

SCHEDULE 6

CIVILIANS

PART III

APPEALS FROM STANDING CIVILIAN COURTS

Forwarding an appeal to the prosecuting authority

3.—(1) When the higher authority receives a notice of appeal against conviction or sentence (or both) lodged under paragraph 18(3) of Schedule 3 to the Armed Forces Act 1976⁽¹⁾, he shall forward the notice to the prosecuting authority with a view to the appeal being heard by a court-martial.

(2) On receipt of a notice under paragraph (1) above, the prosecutor shall determine whether the appeal is to be heard by general court-martial or district court-martial.

(3) Subject to rules 4 to 6 below, these Rules shall be complied with as if the charge which is the subject of the appeal were a charge preferred against the accused under section 83B(4)⁽²⁾ of the Act.

Charge sheet on appeal

4.—(1) Any alternative charge preferred against the accused for trial by the Standing Civilian Court on which no finding was made may be added to the charge sheet for trial by the court-martial.

(2) The prosecutor may not amend or substitute another charge or charges for, or discontinue proceedings on, the charge which is the subject of the appeal.

Appeal against sentence alone

5. Where the appeal in respect of a charge is against sentence alone, the court shall proceed after the commencement of the court-martial trial as if the accused had pleaded guilty to that charge.

Sentencing on appeal

6.—(1) Where the appeal in respect of a charge is against conviction alone and the court find the accused guilty of the charge, it shall pass as the sentence of the court-martial in respect of that charge the sentence passed for that offence by the Standing Civilian Court or any lesser sentence which it considers appropriate.

(2) In any other case where, on appeal, the court-martial is required to pass sentence, it shall proceed to sentence the accused in accordance with these Rules subject to paragraphs (3) to (5) below.

(3) The prosecutor shall, where practicable, in addition to the information listed in rule 76(2) above as modified by Part I of this Schedule, present to the court information concerning—

- (a) any offences which the Standing Civilian Court took into consideration;
- (b) the result of any review of the findings or sentence of the Standing Civilian Court.

(4) In addition to its power under rule 74 above, the court may take into consideration any offence which was taken into consideration by the Standing Civilian Court and as to the judge advocate seems proper.

(5) The court shall award a separate sentence for each offence.

(1) 1976 c. 52; Schedule 3 was amended by the Armed Forces Act 1996, section 5 and Schedule 1.

(2) Section 83B was inserted by the Armed Forces Act 1996, section 5 and Schedule 1.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Appeal by parent or guardian of an accused

7. Where a parent or guardian appeals against an order against him made by the Standing Civilian Court under paragraph 13 of Schedule 5A to the Act, and the accused in respect of whose conviction the order was made does not appeal against that conviction, the court administration officer shall issue a witness summons in respect of that accused to attend the court-martial.

Abandonment of appeal

8.—(1) An accused who has given notice of appeal to a court-martial against finding or sentence of a Standing Civilian Court may abandon the appeal or any part of it at any time before the commencement of the trial by court-martial by giving notice in writing to the court administration officer.

(2) An accused who has given notice of appeal to a court-martial may not abandon the appeal or any part of it after the commencement of the trial by court-martial except with the leave of the court-martial.

(3) Where an accused fails to appear before the court-martial at the appointed time or subsequently thereafter, the judge advocate, if he considers that there is no reasonable explanation for the failure to appear, may direct that the appeal be treated as abandoned.

(4) An accused may not revive an appeal or any part of it which he has abandoned or which is treated as abandoned.