

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Status: This is the original version (as it was originally made).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. Name of Appellant..... Number.....
  - (2) If not in custody set out appellant's address in full. Unit or Ship ..... Rank or Rating.....
  - (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.
    - 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).....
  - (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.
    - 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 [ ]
  - (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.
    - 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
- (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.

#### 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.

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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 .....