

SCHEDULE 4

Rule 30

WITNESS SUMMONS

1.—(1) This paragraph applies where the court is satisfied that—

- (a) a person is likely to be able to give evidence likely to be material evidence, or produce any document or thing likely to be material evidence, in proceedings on an appeal under section 83ZE of the Act; and
- (b) the person will not voluntarily attend as a witness or will not voluntarily produce the document or thing.

(2) In such a case the court shall, subject to the following provisions of this paragraph, issue a summons (a witness summons) directed to the person concerned and requiring him to—

- (a) attend before the court at the time and place stated in the summons, and
- (b) give evidence or produce the document or thing.

(3) A witness summons issued under this paragraph shall be in the form specified in the Appendix to this Schedule.

(4) A witness summons may only be issued under this paragraph on an application made in accordance with paragraph 3; and the court may refuse to issue the summons if any requirement relating to the application is not fulfilled.

(5) Until the hearing of the appeal begins, the jurisdiction of the court in relation to its functions under this Schedule shall be exercised by a judge advocate sitting alone.

(6) An application for a witness summons may be made by the appellant or the respondent.

2. A witness summons which is issued under paragraph 1 and which requires a person to produce a document or thing as mentioned in paragraph 1(2) may also require him to produce the document or thing—

- (a) at a place stated in the summons, and
- (b) at a time which is so stated and precedes that stated under paragraph 1(2),

for inspection by the person applying for the summons.

3.—(1) Subject to sub-paragraph (2), an application for a witness summons shall be made in writing to the court administration officer and shall—

- (a) contain a brief description of the stipulated evidence, document or thing;
- (b) set out the reasons why the applicant considers that the stipulated evidence, document or thing is likely to be material;
- (c) specify the grounds for believing that the directed person is likely to be able to give the stipulated evidence or to produce the stipulated document or thing;
- (d) set out the reasons why the applicant considers that the directed person will not voluntarily attend as a witness or produce the stipulated document or thing;
- (e) if the witness summons is proposed to require the directed person to produce a document or thing, state whether the applicant seeks a requirement also to be imposed under paragraph 2 and, if such a requirement is sought, specify the place and time at which the applicant wishes the document or thing to be produced.

(2) In the case of an application for a witness summons which is made during the hearing of the appeal or at a preliminary hearing, such application shall be made orally to the court, or (as the case may be) the judge advocate, who shall determine the application and give such directions as appear to be appropriate.

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(3) In this Schedule—

- (a) references to any stipulated evidence, document or thing are to any evidence, document or thing whose giving or production is proposed to be required by the witness summons; and
- (b) references to the directed person are to the person to whom the witness summons is proposed to be directed.

4.—(1) If—

- (a) a document or thing is produced in pursuance of a requirement imposed by a witness summons under paragraph 2,
- (b) the person applying for the summons concludes that a requirement imposed by the summons under paragraph 1(2) is no longer needed, and
- (c) he makes an application to the court in accordance with paragraph 5 that the summons shall be of no further effect,

the court may direct accordingly.

(2) If a direction is given under this paragraph the court administration officer shall notify the person to whom the witness summons is directed as to the effect of the direction.

5.—(1) An application for a direction under paragraph 4 that a witness summons shall be of no further effect shall be made in writing to the court administration officer as soon as reasonably practicable after the document or thing has been produced for inspection in pursuance of a requirement imposed by the witness summons under paragraph 2.

(2) The application shall state that the applicant concludes that the requirement imposed by the witness summons under paragraph 1(2) is no longer needed.

6.—(1) A person to whom a witness summons issued under paragraph 1 is directed may apply to the court for a direction that the summons shall be of no effect.

(2) The court may make such a direction if it is satisfied that the person concerned cannot give any evidence likely to be material evidence or, as the case may be, produce any document or thing likely to be material evidence or that for any other reason the witness summons should be of no effect.

(3) The court may refuse to make a direction if any requirement relating to the making of an application for a direction under this paragraph is not fulfilled.

7.—(1) Subject to sub-paragraph (5), an application for a direction under paragraph 6 shall be made in writing to the court administration officer and shall set out—

- (a) the reasons why the applicant considers that he cannot give any evidence likely to be material evidence or, as the case may be, produce any document or thing likely to be material evidence; or
- (b) where there are any other reasons why the applicant considers that the witness summons should be of no effect, those reasons.

(2) On receiving the application, the court administration officer shall serve notice of the application on the person on whose application the witness summons was issued.

(3) The court shall not grant or, as the case may be, refuse the application unless the applicant and the person on whose application the witness summons has been issued have been given an opportunity of making representations, whether at a hearing or (where they agree to do so) in writing without a hearing.

(4) In a case where the witness summons to which the application relates imposed a requirement to produce any document or thing, then if—

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- (a) the applicant can produce that document or thing, but
- (b) he seeks to satisfy the court that the document or thing is not likely to be material evidence or that for some other reason it should not be produced,

the applicant must, unless the court directs otherwise, arrange for the document or thing to be available at the hearing of the application.

(5) In the case of an application which is made during the hearing of the appeal or at a preliminary hearing, such application shall be made orally to the court, or (as the case may be) the judge advocate, who shall determine the application and give such directions as appear to be appropriate.

(6) Where the application is made otherwise than at the hearing of the appeal or at a preliminary hearing, the court administration officer shall notify the applicant and the person on whose application the witness summons was issued of the decision of the court in relation to the application.

Appendix to Schedule 4—Form of Witness Summons

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To:

Of:

Summons to Witness

(Delete as appropriate)*

PROCEEDINGS BEFORE THE SUMMARY APPEAL COURT

Name of the person bringing the appeal under section 83ZE of the Air Force Act 1955:

You are hereby summoned to appear on *(date)* at *(time)*
at *(place)*

to *give evidence
*produce the document[s] or thing[s] specified in the Schedule hereto

* at a preliminary hearing to be held in connection with the proceedings on the appeal
* at the hearing of the appeal

brought by the above-named person.

***You are also hereby summoned** to appear on *(date)*.....at *(time)*.....
at *(place)*..... to produce the document[s] or thing[s] specified in Part II of the Schedule hereto.

You will wish to note that:

(Where the witness is subject to service law) ***Failure to comply with this summons is an offence under:**

***section 57 of the Air Force Act 1957 as amended by paragraph 2 of Schedule 3 to the Armed Forces Discipline Act 2000;**

***section 38 of the Naval Discipline Act 1957 as amended by paragraph 3 of Schedule 3 to the Armed Forces Discipline Act 2000.**

***section 57 of the Army Act 1955 as amended by paragraph 1 of Schedule 3 to the Armed Forces Discipline Act 2000;**

(Where the witness is not subject to air-force law) ***Failure to comply with this summons may render you liable to punishment for contempt of court by virtue of section 101 of the Air Force Act 1955 as amended by paragraph 6 of Schedule 3 to the Armed Forces Discipline Act 2000.**

(signed)

Judge Advocate

(date)

**SCHEDULE OF DOCUMENTS OR THINGS
TO BE PRODUCED**

Part I—Documents etc. to be produced only at the hearing

Part II—Documents etc. to be produced prior to as well as at the hearing