

2004 No. 1937

DEFENCE

The Summary Appeal Courts (Warrant Officers) Order 2004

<i>Made</i> - - - -	<i>22nd July 2004</i>
<i>Laid before Parliament</i>	<i>29th July 2004</i>
<i>Coming into force</i> - -	<i>19th August 2004</i>

The Secretary of State, in exercise of the powers conferred upon him by sections 83ZK and 225(4) of the Army Act 1955(a), sections 83ZK and 223(4) of the Air Force Act 1955(b), sections 52FQ and 135(4) of the Naval Discipline Act 1957(c), and sections 20 and 35(4) of the Armed Forces Act 2001(d), hereby makes the following Order:

Citation and commencement

1. This Order may be cited as the Summary Appeal Courts (Warrant Officers) Order 2004 and shall come into force on 19th August 2004.

Interpretation

2. In this Order—

“the air-force court” means the court established by section 83ZA of the Air Force Act 1955;

“air-force warrant officer” means a warrant officer belonging to Her Majesty’s air forces and subject to air-force law;

“the court administration officer” means—

- (a) in relation to the military court, the person appointed under section 83ZA(4) of the Army Act 1955;
- (b) in relation to the air-force court, the person appointed under section 83ZA(4) of the Air Force Act 1955; and
- (c) in relation to the naval court, the person appointed under section 52FF(4) of the Naval Discipline Act 1957;

“the courts” means the military court, the air-force court and the naval court;

“Her Majesty’s air forces” and “Her Majesty’s military forces” include forces raised under the law of a British overseas territory but do not include the forces of any Commonwealth country;

“Her Majesty’s naval forces” includes forces raised under the law of a British overseas territory and the forces of a Commonwealth country;

(a) 1955 c. 18; sections 83ZA to 83ZL were inserted by sections 14 to 24 of the Armed Forces Discipline Act 2000 (c. 4) (“the 2000 Act”).
(b) 1955 c. 19; sections 83ZA to 83ZL were inserted by sections 14 to 24 of the 2000 Act.
(c) 1957 c. 53; sections 52FF to 52FR were inserted by sections 14 to 24 of the 2000 Act.
(d) 2001 c. 19 (“the 2001 Act”).

“the military court” means the court established by section 83ZA of the Army Act 1955;
“military warrant officer” means a warrant officer belonging to Her Majesty’s military forces and subject to military law;
“the naval court” means the court established by section 52FF of the Naval Discipline Act 1957;
“naval warrant officer” means a warrant officer belonging to Her Majesty’s naval forces and subject to the Naval Discipline Act 1957; and
“service policeman” means a member of the Royal Navy Regulating Branch, the Royal Marines Police, the Royal Military Police or the Royal Air Force Police.

Warrant officers qualified to be members of the courts

3.—(1) Subject to the provisions of this article, warrant officers shall be qualified to be members of the courts.

(2) A warrant officer shall not be qualified to be a member of any of the courts if—

- (a) he serves under the command of the court administration officer of any of the courts;
- (b) he serves under the command of a prosecuting authority appointed under section 83A of the Army Act 1955 or the Air Force Act 1955, or section 52H of the Naval Discipline Act 1957(a);
- (c) he has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990(b);
- (d) he is an advocate or a solicitor in Scotland;
- (e) he is a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland;
- (f) he has in any Commonwealth country 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; or
- (g) he has at any time during the preceding five years been a service policeman.

(3) A naval or air-force warrant officer shall not be qualified to be a member of the military court for the purposes of hearing an appeal unless the court administration officer considers that the necessary number of persons belonging to Her Majesty’s military forces and qualified to be members of the court is not (with due regard to the public service) available to sit as members of the court for the purposes of that hearing.

(4) A naval or military warrant officer shall not be qualified to be a member of the air-force court for the purposes of hearing an appeal unless the court administration officer considers that the necessary number of persons belonging to Her Majesty’s air forces and qualified to be members of the court is not (with due regard to the public service) available to sit as members of the court for the purposes of that hearing.

(5) A military or air-force warrant officer shall not be qualified to be a member of the naval court for the purposes of hearing an appeal unless the court administration officer considers that the necessary number of persons belonging to Her Majesty’s naval forces and qualified to be members of the court is not (with due regard to the public service) available to sit as members of the court for the purposes of that hearing.

(6) A warrant officer belonging to the naval forces of a Commonwealth country shall not be qualified to be a member of the military court or the air-force court.

(a) Section 83A of the Army Act 1955 and the Air Force Act 1955, and section 52H of the Naval Discipline Act 1957, were inserted by paragraphs 14 to 16 of Schedule 1 to the Armed Forces Act 1996 (c. 46) (“the 1996 Act”).
(b) 1990 c. 41.

Warrant officers ineligible to hear particular appeals

4. A warrant officer shall not be eligible to sit as a member of any of the courts for the purposes of hearing an appeal (although otherwise qualified under article 3) if—

- (1) he is not of a higher rank than the appellant;
- (2) he has at any time investigated the subject matter of any charge to which the appeal relates;
- (3) he has at any time held, or acted as one of the persons holding, an inquiry into matters relating to the subject matter of any such charge; or
- (4) he serves under the command of—
 - (a) the officer who tried or dealt with any such charge summarily,
 - (b) an officer to whom any such charge was referred under section 76(5), 76AA(3) or 76B(4) of the Army Act 1955 or the Air Force Act 1955(a), or section 52B(5), 52D(3) or 52D(5) of the Naval Discipline Act 1957(b), or
 - (c) an officer whose consent or approval was sought, under regulations made by virtue of section 83 of the Army Act 1955 or the Air Force Act 1955(c), or section 52F of the Naval Discipline Act 1957(d), for the award of any punishment in respect of any such charge.

Amendments to the Army Act 1955 and the Air Force Act 1955

5.—(1) The Army Act 1955 and the Air Force Act 1955 are each amended as follows.

- (2) In subsection (2) of section 83ZA (the summary appeal court)—
 - (a) at the end of paragraph (a) the word “and” is omitted; and
 - (b) in paragraph (b) after the word “court” there is inserted—

“, and
 - (c) warrant officers qualified under an order made by virtue of section 20 of the Armed Forces Act 2001 to be members of the court”.
- (3) In section 83ZD (constitution of summary appeal court for appeals)—
 - (a) for subsection (1)(b) there is substituted—

“(b) an officer qualified under section 83ZC of this Act for membership of the court, and
 - (c) a third person who is either—
 - (i) an officer qualified under that section, or
 - (ii) a warrant officer qualified under an order made by virtue of section 20 of the Armed Forces Act 2001, for membership of the court.”; and
 - (b) in subsection (2), after “section 83ZJ of this Act” there is inserted “or section 20 of the Armed Forces Act 2001 (eligibility of warrant officers to be members of summary appeal courts)”.

Amendments to the Naval Discipline Act 1957

6.—(1) The Naval Discipline Act 1957 is amended as follows.

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- (a) Section 76 of each Act was substituted, and section 76B inserted, by paragraphs 2 and 7 respectively of Schedule 1 to the 1996 Act. Section 76AA of each Act was inserted by section 11(1) and (2) respectively of the 2000 Act.
 - (b) Sections 52B and 52D were inserted by paragraph 13 of Schedule 1 to the 1996 Act. Section 52B(5) was amended by paragraph 9(2) of Schedule 1 to the 2001 Act. Section 52D(3) was amended by section 11(5) of the 2000 Act and by paragraph 11(4) of Schedule 1 to the 2001 Act. Section 52D(5) was amended by paragraph 11(7) of Schedule 1 to the 2001 Act.
 - (c) Section 83 of each Act was substituted by paragraphs 5 and 10 respectively of Schedule 1 to the 1996 Act.
 - (d) Section 52F was inserted by paragraph 13 of Schedule 1 to the 1996 Act.

- (2) In subsection (2) of section 52FF (the summary appeal court)—
- (a) at the end of paragraph (a) the word “and” is omitted; and
 - (b) in paragraph (b) after the word “court” there is inserted—
 - “, and
 - (c) warrant officers qualified under an order made by virtue of section 20 of the Armed Forces Act 2001 to be members of the court”.
- (3) In section 52FJ (constitution of summary appeal court for appeals)—
- (a) for subsection (1)(b) there is substituted—
 - “(b) an officer qualified under section 52FH of this Act for membership of the court, and
 - (c) a third person who is either—
 - (i) an officer qualified under that section, or
 - (ii) a warrant officer qualified under an order made by virtue of section 20 of the Armed Forces Act 2001, for membership of the court.”; and
 - (b) in subsection (2), after “section 52FP of this Act” there is inserted “or section 20 of the Armed Forces Act 2001 (eligibility of warrant officers to be members of summary appeal courts)”.

Amendments to the Administration of Oaths (Summary Appeal Court) Orders

7.—(1) In article 2(3) of the Administration of Oaths (Summary Appeal Court) (Army) Order 2000(a), after “section 83ZC of the Army Act 1955” there is inserted “or a warrant officer so qualified under an order made by virtue of section 20 of the Armed Forces Act 2001”.

(2) In article 2(3) of the Administration of Oaths (Summary Appeal Court) (Air Force) Order 2000(b), after “section 83ZC of the Air Force Act 1955” there is inserted “or a warrant officer so qualified under an order made by virtue of section 20 of the Armed Forces Act 2001”.

(3) In article 2(2) of the Administration of Oaths (Summary Appeal Court) (Navy) Order 2000(c), after “section 52FH of the Naval Discipline Act 1957” there is inserted “or a warrant officer so qualified under an order made by virtue of section 20 of the Armed Forces Act 2001”.

Ivor Caplin
Parliamentary Under-Secretary of State
Ministry of Defence

22nd July 2004

(a) S.I. 2000/2377.
 (b) S.I. 2000/2378.
 (c) S.I. 2000/2376, to which there are amendments not relevant to this Order.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order enables warrant officers to sit as members of the summary appeal courts established by section 83ZA of the Army Act 1955 and the Air Force Act 1955, and section 52FF of the Naval Discipline Act 1957, as inserted (in each case) by the Armed Forces Discipline Act 2000, to hear appeals from the armed forces' systems of summary discipline.

Article 3 qualifies all warrant officers except those within paragraph (2) to be members of a summary appeal court. Under paragraphs (3), (4) and (5), however, they are qualified to sit as members of a summary appeal court of a Service other than their own only if not enough qualified personnel of that Service are available. Paragraph (6) precludes warrant officers of Commonwealth naval forces from sitting as members of the military and air-force courts at all.

Article 4 provides for circumstances in which a warrant officer is ineligible to sit for the purposes of a particular appeal, despite being otherwise qualified under article 3. This may be because he is not of a higher rank than the appellant, has investigated the case or participated in a related inquiry, or serves under the command of an officer who dealt with the case.

Articles 5 and 6 amend the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957 so that a summary appeal court hearing an appeal may include one warrant officer qualified for membership of the court. They also make consequential amendments.

Article 7 makes consequential amendments to the Orders that provide for the administration of oaths to members of the summary appeal courts.

This Order does not impose any costs on business.

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