

2007 No. 660

DEFENCE

**The Courts-Martial Appeal (Review of Sentencing) Regulations
2007**

Made - - - - *28th February 2007*

Laid before Parliament *8th March 2007*

Coming into force - - *31st March 2007*

The Secretary of State, in exercise of the powers conferred upon him by section 113C(8) of the Army Act 1955(a), section 113C(8) of the Air Force Act 1955(b) and section 71AC(8) of the Naval Discipline Act 1957(c), hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Courts-Martial Appeal (Review of Sentencing) Regulations 2007 and shall come into force on 31st March 2007.

(2) In these Regulations—

“the 1955 Acts” means the Army Act 1955 and the Air Force Act 1955;

“the 1957 Act” means the Naval Discipline Act 1957;

“the registrar” means the registrar of the Courts-Martial Appeal Court;

“An application for leave to refer a case to the Courts-Martial Appeal Court” or “a reference to the Courts-Martial Appeal Court” means a reference under section 113C(1) of either of the 1955 Acts or section 71AC(1) of the 1957 Act, and references to “referral”, “a reference”, or a “case which has been referred for review” are to be construed accordingly;

“An application to the Courts-Martial Appeal Court for leave to refer a case to the House of Lords” or a “reference to the House of Lords” means a reference under sections 113C(4) and (5) of either of the 1955 Acts or sections 71AC(4) and (5) of the 1957 Act; and

“sentence passed by the Courts-Martial Appeal Court or House of Lords” means a sentence passed by the Courts-Martial Appeal Court or House of Lords under section 113C(2) of either of the 1955 Acts or section 71AC(2) of the 1957 Act.

Applications to the Courts-Martial Appeal Court

2. Notice of an application for leave to refer a case to the Courts-Martial Appeal Court must be given within 28 days from the day on which the sentence in the case was passed.

(a) 1955 c.18
(b) 1955 c.19
(c) 1957 c.53

Duties and powers of the registrar in preparation for hearings

3. If the registrar is given notice of an application to the Courts-Martial Appeal Court, he must—
- (a) take all necessary steps for obtaining a hearing of the application or reference; and
 - (b) obtain and lay before the Courts-Martial Appeal Court in proper form all documents, exhibits and other things which appear necessary for the proper determination of the application or reference.

Application to the House of Lords

4. An application to the Courts-Martial Appeal Court for leave to refer a case to the House of Lords must be made within the period of 14 days beginning with the date on which the Courts-Martial Appeal Court concluded the review of the case; and an application to the House of Lords for leave must be made within the period of 14 days beginning with the date on which the Courts-Martial Appeal Court concluded the review or refused leave to refer the case to the House of Lords.

Time spent in custody pending review

5. The time during which a person whose case has been referred for review is in custody pending its review and pending any reference to the House of Lords shall be reckoned as part of the term of any sentence to which he is for the time being subject.

Presence of offender at hearings

6.—(1) Except as provided by paragraphs (2) and (3), a person whose sentencing is the subject of a reference to the Courts-Martial Appeal Court shall be entitled to be present, if he wishes it, on the hearing of the reference, although he may be in custody.

(2) A person in custody shall not be entitled to be present—

- (a) on an application by the Attorney General for leave to refer a case; or
- (b) on any proceedings preliminary or incidental to a reference,

unless the Courts-Martial Appeal Court gives him leave to be present.

(3) The power of the Courts-Martial Appeal Court to pass sentence on a person may be exercised although he is not present.

(4) A person whose sentencing is the subject of a reference to the House of Lords and who is detained pending the hearing of that reference shall not be entitled to be present on the hearing of the reference or of any preliminary or incidental proceedings except where an order of the House authorises him to be present, or where the House or the Courts-Martial Appeal Court, as the case may be, gives him leave to be present.

Effect of sentence passed by the Courts-Martial Appeal Court or House of Lords

7. The term of any sentence passed by the Courts-Martial Appeal Court or House of Lords shall, unless they otherwise direct, begin to run from the time when it would have begun to run if passed in the proceedings in relation to which the reference was made.

Costs

8. Where on a reference to the Courts-Martial Appeal Court, or a reference to the House of Lords, the person whose sentencing is the subject of the reference appears by counsel for the purpose of presenting any argument to the Courts-Martial Appeal Court or to the House of Lords, he shall be entitled to his costs, that is to say to the payment out of public funds of such funds as are reasonably sufficient to compensate him for expenses properly incurred by him for the purpose of being represented on the reference; and any amount recoverable under this paragraph shall be

ascertained, as soon as practicable, by the registrar or, as the case may be, such officer as may be prescribed by order of the House of Lords.

Date 28th February 2007

Derek Twigg
Parliamentary Under Secretary of State
Ministry of Defence

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision supplementary to those contained in sections 113B and 113C of the Army Act 1955 and the Air Force Act 1955, sections 71AB and 71AC of the Naval Discipline Act 1957 and The Courts-Martial (Reviews of Sentencing) (Categories of Offences) Order 2007 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.

Regulation 2 allows for a time limit of 28 days within which notice of application for leave to refer a case to the Courts-Martial Appeal Court must be given. Regulation 3 requires the registrar to make all proper arrangements for a hearing. Regulation 4 provides for 14 day time limits within which leave must be sought for the House of Lords to conduct a review of sentence.

Regulation 5 allows for time spent in custody by a person whose case is pending review to count as time served for the purpose of his sentence.

Regulation 6 relates to the entitlement for an offender who is in custody and whose sentence is the subject of a review to be present during hearings relating to that review. It also provides that for certain hearings an offender in custody may only be present with the leave of the Court and further provides for the passing of sentence on such an offender by the Courts-Martial Appeal Court in his absence.

Regulation 7 provides that any sentence passed by either appellate Court shall begin to run from the point that it would have run in the original proceedings but for the reference, unless either Court otherwise directs.

Regulation 8 makes provision for the award of reasonable costs to an offender whose sentence is the subject of a review where such a person is represented by Counsel.

These provisions are broadly equivalent to those set out in schedule 3 to the Criminal Justice Act 1988.

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