



Armed Forces Discipline Act 2000

2000 CHAPTER 4

Summary appeal courts

14 Summary appeal courts

(1) After section 83 of each of the 1955 Acts there is inserted—

“The summary appeal court

83ZA The summary appeal court

- (1) There shall be a court (in this Act referred to as “the summary appeal court”) for the purpose of hearing appeals against findings recorded and punishments awarded by commanding officers and appropriate superior authorities on dealing summarily with charges.
- (2) The court shall consist of—
 - (a) judge advocates appointed under section 83ZB of this Act, and
 - (b) officers qualified under section 83ZC of this Act to be members of the court.
- (3) The court—
 - (a) may sit in two or more divisions, and
 - (b) may sit in any place, whether within or outside the United Kingdom.
- (4) There shall be a court administration officer for the court, who shall be an officer (or other person) appointed by the Defence Council.
- (5) The court shall sit at such times and in such places as may be determined by the court administration officer.
- (6) The court administration officer shall perform such other functions as may be prescribed by rules under section 83ZJ of this Act.”

(2) After section 52F of the 1957 Act there is inserted—

*“The summary appeal court***52FF The summary appeal court**

- (1) There shall be a court (in this Act referred to as “the summary appeal court”) for the purpose of hearing appeals against findings recorded and punishments awarded on summary trial.
- (2) The court shall consist of—
 - (a) judge advocates appointed under section 52FG of this Act, and
 - (b) officers qualified under section 52FH of this Act to be members of the court.
- (3) The court—
 - (a) may sit in two or more divisions, and
 - (b) may sit in any place, whether within or outside the United Kingdom.
- (4) There shall be a court administration officer for the court, who shall be an officer (or other person) appointed by the Defence Council.
- (5) The court shall sit at such times and in such places as may be determined by the court administration officer.
- (6) The court administration officer shall perform such other functions as may be prescribed by rules under section 52FP of this Act.”

15 Appointment of judge advocates

- (1) After section 83ZA of each of the 1955 Acts there is inserted—

“83ZB Judge advocates

- (1) Judge advocates in relation to the summary appeal court shall be appointed by the Judge Advocate General.
- (2) No person shall be appointed under this section unless he is qualified under section 84B(2) of this Act for appointment as the judge advocate in relation to a court-martial.”

- (2) After section 52FF of the 1957 Act there is inserted—

“52FG Judge advocates

- (1) Judge advocates in relation to the summary appeal court shall be appointed by the Chief Naval Judge Advocate.
- (2) No person shall be appointed under this section unless he is qualified under section 53B(2) of this Act for appointment as the judge advocate in relation to a court-martial.”

16 Officers qualified for membership of summary appeal court

(1) After section 83ZB of the Army Act 1955 there is inserted—

“83ZC Officers qualified for membership of summary appeal court

- (1) Subject to subsections (2) and (3) below, an officer is qualified under this section for membership of the summary appeal court if he is a military officer who has held a commission in any of Her Majesty’s naval, military, or air forces for a period of not less than two years or periods amounting in the aggregate to not less than two years.
- (2) Subject to subsection (3) below, rules under section 83ZJ of this Act may specify circumstances in which any other military officer or a naval or air-force officer is qualified under this section for membership of the court.
- (3) The following are not qualified under this section for membership of the court—
 - (a) the court administration officer,
 - (b) an officer under the command of the court administration officer,
 - (c) the prosecuting authority,
 - (d) any person who has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990,
 - (e) an advocate in Scotland or a solicitor who has a right of audience in the Court of Session or the High Court of Justiciary,
 - (f) a member of the Bar of Northern Ireland,
 - (g) a person who 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
 - (h) any person who is, or has at any time during the preceding five years been, a provost officer.
- (4) In this section—

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

“military officer” means an officer belonging to Her Majesty’s military forces and subject to military law; and

“naval officer” means an officer belonging to Her Majesty’s naval forces and subject to the Naval Discipline Act 1957.”

(2) After section 83ZB of the Air Force Act 1955 there is inserted—

“83ZC Officers qualified for membership of summary appeal court

- (1) Subject to subsections (2) and (3) below, an officer is qualified under this section for membership of the summary appeal court if he is an air-force officer who has held a commission in any of Her Majesty’s naval, military, or air forces for a period of not less than two years or periods amounting in the aggregate to not less than two years.
- (2) Subject to subsection (3) below, rules under section 83ZJ of this Act may specify circumstances in which any other air-force officer or a naval or military officer is qualified under this section for membership of the court.

(3) The following are not qualified under this section for membership of the court—

- (a) the court administration officer,
- (b) an officer under the command of the court administration officer,
- (c) the prosecuting authority,
- (d) any person who has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990,
- (e) an advocate in Scotland or a solicitor who has a right of audience in the Court of Session or the High Court of Justiciary,
- (f) a member of the Bar of Northern Ireland,
- (g) a person who 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
- (h) any person who is, or has at any time during the preceding five years been, a provost officer.

(4) In this section—

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

“military officer” means an officer belonging to Her Majesty’s military forces and subject to military law; and

“naval officer” means an officer belonging to Her Majesty’s naval forces and subject to the Naval Discipline Act 1957.”

(3) After section 52FG of the 1957 Act there is inserted—

“52FH Officers qualified for membership of summary appeal court

- (1) Subject to subsections (2) and (3) below, an officer is qualified under this section for membership of the summary appeal court if he is a naval officer of or above the rank of lieutenant who has held a commission in any of Her Majesty’s naval, military, or air forces for a period of not less than three years or periods amounting in the aggregate to not less than three years.
- (2) Subject to subsection (3) below, rules under section 52FP of this Act may specify circumstances in which any other naval officer or a military or air-force officer is qualified under this section for membership of the court.
- (3) The following are not qualified under this section for membership of the court—
 - (a) the court administration officer,
 - (b) an officer under the command of the court administration officer,
 - (c) the prosecuting authority,
 - (d) any person who has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990,
 - (e) an advocate in Scotland or a solicitor who has a right of audience in the Court of Session or the High Court of Justiciary,
 - (f) a member of the Bar of Northern Ireland,

- (g) a person who 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
- (h) any person who is, or has at any time during the preceding five years been, a member of the Royal Navy Regulating Branch.

(4) In this section—

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

“military officer” means an officer belonging to Her Majesty’s military forces and subject to military law; and

“naval officer” means an officer belonging to Her Majesty’s naval forces and subject to this Act.”

17 Constitution of court for appeals

(1) After section 83ZC of each of the 1955 Acts there is inserted—

“83ZD Constitution of summary appeal court for appeals

(1) For the purpose of hearing an appeal, the summary appeal court shall consist of—

- (a) one of the judge advocates appointed under section 83ZB of this Act, and
- (b) two officers qualified under section 83ZC of this Act for membership of the court.

(2) Subsection (1) above has effect subject to any provision made by virtue of section 83ZJ of this Act.

(3) The judge advocate for any appeal shall be specified by or on behalf of the Judge Advocate General.

(4) The other members of the court for any appeal shall be specified by or on behalf of the court administration officer.”

(2) After section 52FH of the 1957 Act there is inserted—

“52FJ Constitution of summary appeal court for appeals

(1) For the purpose of hearing an appeal, the summary appeal court shall consist of—

- (a) one of the judge advocates appointed under section 52FG of this Act, and
- (b) two officers qualified under section 52FH of this Act for membership of the court.

(2) Subsection (1) above has effect subject to any provision made by virtue of section 52FP of this Act.

(3) The judge advocate for any appeal shall be specified by or on behalf of the Chief Naval Judge Advocate.

Status: This is the original version (as it was originally enacted).

- (4) The other members of the court for any appeal shall be specified by or on behalf of the court administration officer.
- (5) In specifying members of the court under subsection (4) above the person doing so shall ensure that at least one member of the court for any appeal is of or above the rank of commander.
- (6) At any sitting of the court, the most senior member of the court at that sitting shall preside.”

18 Right of appeal

- (1) After section 83ZD of each of the 1955 Acts there is inserted—

“83ZE Right of appeal

- (1) Any person in respect of whom—
 - (a) a charge has been dealt with summarily, and
 - (b) a finding that the charge has been proved has been recorded,may appeal to the summary appeal court against the finding or against any punishment awarded (or against both).
- (2) Subject to subsection (3) below, any appeal must be brought within the period of fourteen days beginning with the date on which the punishment was awarded (“the initial period”) or within such longer period as the court may (before the end of the initial period) allow.
- (3) The court may at any later time give leave for an appeal to be brought.
- (4) On any appeal under this section, the respondent shall be the prosecuting authority.”

- (2) After section 52FJ of the 1957 Act there is inserted—

“52FK Right of appeal

- (1) Any person in respect of whom—
 - (a) a charge has been tried summarily, and
 - (b) a finding of guilt has been recorded,may appeal to the summary appeal court against the finding or against any punishment awarded (or against both).
- (2) Subject to subsection (3) below, any appeal must be brought within the period of fourteen days beginning with the date on which the punishment was awarded (“the initial period”) or within such longer period as the court may (before the end of the initial period) allow.
- (3) The court may at any later time give leave for an appeal to be brought.
- (4) On any appeal under this section, the respondent shall be the prosecuting authority.”

19 Hearing of appeals

(1) After section 83ZE of each of the 1955 Acts there is inserted—

“83ZF Hearing of appeals

- (1) An appeal under section 83ZE of this Act against a finding shall be by way of a rehearing of the charge.
- (2) An appeal under section 83ZE of this Act which relates only to the punishment awarded shall be by way of a rehearing in relation to the award of punishment.
- (3) Except in such cases as may be prescribed by rules under section 83ZJ of this Act, appeals shall be heard in open court.
- (4) Proceedings of the summary appeal court shall be conducted in accordance with the law of England and Wales.
- (5) Rulings and directions on questions of law (including questions of procedure and practice) shall be given by the judge advocate.
- (6) Any directions given by the judge advocate shall be binding on the court.”

(2) After section 52FK of the 1957 Act there is inserted—

“52FL Hearing of appeals

- (1) An appeal under section 52FK of this Act against a finding shall be by way of a rehearing of the charge.
- (2) An appeal under section 52FK of this Act which relates only to the punishment awarded shall be by way of a rehearing in relation to the award of punishment.
- (3) Except in such cases as may be prescribed by rules under section 52FP of this Act, appeals shall be heard in open court.
- (4) Proceedings of the summary appeal court shall be conducted in accordance with the law of England and Wales.
- (5) Rulings and directions on questions of law (including questions of procedure and practice) shall be given by the judge advocate.
- (6) Any directions given by the judge advocate shall be binding on the court.”

20 Powers of court

After section 83ZF of each of the 1955 Acts there is inserted—

“83ZG Powers of summary appeal court

- (1) On an appeal against a finding that a charge has been proved, the summary appeal court—
 - (a) may confirm or quash the finding, or
 - (b) in a case where the commanding officer or appropriate superior authority could validly have recorded a finding that another charge had

been proved, may substitute for the finding a finding that that other charge has been proved.

- (2) Where the court quashes a finding—
- (a) the court shall quash any punishment which relates only to that finding (or to that and one or more other findings which are also quashed), and
 - (b) the court may vary any punishment which relates both to that and one or more other findings so as to award any punishment which—
 - (i) it would have been within the powers of the commanding officer or appropriate superior authority to award, and
 - (ii) in the opinion of the court, is no more severe than the punishment originally awarded.
- (3) Where, on an appeal against a finding that a charge has been proved, the court confirms the finding or substitutes for it a finding that another charge has been proved, the court may vary the punishment awarded by the commanding officer or appropriate superior authority so as to award any punishment which—
- (a) it would have been within the powers of the commanding officer or appropriate superior authority to award, and
 - (b) in the opinion of the court, is no more severe than that originally awarded.
- (4) On an appeal against the punishment awarded, the court—
- (a) may confirm the punishment awarded by the commanding officer or appropriate superior authority, or
 - (b) may substitute any other punishment which—
 - (i) it would have been within the powers of the commanding officer or appropriate superior authority to award, and
 - (ii) in the opinion of the court, is no more severe than that originally awarded.
- (5) Any punishment awarded by the court shall have effect as if awarded on the day on which the original punishment was awarded on dealing with the charge summarily.
- (6) Any finding substituted or sentence awarded by the court shall be treated for all purposes as having been made or awarded by the officer who dealt summarily with the charge.”

(2) After section 52FL of the 1957 Act there is inserted—

“52FM Powers of court

- (1) On an appeal against a finding of guilt, the summary appeal court—
 - (a) may confirm or quash the finding, or
 - (b) in a case where the officer who conducted the summary trial could validly have recorded a finding that another charge had been proved, may substitute for the finding a finding that that other charge has been proved.
- (2) Where the court quashes a finding—

- (a) the court shall quash any punishment which relates only to that finding (or to that and one or more other findings which are also quashed), and
 - (b) the court may vary any punishment which relates both to that and one or more other findings so as to award any punishment which—
 - (i) it would have been within the powers of the officer who conducted the summary trial to award, and
 - (ii) in the opinion of the court, is no more severe than the punishment originally awarded.
- (3) Where, on an appeal against a finding of guilt, the court confirms the finding or substitutes for it a finding that another charge has been proved, the court may vary the punishment awarded at the summary trial so as to award any punishment which—
- (a) it would have been within the powers of the officer who conducted the summary trial to award, and
 - (b) in the opinion of the court, is no more severe than that originally awarded.
- (4) On an appeal against the punishment awarded, the court—
- (a) may confirm the punishment awarded at the summary trial, or
 - (b) may substitute any other punishment which—
 - (i) it would have been within the powers of the officer who conducted the summary trial to award, and
 - (ii) in the opinion of the court, is no more severe than that originally awarded.
- (5) Any punishment awarded by the court shall have effect as if awarded on the day on which the original punishment was awarded on summary trial of the charge.
- (6) Any finding substituted or sentence awarded by the court shall be treated for all purposes as having been awarded or made by the officer who conducted the summary trial.”

21 Making of, and appeals from, decisions of court

- (1) After section 83ZG of each of the 1955 Acts there is inserted—

“83ZH Making of, and appeals from, decisions of court

- (1) Subject to section 83ZF(5) of this Act, any decision of the summary appeal court when constituted as mentioned in section 83ZD(1) of this Act shall be determined by a majority of the votes of the members of the court.
- (2) The person who brought the appeal may question any judgment of the summary appeal court on the ground that it is wrong in law or is in excess of jurisdiction, by applying to the summary appeal court to have a case stated for the opinion of the High Court in England and Wales.”

- (2) After section 52FM of the 1957 Act there is inserted—

“52FN Making of, and appeals from, decisions of court

- (1) Subject to section 52FL(5) of this Act, any decision of the summary appeal court when constituted as mentioned in section 52FJ(1) of this Act shall be determined by a majority of the votes of the members of the court.
- (2) The person who brought the appeal may question any judgment of the summary appeal court on the ground that it is wrong in law or is in excess of jurisdiction, by applying to the summary appeal court to have a case stated for the opinion of the High Court in England and Wales.”

22 Rules

- (1) After section 83ZH of each of the 1955 Acts there is inserted—

“83ZJ Rules of summary appeal court

- (1) The Secretary of State may make rules for the purpose of regulating the practice and procedure to be followed in the summary appeal court.
- (2) Rules under this section may, in particular, make provision—
 - (a) as to the practice and procedure of the court in exercising functions preliminary to or incidental to the hearing of appeals under section 83ZE of this Act;
 - (b) as to the bringing and abandonment of appeals;
 - (c) as to the procedure for applying for leave under section 83ZE(2) or (3) of this Act;
 - (d) as to the procedure for applying for leave, or making a reference, under section 115(5A) or (5B) of this Act;
 - (e) as to consultation by the court administration officer with the Judge Advocate General before specifying where the court is to sit;
 - (f) as to circumstances in which the jurisdiction of the court may be exercised by a judge advocate appointed under section 83ZB of this Act sitting alone;
 - (g) enabling an uncontested appeal to be determined without a hearing;
 - (h) as to the convening and constitution of the court to hear any appeal;
 - (i) as to circumstances in which officers otherwise qualified under section 83ZC of this Act are ineligible to hear particular appeals;
 - (j) enabling the appellant to object to members of the court;
 - (k) as to the representation of the appellant on the hearing of appeals under section 83ZE of this Act and at any preliminary proceedings;
 - (l) as to the admissibility of evidence;
 - (m) as to the rehearing of an appeal where any member of the court originally constituted to hear it has been unable to continue hearing the appeal;
 - (n) as to procuring the attendance of witnesses at the hearing of appeals and at any preliminary proceedings;
 - (o) as to the administration of oaths;

- (p) as to the recording of the proceedings of the court and custody of records of the proceedings;
 - (q) as to making copies of the records of proceedings available and as to the fees payable for such copies;
 - (r) as to the procedure for applying to have a case stated under section 83ZH(2) of this Act.
- (3) Rules under this section may provide for any enactment which relates to the practice or procedure of courts-martial or to the admissibility of evidence in courts-martial to apply in relation to the court with such modifications as may be specified.
- (4) Rules under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.”
- (2) After section 52FN of the 1957 Act there is inserted—

“52FP Rules of summary appeal court

- (1) The Secretary of State may make rules for the purpose of regulating the practice and procedure to be followed in the summary appeal court.
- (2) Rules under this section may, in particular, make provision—
 - (a) as to the practice and procedure of the court in exercising functions preliminary to or incidental to the hearing of appeals under section 52FK of this Act;
 - (b) as to the bringing and abandonment of appeals;
 - (c) as to the procedure for applying for leave under section 52FK(2) or (3) of this Act;
 - (d) as to the procedure for applying for leave, or making a reference, under section 71B(5A) or (5B) of this Act;
 - (e) as to circumstances in which the jurisdiction of the court may be exercised by a judge advocate appointed under section 52FG of this Act sitting alone;
 - (f) enabling an uncontested appeal to be determined without a hearing;
 - (g) as to the convening and constitution of the court to hear any appeal;
 - (h) as to circumstances in which officers otherwise qualified under section 52FH of this Act are ineligible to hear particular appeals;
 - (i) enabling the appellant to object to members of the court;
 - (j) as to the representation of the appellant on the hearing of appeals under section 52FK of this Act and at any preliminary proceedings;
 - (k) as to the admissibility of evidence;
 - (l) as to the rehearing of an appeal where any member of the court originally constituted to hear it has been unable to continue hearing the appeal;
 - (m) as to procuring the attendance of witnesses at the hearing of appeals and at any preliminary proceedings;
 - (n) as to the administration of oaths;
 - (o) as to the recording of the proceedings of the court and custody of records of the proceedings;

- (p) as to making copies of the records of proceedings available and as to the fees payable for such copies;
- (q) as to the procedure for applying to have a case stated under section 52FN(2) of this Act.

(3) Rules under this section may provide for any enactment which relates to the practice or procedure of courts-martial or to the admissibility of evidence in courts-martial to apply in relation to the court with such modifications as may be specified.

(4) Rules under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.”

23 Oaths required of members of court

(1) After section 83ZJ of each of the 1955 Acts there is inserted—

“83ZK Administration of oaths to members of summary appeal court

- (1) Every member of the summary appeal court shall, before first sitting as a member of the court, have administered to him by the prescribed person in the prescribed manner an oath in the prescribed form.
- (2) In subsection (1) above “prescribed” means prescribed by the Secretary of State by order made by statutory instrument.
- (3) An order made under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

(2) After section 52FP of the 1957 Act there is inserted—

“52FQ Administration of oaths to members of summary appeal court

- (1) Every member of the summary appeal court shall, before first sitting as a member of the court, have administered to him by the prescribed person in the prescribed manner an oath in the prescribed form.
- (2) In subsection (1) above “prescribed” means prescribed by the Secretary of State by order made by statutory instrument.
- (3) An order made under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

24 Privilege of witnesses and others

(1) After section 83ZK of each of the 1955 Acts there is inserted—

“83ZL Privileges of witnesses and others

A witness before the summary appeal court or any other person whose duty it is to attend on or before the court shall be entitled to the same immunities and privileges as a witness before the High Court in England and Wales.”

(2) After section 52FQ of the 1957 Act there is inserted—

“52FR Privileges of witnesses and others

A witness before the summary appeal court or any other person whose duty it is to attend on or before the court shall be entitled to the same immunities and privileges as a witness before the High Court in England and Wales.”

25 Further amendments relating to summary appeal courts

Schedule 3 to this Act (which makes further amendments of the 1955 Acts and the 1957 Act in relation to the summary appeal courts) shall have effect.