

1972 No. 798 (L.7)

**COURTS-MARTIAL (APPEALS)****The Courts-Martial Appeal (Amendment) Rules 1972**

<i>Made</i>	- - -	19th May 1972
<i>Laid before Parliament</i>		31st May 1972
<i>Coming into Operation</i>		1st July 1972

The Lord Chief Justice of England, in exercise of the powers conferred on him by section 49 of the Courts-Martial (Appeals) Act 1968(a), and with the approval of the Lord Chancellor, hereby makes the following Rules:—

*Citation and commencement*

1. These Rules may be cited as the Courts-Martial Appeal (Amendment) Rules 1972 and shall come into operation on 1st July 1972.

*Amendment of existing Rules*

2. The Courts-Martial Appeal Rules 1968(b) shall be amended as follows:—

- (1) in rule 4 (which relates to notices of application for leave to appeal)—
  - (a) for paragraph (1), there shall be substituted the following paragraph:—
    - “(1) Notice of application for leave to appeal to the court shall be given in form 1.”; and
    - (b) the proviso to paragraph (2) shall be omitted;
- (2) paragraph (2) of rule 5 (which relates to the abandonment of appeals) shall be omitted;
- (3) in paragraph (1) of rule 6 (which relates to the time for presenting petitions and giving notices), for the words “the conviction was pronounced” in both places where they appear in sub-paragraph (a), there shall be substituted the words “sentence was passed”; and in paragraph (3)(a), for the words “the conviction is pronounced”, there shall be substituted the words “sentence is passed”;
- (4) in paragraph (3) of rule 8 (which relates to applications to a single judge), after the words “the judge’s decision”, there shall be inserted the words “or such longer period as a judge of the court may fix”;

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(a) 1968 c. 20.

(b) S.I. 1968/1071 (1968 II, p. 2872).

- (5) in paragraph (1) of rule 9 (which relates to courts-martial proceedings), after the word “conviction”, there shall be inserted the words “(or, in the case of an application for leave to appeal against sentence, his sentence)”;
- (6) for paragraph (2) of rule 19 (which relates to the notifying of results of appeals, etc.), there shall be substituted the following paragraph:—  
 “(2) On receiving notice of application for leave to appeal to the court or the House of Lords in a case involving sentence of death, the registrar shall send a copy of the notice to the Secretary of State.”;
- (7) in Form 1 in Schedule 1 (notice of application for leave to appeal)—
- (a) in the heading, for the words “LEAVE TO APPEAL AGAINST CONVICTION”, there shall be substituted the words “LEAVE TO APPEAL\*” and, in the margin opposite the heading, there shall be inserted the following note:—  
 “ \* see Note C at the end of this Form”;
- (b) in Note A, for the words “conviction is pronounced”, there shall be substituted the words “sentence is passed”;
- (c) in Note B, for the words “conviction was pronounced” and “pronouncement”, there shall be substituted the words “sentence was passed” and “passing of sentence” respectively; and
- (d) after Note B, there shall be added the following note:—

“NOTE C

A serviceman has no right of appeal to the court against sentence, but a civilian convicted by court-martial may apply for leave to appeal against sentence (whether or not he also applies for leave to appeal against conviction). Notes A and B above apply to an application for leave to appeal against sentence as they apply to an application for leave to appeal against conviction.

Under section 8 of the Courts-Martial (Appeals) Act 1968 (as amended by section 73 of the Armed Forces Act 1971(a)) the right to appeal to the court against sentence arises only if the person concerned was a civilian both at the time of his conviction and when the offence was committed.

A civilian is defined as any person who is not subject to service law (meaning military law, air-force law and the Naval Discipline Act 1957(b)) and any person within section 208A or 209 of the Army Act 1955(c), section 208A or 209 of the Air Force Act 1955(d) or section 117 or 118 of the Naval Discipline Act (which apply certain provisions of those Acts to passengers in Her Majesty’s ships and aircraft, persons employed by or accompanying Her Majesty’s forces, families of members of those forces, etc.).

For the purpose of giving notice of a civilian’s application for leave to appeal against sentence (or against both conviction and sentence), Form 1 is to be modified to the extent that may be necessary.”

(a) 1971 c. 33.  
 (c) 3 & 4 Eliz. 2 c. 18.

(b) 1957 c. 53.  
 (d) 3 & 4 Eliz. 2 c. 19.

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- (8) in Form 2 in Schedule 1 (notice of abandonment of appeal)—
- (a) for marginal note (2), there shall be substituted the following marginal note:—
- “(2) This notice must be signed by the appellant or his representative.”; and
- (b) the entries at the foot of the form relating to the attestation of the appellant’s signature shall be omitted.

Dated 18th May 1972.

*Widgery, C. J.*

I approve,

Dated 19th May 1972.

*Hailsham of St. Marylebone, C.*

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#### EXPLANATORY NOTE

*(This Note is not part of the Rules.)*

These Rules make drafting amendments to the Courts-Martial Appeal Rules 1968 consequential upon the coming into force of those provisions of the Armed Forces Act 1971 which give to a civilian convicted by court-martial a right to appeal against sentence to the Courts-Martial Appeal Court. In addition, the amendment to rule 5 permits an appellant’s representative to sign on his behalf notice of abandonment of the appeal and the amendment to rule 8 enables a judge of the court to extend the period within which an application for leave to appeal, which has been refused by a single judge, may be renewed before the full court.

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