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STATUTORY INSTRUMENTS

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**1997 No. 580 (L. 3)**

**COURTS-MARTIAL (APPEALS)**

**The Courts-Martial Appeal (Amendment) Rules 1997**

<i>Made</i>	- - - -	<i>4th March 1997</i>
<i>Laid before Parliament</i>		<i>5th March 1997</i>
<i>Coming into force</i>	- -	<i>1st April 1997</i>

The Lord Chief Justice of England, in exercise of the powers conferred on him by section 49 of the Courts-Martial (Appeals) Act 1968(1), and with the approval of the Lord Chancellor, hereby makes the following Rules—

1. These Rules may be cited as the Courts-Martial Appeal (Amendment) Rules 1997 and shall come into force on 1st April 1997.

2. The Courts-Martial Appeal Rules 1968(2) shall be amended in accordance with the following provisions of these Rules and, in those provisions, any reference to a rule, Schedule or Form by number alone shall be construed as a reference to the rule, Schedule or Form so numbered in the 1968 Rules.

3. In the definition of ‘prisoner of war’ in rule 2, for the words from ‘means’ to ‘Schedule 3 to’ substitute ‘has the same meaning as in section 7(1) of’.

4. For rule 3 substitute—

“Petitions

3.—(1) For the purposes of section 8(2), a petition shall be treated as having been presented to the Defence Council if it is presented by the appellant—

- (a) in the case of a naval court-martial, to the court administration officer;
- (b) in the case of an army court-martial, to the Director of Personal Services (Army);  
and
- (c) in the case of an air force court-martial, to the Deputy Director Personnel Management Agency (P1) (Royal Air Force).

(2) A petition shall also be treated as having been presented to the Defence Council if it is presented by the appellant—

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(1) 1968 c. 20.

(2) S.I. 1968/1071, amended by S.I. 1972/798.

- (a) where he is in custody or detention in any civil prison or institution, to the governor of the prison or institution;
- (b) where he is detained in naval detention quarters or in any military or air force establishment, to the commandant of the quarters or establishment; or
- (c) where he is a prisoner of war, to the officer commanding the prisoner of war camp or other place in which the prisoner of war is held.

(3) A person to whom a petition is presented under paragraph (2) shall immediately send it to whichever of the persons referred to in paragraph (1) is appropriate in the circumstances.”.

5. For rule 4(3) substitute—

“(3) Where rule 3(2) applies to the appellant, any application or notice which is required or authorised to be given to the court under these Rules may be lodged by the appellant with a person to whom, by virtue of rule 3, he may present a petition.”.

6. For rule 6(1) substitute—

“(1) The period within which a person convicted by a court-martial, other than a person sentenced to death, must, as a condition precedent to the exercise of his right of appeal, present a petition to the Defence Council under section 8(2)(a) shall be:—

- (a) in the case of a conviction of a prisoner of war, who has a protecting power, by a prisoner of war court martial, 28 days following the day on which he received notice that the protecting power had been notified that sentence was passed by the court-martial; and
- (b) in all other cases, 28 days following the day on which sentence was passed.”.

7. For rule 6(3)(a) substitute—

“(a) in the case of a conviction involving sentence of death, the day on which sentence is passed.”.

8. After rule 14 insert—

“Evidence through television link where witness is not in the country where court is sitting

**14A.**—(1) In this rule, and rules 14B and 14C, references to sections of the Criminal Justice Act 1988<sup>(3)</sup> are references to those sections as modified by paragraph 8(2) of Schedule 13 to that Act and by the Criminal Justice Act 1988 (Application to Service Courts) (Evidence) Order 1996<sup>(4)</sup>

(2) A party to an appeal who applies for leave to call a witness may also apply for leave under section 32(1) of the Criminal Justice Act 1988, for the evidence of that witness to be given through a live television link where the witness is not in the country where the court is sitting.

(3) An application made under paragraph (2) shall be made by serving a notice in writing on the Registrar which shall state—

- (a) the grounds of the application,
- (b) the name of the witness,

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(3) 1988 c. 33. Sections 32(1) to (3), 32A and 34A were applied to Service courts, with modifications, by the Criminal Justice Act 1988 (Application to Service Courts) (Evidence) Order 1996 (S.I. 1996/2592).

(4) S.I. 1996/2592

(c) the country and place where it is proposed the witness will be when giving evidence, and

(d) the name and occupation of any person who it is proposed should be available for the purpose specified in paragraph (4).

(4) The purpose referred to in paragraph (3)(d) is that of answering any questions the court may put, before or after the evidence of the witness is given, as to the circumstances in which the evidence is given, including questions about any persons who are present when the evidence is given and any matters which may affect the giving of the evidence.

(5) An application shall be made at the same time as the application for leave to call the witness or at any time after that, but no less than 14 days before the date fixed for the hearing of the appeal except with the leave of the court.

(6) The Registrar shall, as soon as practicable after receiving an application, send a copy of the notice to the other parties to the appeal.

(7) An application shall be determined without a hearing unless the court otherwise directs, and the Registrar shall notify the applicant and the other parties of the time and place of any hearing.

(8) The Registrar shall notify the parties of the decision of the court in relation to an application and, where leave is granted, the notification shall state the name of the witness and, where applicable, the name and occupation of any person specified by the court for the purpose set out in paragraph (4).

Evidence through television link where witness is a child or is to be cross-examined after admission of a video recording

**14B.—**(1) A party to an appeal who applies for leave to call a witness may also apply for leave under section 32(1) of the Criminal Justice Act 1988 for the evidence of that witness to be given through a live television link where—

(a) the offence charged is one to which section 32(2) applies; and

(b) the evidence is to be given by a witness who is either—

(i) in the case of an offence falling within section 32(2)(a), (b) or (bb), under the age of 14; or

(ii) in the case of an offence falling within section 32(2)(c) or (cc), under the age of 17; or

(iii) a person who is to be cross-examined following the admission under section 32A of that Act of a video recording of testimony from him;

and references in this rule to an offence include references to attempting or conspiring to commit, or aiding, abetting, counselling, procuring or inciting the commission of that offence.

(2) An application shall be made by serving a notice in writing on the Registrar which shall state:

(a) the grounds of the application,

(b) the date of birth of the witness,

(c) the name of the witness, and

(d) the name, occupation and relationship (if any) to the witness of any person proposed to accompany the witness and the grounds for believing that that person should accompany the witness.

(3) An application shall be made at the same time as the application for leave to call the witness or at any time after that, but no less than 14 days before the date fixed for the hearing of the appeal except with the leave of the court.

(4) The Registrar shall, as soon as practicable after receiving an application, send a copy of the notice to the other parties to the appeal.

(5) An application shall be determined without a hearing unless the court otherwise directs, and the Registrar shall notify the applicant and the other parties of the time and place of any hearing.

(6) The Registrar shall notify the parties and the person who is to accompany the witness (if known) of the decision of the court in relation to the application, and, where leave is granted, the notification shall state the name of the witness and, if known, the name, occupation and relationship (if any) to the witness of the person who is to accompany the witness.

(7) A witness giving evidence through a television link pursuant to leave granted in accordance with this rule shall be accompanied by a person acceptable to the court and, unless the court otherwise directs, by no other person.

#### Video recordings of testimony from child witnesses

**14C.**—(1) A party to an appeal who applies for leave to call a witness may also apply for leave under section 32A of the Criminal Justice Act 1988 to tender in evidence a video recording of testimony from a witness where—

- (a) the offence charged is one to which section 32(2) of that Act applies;
- (b) in the case of an offence falling within section 32(2)(a), (b) or (bb), the proposed witness is under the age of 14 or, if he was under 14 when the video recording was made, is under the age of 15;
- (c) in the case of an offence falling within section 32(2)(c) or (cc), the proposed witness is under the age of 17 or, if he was under 17 when the video recording was made, is under the age of 18, and
- (d) the video recording is of an interview conducted between an adult and a person coming within sub-paragraph (b) or (c), not being the accused or one of the accused, which relates to any matter in issue in the proceedings;

and references in this rule to an offence include references to attempting or conspiring to commit, or aiding, abetting, counselling, procuring or inciting the commission of, that offence.

(2) An application shall be made by serving a notice in writing on the Registrar. The application shall be accompanied by the video recording which it is proposed to tender in evidence and shall include—

- (a) the name of the appellant and the offence or offences charged;
- (b) the name and date of birth of the witness in respect of whom the application is made;
- (c) the date on which the video recording was made;
- (d) a statement that in the opinion of the applicant the witness is willing and able to attend the appeal for cross-examination; and
- (e) a statement of the circumstances in which the video recording was made which complies with paragraph (4).

(3) Where it is proposed to tender part only of a video recording of an interview with the witness an application must specify that part and be accompanied by a video recording

of the entire interview, including those parts which it is not proposed to tender in evidence, and by a statement of the circumstances in which the video recording of the entire interview was made which complies with paragraph (4).

(4) The statement of the circumstances in which the video recording was made referred to in paragraphs (2)(e) and (3) shall include the following information, except in so far as it is contained in the recording itself—

- (a) the times at which the recording commenced and finished including details of any interruptions;
- (b) the location at which the recording was made and the usual function of the premises;
- (c) the name, age and occupation of any person present at any point during the recording, the time for which he was present, his relationship (if any) to the witness and to the appellant;
- (d) a description of the equipment used including the number of cameras used and whether they were fixed or mobile: the number and location of microphones: the video format used and whether there were single or multiple recording facilities; and
- (e) the location of the mastertape if the video recording is a copy and details of when and by whom the copy was made.

(5) An application shall be made at the same time as the application for leave to call the witness or at any time after that, but no less than 14 days before the date fixed for the hearing of the appeal except with the leave of the court.

(6) The Register shall, as soon as practicable after receiving an application send a copy of the notice to the other parties to the appeal. Copies of any video recording required by paragraph (2) or (3) to accompany the notice shall be provided by the applicant and sent by the Registrar to any party to the appeal not already served with a copy. In the case of an appellant acting in person, a copy shall be made available for viewing by him.

(7) An application shall be determined without a hearing, unless the court otherwise directs, and the Registrar shall notify the applicant and other parties of the time and place of any hearing.

(8) The Registrar shall notify all the parties of the decision of the court in relation to an application, and, where leave is granted, the notification shall state whether the whole or specified parts only of the video recording or recordings disclosed are to be admitted in evidence.”.

9. In rule 17(iv), for ‘Minister of Home Affairs’ substitute ‘Secretary of State’.

10. For rule 21 substitute—

“21. In any proceedings before the court any of the following persons may address the court:—

- (a) any person who has a right of audience in the Criminal Division of the Court of Appeal by virtue of section 27 of the Courts and Legal Services Act 1990(5);
- (b) a barrister of the Northern Ireland bar or an advocate of the Scottish bar;
- (c) the appellant, if he has the leave of the court to be present and is not otherwise represented; and
- (d) where the court is sitting at a place outside the United Kingdom any other person allowed by leave of the court to appear on behalf of the appellant or respondent.”.

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**11.** For Forms 1 and 2 in Schedule 1, substitute the Forms numbered 1 and 2 respectively in the Schedule to these Rules.

**12.** Omit Schedule 2.

**13.** Rule 6 and Form 1 shall apply to any appeal in relation to a conviction or sentence passed before 1st April 1997 as if the amendments set out in these Rules had not been made.

Dated 28th February 1997

*Bingham of Cornhill, C.J.*

Approved,

Dated 4th March 1997

*Mackay of Clashfern, C.*

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## SCHEDULE

Rule 4

Form 1 TO THE REGISTRAR OF THE COURTS-MARTIAL APPEAL COURT Royal Courts of  
Justice Strand London WC2A 2LL NOTICE OF APPLICATION FOR LEAVE TO APPEAL

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

- (1) See Notes A and B at the end of this form.
- (2) If not in custody set out appellant's address in full.
- (3) The reasons why you consider that your conviction should be quashed and/or that your sentence should be reduced should be set out in a separate document(s) and attached to this form. See Note C at the end of this form.
- (4) This notice must be signed by the appellant or by his representative. If the appellant cannot write he must affix his mark in the presence of a witness. The name and address of the attesting witness must be given.
- (5) If this form is lodged more than 28 days after the appellant has become entitled to appeal it must be accompanied by the reasons why the application was delayed. To calculate whether an extension of time is required see Note A at the end of this form.
- (6) The appellant must answer the questions.
- (7) If you are applying for leave to call a witness you must complete Form 5 and send it together with this form.
- (8) See Note B at the end of this form.
- Name of Appellant..... Number.....
- Unit or Ship ..... Rank or Rating.....
- Convicted by Court-Martial held at.....
- Offence(s) of which convicted .....
- Sentence.....
- Date when sentence passed .....
- Date when petition to Defence Council presented (1).....
- Date when notified that petition not granted (1).....
- Name of place of detention/address (2).....
- .....
- I the above named applicant hereby give notice that I apply to the Courts-Martial Appeal Court for the following: (3)
- Extension of time within which to apply for leave to appeal (5) {
- Leave to appeal against conviction {
- Leave to appeal against sentence {
- Leave to call a Witness (7) {
- Leave to be present {
- Legal aid {
- Signed (4) .....
- Dated (5).....
- QUESTIONS (6)**
1. Do you desire the Court to exercise in your favour its power to direct that you are to be treated as not having lost your right of appeal notwithstanding your failure to present your petition to the Defence Council within the prescribed period? Yes/Not applicable (see note 8) If yes please set out or attach the grounds on which you submit the Court should give such a direction .....
2. If you are applying for legal aid is any solicitor, solicitor advocate or Counsel now acting for you. YES/NO If so please give his/her name and address



#### **NOTE A**

Under section 8(2) of the Court-Martial (Appeals) Act 1968, a person convicted by court-martial does not (save in the case of a sentence of death) become entitled to apply for leave to appeal until—

- (a) he has presented to the Defence Council a petition praying that his conviction or, as the case may be, his sentence be quashed, and
  - (b) either—
    - (i) 40 (or, if the court-martial was held abroad, 60) days have passed since the petition was presented, or
    - (ii) he has been notified that the petition has not been granted,
- whichever occurs first.

From the day on which a convicted person becomes entitled to apply for leave to appeal, he has 28 days in which to give notice of application to the Court. If he fails to give notice within this time, he must apply (on Form 3) for an extension of time.

A person convicted by court-martial and sentenced to death becomes entitled to apply for leave to appeal when the sentence is passed and the 28 days run from then. In such a case, the court has no power to extend the time.

#### **NOTE B**

A petition to the Defence Council, such as is mentioned in Note A, above, must be presented within the period prescribed by the Courts-Martial Appeal Rules and that period cannot be extended.

Nevertheless, the Court has (under section 8(3) of the Courts-Martial (Appeals) Act 1968) power to direct that a person who has presented such a petition, but has done so out of time, and who subsequently applies for leave to appeal, is to be treated as not having lost his right of appeal if the Court thinks that there is a reasonable explanation of his failure to present his petition in time and that it is in the interests of justice that he should be so treated.

The period prescribed by the Court-Martial Appeal Rules for the presentation of a petition to the Defence Council is 28 days from the day on which sentence is passed.

#### **NOTE C**

**Grounds of appeal.**

Where grounds have been settled by counsel they must be signed by counsel and attached to this form. There is no obligation to include a copy of counsel's advice although in some cases it may be helpful to do so. Grounds must be settled with sufficient detail to enable matters relied upon to be clearly identified. Wording such as "the conviction is unsafe and unsatisfactory" or "the sentence is in all the circumstances too severe" will be ineffective as grounds and an extension of time may have to be applied for.

Form 2 TO THE REGISTRAR OF THE COURTS-MARTIAL APPEAL COURT Royal Courts of Justice Strand, London WC2A 2LL  
**NOTICE OF ABANDONMENT**

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

Name of Appellant.....	Number.....
Unit or Ship .....	Rank or Rating .....
Convicted by Court-Martial held at .....	
Offence(s) of which convicted .....	
.....	
Name of prison or place of detention (1) .....	(1) If not in custody, set out appellant's address in full.
.....	
I, the above-named Appellant, having been convicted as above stated and having duly sent to the registrar of the court notice that I desired to appeal DO NOW HEREBY GIVE NOTICE that I do not intend further to prosecute my appeal against conviction and/or sentence (2) but THAT I HEREBY ABANDON all proceedings in regard to such appeal as from the date hereof.	(2) Where appeal is against both conviction and sentence, indicate whether abandonment is in part only.
Dated..... 19 .....	
(Signed)(3).....	(3) This notice must be signed by the appellant personally in the presence of a witness. If the appellant is insane, it may be signed by his representative.
Appellant.	
This notice was signed by the above-named appellant on the day above stated in my presence.	
Signature of Witness .....	
Address of Witness .....	

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Rules amend the Courts-Martial Appeal Rules 1968. They change the time limit for presentation of a petition before the exercise of a right of appeal to 28 days in all cases, consequent on the abolition of the requirement for findings of army and air force courts-martial to be confirmed by the appropriate officer. They also make provision for applications under section 32(1) of the Criminal Justice Act 1988 (evidence through television links where witness is outside the country where the court is sitting and such evidence by child witnesses) and section 32A of that Act (video recordings of testimony from child witnesses). Rights of audience in the Courts-Martial Appeal Court have been extended to include all those who have rights of audience in the Criminal Division of the Court of Appeal. Some minor drafting changes have been made.

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The Rules substitute Forms 1 and 2. The new forms reflect the fact that an appeal can now be made by servicemen against sentence as well as conviction and have been generally updated.

The new provisions relating to time limits for presenting a petition and the new Form 1 shall not apply to appeals where the conviction has taken place or sentence passed before 1st April 1997.