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STATUTORY INSTRUMENTS

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**2004 No. 1949**

**DEFENCE**

**The Summary Appeal Court (Navy) (Amendment) Rules 2004**

*Made* - - - - 22nd July 2004  
*Laid before Parliament* 29th July 2004  
*Coming into force* - - 19th August 2004

The Secretary of State, in exercise of the powers conferred upon him by sections 52FH(2) and 52FP of the Naval Discipline Act 1957(1), hereby makes the following Rules:

**Citation and commencement**

1. These Rules may be cited as the Summary Appeal Court (Navy) (Amendment) Rules 2004 and shall come into force on 19<sup>th</sup> August 2004.

**Interpretation**

2. In these Rules “the principal Rules” means the Summary Appeal Court (Navy) Rules 2000(2).

**Determination of applications**

3.—(1) Rule 10 of the principal Rules is amended as follows.

(2) In paragraph (2), after “determining an application” there is inserted “under section 52FK(3) of the Act”.

(3) In paragraph (3), after “is minded to refuse” there is inserted “such”.

**Officers qualified for membership of the summary appeal court**

4.—(1) Rule 23 of the principal Rules is amended as follows.

(2) In paragraph (1)—

(a) for “52FH” there is substituted “52FH(3)”; and

(b) for “that section” there is substituted “section 52FH”; and

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(1) 1957 c. 53; sections 52FF to 52FR were inserted by sections 14 to 24 of the Armed Forces Discipline Act 2000 (c. 4).  
(2) S.I.2000/2370.

- (c) for “naval officers so qualified” there is substituted “persons belonging to Her Majesty’s naval forces and qualified for membership of the court”.
- (3) After paragraph (2) there is inserted—
  - “(2A) Subject to section 52FH(3) of the Act and rule 24, an officer shall be qualified under section 52FH for membership of the court for the purposes of hearing an appeal if—
    - (a) immediately before receiving his commission, he was a warrant officer in any of Her Majesty’s naval, military or air forces, and
    - (b) the appellant is of a rank below that which the officer held immediately before he received his commission, and
    - (c) if the officer is a military or air-force officer, the court administration officer considers that the necessary number of persons belonging to Her Majesty’s naval forces and qualified for membership 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.”.

#### **Officers who are ineligible to hear particular appeals**

- 5.—(1) Rule 24 of the principal Rules is amended as follows.
- (2) After paragraph (a) there is inserted—
  - “(aa) he acted as the appropriate superior authority under section 52EE of the Act in relation to any charge to which the appeal relates;”.
- (3) In paragraph (b), after “section 52B(5)” there is inserted “, 52D(3) or 52D(5)”.
- (4) In paragraph (c), for “he approved or otherwise consented to any punishment awarded” there is substituted “he was asked to approve the award of any punishment”.
- (5) In paragraph (e), after “to which the appeal relates” there is inserted—
  - “; or
  - (f) he serves under the command of any officer falling within paragraphs (a) to (c).”

#### **Spare members**

- 6. In rule 25 of the principal Rules, after “section 52FH of the Act” there is inserted “, an order made by virtue of section 20 of the Armed Forces Act 2001”.

#### **Information to be provided by the respondent**

- 7.—(1) Rule 60 of the principal Rules is amended as follows.
- (2) At the end of paragraph (2)(d), “and” is omitted.
- (3) In paragraph (2)(e), after “Northern Ireland” there is inserted—
  - “;
  - (f) the appellant’s rate of pay, including any allowances to which he is entitled and any deductions to which he is liable; and
  - (g) if on summary trial of the charge the appellant was sentenced to dismissal from Her Majesty’s service, the likely effect of that sentence on his future pension entitlements (including terminal benefits)”.
- (4) After paragraph (2) there is inserted—
  - “(2A) If on summary trial of the charge the appellant was sentenced to disrating, the information to be provided under paragraph (2)(f) shall include—

- (a) details of the appellant's rate of pay immediately before and after that sentence took effect, and
- (b) if there is another sentence of disrating which the court could award, details of what his rate of pay would be if the court awarded such other sentence.”.

**Transitional provisions**

8.—(1) Rule 3 does not preclude a hearing of an application under section 52FK(2) of the Naval Discipline Act 1957 if the applicant has requested such a hearing under rule 10(4) of the principal Rules before these Rules come into force.

(2) Rules 4, 5 and 7 apply only to hearings which begin after these Rules come into force.

22nd July 2004

*Ivor Caplin*  
Parliamentary Under-Secretary of State Ministry  
of Defence

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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## EXPLANATORY NOTE

*(This note is not part of the Rules)*

These Rules amend the Summary Appeal Court (Navy) Rules 2000 (“the principal Rules”). The principal Rules govern the procedure of the summary appeal court established by section 52FF of the Naval Discipline Act 1957, as inserted by the Armed Forces Discipline Act 2000, to hear appeals from the Royal Navy’s system of summary discipline.

Rule 10 of the principal Rules prescribes the circumstances in which there is to be a hearing of an application. By virtue of rule 9(1) of the principal Rules, this means either an application to extend the period of time for bringing an appeal or an application for leave to bring an appeal out of time. Rule 3 of these Rules amends rule 10 of the principal Rules so that there can be a hearing only in the latter case.

Under section 52FH(1) of the Naval Discipline Act 1957, a naval officer of or above the rank of lieutenant is qualified for membership of the court if he has held a commission for at least three years. Under rule 23 of the principal Rules, a military or air-force officer of corresponding rank who has held a commission for three years is also qualified if not enough qualified naval officers are available. Under rule 4 of these Rules, a naval officer is qualified (despite being below the rank of lieutenant, or having held a commission for less than three years) if immediately before receiving his commission he was a warrant officer of higher rank than the appellant; and a military or air-force officer who was previously a warrant officer is similarly qualified, subject to the same condition, if not enough qualified naval personnel are available.

Rule 5 amends rule 24 of the principal Rules so as to extend the circumstances in which an officer is ineligible to sit as a member of the court for the purposes of a particular appeal. It makes him ineligible if he dealt with the case in the role of appropriate superior authority, if he considered it in the role of higher authority (irrespective of either the procedural route by which it reached him or his decision upon it), or if he serves under the command of an officer who dealt with the case.

Rule 6 makes a warrant officer eligible to be nominated as a reserve member of the court under rule 25 of the principal Rules, if he is qualified for membership of the court.

Rule 7 amends rule 60 of the principal Rules so as to require the prosecuting authority to provide the court with information about the appellant’s rate of pay. Where the original punishment included disrating, this includes information about how his pay would be affected if the court upheld that punishment or substituted some lesser disrating. Where the original punishment included dismissal from Her Majesty’s service, information about the likely effect on his pension rights must also be provided.

Rule 8 provides for transitional cases.

These Rules do not impose any costs on business.