STATUTORY INSTRUMENTS

2009 No. 2044

The Court Martial (Prosecution Appeals) Order 2009

PART 3

Procedural provisions

Request for adjournment

15.—(1) A request by the Director for an adjournment under article 4(4)(b) must be made to the judge advocate immediately following the making of a ruling to which article 4 refers.

(2) The judge advocate shall grant the request unless he considers it is in the interests of justice for the Director to indicate immediately whether or not he intends to seek leave to appeal.

(3) The adjournment shall be until the next court day after the day on which the ruling was given, unless the judge advocate considers that the interests of justice require a longer adjournment.

(4) Subject to article 21(7) and (8), as soon as is reasonably practicable after the Director informs the judge advocate that he intends to seek leave to appeal or requests an adjournment to consider whether to do so, the court administration officer shall provide a transcript of the ruling which is the subject of the proposed appeal to—

(a) the Director;

(b) the accused; and

(c) any interested party.

Application to the judge advocate for leave to appeal

16.—(1) The Director must inform the judge advocate immediately after the ruling or the adjournment if he intends to seek leave to appeal against a ruling and at the same time he may apply orally for leave to appeal.

(2) Before deciding whether or not to grant leave to appeal, the judge advocate shall hear oral representations from the accused.

(3) The judge advocate shall decide whether or not to give leave to appeal on the same day on which an oral application for leave to appeal is made to that judge advocate.

(4) The judge advocate may extend the period under paragraph (3) only if he considers it is in the interests of justice to do so.

(5) If the judge advocate gives leave to appeal he must issue a written certificate that he has done so and the court administration officer must forward that certificate to the registrar.

Further provision on expedited and non-expedited appeals

17.—(1) At the time when the Director informs the judge advocate that he intends to seek leave to appeal against a ruling, he must also make oral representations as to whether or not that appeal should be expedited under article 5(1).

(2) Before deciding whether or not the appeal should be expedited, the judge advocate shall hear oral representations from the accused and any interested party.

(3) The court administration officer must provide a copy of the reasons given by the judge advocate for his decision as to whether or not the appeal should be expedited, to the Director, the accused and all interested parties.

(4) The judge advocate may reverse his decision that the appeal should be expedited at any time before the notice of appeal or application for leave to appeal is served on the court administration officer under article 18(1) and must provide reasons for that reversal in writing to the Director, the accused and all interested parties.

(5) At any time after a notice of appeal or application for leave to appeal has been served on the registrar under article 18(1), the Director or accused may apply to the Court Martial Appeal Court to reverse a judge advocate's decision that the appeal should be expedited under article 5(4) and written notice of such an application must be served on—

(a) the registrar;

(b) the court administration officer;

(c) any interested party; and

(d) whichever of the following does not make the application—

(i) the Director;

(ii) the accused.

Notice of appeal or application for leave to appeal

18.—(1) Subject to article 21, a written notice of appeal (where the judge advocate has granted leave) or a written notice of application for leave to appeal shall be served on—

(a) the registrar;

(b) the court administration officer;

(c) the accused; and

(d) any interested party.

(2) The notice of appeal or application for leave to appeal must be served—

(a) where the judge advocate has decided that the appeal should be expedited under article 5(1) and that decision has not been subsequently reversed, before 5.00 pm on the next court day; or

(b) in any other case, within ten days of the day on which the Director informs the judge advocate that he intends to seek leave to appeal.

(3) The Court Martial Appeal Court may extend the period for service under paragraph (2), either before or after it expires, on application by the Director.

(4) A notice of appeal or, as the case may be, a notice of application for leave to appeal shall—

(a) specify each ruling against which the Director wants to appeal;

(b) identify each ground of appeal on which the Director relies, numbering them consecutively (if there is more than one) and concisely outlining each argument in support;

(c) summarise the relevant facts;

(d) identify any relevant authorities;

(e) include or attach any application for the following, with reasons—

(i) permission to appeal, if the Director needs the court's permission;

(ii) an extension of time within which to serve the appeal notice;

(iii) expedition of the appeal, or revocation of a direction expediting the appeal;

(f) include a list of those on whom the Director has served the appeal notice;

(g) attach—

(i) a transcript or note of each ruling against which the Director wants to appeal;

(ii) all relevant skeleton arguments considered by the judge advocate;

(iii) any written application for leave to appeal that the Director made to the judge advocate;

(iv) a transcript or note of the decision by the judge advocate on any application for permission to appeal;

(v) a transcript or note of the decision by the judge advocate on any request to expedite the appeal; and

(vi) any other document or thing that the Director thinks the court will need to decide the appeal.

Accused's response

19.—(1) Upon receiving notice of an appeal or application for leave to appeal, the accused if he wishes to oppose the appeal or application, must serve a written response ("the accused's response") on—

(a) the registrar;

(b) the court administration officer;

(c) the Director; and

(d) any interested party.

(2) An accused's response must be served on those listed in paragraph (1)—

(a) where the judge advocate has decided that the appeal should be expedited under article 5(1) and that decision has not been subsequently reversed under article 5(4), on the next court day after the day on which the notice of appeal or application for leave to appeal is served on the accused; or

(b) in any other case, within ten days of the day on which the notice of the appeal or application for leave to appeal is served on the defendant.

(3) The Court Martial Appeal Court may extend the period of service under paragraph (2) either before or after it expires.

(4) An accused's response shall—

(a) give the date on which the accused was served with the appeal notice;

(b) identify each ground of opposition on which the accused relies, numbering them consecutively (if there is more than one), concisely outlining each argument in support and identifying the ground of appeal to which each relates;

(c) summarise any relevant facts not already summarised in the appeal notice;

(d) identify any relevant authorities;

(e) include or attach any application for the following, with reasons—

(i) an extension of time within which to serve the accused's response;

(ii) a direction to attend in person any hearing that the accused could attend by live link, if the accused is in custody;

(f) identify any other document or thing that the accused thinks the court will need to decide the appeal.

Accused in custody

20.—(1) An accused in custody is not entitled to be present in person at the hearing of an appeal or application for leave to appeal, unless the Court Martial Appeal Court so directs.

(2) However, an accused in custody may participate in such a hearing, without a direction of the Court Martial Appeal Court, by way of live link.

(3) In directing whether an accused in custody shall be present in person under paragraph (1) the Court Martial Appeal Court must take into account—

(a) any representations of the Director and the accused;

(b) the availability and reliability of live link facilities;

(c) any practical difficulties with the physical attendance of the accused; and

(d) whether or not the appeal is expedited under article 5(1).

Public interest rulings

21.—(1) This article applies where a public interest ruling is the subject of an appeal or application for leave to appeal.

(2) In any appeal or application for leave to appeal against a public interest ruling, the Director need not describe the material that is the subject of the ruling in the notice of appeal or application for leave to appeal under article 18.

(3) Where the Director has reason to believe that to reveal to the accused or any interested party the category of material that is the subject of the public interest ruling would have the effect of disclosing that which the Director considers should not be disclosed, the Director need not describe the category of the material in the notice of appeal or application for leave to appeal under article 18.

(4) Where the Director has reason to believe that to reveal to the accused or to any interested party the fact that a public interest ruling has been made would have the effect of disclosing that which the Director considers should not be disclosed the Director need not serve a notice of appeal or application for leave to appeal on the accused or any interested party as otherwise required under article 18(1), unless the Court Martial Appeal Court otherwise directs.

(5) Where the Director has taken any of the measures set out in paragraphs (2), (3) and (4) the notice of appeal or application for leave to appeal served on the registrar under article 18(1)(a) must be accompanied by a confidential annex indicating that the measure or measures have been taken and giving the Director's reasons for taking them.

(6) Where the Director has taken any of the measures set out in paragraph (4), the accused shall not be entitled to be present in person at the hearing by the Court Martial Appeal Court of the appeal or application for leave to appeal, or appear by way of live link, unless the Court Martial Appeal Court otherwise directs.

(7) The court administration officer shall not provide a transcript of the ruling which is the subject of the proposed appeal to the accused or any interested party unless and until the Director has served a notice of appeal or application for leave to appeal on that person.

(8) A transcript provided by the court administration officer to an accused or interested party shall not describe or disclose—

(a) the material that is the subject of the ruling, or

(b) the category of that material,

save to the extent that the Director has described that material or category of material in the notice of appeal or application for leave to appeal served on that accused or interested party.

Supply of documentary and other exhibits

22.—(1) The registrar must, on request, supply to the Director, the accused or any interested party copies of documents or other exhibits required for the appeal or application for leave to appeal and may make charges in accordance with scales and rates fixed for the time being by the Treasury.

(2) The registrar must, on request, make arrangements for the Director, the accused or any interested party to inspect any document or other exhibit required for the appeal.

(3) This article shall not apply to the supply of transcripts of proceedings.

(4) This article shall not require the registrar to supply to the accused or any interested party, or allow the accused or any interested party to inspect—

(a) material that is the subject of a public interest ruling,

(b) a notice of appeal or application for leave to appeal served by the Director on the registrar in accordance with article 18(1) where by virtue of article 21(4) the Director has not served it on the accused or any interested party, or

(c) a confidential annex served by the Director on the registrar in accordance with article 21(5),

unless the Court Martial Appeal Court otherwise directs.

Abandonment of proceedings

23.—(1) An appeal or application for leave to appeal (including an application for leave to appeal to the Supreme Court) may be abandoned before it is heard by the Court Martial Appeal Court by serving notice in writing (a "notice of abandonment") on the registrar.

(2) A notice of abandonment shall specify each ruling in respect of which the appeal is abandoned.

Powers exercisable by a single judge

24.—(1) The following powers may be exercised by a single judge in the same manner as they may be exercised by the Court Martial Appeal Court and subject to the same provisions—

(a) to give leave to appeal under article 3(4);

(b) to reverse, under article 5(4), a decision of the judge advocate that an appeal should be expedited;

(c) to extend, under article 18(3), the time for service of the notice of appeal or of an application for leave to appeal;

(d) to extend, under article 19(3), time for service of the accused's response;

(e) to direct, under article 20(1), that the accused in custody be present in person at the hearing of the appeal or application for leave to appeal;

(f) where the Director has served a notice of abandonment under article 23, to order the acquittal of the accused and, where appropriate, his release from custody under article 4(11), and payment of his costs under article 13.

(2) A single judge may, for the purposes of exercising any of the powers specified in paragraph (1), sit in such place as he appoints and may sit otherwise than in open court.

(3) Where a single judge exercises one of the powers specified in paragraph (1), the registrar must serve notice of the single judge's decision on—

(a) the Director;

(b) the accused;

(c) any interested party; and

(d) the court administration officer.

Powers exercisable by the registrar

25.—(1) The following powers may be exercised by the registrar in the same manner as they may be exercised by the Court Martial Appeal Court and subject to the same provisions—

(a) to extend, under article 18(3), the time for service of the notice of appeal or of an application for leave to appeal; and

(b) to extend, under article 19(3), time for service of the accused's response.

(2) Where the registrar exercises one of the powers specified in paragraph (1), he must serve notice of his decision on—

(a) the Director;

(b) the accused;

(c) any interested party; and

(d) the court administration officer.

(3) Where the registrar has refused an application to exercise any of the powers specified in paragraph (1), the party making the application may have it determined by a single judge by serving a written notice of renewal.

(4) A notice of renewal shall—

(a) be served on the registrar within ten days of the day on which notice of the registrar's decision is served on the party making the application;

(b) specify the applications that the party wishes to have determined by a single judge; and

(c) a notice of renewal must be signed by, or on behalf of, the person making the application.

(5) If the notice is not signed by the party making the application and that party is in custody, the registrar shall, as soon as practicable after receiving the notice, send a copy of it to that party.

(6) If the notice of renewal is not served on the registrar within the period specified in paragraph (4), the application shall be treated as having been refused by the single judge.

Determination by full court

26.—(1) Where a single judge has refused an application to exercise any of the powers specified in article 24(1), the party making the application may have it determined by the Court Martial Appeal Court by serving a written notice of renewal.

(2) A notice of renewal shall—

(a) be served on the registrar within ten days of the day on which notice of the single judge's decision is served on the party making the application;

(b) specify the applications that the party wishes to have determined by a full court; and

(c) a notice of renewal must be signed by, or on behalf of, the person making the application.

(3) The Court Martial Appeal Court may extend the period for service under paragraph (2) either before or after it expires.

(4) If the notice is not signed by the party making the application and that party is in custody, the registrar shall, as soon as practicable after receiving the notice, send a copy of it to that party.

(5) If the notice of renewal is not served on the registrar within the period specified in paragraph (2) or such extended period as the Court Martial Appeal Court has allowed under paragraph (3), the application shall be treated as having been refused by the court.

Notice of hearing and decision of the Court Martial Appeal Court

27.—(1) The registrar must give notice, as far in advance as reasonably practicable, of the date fixed for the hearing by the Court Martial Appeal Court of an appeal or application to—

(a) the Director;

(b) the accused;

(c) any interested party; and

(d) the court administration officer.

(2) The registrar must, as soon as reasonably practicable, serve notice of a decision of the Court Martial Appeal Court on an appeal or application on those parties listed in paragraph (1).

(3) Where a party to whom notice is required to be given under this article is in custody, notice must instead be given to the person having custody of him.

Assistance from the court administration officer

28. The registrar may require the court administration officer to furnish the Court Martial Appeal Court with any assistance or information which it may require for the purposes of exercising its jurisdiction under this Order.

Further provision on appeals to the Supreme Court

29. An application to the Court Martial Appeal Court for leave to appeal to the Supreme Court may be made—

(a) orally after the decision of the Court Martial Appeal Court from which an appeal lies to the Supreme Court; or

(b) in writing and served on the registrar within ten days of service by the registrar of notice under article 27(2).

Service

30.—(1) Where this Order requires service of a document on the registrar then, unless the registrar, a single judge or the Court Martial Appeal Court directs otherwise, the document may be served by any of the following methods—

(a) in the case of an accused or interested party who is in custody, by delivering it to the person who has custody of him;

(b) by addressing it to the registrar and delivering it at, or sending it by post, fax, electronic mail or other electronic means, to his office at the Royal Courts of Justice, London WC2A 2LL.

(2) Where this Order requires service of a document on the court administration officer then, unless the registrar, a single judge or the Court Martial Appeal Court directs otherwise, the document may be served by any of the following methods—

(a) in the case of an accused or interested party who is in custody, by delivering it to the person who has custody of him;

(b) by delivering it, or sending it by post, DX, fax, electronic mail or other electronic means, to the court administration officer.

(3) Where this Order requires the service of a document on the Director then, unless the registrar, a single judge or the Court Martial Appeal Court directs otherwise, the document may be served by any of the following methods—

(a) in the case of an accused or interested party who is in custody, by delivering it to the person who has custody of him;

(b) by post, DX, fax, electronic mail or other electronic means to—

(i) the principal office of the Service Prosecuting Authority; or

(ii) with the agreement of a prosecuting officer, that Authority's main office in Germany; or

(c) on a prosecuting officer personally, with his agreement.

(4) A person who has custody of an accused or interested party and to whom that accused or interested party delivers a document under paragraph (1)(a), (2)(a) or (3)(a) must endorse on it the date of delivery and forward it to the registrar, the court administration officer or the Director, as appropriate.

(5) Where this Order requires the service of a document on any other person then, unless the registrar, a single judge or the Court Martial Appeal Court directs otherwise, the document may be served by any of the following methods—

(a) personally, on that person or on his legal representative;

(b) by post to that person's last known place of abode, unit or place of business;

(c) by post to his legal representative's place of business;

(d) leaving it at the person's last known place of abode or place of business;

(e) if the person has—

(i) indicated that he is willing to accept service by DX, fax, electronic mail or other electronic means, and

(ii) has given a DX box number, fax number or electronic mail or other electronic means address,

by sending a copy of the document by such means to him;

(f) if the person's legal representative has—

(i) indicated that he is willing to accept service by DX, fax, electronic mail or other electronic means, and

(ii) has given a DX box number, fax number or electronic mail or other electronic means address,

by sending a copy of the document by such means to the legal representative.

(6) Where a document is served under this Order by any method other than personal service it is deemed to be served—

(a) in the case of a document left at an address, on the next court day after the day on which it was left;

(b) in the case of a document sent by post, on the fifth court day after the day on which it was posted;

(c) in the case of a document served by DX, on the fifth day after the day on which it was left at the addressee's DX box number or despatched;

(d) in the case of a document transmitted by fax, electronic mail or other electronic means, the day after it was transmitted;

(e) in any case, on the day on which the addressee responds to it if that is earlier.

(7) Where a document to be served on a person is sent or delivered to his commanding officer, his commanding officer must arrange for the document to be served on him personally as soon as is reasonably practicable.