



Courts-Martial (Appeals) Act 1968

1968 CHAPTER 20

PART II

[^{F1}APPEALS FROM THE COURT MARTIAL]

General procedural provisions

28 Evidence.

- (1) [^{F1}For the purposes of an appeal or an application for leave to appeal,] the Appeal Court may—
- (a) order the production of any document, exhibit or other thing connected with the proceedings the production of which appears to them necessary for the determination of the case;
 - [^{F2}(b) order any witness to attend for examination and be examined before the Court (whether or not he was called in the proceedings from which the appeal lies); and]
 - [^{F3}(c) receive any evidence which was not adduced [^{F4}in the proceedings from which the appeal lies].]
- [^{F5}(1A) The power conferred by subsection (1)(a) may be exercised so as to require the production of any document, exhibit or other thing mentioned in that subsection to—
- (a) the Appeal Court;
 - (b) the appellant;
 - (c) the respondent.]

[^{F6}(2) The Appeal Court shall, in considering whether to receive any evidence, have regard in particular to—

 - (a) whether the evidence appears to the Court to be capable of belief;
 - (b) whether it appears to the Court that the evidence may afford any ground for allowing the appeal;
 - (c) whether the evidence would have been admissible [^{F7}in the proceedings from which the appeal lies] on an issue which is the subject of the appeal; and

*Changes to legislation: There are currently no known outstanding effects for the
 Courts-Martial (Appeals) Act 1968, Section 28. (See end of Document for details)*

- (d) whether there is a reasonable explanation for the failure to adduce the evidence [^{F8}in those proceedings].]
- (3) Subsection (1)(c) above applies to any [^{F9}evidence of a] witness (including the appellant) who is competent but not compellable ^{F10} . . .
- (4) [^{F11}For the purposes of an appeal or an application for leave to appeal,] the Appeal Court may order the examination of any witness whose attendance may be required under subsection (1)(b) of this section to be conducted in the prescribed manner before any judge of the Court or before any other person appointed by the Court for that purpose, and allow the admission of any depositions so taken as evidence before the Court.
- [^{F12}(5) In this section, “respondent” includes a person who will be a respondent if leave to appeal is granted.]

Textual Amendments

- F1** Words in s. 28(1) inserted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\), s. 153\(7\), Sch. 25 para. 7\(2\)](#); S.I. 2009/1028, art. 2(a)
- F2** S. 28(1)(b) substituted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\), s. 153\(7\), Sch. 25 para. 7\(3\)](#); S.I. 2009/1028, art. 2(a)
- F3** S. 28(1)(c) substituted (1.1.1996 subject to savings) by [1995 c. 35, s. 29\(1\), Sch. 2 para. 5\(3\)\(a\)](#); S.I. 1995/3061, [art. 3](#) (with [art. 4](#))
- F4** Words in s. 28(1)(c) substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\), s. 383\(2\), Sch. 8 para. 31\(a\)\(ii\)](#); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4
- F5** S. 28(1A) inserted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\), s. 153\(7\), Sch. 25 para. 7\(4\)](#); S.I. 2009/1028, art. 2(a)
- F6** S. 28(2) substituted (1.1.1996 subject to savings) by [1995 c. 35, s. 29\(1\), Sch. 2 para. 5\(3\)\(b\)](#); S.I. 1995/3061, [art. 3](#) (with [art. 4](#))
- F7** Words in s. 28(2)(c) substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\), s. 383\(2\), Sch. 8 para. 31\(b\)\(i\)](#); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4
- F8** Words in s. 28(2)(d) substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\), s. 383\(2\), Sch. 8 para. 31\(b\)\(ii\)](#); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4
- F9** Words in s. 28(3) inserted (1.1.1996 subject to savings) by [1995 c. 35, s. 29\(1\), Sch. 2 para. 5\(3\)\(c\)](#); S.I. 1995/3061, [art. 3](#) (with [art. 4](#))
- F10** Words in s. 28(3) repealed (1.1.1996 subject to savings) by [1995 c. 35, s. 29\(2\), Sch. 3](#); S.I. 1995/3061, [art. 3](#) (with [art. 4](#))
- F11** Words in s. 28(4) inserted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\), s. 153\(7\), Sch. 25 para. 7\(5\)](#); S.I. 2009/1028, art. 2(a)
- F12** S. 28(5) inserted (31.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\), s. 153\(7\), Sch. 25 para. 7\(6\)](#); S.I. 2009/1028, art. 2(a)

Changes to legislation:

There are currently no known outstanding effects for the Courts-Martial (Appeals) Act 1968, Section 28.