

2005 No. 446 (L. 7)

COURTS-MARTIAL (APPEALS)

The Courts-Martial Appeal (Amendment) Rules 2005

Made - - - - - *27th February 2005*

Laid before Parliament *4th March 2005*

Coming into force - - *1st April 2005*

The Lord Chief Justice of England, in exercise of the powers conferred upon him by section 49 of the Courts-Martial (Appeals) Act 1968(a) and with the approval of the Lord Chancellor hereby makes the following Rules:

Citation, commencement and application

1.—(1) These rules may be cited as the Courts-Martial Appeal (Amendment) Rules 2005 and shall come into force on 1st April 2005.

(2) The amendments made by these Rules shall have effect only in relation to proceedings before the Courts-Martial Appeal Court commenced on or after 1st April 2005 and in relation to proceedings commenced before that date the Courts-Martial Appeal Rules 1968(b) shall continue to have effect as if these Rules had not been made.

(3) Any reference to a rule by number alone means the rule so numbered in the Courts-Martial Appeal Rules 1968.

Amendments to the Courts-Martial Appeal Rules 1968

2. The Courts-Martial Appeal Rules 1968 shall be amended in accordance with the following provisions of these Rules.

3. For rule 8 substitute—

“8. Exercise of Court’s powers to give leave to appeal, etc: general rules

(1) This rule and rule 8ZA apply when a single judge or the registrar exercises a power conferred by one of the following sections of the Act—

- (a) Section 36 (Powers under Part II which are exercisable by single judge);
- (b) Section 36A (Powers under Part II which are exercisable by registrar);
- (c) Section 36B (Procedural directions: powers of single judge and registrar); or
- (d) Section 36C (Appeals against procedural directions).

(2) An application for the exercise of any of the powers referred to in paragraph (1) shall be in the relevant form scheduled to these Rules or in the form required by the registrar.

(a) 1968 c. 20.

(b) S.I. 1968/1071, to which there is a relevant amendment in S.I. 1972/798.

(3) An application for the exercise of any of the powers referred to in paragraph (1) must be signed by the appellant or on his behalf.

- (4) If an application is not signed by the appellant and he is:
- (a) in custody in any civil prison or detained in any civil institution;
 - (b) detained in any military, air force or naval establishment; or
 - (c) a prisoner of war;

the registrar must send him a copy as soon as practicable after receiving it unless it has been ascertained from his representative (if appropriate) that a copy has already been sent to him.

(5) Where an application has been dealt with by a judge or the registrar exercising the powers of the court under section 36(1), 36A or 36B(1), the registrar shall notify the appellant of the decision and, where the appellant is a prisoner of war who has a protecting power, shall also notify the protecting power of the decision and the appellant of the receipt by the protecting power of such notification.

(6) Neither a single judge nor the registrar need sit in court to exercise any of the powers referred to in paragraph (1) of this rule.”.

4. After rule 8 insert—

“8ZA. Further applications to a judge or to the court: additional rules

- (1) Where an appellant—
- (a) makes a requisition under section 36(2) to have an application determined by the full court; or
 - (b) renews an application for the exercise of a power conferred by section 36A (powers under Part II which are exercisable by registrar);

then the period within which he must do so shall be 14 days next following the day on which he receives notice of the judge’s decision or the registrar’s decision, as appropriate, or such longer period as a judge of the court, the registrar or the court as appropriate, may fix and the period may be extended by a judge of the court, the registrar or the court as appropriate, before or after it expires:—

Provided that, if the appellant is a prisoner of war who has a protecting power, the said period shall not elapse earlier than 14 days next following the day on which he receives, from the officer commanding the prisoner of war camp or other place in which he is detained, notice that the protecting power has been notified of the decision.

(2) A requisition under section 36(2) to have an application determined by the full court or a renewal of an application under section 36A(2) shall be made by notice to the registrar.

(3) Where an appellant or the Defence Council, as appropriate, applies for procedural directions under section 36C (Appeals against procedural directions) then the period within which either the appellant or the Defence Council, as appropriate, must do so shall be 14 days next following the day on which he receives notice of the judge’s decision or the registrar’s decision, as appropriate, or such longer period as a judge of the court, the registrar or the court may fix and the period may be extended by a judge of the court, the registrar or the court before or after it expires:—

Provided that, if the appellant is a prisoner of war who has a protecting power, the said period shall not elapse earlier than 14 days next following the day on which he receives, from the officer commanding the prisoner of war camp or other place in which he is detained, notice that the protecting power has been notified of the decision.

(4) The general rule is that an application for an extension of the periods referred to in paragraphs (1) and (3) will be considered at the same time as the further application itself.

(5) Where—

(a) an appellant may renew to the full court an application for the exercise of a power conferred by section 36(1), but

(b) he does not do so within the period fixed by this rule or extended under it, then his application shall be treated as having been refused by the full court.”.

Dated 16th February 2005

Woolf C.J.

Approved,

Falconer of Thoroton, C.

Dated 27 February 2005

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules substitute rule 8 of the Courts-Martial Appeal Rules 1968 and insert a new rule 8ZA into those Rules so as to take account of new section 36B (procedural directions: powers of single judge and registrar) and 36C (appeals against procedural directions) of the Courts-Martial (Appeals) Act 1968, inserted by section 90(3) of the Courts Act 2003 (c. 39), and provides rules supplementing the powers exercisable by the registrar under section 36A of the Courts-Martial (Appeals) Act 1968.

New section 36B will allow either the registrar or a single judge of the Appeal Court to give procedural directions. New section 36C provides both the appellant and in certain circumstances the Defence Council with a right of appeal either to a single judge (following determination by the registrar) or to the Appeal Court (following a determination by a single judge).

At present, rule 8 applies only to the exercise of powers by a single judge under section 36(1) of the Courts-Martial (Appeals) Act 1968 and the right to renew an application to the full court under section 36(2) of that Act. The new rules will apply to any application to the registrar, or to a single judge, or to the Appeal Court, for the exercise of a power conferred by—

- (a) section 36 (powers under Part II which are exercisable by single judge);
- (b) section 36A (powers under Part II which are exercisable by registrar);
- (c) section 36B (procedural directions: powers of single judge and registrar);
- (d) section 36C (Appeals against procedural directions);

of the Courts-Martial (Appeals) Act 1968.

Substituted rule 8 prescribes the form and requirements of service of such applications. It also permits the registrar or a single judge, when exercising a power conferred by one of those sections, to sit otherwise than in open court. New rule 8ZA prescribes additional rules, including a time limit, for making a further application to a single judge or to the Appeal Court and prescribes the consequences of failure to renew to the Appeal Court within time an application for the exercise of a power conferred by section 36(1) of the Courts-Martial (Appeals) Act 1968.

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