
STATUTORY INSTRUMENTS

2009 No. 2657

The Court Martial Appeal Court Rules 2009

PART 7

**APPEALS AGAINST CONVICTION, SENTENCE, FINDING OF
INSANITY OR UNFITNESS TO PLEAD OR HOSPITAL ORDER**

Applicability of this Part

45.—(1) This Part, except rule 51, applies where an individual wants to appeal under section 8, 21, 24 or 25A.

(2) Rule 51 applies where—

- (a) the Commission refers a conviction, sentence or a finding by the Court Martial to the court under section 12A of the 1995 Act;
- (b) the Judge Advocate General or the Secretary of State refers a finding, or the Secretary of State refers a sentence, to the court under section 34.

(3) In this Part (except rule 51)—

“appellant” means the individual who wants to appeal under section 8, 21, 24 or 25A;

“appeal notice” means the application to the court for permission to appeal required under section 9(1);

“respondent” means a person who serves a respondent’s notice.

Application for permission to appeal

46.—(1) The appeal notice must be in the form set out in Schedule 2 and must—

- (a) include the required information;
- (b) state the name of the judge advocate in the proceedings of the Court Martial;
- (c) state and give the date of—
 - (i) the conviction, verdict, or finding,
 - (ii) the sentence, or
 - (iii) the order,about which the appellant wants to appeal;
- (d) state each ground of appeal on which the appellant relies, numbering them consecutively (if there is more than one), and concisely outlining each argument in support;
- (e) identify the transcript that the appellant thinks the court will need, if the appellant wants to appeal against a conviction;
- (f) identify the relevant sentencing powers of the Court Martial, if sentencing is in issue;
- (g) where the Commission refers a case to the court, explain how each ground of appeal relates (if it does) to the reasons for the reference;

- (h) summarise the relevant facts;
 - (i) identify any authorities the appellant considers relevant;
 - (j) include or attach any application for the following, with reasons—
 - (i) permission to appeal, if the appellant needs the court’s permission;
 - (ii) an extension of time within which to serve the appeal notice⁽¹⁾;
 - (iii) permission to adduce evidence, including hearsay evidence and evidence of bad character;
 - (iv) an order requiring a witness to attend court;
 - (k) state whether the appellant wishes to be present when the court considers the appeal;
 - (l) identify any other document or thing that the appellant thinks the court will need to decide the appeal.
- (2) If the appellant wants the court to make an order for the attendance of a witness the following information must be attached to the appeal notice—
- (a) the name and address of the witness if known to the appellant;
 - (b) whether the witness was examined by the Court Martial;
 - (c) if the witness was not examined by the Court Martial, the reasons why not, if known to the appellant; and
 - (d) a summary of the evidence the appellant expects the witness to give.
- (3) An attachment to the appeal notice must also—
- (a) contain any application to be made to the court for a declaration of incompatibility under section 4 of the 1998 Act; or
 - (b) specify any issue for the court to decide which may lead to the court making such a declaration.
- (4) The appeal notice must be signed by the appellant or his legal representative.

Prescribed period

47. Subject to rule 48, for the purposes of section 9(1), the period within which an appeal notice must be lodged with the registrar is the period of 28 days after the date of the—

- (a) conviction, verdict, or finding,
- (b) sentence, or
- (c) order,

in relation to which the appellant wants to appeal.

Prescribed period: appeals where previous convictions set aside

48.—(1) Paragraph (2) applies where—

- (a) a sentence has been imposed on any person under section 225(3) of the 2003 Act as a result of section 219(2)(b) of the 2006 Act (dangerous offenders aged 18 or over) or under section 227(2) to (5) of the 2003 Act as applied by section 220(2) of the 2006 Act (certain violent or sexual offences: offenders aged 18 or over);

(1) Section 9(3) of the 1968 Act provides that the court may extend the period within which an application for leave to appeal under section 9 must be made. Sections 36 and 36A of the 1968 Act provide that that power to extend the period may be exercised by a judge of the court or the registrar.

- (b) the condition in section 225(3A) of the 2003 Act or (as the case may be) section 227(2A) of that Act was met but the condition in section 225(3B) of that Act or (as the case may be) 227(2B) of that Act was not; and
- (c) any previous conviction of his without which the condition in section 225(3A) of the 2003 Act or (as the case may be) section 227(2A) of that Act would not have been met has been subsequently set aside on appeal.

(2) For the purposes of section 9(1), the period within which an appeal notice for an appeal against sentence must be lodged with the registrar is the period of 28 days after the date on which the previous conviction was set aside.

Respondent's notice

49.—(1) The registrar may serve an appeal notice on any party directly affected by the appeal.

(2) A party on whom the registrar serves an appeal notice may serve a respondent's notice, and must do so if—

- (a) that person wants to make representations to the court;
- (b) the registrar so directs; or
- (c) a judge of the court so directs.

(3) A party serving a respondent's notice must serve it on—

- (a) the appellant;
- (b) the registrar; and
- (c) any other party on whom the appeal notice was served.

(4) Subject to rule 50, a party serving a respondent's notice must do so not more than 14 days after the registrar serves—

- (a) the appeal notice;
- (b) a direction to do so.

(5) The respondent's notice must—

- (a) state the name and address of the respondent;
- (b) state the date on which the respondent was served with the appeal notice or reference;
- (c) state any ground of opposition on which the respondent 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;
- (d) identify the relevant sentencing powers of the Court Martial, if sentence is in issue;
- (e) summarise any relevant facts not already summarised in the appeal notice or reference;
- (f) identify any authorities the respondent considers relevant;
- (g) include or attach any application for the following, stating the reasons for the application—
 - (i) an extension of time within which to serve the respondent's notice;
 - (ii) permission to adduce evidence, including hearsay evidence and evidence of bad character;
 - (iii) an order requiring a witness to attend court;
- (h) identify any other document or thing that the appellant thinks the court will need to decide the appeal.

Extension of time

50.—(1) A judge of the court or the registrar may extend the period for service of a respondent’s notice under rule 49(4) (even after it has expired).

(2) If a judge of the court or the registrar exercises, or refuses to exercise, the power under paragraph (1), the registrar must, within seven days after the date of the exercise or refusal, serve notice of his decision on the appellant and the respondent.

(3) If the registrar refuses to exercise the power under paragraph (1), the respondent shall be entitled to have the application for the exercise of the power determined by a judge of the court.

(4) If a judge of the court refuses to exercise the power under paragraph (1), the appellant or respondent shall be entitled to have the application for the exercise of the power determined by the court as duly constituted for the purpose in accordance with section 5.

References by the Commission, the Judge Advocate General or the Secretary of State

51.—(1) The registrar must serve—

(a) on the person whose conviction or sentence the Commission refers to the court under section 12A of the 1995 Act, or on the person in relation to whom the finding was made that the Commission refers under that section, a copy of the reference;

(b) on the person with respect to whose—

(i) conviction the Judge Advocate General or the Secretary of State makes the reference of a finding under section 34, or

(ii) sentence the Secretary of State makes the reference of a sentence under section 34, a copy of the reference; and

(c) on any other person directly affected by a reference referred to in sub-paragraph (a) or (b).

(2) Rule 49, and so far as it relates to a respondent’s notice, rule 50 shall apply with respect to a reference within paragraph (1)(a) or (b), as if in that rule 49—

(a) “appeal” means the appeal which by virtue of section 34 or of section 12A of the 1995 Act, the reference to the court is to be treated as being;

(b) “appeal notice” means the reference to the court; and

(c) any reference to the appellant were a reference to whichever of the Commission, the Judge Advocate General or the Secretary of State made the reference to the court.