



Courts-Martial (Appeals) Act 1951

1951 CHAPTER 46

PART I

APPEALS FROM COURTS-MARTIAL

Appeals to the Courts-Martial Appeal Court

3 Right of appeal from court-martial

- (1) Subject to the following provisions of this Part of this Act, a person convicted by a court-martial may, with the leave of the Court, appeal to the Court against his conviction.
- (2) Except in the case of a conviction involving sentence of death, the right conferred by the foregoing subsection on a person convicted by a court-martial shall not be exercisable—
 - (a) unless, within such period as may be prescribed, he presents to the appropriate authority a petition praying that his conviction be quashed ; and
 - (b) until either the prescribed period beginning with the day on which the petition is presented expires or he is notified by that authority that the petition has not been granted, whichever event first occurs.
- (3) For the purposes of the last foregoing subsection the appropriate authority shall be—
 - (a) in the case of a conviction by a naval court-martial, the Admiralty; and
 - (b) in the case of a conviction by an army or air force court martial, the Secretary of State:

Provided that, in the case of the conviction by an army court-martial of an officer, non-commissioned officer or man of the Royal Marines or Royal Marine Forces Volunteer Reserve or the conviction by an air force court-martial of an officer, petty officer or seaman of the naval forces, the appropriate authority shall, instead of being the Secretary of State, be the Admiralty.

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- (4) Rules of court may provide that, in such circumstances as may be specified in the rules, any such petition as is mentioned in subsection (2) of this section which is presented to such person as may be specified in the rules shall be treated, for the purposes of that subsection, as having been presented to the appropriate authority.

4 Application for leave to appeal

- (1) Leave to appeal to the Court shall not be given except in pursuance of an application in that behalf made by or on behalf of the appellant, and lodged, within the prescribed period, with the registrar, being an application in the prescribed form and specifying the grounds on which leave to appeal is sought and such other particulars, if any, as may be prescribed.
- (2) Rules of court may provide that, in such circumstances as may be specified in the rules, any such application as aforesaid which is lodged with such person (other than the registrar) as is specified in the rules shall be treated, for the purposes of the last foregoing subsection, as having been lodged with the registrar.
- (3) Where an application for leave to appeal to the Court is lodged with a person other than the registrar in accordance with rules of court having effect by virtue of the last foregoing subsection, it shall be the duty of that person—
- (a) to forward the application to the registrar with as much expedition as practicable ; and
 - (b) if it appears to that person that it is practicable to furnish the registrar, before the receipt by him of the application, with such particulars of the application as will enable him to prepare a copy of it, and that in all the circumstances it is expedient so to do, forthwith to furnish him with those particulars.
- (4) Where an appellant convicted by a court-martial held outside the United Kingdom duly presents a petition under the last foregoing section and, before the expiration of the period within which an application for leave to appeal to the Court against the conviction is required by subsection (1) of this section to be lodged, the appropriate authority for the purposes of subsection (2) of the last foregoing section receives from the appellant such an application accompanied by a request that that authority will forward the application to the registrar in the event of its being decided not to grant the petition, it shall be the duty of that authority to comply with the request, and accordingly, the right conferred upon the appellant by subsection (1) of the last foregoing section shall, if it has not previously become exercisable, become exercisable on the happening of that event.
- (5) Except in the case of a conviction involving sentence of death, the Court may extend the period within which an application for leave to appeal must be lodged, whether that period has expired or not.
- (6) In considering whether or not to give leave to appeal, the Court shall have regard to any expression of opinion made by the Judge Advocate of His Majesty's Fleet or the Judge Advocate General that the case is a fit one for appeal, and, if any such expression is so made, may, without more, give leave to appeal.
- (7) Where the Court dismiss an application for leave to appeal they may, if they consider the application to have been frivolous or vexatious, order that any sentence passed upon the applicant in the proceedings from which it was sought to bring the appeal shall begin to run from the day on which the Court dismiss the application.

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5 Determination of appeals in ordinary cases

- (1) Subject to the provisions of the next following section, on an appeal under this Part of this Act the Court shall allow the appeal if they think that the finding of the court-martial is unreasonable or cannot be supported having regard to the evidence or involves a wrong decision of a question of law or that, on any ground, there was a miscarriage of justice, and in any other case shall dismiss the appeal:

Provided that the Court may, notwithstanding that they are of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if they consider that no substantial miscarriage of justice has actually occurred.

- (2) If the Court allow an appeal under this Part of this Act, they shall quash the conviction.

6 Powers of the Court in special cases

- (1) If it appears to the Court that an appellant, though not properly convicted on some charge preferred against him before the court-martial by which he was tried, was properly convicted on some other charge so preferred, then, if the sentence passed by the court-martial on the appellant was not warranted by the relevant Act for the offence of which he was convicted on the other charge, the Court shall pass on the appellant, in substitution for the sentence passed on him by the court-martial, such sentence so warranted as they think proper.

- (2) Where an appellant has been convicted of an offence and the court-martial by which he was tried could lawfully have found him guilty of some other offence, and it appears to the Court that the court-martial must have been satisfied of facts which proved him guilty of that other offence, the Court may, instead of allowing or dismissing the appeal, substitute for the finding of the court-martial a finding of guilty of the other offence and pass on the appellant, in substitution for the sentence passed on him by the court-martial, such sentence as they think proper, being a sentence warranted by the relevant Act for that other offence but not being a sentence of greater severity.

- (3) Where—

- (a) an appellant has been convicted of an offence committed under circumstances involving the higher of two degrees of punishment, and it appears to the Court that the court-martial by which he was tried ought to have found him guilty of the offence as being committed under circumstances involving the lower degree of punishment ; or
- (b) an appellant has been convicted of an offence and it appears to the Court that the court-martial by which he was tried ought to have found him guilty of the offence subject to exceptions or variations;

the Court may, instead of allowing or dismissing the appeal, substitute for the finding of the court-martial a finding of guilty of the offence as being committed under circumstances involving the lower degree of punishment or, as the case may be, guilty of the offence subject to exceptions or variations and: pass on the appellant, in substitution for the sentence passed on him by the court-martial, such sentence as they think proper, being a sentence warranted by the relevant Act for the offence specified or involved in the substituted finding, but not being a sentence of greater severity.

- (4) If, on an appeal, it appears to the Court that, although the appellant was guilty of the act or omission charged against him, he was insane at the time the act was done or the omission made so as not to be responsible according to law for his actions, the Court may quash the sentence passed at the trial and order the appellant to be kept in custody

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under section sixty-eight of the Naval Discipline Act, section one hundred and thirty of the Army Act or section one hundred and thirty of the Air Force Act, as the case may require, in like manner as on a special finding of insanity by the court-martial by which the appellant was convicted.

- (5) The term of any sentence passed by the Court under any of the foregoing provisions of this section shall, unless the Court otherwise direct, begin to run from the time from which it would have begun to run if it had been passed in the proceedings from which the appeal is brought, and a sentence passed by the Court as aforesaid shall—
- (a) if passed on an appeal against a conviction by a naval court-martial, be deemed, for the purposes of the Naval Discipline Act, to be a sentence passed by such a court-martial ; and
 - (b) if passed on an appeal against a conviction by an army or air force court-martial, be deemed, for the purposes of the Army Act or the Air Force Act, as the case may be, to be a sentence passed by an army or, as the case may be, an air force court-martial, being a sentence that has been confirmed.
- (6) In this section the expression " the relevant Act" means, in relation to an appellant, the Act under which he was tried.

7 Decision of the Court to be final subject to appeal to House of Lords

- (1) If, in the case of an appeal under this Part of this Act, the Attorney General, upon an application in that behalf made to him within a period of fourteen days from the date when the decision of the Court was given, grants to the appellant or to the Admiralty, the Army Council or the Air Council a certificate that the decision of the Court involves a point of law of exceptional public importance and that it is desirable in the public interest that a further appeal should be brought, an appeal to the House of Lords from the decision of the Court shall lie at the instance of the person or authority to whom the certificate is granted ; but subject to the foregoing provisions of this subsection the determination by the Court of any appeal or other matter which they have power to determine shall be final, and no appeal shall lie from the Court to any other court.
- (2) Where the Court have allowed an appeal and, immediately after the decision of the Court has been given, notice is given to the Court on behalf of the Admiralty, the Army Council or the Air Council of their intention to apply to the Attorney General for such a certificate as aforesaid, the Court may make an order providing for the detention of the appellant or directing that he shall not be released except on bail until either the Attorney General has refused to grant the certificate or a decision on the appeal has been given by the House of Lords or the appeal has been abandoned, as the case may be.

8 Supplementary powers of the Court

- (1) For the purposes of this Part of this Act the Court may, if they think it necessary or expedient in the interests of justice—
- (a) order the production of any document, exhibit or other thing connected with the proceedings the production of which appears to them necessary for the determination of the case;
 - (b) order the taking of such steps as are requisite to obtain from any member of the court-martial by which the appellant was tried or the person who officiated as judge advocate at the trial a report giving his opinion upon the case or upon

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any point arising therein or containing a statement as to any facts whereof the ascertainment appears to the Court to be material for the purpose of the determination of the case;

- (c) order any witnesses who would have been compellable witnesses at the trial to attend and be examined before the Court, whether they were or were not called at the trial, or order the examination of any such witnesses to be conducted in the prescribed manner before any judge of the Court or before any other person appointed by the Court for that purpose, and allow the admission of any depositions so taken as evidence before the Court;
- (d) receive the evidence, if tendered, of any witness (including the appellant) who is a competent but not compellable witness and, if the appellant makes an application for the purpose, of the husband or wife of the appellant, in cases where the evidence of the husband or wife could not have been given at the trial except on such an application ;
- (e) where any question arising on the appeal involves prolonged examination of documents or accounts, or any scientific or local investigation, which cannot in the opinion of the Court conveniently be conducted before the Court, order the reference of the question in the prescribed manner for inquiry and report to a special commissioner appointed by the Court, and act upon the report of any such commissioner so far as they think fit to adopt it; and
- (f) appoint any person with special expert knowledge to act as assessor to the Court in any case where it appears to the Court that such special knowledge is required for the proper determination of the case;

and may issue any warrants necessary for enforcing the orders or sentences of the Court:

Provided that the Court shall not make an order under paragraph (b) of this subsection for the purpose of obtaining a report from a member of a court-martial other than the president thereof unless they also make such an order for the purpose of obtaining a report from the president or are satisfied that the obtaining of a report from him is impracticable or would involve undue delay.

- (2) There may be paid out of moneys provided by Parliament—
 - (a) to a witness attending before the Court in obedience to an order under paragraph (c) of the foregoing subsection or examined in pursuance of such an order before any such person as is mentioned in that paragraph, such travelling and subsistence allowances as may be prescribed by regulations made by the Lord Chancellor; and
 - (b) to a special commissioner to whom a question is referred under paragraph (e) of that subsection for inquiry and report and to a person appointed under paragraph (f) of that subsection to act as assessor to the Court, such remuneration and such travelling and subsistence allowances as may be so prescribed.

The powers conferred on the Lord Chancellor by this subsection shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

9 Right of appellant to present his case in writing

An appellant may, if he so desires, instead of presenting his case orally, present it in writing in the prescribed form.

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10 Legal aid to appellants

- (1) The Court may at any time assign to an appellant a solicitor and counsel, or counsel only, in any appeal or proceedings preliminary or incidental to an appeal in which, in the opinion of the Court, it appears desirable in the interests of justice that the appellant should have legal aid and that he has not sufficient means to enable him to obtain that aid.
- (2) If, on a question of granting an appellant legal aid under the foregoing subsection, there is a doubt whether it is desirable in the interests of justice that the appellant should have legal aid or whether he has sufficient means to enable him to obtain that aid, the doubt shall be resolved in favour of granting him legal aid.
- (3) Before a person is granted legal aid under this section he may be required to furnish a written statement in the prescribed form about matters relevant for determining whether his means are insufficient to enable him to obtain legal aid, and if a person in furnishing such a written statement as aforesaid (whether required so to do or not) knowingly makes any false statement or false representation he shall be liable on summary conviction to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding four months or to both.
- (4) The registrar shall report to the Court or a judge thereof any case in which it appears to him that, although no application has been made for the purpose, legal aid ought to be granted under this section to an appellant.
- (5) A solicitor or counsel assigned to an appellant under this section shall be entitled to be paid by the Admiralty or the Secretary of State (according as to whether the matter in relation to which solicitor or counsel is so assigned arises out of a naval court-martial or an army or air force court-martial) such sums in respect of fees and disbursements as may be prescribed by regulations made by the Lord Chancellor.

The power conferred on the Lord Chancellor by this subsection shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

11 Proceedings to be heard in absence of appellants

An appellant shall not be entitled to be present at the hearing of an appeal under this Part of this Act to the Court or at any proceedings preliminary or incidental to such an appeal except where rules of court provide that he shall have the right to be present or the Court give him leave to be present, and accordingly any power of the Court under this Part of this Act to pass a sentence may be exercised notwithstanding the absence of the appellant.

12 Defence of appeals

It shall be the duty—

- (a) on an appeal under this Part of this Act to the Court against a conviction by a naval court-martial, of the Admiralty;
- (b) on such an appeal against a conviction by an army court martial, of the Army Council; and
- (c) on such an appeal against a conviction by an air force court-martial, of the Air Council;

to undertake the defence of the appeal.

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13 Costs

- (1) Where the Court allow an appeal they may, if they think fit, direct the payment by the Admiralty or the Secretary of State (according as to whether the conviction that was the subject of the appeal was by a naval court-martial or by an army or air force court-martial) of such sums as appear to the Court reasonably sufficient to compensate the appellant for any expenses properly incurred by him in the prosecution of his appeal (including any proceedings preliminary or incidental thereto) or in carrying on his defence before the court-martial by which he was convicted or before any other court-martial before which were begun, but not concluded, proceedings for the offence with which he was charged before the court-martial by which he was convicted.
- (2) Where an appeal to the House of Lords under subsection (1) of section seven of this Act from a decision of the Court is determined in favour of the person who was the appellant in the proceedings before the Court, the House of Lords may, if they think fit, direct the payment by the Admiralty or the Secretary of State (according as to whether the conviction that was the subject of those proceedings was by a naval court-martial or by an army or air force court-martial) of such sums as appear to the House of Lords to be reasonably sufficient to compensate the person aforesaid for any expenses properly incurred by him in the appeal to the House of Lords, in the prosecution of his appeal to the Court (including any proceedings preliminary or incidental thereto) or in carrying on his defence before the court-martial by which he was convicted or before any other court-martial before which were begun, but not concluded, proceedings for the offence with which he was charged before the court-martial by which he was convicted.
- (3) Where the Court dismiss an appeal or application for leave to appeal they may, if they think fit, order the appellant or applicant, as the case may be, to pay to the Admiralty or the Secretary of State (according as to whether the conviction that was the subject of the proceedings before the Court was by a naval court-martial or by an army or air force court-martial) the whole or any part of the costs of the appeal or application, including the costs of copying or transcribing any documents for the use of the Court, and an order under this subsection may be enforced—
 - (a) in the same manner as an order for the payment of costs made by the High Court in civil proceedings; or
 - (b) by making deductions from pay due to the applicant or appellant, as the case may be ;or partly in the one way and partly in the other.