles 2138(1) and 2126(7)).

(6) Provision is made for the proceedings to be recorded by mechanical means, as well as by shorthand. The form of oath for the person employed to record the proceedings also allows for this possibility (Articles 2140 and 2164(1)).

(7) In navigational cases involving aircraft the Captain is to make available the maps by which the aircraft was navigated, just as he has to produce the charts by which a ship was navigated (Article 2145).

(8) It has been made clear that, should the court be reduced below four, the trial must be terminated and the court dissolved (Article 2165).

(9) The evidence of a sick witness unable to appear is now to be taken before the judge advocate instead of before a magistrate or consul (Article 2167).

(10) The procedure for dealing with contempt of court has been revised in consequence of the changes introduced by sections 38 and 65 of the Act (Article 2169).

(11) It is no longer necessary for General Orders to apply the Criminal Evidence Act, 1898, to courts-martial, as section 6 of that Act, as amended by paragraph 5 of the Second Schedule to the Revision of the Army and Air Force Acts (Transitional Provisions) Act, 1955, now makes permanent provision for this (Article 2171 of the *present* Orders).

(12) Article 2240 already enables copies of certain official documents to be received as prima facie evidence without formal proof. The new Article enables the originals of such documents to be produced in the same way.

(13) Section 58(3) of the Act provides for General Orders to direct that the powers conferred by section 7 of the Bankers' Books Evidence Act, 1879, may be exercised by the convening authority as well as the court or a judge. Article 2243 makes the necessary provision.

(14) The president of a court-martial in a navigational case may dispense with the special procedure in Article 2252 for obtaining navigational evidence, if he considers the circumstances so exceptional that it would be a waste of time.

5. The new General Orders will come into operation on the date appointed for the commencement of the Naval Discipline Act, 1957.