

Courts-Martial (Appeals) Act 1968

1968 CHAPTER 20

PART I

[^{F1}THE COURT MARTIAL APPEAL COURT]

Textual Amendments

- F1** Pt. 1 heading substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 8 para. 2](#); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4

1 The Court and its jurisdiction.

- (1) [^{F2}The Court Martial Appeal Court] shall continue in existence and is in this Act referred to either as “the Appeal Court” or as “the Court”.
- (2) The Appeal Court shall be a superior court of record and shall, for the purposes of this Act and subject to its provisions, have full power to determine, in accordance with this Act, any question necessary to be determined for the purpose of doing justice in any case before the Court.
- (3) The powers of the Appeal Court shall be exercisable by them so far as they think it necessary or expedient in the interests of justice that they should be exercised, and the Court may issue any warrants necessary for enforcing their orders or sentences.
- (4) Except as provided by Part III of this Act, no appeal shall lie from any decision of the Appeal Court.

Textual Amendments

- F2** Words in s. 1(1) substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 8 para. 3](#); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4

*Changes to legislation: There are currently no known outstanding effects for the
 Courts-Martial (Appeals) Act 1968, Part I. (See end of Document for details)*

2 Judges.

- (1) The following shall be judges of the Appeal Court:—
- (a) the ex officio and ordinary judges of the Court of Appeal and such of the judges . . . ^{F3} of the High Court as the Lord Chief Justice may, . . . ^{F3}, from time to time nominate for the purpose;
 - (b) such of the Lords Commissioners of Justiciary as the Lord Justice General may from time to time nominate for the purpose; and
 - (c) such of the judges of Her Majesty's [^{F4}Court of Judicature] of Northern Ireland as the Lord Chief Justice of Northern Ireland may from time to time nominate for the purpose.
- (2) The Lord Chancellor may appoint other persons, being persons of legal experience, to be judges of the Appeal Court and—
- (a) the appointment of a person under this subsection shall be for such term as may be determined by the Lord Chancellor, with the approval of the Treasury, before his appointment and shall be subject to such conditions as may be so determined; and
 - (b) a person so appointed who ceases to hold office as a judge of the Appeal Court shall be eligible for reappointment.
- (3) There may be paid out of moneys provided by Parliament to the persons appointed under subsection (2) of this section to be judges of the Appeal Court such remuneration, and to all the judges of the Court such travelling and subsistence allowances, as the Lord Chancellor may, with the approval of the Treasury, determine.

Textual Amendments

- F3** Words repealed by [Supreme Court Act 1981 \(c. 54, SIF 37\)](#), **ss. 145(2), 152(4), 153(4)(d)**, Sch. 7
- F4** Words in Act substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), s. 148(1), **Sch. 11 para. 6**; S.I. 2009/1604, art. 2(d)

Modifications etc. (not altering text)

- C1** Functions of Treasury under s. 2 now exercisable by Minister for the Civil Service: [S.I. 1971/2099](#)

3 Other senior judges who may exercise powers of Appeal Court.

Any power under this Act which is exercisable by a judge of the Appeal Court may also be exercised—

- (a) by any judge . . . ^{F5} of the High Court;
- (b) by any Lord Commissioner of Justiciary;
- (c) by any judge of Her Majesty's [^{F4}Court of Judicature] of Northern Ireland, notwithstanding that he is not for the time being a judge of the Appeal Court; and references in this Act to a judge of the Court shall be construed accordingly.

Textual Amendments

- F4** Words in Act substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), s. 148(1), **Sch. 11 para. 6**; S.I. 2009/1604, art. 2(d)
- F5** Words repealed by [Supreme Court Act 1981 \(c. 54, SIF 37\)](#), **ss. 145(3), 152(4), 153(4)(d)**, Sch. 7

Changes to legislation: There are currently no known outstanding effects for the Courts-Martial (Appeals) Act 1968, Part I. (See end of Document for details)

4 **Sittings.**

(1) For the purpose of hearing and determining appeals under this Act, or any matter preliminary or incidental to an appeal, the Appeal Court shall be summoned in accordance with directions given [^{F6}in accordance with Part 1 of Schedule 2 to the Constitutional Reform Act 2005].

^{F7}(2)

(3) The Appeal Court shall sit at such place as [^{F8}such directions may provide], whether within or outside the United Kingdom.

Textual Amendments

- F6** Words in s. 4(1) substituted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\), s. 148\(1\), Sch. 2 para. 4\(2\)](#); [S.I. 2006/1014, art. 2\(a\), Sch. 1 para. 7](#)
- F7** S. 4(2) repealed (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\), s. 383\(2\), Sch. 8 para. 4, Sch. 17](#); [S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#)); [S.I. 2009/1167, art. 4](#)
- F8** Words in s. 4(3) substituted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\), s. 148\(1\), Sch. 2 para. 4\(4\)](#); [S.I. 2006/1014, art. 2\(a\), Sch. 1 para. 7](#)

[^{F9}5

(1) Subject to subsection (4) below, the Appeal Court shall be duly constituted if it consists of an uneven number of judges not less than three.

(2) Where—

- (a) part of any proceedings before the Appeal Court has been heard by an uneven number of judges greater than three; and
- (b) one or more members of the Court as constituted for the purpose of those proceedings are unable to continue,

then, subject to subsection (4) below, the Court shall remain duly constituted for the purpose of those proceedings so long as the number of members (whether even or uneven) is not reduced to less than three.

(3) Subject to subsection (4) below, the Appeal Court shall, if it consists of two judges, be duly constituted for every purpose except—

- (a) determining an appeal against—
 - (i) conviction; or
 - (ii) a finding of not guilty by reason of insanity; or
 - (iii) a finding of unfitness to stand trial [^{F10}or that the defendant did the act or made the omission charged against him];
- (b) determining an application for leave to appeal to the [^{F11}Supreme Court]; and
- (c) refusing an application for leave to appeal to the Appeal Court against conviction or any such finding as is mentioned in paragraph (a)(ii) or (iii), other than an application which has been refused by a single judge.

(4) At least one of the judges of which the Appeal Court consists at any sitting must be a judge of the Court by virtue of section 2(1) of this Act, except that where the Court is directed to sit at a place outside the United Kingdom the Lord Chancellor may, if he thinks it expedient to do so [^{F12}after consulting the Lord Chief Justice], direct that this provision shall not apply to the Court while sitting at that place.

*Changes to legislation: There are currently no known outstanding effects for the
 Courts-Martial (Appeals) Act 1968, Part I. (See end of Document for details)*

- (5) Where an appeal has been heard by the Appeal Court and the Court as constituted for that purpose consists of an even number of judges, then, if those judges are equally divided, the case shall be re-argued before and determined by an uneven number of judges not less than three.

^{F13} [The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.]]

Textual Amendments

- F9** S. 5 substituted by [Supreme Court Act 1981 \(c. 54, SIF 37\)](#), **ss. 145(4), 153(4)(d)**
- F10** Words in s. 5(3)(a)(iii) inserted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), **Sch. 8 para. 5**; S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4
- F11** Words in s. 5(3)(b) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), s. 148(1), **Sch. 9 para. 17(2)**; S.I. 2009/1604, art. 2(d)
- F12** Words in s. 5(4) inserted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\)](#), s. 148(1), **Sch. 4 para. 62(2)**; S.I. 2006/1014, art. 2(a), Sch. 1 para. 11(e)
- F13** S. 5(6) inserted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\)](#), s. 148(1), **Sch. 4 para. 62(3)**; S.I. 2006/1014, art. 2(a), Sch. 1 para. 11(e)

6 Power of Master of the Rolls to act for Lord Chief Justice.

The Master of the Rolls may exercise the powers conferred on the Lord Chief Justice by sections 2 and 4 above if at any time the Lord Chief Justice is unable to exercise them himself or there is a vacancy in the office of Lord Chief Justice.

7 Court staff, salaries and pensions.

- (1) There shall be a registrar of the Appeal Court (in this Act referred to as “the registrar”) to be appointed by the Lord Chancellor, and the Lord Chancellor may appoint such other officers and servants of the Court as he may, with the approval of the Treasury as to numbers, determine.
- (2) The remuneration of the officers and servants of the Appeal Court shall be such as the Lord Chancellor may, with the approval of the Treasury, determine, and [^{F14}the principal civil service pension scheme within the meaning of section 2 of the ^{M1}Superannuation Act 1972 and for the time being in force shall, with the necessary adaptations, apply to officers and servants of the Court as it applies to other persons employed in the civil service of the State].
- (3) The remuneration of the officers and servants of the Appeal Court and such other expenses of the Court as the Treasury may sanction shall be defrayed out of moneys provided by Parliament.

Textual Amendments

- F14** Words substituted by [Superannuation Act 1972 \(c. 11\)](#), **Sch. 6 para. 70**

Modifications etc. (not altering text)

- C2** Functions of Treasury under s. 7 now exercisable by Minister for the Civil Service: [S.I. 1971/2099](#)

Changes to legislation: *There are currently no known outstanding effects for the Courts-Martial (Appeals) Act 1968, Part I. (See end of Document for details)*

Marginal Citations

M1 1972 c. 11.

Changes to legislation:

There are currently no known outstanding effects for the Courts-Martial (Appeals) Act 1968, Part I.