
STATUTORY INSTRUMENTS

2000 No. 2228 (L.18)

COURTS-MARTIAL (APPEALS)

The Courts-Martial Appeal (Amendment) Rules 2000

Made - - - - *9th August 2000*
Laid before Parliament *16th August 2000*
Coming into force - - *2nd October 2000*

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 2000 and shall come into force on 2nd October 2000.

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

3. In rule 4, after paragraph (1) there shall be inserted—

“(1A) A notice of application for leave to appeal shall specify—

- (a) any application to be made to the court for a declaration of incompatibility under section 4 of the Human Rights Act 1998(3); or
- (b) any issue for the court to decide which may lead to the court making such a declaration.

(1B) Where the notice of application for leave to appeal includes an application or issue in accordance with paragraph (1A), a copy of the notice shall be served by the appellant on the person to whom a petition may be presented under rule 3(1), whichever is appropriate in the circumstances.”

4. After rule 6 there shall be inserted—

“Crime (Sentences) Act 1997

6A.—(1) This rule applies where—

(1) 1968 c. 20.
(2) S.I.1968/1071, amended by S.I. 1972/798 and 1997/580.
(3) 1998 c. 42.

- (a) a person has been convicted by a court-martial of an offence under section 70 of the Army Act 1955(4), section 70 of the Air Force Act 1955(5) or section 42 of the Naval Discipline Act 1957(6);
- (b) the corresponding civil offence is one to which section 2 of the Crime (Sentences) Act 1997(7) would apply;
- (c) the court-martial has imposed on that person the sentence required by subsection (2) of section 2; and
- (d) any previous conviction of his without which that section would not have applied has subsequently been quashed by the Defence Council, or set aside on appeal.

(2) Where no petition was presented to the Defence Council within the period allowed by rule 6(1), a petition against the sentence may be presented within 28 days from the date on which the previous conviction was quashed or set aside.

(3) Where a petition was presented to the Defence Council, an application for leave to appeal to the court against the sentence may be lodged within 28 days from the date on which the previous conviction was quashed or set aside.”.

5. After rule 8 there shall be inserted—

“Human Rights Act 1998

8A.—(1) The court shall not consider making a declaration of incompatibility under section 4 of the Human Rights Act 1998 unless it has given written notice to the Crown.

(2) Where notice has been given to the Crown, a Minister or other person entitled under the Human Rights Act 1998 shall be so joined on giving written notice to the court.

(3) A notice given under paragraph (1) shall be served on—

- (a) the person named in the list published under section 17(1) of the Crown Proceedings Act 1947(8); or
- (b) in case of doubt as to whether any and if so which of those departments is appropriate, on the Treasury Solicitor.

(4) A notice given under paragraph (1) shall provide an outline of the issues in the case and specify—

- (a) the appellant;
- (b) the person to whom his petition was presented under rule 3(1), or to whom it was sent under rule 3(3);
- (c) the date on which and place at which the court-martial was held; and
- (d) the provision of primary legislation and the Convention right in question.

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- (4) 1955 c. 18. Section 70 was amended by paragraph 1(1) of Schedule 4 to the Crime (Sentences) Act 1997 (c. 43). The reference in section 70(3A) to section 2 of the Crime (Sentences) Act 1997 will from 25th August 2000 be repealed and replaced by a reference to section 109 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), pursuant to paragraph 8 of Schedule 9 to that Act.
 - (5) 1955 c. 19. Section 70 was amended by paragraph 2(1) of Schedule 4 to the Crime (Sentences) Act 1997. The reference in section 70(3A) to section 2 of the Crime (Sentences) Act 1997 will from 25th August 2000 be repealed and replaced by a reference to section 109 of the Powers of Criminal Courts (Sentencing) Act 2000, pursuant to paragraph 13 of Schedule 9 to that Act.
 - (6) 1957 c. 53. Section 42 was amended by paragraph 3(1) of Schedule 4 to the Crime (Sentences) Act 1997. The reference in section 42(1A) to section 2 of the Crime (Sentences) Act 1997 will from 25th August 2000 be repealed and replaced by a reference to section 109 of the Powers of Criminal Courts (Sentencing) Act 2000, pursuant to paragraph 18 of Schedule 9 to that Act.
 - (7) Section 2 of the Crime (Sentences) Act 1997 will on 25th August 2000 be repealed and replaced by section 109 of the Powers of Criminal Courts (Sentencing) Act 2000, and section 2(2) of the 1997 Act will become section 109(2) of the 2000 Act.
 - (8) 1947 c. 44.

(5) Any consideration of whether a declaration of incompatibility should be made shall be adjourned for—

- (a) 21 days from the date of the notice given under paragraph (1); or
- (b) such other period specified in the notice as the court shall allow, in order that the relevant Minister or other person may seek to be joined and to prepare his case.

(6) Unless the court otherwise directs, the Minister or other person entitled under the Human Rights Act 1998 to be joined as a party shall, if he is to be joined, give written notice to the court and to every other party.

(7) Where a Minister of the Crown has nominated a person to be joined as a party by virtue of section 5(2)(a) of the Human Rights Act 1998, a notice under paragraph (6) shall be accompanied by a written nomination signed by or on behalf of the Minister.”.

6. In rule 19, after paragraph (1) there shall be inserted—

“(1A) In the case of a declaration of incompatibility under section 4 of the Human Rights Act 1998, the declaration shall be served on—

- (a) all the parties to the proceedings; and
- (b) where a Minister of the Crown has not been joined as a party, the person on whom notice has been served under rule 8A(3).”.

Dated 3rd August 2000

Harry Woolf, C.J.

Approved,

Dated 9th August 2000

Irvine of Lairg, C.

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

EXPLANATORY NOTE

(This note is not part of the Rules)

Section 4 of the Human Rights Act 1998 gives the Courts-Martial Appeal Court the power to make a declaration that a provision of primary legislation is incompatible with the European Convention on Human Rights. Rules 3, 5 and 6 of these Rules amend the Courts-Martial (Appeal) Rules 1968 to provide the procedure for the making of a declaration of incompatibility, and in particular for the service of notice on the Crown as required by section 5 of the 1998 Act.

Rule 4 provides for the application of the Crime (Sentences) Act 1997 to certain sentences passed by courts-martial. Unless there are exceptional circumstances which justify its not doing so, a court-martial is required to impose a mandatory life sentence where the accused is convicted on a second occasion of one of certain serious offences, and the corresponding civil offence is one to which section 2 of the 1997 Act would apply. If the conviction for the first offence is subsequently quashed or set aside, the accused will normally be out of time to appeal against the sentence for the second offence. Rule 4 extends the time within which an appeal against sentence may be lodged.

The Crime (Sentences) Act 1997, though still in force at the date these Rules are made, will on 25th August 2000 be repealed and replaced by a consolidation Act, the Powers of Criminal Courts (Sentencing) Act 2000. As from the date of entry into force of these Rules the references to section 2 of the 1997 Act should be read as references to section 109 of the 2000 Act.