

2007 No. 710

COURTS-MARTIAL APPEALS

The Courts-Martial Appeal (Amendment) Rules 2007

Made - - - - *28th February 2007*

Laid before Parliament *8th March 2007*

Coming into force - - *31st March 2007*

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 interpretation

1. These Rules may be cited as the Courts-Martial Appeal (Amendment) Rules 2007 and shall come into force on 31st March 2007.

Amendments to the Courts-Martial Appeal Rules 1968

2. The Courts-Martial Appeal Rules 1968 shall be amended in accordance with the Schedule to these Rules.

Approved

C J Phillips

28th February 2007

Falconer of Thoroton C
Department of Constitutional Affairs

SCHEDULE

Rule 2

Modification of the Courts-Martial Appeal Rules 1968

1. In rule 2(1) (definitions)—

(a) after “the Act” insert—

““the 1955 Acts” means the Army Act 1955(b) and the Air Force Act 1955(c);

(a) 1968 c.20.
(b) 1955 c.18
(c) 1955 c.19

“the 1957 Act” means the Naval Discipline Act 1957(a);

“the 2007 Regulations” means the Courts-Martial (Review of Sentencing) Regulations 2007(b); and

(b) after “exhibit” insert—

““offender” means for the purpose of Rules 8B to 8H the person whose sentencing is the subject of a reference under section 113C(1) of the 1955 Acts or section 71AC(1) of the 1957 Act.”

2. After rule 8A insert—

“Attorney General’s reference of unduly lenient sentence: applications

8B.—(1) This rule and rules 8C to 8H apply when the Attorney General makes an application for leave to refer a case to the court under section 113C(1) of the 1955 Acts or section 71AC(1) of the 1957 Act.

(2) An application under paragraph (1) shall be in writing and—

(a) specify—

(i) the name of the offender;

(ii) the date on which, and the offence of which, he was convicted;

(iii) the sentence passed on him in respect of that offence;

(iv) the date on which sentence was passed (if later than the date under subparagraph (ii)); and

(v) the judge advocate by whom, and the courts-martial centre at which, the sentence was passed.

(b) state the reason why it appears to the Attorney General that the sentencing of the offender was unduly lenient; and

(c) be entitled, as appropriate, “Reference under—

(d) section 113C(1) of the Army Act 1955;

(e) section 113C(1) of the Air Force Act 1955; or

(f) section 71AC(1) of the Naval Discipline Act 1957,

to the Courts-Martial Appeal Court for review of sentence” together with the year and number of the application and the name of the offender.

(3) The sending of the application to the registrar shall constitute the giving of notice of the application for the purpose of regulation 2 (Applications to the Courts-Martial Appeal Court) of the 2007 Regulations.

Duties of the registrar on receipt of application

8C.—(1) The registrar shall, as soon as practicable after receiving an application, cause to be served on the offender a copy of it together with a notice which—

(a) informs him that the result of any reference could be that the court would quash the sentence passed on him in the proceedings and in place of it pass such sentence as they thought appropriate for the case and as the court below had power to pass when dealing with him (including a greater punishment);

(b) informs him of the effect of regulations 6(1) (entitlement for offender to be present at hearings), 6(2) (offender in custody requires leave to be present at hearing), 6(3) (power of court to pass sentence on offender not present) and 8 (entitlement of offender to reasonable costs out of central funds) of the 2007 Regulations; and

(a) 1957 c.53

(b) S.I. 2007/660

- (c) invites him, within such period as the registrar may specify (being not less than 14 days from the date of service on him of the notice), to serve notice on the registrar if he wishes—
 - (i) to apply to the court for leave to be present under regulation 6(2) of the 2007 Regulations; and
 - (ii) to present any argument to the court on the hearing of the application or, if leave is given, of the reference, and whether to present it in person or by counsel on his behalf.
- (d) draws to his attention the effect of rule 8G (supply of documentary and other exhibits); and
- (e) advises him to consult a legal adviser as to his position as soon as possible.

(2) The court shall not hear argument by or on behalf of the Attorney General until the period specified by the registrar has expired unless the offender agrees or has indicated that he does not wish to present any argument to the court.

(3) For the purpose of this rule—

“legal adviser” means a person who—

- (a) has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990^(a);
- (b) is an advocate or solicitor in Scotland;
- (c) is a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland; or
- (d) has in any of the Channel Islands, the Isle of Man, a Commonwealth country or a British Overseas territory rights and duties similar to those of a barrister or solicitor in England and Wales and is subject to punishment or disability for a breach of professional rules.

References to the court

8D.—(1) Every reference shall be in writing and —

- (a) contain the information required by rule 8B(2) to be specified in an application;
- (b) summarise the arguments intended to be put to the court; and
- (c) specify the authorities intended to be cited.

(2) The reference shall bear the same title as the application.

(3) Subject to paragraph (4), the reference shall be sent on behalf of the Attorney General to the registrar, who shall, as soon as practicable after receiving it, serve a copy of it on the offender.

(4) Where the court gives leave for a case to be referred to it and is satisfied that the document comprising the application also contains the material required by paragraph (1), the court may order that the document be treated for the purpose of these Rules as the reference; and in that case paragraph (3) shall not apply.

Withdrawal or amendment of application or reference

8E. The Attorney General may withdraw or amend an application or reference at any time before the court has begun the hearing of the application or reference as the case may be, or, after that, and until the court has given its decision, may withdraw or amend the application or reference by leave of the court, and notice of such withdrawal or amendment shall be served on the registrar and on the offender on behalf of the Attorney General.

(a) 1990 c.41.

Registrar's power to require information from court martial

8F. The registrar may require the trial judge advocate or the court administration officer to furnish the court with any assistance or information which it may require for the purpose of exercising its jurisdiction.

Supply of documentary and other exhibits

8G.—(1) The registrar shall, on request, supply to the offender copies of documents or other things required for the application or reference and in such case may make charges in accordance with scales and rates fixed from time to time by the Treasury.

(2) The registrar shall, on request, make arrangements for the offender to inspect any document or other thing required for the application or reference.

(3) This rule shall not apply to the supply of transcripts of any proceedings or part of proceedings.

Service of documents

8H.—(1) For the purposes of rules 8B to 8E service of a document on the offender may be effected—

- (a) by delivering it to the person to whom it is directed; or
- (b) by sending it by post addressed to him at his unit or place of abode.

(2) For the purposes of rules 8B to 8E service of a document on the registrar may be effected—

- (a) in the case of an offender who is in custody, by delivering it to the person having custody of him;
- (b) by delivering it to the registrar;
- (c) by addressing it to him and leaving it at his office in the Royal Courts of Justice, London WC2; or
- (d) by sending it by post addressed to him at the said office.

(3) A person having custody of an offender and to whom a document is delivered in pursuance of paragraph (2)(a) shall endorse on it the date of delivery and cause it to be forwarded to the registrar.”

Applications in relation to appeals to the House of Lords

3. In rule 18(1) after paragraph (c) insert —

“(ca) for leave to refer a case to the House of Lords under sections 113C(4) and (5) of the 1955 Acts or sections 71AC(4) and (5) of the 1957 Act; or”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Rules set out in the Schedule amend the Courts-Martial Appeal Rules 1968 (S.I. 1968/1071). They make specific procedural provision with respect to references and applications for reviews of sentencing by the Courts-Martial Appeal Court where the Attorney General considers a sentence awarded by a court-martial for a qualifying offence to be unduly lenient. These Rules are broadly equivalent to those provisions in Part 70 of the Criminal Procedure Rules (S.I. 2005/384) and supplement the Courts-Martial Appeal (Reviews of Sentencing) Regulations 2007 (S.I.2007/660).

Rule 8B stipulates the information that is to be contained in an application for leave to refer a case to the Courts-Martial Appeal Court, including the reasons why it appears to the Attorney General that the sentence awarded was unduly lenient, and provides that the notice giving requirement will be satisfied by the sending of the application.

Rule 8C specifies a number of the duties of the registrar of the Courts-Martial Appeal Court including the duty to inform an offender whose sentence is the subject of a review of the possible effects of such a review and his rights in relation to his presence during any hearings relating to the review. The obligations include a duty to invite an offender to give notice within a specified time if he wishes to seek leave to be present during a hearing, present argument or have documents or other exhibits made available to him. The registrar is also obliged to advise the offender to consult a legal adviser. The rule further provides that the Courts-Martial Appeal Court will not hear argument on behalf of the Attorney General until the expiry of the time specified by the registrar for the offender to give notice of his intentions in relation to the hearing other than with the agreement of the offender.

Rule 8D provides that the reference must be made in writing and sets out the information required supporting the reference. It further allows for the Courts-Martial Appeal Court to order that an application be treated as the reference where it is satisfied that an application contains all of the necessary information.

Rule 8E makes provision for the Attorney General to withdraw or amend an application or reference. Rule 8F provides that the registrar may require the trial judge advocate or the court administration officer to provide the Courts-Martial Appeal Court with assistance where necessary.

Rule 8G provides for the registrar to make arrangements for an offender, on request, to be supplied with, or be able to inspect, documents relating to a referral, whilst Rule 8H provides for the service of documents in relation to reviews of sentence.

Rule 18 (1) is amended to make provision for the Attorney General to apply for leave to refer a point of law relating to the unduly lenient sentence to the House of Lords.

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