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STATUTORY INSTRUMENTS

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**2000 No. 2372**

**The Summary Appeal Court (Air Force) Rules 2000**

**PART II**

**BRINGING AND ABANDONMENT OF APPEALS**

**Bringing of appeals**

**8.—(1)** For the purposes of section 83ZE(2) of the Act—

- (a) a person brings an appeal when he serves on his commanding officer a notice in writing in the form set out in Schedule 2; and
- (b) the date on which the appeal is brought is—
  - (i) where the notice is delivered to the commanding officer or left at his proper address, the date on which it is so delivered or left;
  - (ii) where the notice is sent by post to the commanding officer at his proper address, the date on which it is received at that address; or
  - (iii) where the notice is transmitted by FAX or other means of electronic data transmission, the date on which it is so transmitted.

(2) Where two or more charges have been tried summarily together and an appeal is brought against more than one of the findings made in respect of those charges, it shall be sufficient for the purposes of paragraph (1) for the appellant to serve a single notice of appeal relating to all matters against which an appeal is brought.

(3) Where notice of appeal is served on a person's commanding officer in accordance with paragraph (1), the commanding officer shall as soon as reasonably practicable—

- (a) forward it to the court administration officer; and
- (b) serve a copy of it on the prosecuting authority together with—
  - (i) the Record of Summary Dealing;
  - (ii) a list of persons whose evidence was not adduced in the proceedings on summary dealing but who appear to the commanding officer to be potential witnesses in the proceedings before the court;
  - (iii) any material in the possession of the commanding officer which is not annexed to or referred to in the Record of Summary Dealing but which in his opinion may be material to the proceedings before the court;
  - (iv) copies of any conduct sheets of the appellant; and
  - (v) a document specifying the appellant's age and, where applicable, his rank, service record and any recognised acts of gallantry.

(4) In these Rules, the reference to the Record of Summary Dealing is to any record of proceedings on summary dealing required to be made in accordance with regulations under section 83 of the Act in respect of the charge to which the appeal relates.

### **Application for leave to extend time for appealing and for leave to bring an appeal out of time**

9.—(1) This rule and rules 10 and 11 shall have effect in relation to—

- (a) an application under section 83ZE(2) of the Act to extend the period of time for bringing an appeal; and
- (b) an application under section 83ZE(3) for leave to bring an appeal out of time,

and any reference in this rule and rules 10 and 11 to an application or an applicant shall be construed accordingly.

(2) Notice of an application shall be given in the form set out in Schedule 2 and shall be served on the commanding officer of the person making the application.

(3) A person who has given notice of an application in accordance with paragraph (2) may withdraw that notice at any time before the determination of the application by giving notice in writing to his commanding officer who shall forward it to the court administration officer.

(4) Where a person gives notice of an application in accordance with paragraph (2), he may at the same time serve on his commanding officer any documents he considers relevant to the determination of the application.

(5) On receipt of a notice of application under paragraph (2), the commanding officer shall as soon as reasonably practicable—

- (a) forward it to the court administration officer together with any documents served on him under paragraph (4); and
- (b) serve on the prosecuting authority copies of any documents forwarded under subparagraph (a) together with the documents and any other material referred to in paragraphs (i) to (v) of rule 8(3)(b).

### **Determination of applications**

10.—(1) The powers of the court to determine an application shall be exercised by a judge advocate sitting alone; and, except as provided by the following provisions of this rule, an application shall be determined without a hearing.

(2) There is to be a hearing for the purposes of determining an application if—

- (a) the applicant requests a hearing in accordance with paragraph (4); or
- (b) the judge advocate specified to determine the application so directs.

(3) Where the judge advocate is minded to refuse an application without a hearing, the court administration officer shall give notice in writing of that fact to the applicant.

(4) On receipt of a notice under paragraph (3), the applicant may request a hearing of the application by giving notice in writing to the court administration officer before the end of the period of 14 days beginning with the date of the notice under paragraph (3).

(5) Where there is a requirement for a hearing, the court administration officer shall—

- (a) determine the time and place of the hearing; and
- (b) serve notice of those matters on the applicant and the prosecuting authority.

(6) If, having notified a person in accordance with paragraph (5), the court administration officer changes the time or place of the hearing, he shall notify the person of the change.

### **Notice of decision of the judge advocate on an application**

11.—(1) The judge advocate shall give notice in writing of his decision on an application to the court administration officer who shall serve a copy of it on—

- (a) the applicant;
- (b) the applicant's commanding officer;
- (c) the prosecuting authority;

(2) Where the judge advocate refuses an application, he shall set out in writing his reasons for doing so, and those reasons shall be included in the notice given in accordance with paragraph (1).

### **Application by the authority carrying out a review for leave to refer a case to the summary appeal court**

**12.**—(1) This rule and rule 13 shall have effect in relation to a reference made under section 115(5A) or (5B) of the Act<sup>(1)</sup> by the authority carrying out a review under that section.

(2) The authority shall give notice to the court administration officer in the form set out in Schedule 2 that he is applying for the leave of the summary appeal court to refer a finding recorded, or punishment awarded, for the court to consider or reconsider as on an appeal.

(3) The authority may withdraw the notice given under paragraph (2) at any time before the determination of the application for leave by giving notice in writing to the court administration officer.

(4) Where the authority gives notice in accordance with paragraph (2), he shall at the same time serve on the court administration officer any documents he considers relevant to the determination of the application.

(5) Where notice is given in accordance with paragraph (2) or (3), the court administration officer shall as soon as reasonably practicable notify—

- (a) the Judge Advocate General;
- (b) the person to whom the application relates;
- (c) that person's commanding officer; and
- (d) the prosecuting authority,

of that fact.

(6) On being notified under paragraph (5)(c) of the fact that the authority is applying for the leave of the court under section 115(5A) or (5B) of the Act, the commanding officer of the person to whom the application relates shall serve on the prosecuting authority the documents and any other material referred to in paragraphs (i) to (v) of rule 8(3)(b).

### **Determination of application for leave by the authority carrying out a review**

**13.**—(1) The powers of the court under section 115(5A) or (5B) of the Act shall be exercised by a judge advocate sitting alone.

(2) The judge advocate may determine an application for leave made under section 115(5A) or (5B) of the Act without a hearing.

(3) Where the judge advocate directs the court administration officer to convene a hearing for the purposes of determining the application, the court administration officer shall—

- (a) determine the time and place of the hearing; and
- (b) serve notice of those matters on—
  - (i) the authority making the application;
  - (ii) the person to whom the application relates;

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(1) Section 115 was substituted by the Armed Forces Act 1996 (c. 46), Schedule 5, paragraph 7. Subsections (5A) and (5B) of section 115 were inserted by the Armed Forces Discipline Act 2000 (c. 4), Schedule 3, paragraph 19(4).

- (iii) that person's commanding officer; and
- (iv) the prosecuting authority.

(4) If, having notified a person in accordance with paragraph (3), the court administration officer changes the time or place of the hearing, he shall notify the person of the change.

(5) The judge advocate shall give notice in writing of his decision to the court administration officer who shall serve a copy of it on the persons listed in paragraph (3)(b).

(6) Where the judge advocate refuses an application for leave made under section 115(5A) or (5B) of the Act, he shall set out in writing his reasons for doing so, and those reasons shall be included in the notice given in accordance with paragraph (5).

(7) For the purposes of these Rules, a reference to the court under section 115(5A) or (5B) of the Act shall be treated as an appeal brought by the person to whom the finding or punishment relates against the finding or punishment.

### **Hearings of applications**

**14.**—(1) Subject to rule 5, the court shall sit in open court when hearing an application in accordance with rule 10 or 13.

(2) The applicant shall be entitled to address the court, and for that purpose to be legally represented, at any hearing held in accordance with rule 10.

(3) The authority making the application and the person to whom the application relates shall be entitled to address the court, and for that purpose to be legally represented, at any hearing held in accordance with rule 13.

(4) The judge advocate may give leave for the prosecuting authority to address the court at any hearing held in accordance with rule 10 or 13.

(5) For the purposes of this rule, any legal representation shall be by a person who has one or more of the qualifications listed in rule 7.

### **Abandonment of appeals**

**15.**—(1) A person may abandon an appeal under section 83ZE of the Act (whether wholly or in part) at any time prior to its determination.

(2) Where an appellant exercises the right conferred on him by paragraph (1) prior to the hearing of the appeal, he shall do so by serving notice on the court administration officer in the form set out in Schedule 2 (referred to in this rule as "the notice of abandonment").

(3) The court administration officer shall serve a copy of the notice of abandonment on—

- (a) the prosecuting authority;
- (b) the appellant's commanding officer;
- (c) the Judge Advocate General; and,
- (d) where the appeal falls to be considered by the court on a reference made under section 115(5A) or (5B) of the Act by the authority carrying out a review under that section, that authority.

(4) Where the notice of abandonment relates to the whole of any appeal under section 83ZE of the Act, the appeal shall be treated for the purposes of section 118ZA(3)(b) and (4) of the Act (commencement of sentences of detention) as having been determined on the date on which the copy of the notice is received by the appellant's commanding officer in accordance with paragraph (3).

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(2) Section 118ZA was inserted by the Armed Forces Discipline Act 2000 (c. 4), Schedule 3, paragraph 9.

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

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