
EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules regulate the practice and procedure to be followed in proceedings before the summary appeal court. The summary appeal court is established under section 52FF of the Naval Discipline Act 1957 (“the Act”), as inserted by section 14 of the Armed Forces Discipline Act 2000, to hear appeals against findings recorded and punishments awarded on summary trial.

Part I of the Rules contains provisions which apply generally to proceedings before the summary appeal court. These include provisions dealing with the service of documents (*rules 3 and 4*), the circumstances in which hearings before the court may be held in camera (*rule 5*), and the legal representation of appellants (*rules 6 and 7*).

Part II makes provision with respect to the bringing and abandonment of appeals. *Rule 8* and *Schedule 2* specify the form in which notice of appeal is to be given. Section 52FK(2) and (3) of the Act enables the court to give leave to extend the period for bringing an appeal and to give leave for an appeal to be brought out of time. *Rules 9 to 11* specify the practice and procedure to be followed in determining an application for leave under either of those subsections. Section 71B(5A) and (5B) of the Act allows the authority carrying out a review under that section, with the leave of the summary appeal court, to refer any finding or punishment awarded to the court to be considered or re-considered by it as on an appeal. *Rules 12 and 13* specify the practice and procedure to be followed in determining an application for leave made under either of those subsections. *Rule 15* enables an appeal to be abandoned at any time before its determination, and specifies the procedure to be followed where the appeal is abandoned prior to the hearing.

Part III specifies the procedure to be followed on the bringing of an appeal. *Rule 16* requires the prosecuting authority as the respondent to give notice indicating whether or not he intends to contest an appeal against finding. *Rule 17* prescribes the practice to be followed by the court where the respondent gives notice that he does not intend to contest an appeal, including specifying the circumstances in which the functions of the court can be exercised by a judge advocate sitting alone. *Rules 18, 19 and 21* make provision as to the documents and other material to be made available by the respondent to the appellant. *Rule 22* requires the court administration officer to give notice of the time and place fixed for the hearing of the appeal, and to give particulars of the persons who are to hear the appeal.

Part IV makes provision with respect to the constitution of the summary appeal court in hearing particular appeals. *Rule 23* specifies the circumstances in which persons who are not qualified for membership of the court under section 52FH of the Act may nevertheless sit as members of the court hearing an appeal. *Rule 24* identifies the persons who, although otherwise qualified for membership of the court, cannot sit as members of the court to hear particular appeals. *Rule 25* requires the court administration officer to specify two reserve members for the hearing of an appeal (known as “spare members”). *Rule 26* makes provision for the appointment of court officials.

Part V makes provision with respect to the admissibility of evidence (*rules 27 and 28*); the circumstances in which evidence can be given by live TV link (*rule 29*); the summoning of witnesses (*rule 30 and Schedule 4*); and the administration of oaths and affirmations to witnesses and other persons attending hearings of the court (*rule 31 and Schedule 5*).

Part VI specifies the practice and procedure to be followed by the court in deciding to hear two or more appeals at the same time (*rule 32*), and provides for preliminary hearings to take place before judge advocates (*rules 33 to 37*). *Rule 35* specifies the matters which are capable of being dealt with

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at a preliminary hearing. *Rules 34, 36 and 37* deal with attendance at preliminary hearings, which includes attendance by live TV link in specified circumstances.

Part VII makes provision with respect to sittings and adjournments (*rule 38*) and challenges by the appellant to members of the court or any interpreter (*rule 39*). It also includes provision for refixing the hearing of any appeal where for any reason the hearing is unable to continue (*rule 41*). *Rule 43* provides that, to the extent that any matter relating to the practice and procedure of the court at a hearing is not provided by the Act or the Rules, it shall be determined by the judge advocate.

Part VIII makes specific provision with respect to the hearing of an appeal against a finding that a charge has been proved. *Rule 46* allows the appellant and the respondent each to address the court at least once. *Rule 47* makes provision as to the practice and procedure to be adopted where the court is hearing appeals by more than one appellant at the same time. Other provisions in *Part VIII* closely follow provisions which apply to the hearing of a charge by a court-martial. *Rule 58* provides for the decision of the court in relation to each finding, and the reasons for it (except where the decision is to quash the finding), to be announced in open court.

Part IX deals with the practice and procedure of the court in relation to the exercise of its powers to vary any punishment awarded on summary dealing. *Rule 60* specifies the information which is to be provided to the court by the respondent. Other provisions relating to the determination of disputes of fact (*rule 61*) and the giving of evidence on behalf of the appellant (*rule 62*) closely follow equivalent provisions in the Courts-Martial (Royal Navy) Rules 1997. *Rule 63* requires any decision of the court and the reasons for it to be announced in open court.

Part X provides for the keeping of the record of proceedings for a period of 6 years after the conclusion of the hearing of the appeal (*rule 64*). It also provides for an appellant to be entitled to receive a copy of the record of proceedings on application to the court administration officer.

Part XI specifies the procedure which is to apply with respect to applications to the court to have a case stated for the opinion of the High Court (*rules 65 to 67*). The procedure closely follows that which applies in relation to applications to the Crown Court to have a case stated.