



# Armed Forces Act 2006

## 2006 CHAPTER 52

### PART 6

#### SUMMARY HEARING AND APPEALS AND REVIEW

#### CHAPTER 2

##### THE SUMMARY APPEAL COURT

#### 140 The Summary Appeal Court

- (1) There shall be a court, to be known as the Summary Appeal Court.
- (2) The Summary Appeal Court may sit in any place, whether within or outside the United Kingdom.

#### Commencement Information

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|-----------|---|
| <b>I1</b> | S. 140 in force at 28.3.2009 for specified purposes by <a href="#">S.I. 2009/812</a> , <a href="#">art. 3(a)(b)</a> (with transitional provisions in <a href="#">S.I. 2009/1059</a> ) |
| <b>I2</b> | S. 140 in force at 31.10.2009 in so far as not already in force by <a href="#">S.I. 2009/1167</a> , <a href="#">art. 4</a>  |

#### 141 Right of appeal

- (1) A person in respect of whom—
  - (a) a charge has been heard summarily, and
  - (b) a finding that the charge has been proved has been recorded,may appeal to the Summary Appeal Court against the finding or against the punishment awarded.
- (2) Subject to subsection (3), any appeal under this section must be brought—

*Status: Point in time view as at 22/11/2023.*

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- (a) within the period of 14 days beginning with the date on which the punishment was awarded (“the initial period”); or
  - (b) within such longer period as the court may allow by leave given before the end of the initial period.
- (3) The court may at any later time give leave for an appeal to be brought within such period as it may allow.
- (4) The respondent to an appeal under this section is the Director of Service Prosecutions.

**Commencement Information**

- I3** S. 141 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I4** S. 141 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

**142 Constitution of the SAC for appeals**

- (1) For the purpose of hearing an appeal under section 141, the Summary Appeal Court is to consist of—
- (a) a judge advocate;
  - (b) an officer qualified for membership under section 143 and not ineligible by virtue of section 144; and
  - (c) a third person who is an officer or warrant officer so qualified and not so ineligible.
- (2) Subsection (1) is subject to any provision made by SAC rules.
- (3) The judge advocate for an appeal under section 141 is to be specified by or on behalf of the Judge Advocate General.
- (4) The other members of the court for an appeal under section 141 are to be specified by or on behalf of the court administration officer.

**Commencement Information**

- I5** S. 142 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I6** S. 142 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

**143 Officers and warrant officers qualified for membership of the SAC**

- (1) Subject to subsections (2) to (4), an officer or warrant officer is qualified for membership of the Summary Appeal Court if he is subject to service law.
- (2) An officer is not qualified for membership of the court unless—
- (a) he has held a commission in any of Her Majesty's forces for at least three years, or for periods amounting in the aggregate to at least three years; or
  - (b) immediately before receiving his commission, he was a warrant officer in any of those forces.

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- (3) A warrant officer is not qualified for membership of the court if he is an acting warrant officer.
- (4) An officer or warrant officer is not qualified for membership of the court if—
- (a) he is a member of the Military Court Service;
  - (b) he is a member of or on the staff of the Service Prosecuting Authority;
  - (c) he is a service policeman;
  - (d) he is a member of the Royal Army Chaplains' Department or the Royal Air Force Chaplains' Branch;
  - (e) he has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41);
  - (f) he is an advocate or solicitor in Scotland;
  - (g) he is a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland; or
  - (h) he has in a relevant territory rights and duties similar to those of a barrister or solicitor in England and Wales, and is subject to punishment or disability for breach of professional rules.
- (5) In this section “relevant territory” means—
- (a) any of the Channel Islands;
  - (b) the Isle of Man;
  - (c) a Commonwealth country; or
  - (d) a British overseas territory.

#### Commencement Information

- 17** S. 143 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- 18** S. 143 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 144 Officers and warrant officers ineligible for membership in particular circumstances

- (1) An officer is ineligible for membership of the Summary Appeal Court for the hearing of an appeal under section 141 if—
- (a) he was the commanding officer of the appellant at any time in the period beginning with the date of commission of the offence which is the subject of the finding against the appellant and ending with the start of the appeal hearing;
  - (b) before the summary hearing, he took part in investigating the subject matter of any finding against the appellant;
  - (c) he is a higher authority who dealt with an application made before the summary hearing for permission under section 54 or for extended powers for the purposes of any provision of section 133, 134, 135, 136 or 194;
  - (d) he serves under the command of a person within paragraph (c);
  - (e) he serves under the command of the officer who conducted the summary hearing; or
  - (f) before the summary hearing, he conducted (whether alone or with other persons) an inquiry into the subject matter of any finding against the appellant.

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- (2) A warrant officer is ineligible for membership of the Summary Appeal Court for the hearing of an appeal under section 141 if he falls within subsection (1)(b), (d), (e) or (f).
- (3) Where there is more than one finding against the appellant, the reference in subsection (1)(a) to the date of commission of the offence there mentioned is to the date of commission of the earliest such offence.
- (4) SAC rules may provide that an officer or warrant officer of a description prescribed by the rules is ineligible for membership of the Summary Appeal Court.

**Commencement Information**

- I9** S. 144 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I10** S. 144 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

**145 Open court**

Subject to any provision made by SAC rules, the Summary Appeal Court must sit in open court.

**Commencement Information**

- I11** S. 145 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I12** S. 145 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

**146 Hearing of appeals**

- (1) An appeal under section 141 against a finding is to be by way of—
  - (a) a rehearing of the charge; and
  - (b) except where section 147(2) applies, a rehearing as respects punishment.
- (2) An appeal under section 141 against punishment is to be by way of a rehearing as respects punishment.
- (3) In the case of the hearing of an appeal under section 141, rulings and directions on questions of law, procedure or practice are to be given by the judge advocate.
- (4) Any rulings or directions given under subsection (3) are binding on the court.

**Commencement Information**

- I13** S. 146 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I14** S. 146 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

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## 147 Powers of the SAC

- (1) At a rehearing of a charge by virtue of section 146(1)(a), the Summary Appeal Court may—
  - (a) confirm or quash the finding concerned; or
  - (b) substitute for the finding concerned a finding that another charge has been proved.
- (2) Where the court quashes the finding, or (if there is more than one finding) every finding, made in respect of the appellant, it must quash the punishment which relates to that finding or, as the case may be, to those findings.
- (3) At a rehearing as respects punishment by virtue of section 146(1)(b) or (2), the Summary Appeal Court may—
  - (a) confirm the punishment awarded; or
  - (b) quash that punishment and award in substitution for it any punishment which—
    - (i) it would have been within the powers of the officer who conducted the summary hearing to award; and
    - (ii) in the opinion of the court, is no more severe than the punishment originally awarded.
- (4) SAC rules may make provision in connection with the exercise of the power under subsection (1)(b) (including provision restricting the exercise of the power).
- (5) In determining—
  - (a) whether to substitute a term of detention, or
  - (b) the length of any such substituted term,the court must take account of any period of the original term of detention that the appellant served.

### Commencement Information

- I15** S. 147 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I16** S. 147 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 148 Effect of substituted punishment

- (1) Unless it otherwise directs, any punishment substituted by the Summary Appeal Court has effect as if awarded on the day on which the original punishment was awarded, but this is subject to subsection (2).
- (2) Where the court substitutes a term of detention (other than a suspended sentence of service detention), the substituted term takes effect—
  - (a) if the court makes a direction under section 189(3), in accordance with the direction;
  - (b) otherwise, from the beginning of the day on which the punishment is substituted.

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#### Commencement Information

- I17** S. 148 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I18** S. 148 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 149 Making of, and appeals from, decisions of the SAC

- (1) Subject to section 146(3), any decision of the Summary Appeal Court when constituted as mentioned in section 142(1) must be determined by a majority of the votes of the members of the court.
- (2) The appellant or respondent may question any decision of the Summary Appeal Court on the ground that it is wrong in law or is in excess of jurisdiction, by applying to the Summary Appeal Court to have a case stated for the opinion of the High Court in England and Wales.

#### Commencement Information

- I19** S. 149 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I20** S. 149 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 150 Privileges of witnesses and others

A witness before the Summary Appeal Court or any other person whose duty it is to attend the court is entitled to the same immunities and privileges as a witness before the High Court in England and Wales.

#### Commencement Information

- I21** S. 150 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I22** S. 150 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 151 SAC rules

- (1) The Secretary of State may by rules (referred to in this Act as “SAC rules”) make provision with respect to the Summary Appeal Court.
- (2) SAC rules may in particular make provision with respect to—
  - (a) sittings of the court, including the place of sitting and changes to the place of sitting;
  - (b) the hearing of appeals and other proceedings of the court;
  - (c) the practice and procedure of the court;
  - (d) evidence, including the admissibility of evidence;
  - (e) the representation of the appellant.
- (3) Without prejudice to the generality of subsections (1) and (2), SAC rules may make provision—

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- (a) as to oaths and affirmations for members of the court, witnesses and other persons;
  - (b) as to objections to, and the replacement of, members of the court;
  - (c) as to the constitution of the court;
  - (d) for such powers of the court as may be prescribed by the rules to be exercised by a judge advocate;
  - (e) for procuring the attendance of witnesses and other persons and the production of documents and other things, including provision about—
    - (i) the payment of expenses to persons summoned to attend the court;
    - (ii) the issue by the court of warrants for the arrest of persons;
  - (f) enabling an uncontested appeal to be determined without a hearing;
  - (g) as to the bringing or abandonment of appeals;
  - [<sup>F1</sup>(ga) in relation to cases where the court has awarded or confirmed a punishment at a rehearing and it appears to the court that it had no power to do so, enabling the court to substitute for the (purported) award or confirmation of the punishment a decision that the court would have had power to make at the rehearing;]
  - (h) for the discharge of a court (including provision as to rehearings following discharge);
    - (i) as to notifications and references under section 152;
    - (j) for the making and retention of records of the proceedings of the court;
    - (k) for the supply of copies of such records, including provision about the fees payable for the supply of such copies;
    - (l) conferring functions in relation to the court on the court administration officer;
    - (m) for the delegation by the court administration officer of any of his functions in relation to the court.
- (4) Provision that may be made by the rules by virtue of subsection (2)(d) includes provision applying, with or without modifications, any enactment (whenever passed) creating an offence in respect of statements admitted in evidence.
- (5) Provision that may be made by the rules by virtue of subsection (3)(e)(ii) includes provision—
  - (a) conferring powers of arrest;
  - (b) requiring any arrested person to be brought before the court;
  - (c) authorising the keeping of persons in service custody, and the imposition of requirements on release from service custody (including provision applying section 107(5) and (6) with or without modifications).
- [<sup>F2</sup>(5A) Rules made by virtue of subsection (3)(ga) may make provision about the commencement of punishments varied by the court.]
- (6) SAC rules may apply, with or without modifications, any enactment or subordinate legislation (whenever passed or made), including any provision made by or under this Act.
- (7) In this section “appeal” means an appeal under section 141.

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#### Textual Amendments

- F1** S. 151(3)(ga) inserted (1.5.2022 for specified purposes, 13.11.2023 in so far as not already in force) by Armed Forces Act 2021 (c. 35), **ss. 5(2), 24(1)**; S.I. 2022/471, **reg. 2(b)**; S.I. 2023/1102, **reg. 2**
- F2** S. 151(5A) inserted (1.5.2022 for specified purposes, 13.11.2023 in so far as not already in force) by Armed Forces Act 2021 (c. 35), **ss. 5(3), 24(1)**; S.I. 2022/471, **reg. 2(b)**; S.I. 2023/1102, **reg. 2**
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#### Commencement Information

- I23** S. 151 in force at 28.3.2009 for specified purposes by S.I. 2009/812, **art. 3(a)(b)** (with transitional provisions in S.I. 2009/1059)
- I24** S. 151 in force at 31.10.2009 in so far as not already in force by S.I. 2009/1167, **art. 4**



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