

2004 No. 1951

DEFENCE

**The Summary Appeal Court (Air Force) (Amendment) Rules
2004**

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| <i>Made</i> - - - - | <i>22nd July 2004</i> |
| <i>Laid before Parliament</i> | <i>29th July 2004</i> |
| <i>Coming into force</i> - - | <i>19th August 2004</i> |

The Secretary of State, in exercise of the powers conferred upon him by sections 83ZC(2) and 83ZJ of the Air Force Act 1955(a), hereby makes the following Rules:

Citation and commencement

1. These Rules may be cited as the Summary Appeal Court (Air Force) (Amendment) Rules 2004 and shall come into force on 19th August 2004.

Interpretation

2. In these Rules “the principal Rules” means the Summary Appeal Court (Air Force) Rules 2000(b).

Definition of “commanding officer”

3. In rule 2(3) of the principal Rules, for “military” (at each of its three appearances) there is substituted “air-force”.

Determination of applications

4.—(1) Rule 10 of the principal Rules is amended as follows.

(2) In paragraph (2), after “determining an application” there is inserted “under section 83ZE(3) of the Act”.

(3) In paragraph (3), after “is minded to refuse” there is inserted “such”.

Officers qualified for membership of the summary appeal court

5.—(1) Rule 23 of the principal Rules is amended as follows.

(2) In paragraph (1)—

(a) for “83ZC” there is substituted “83ZC(3)”;

(b) for “that section” there is substituted “section 83ZC”; and

(a) 1955 c. 19; sections 83ZA to 83ZL were inserted by sections 14 to 24 of the Armed Forces Discipline Act 2000 (c. 4).
(b) S.I. 2000/2372.

(c) for “military officers so qualified” there is substituted “persons belonging to Her Majesty’s air forces and qualified for membership of the court”.

(3) After paragraph (2) there is inserted—

“(2A) Subject to section 83ZC(3) of the Act and rule 24, an officer shall be qualified under section 83ZC for membership of the court for the purposes of hearing an appeal if—

- (a) immediately before receiving his commission, he was a warrant officer in any of Her Majesty’s naval, military or air forces, and
- (b) the appellant is of a rank below that which the officer held immediately before he received his commission, and
- (c) if the officer is a naval or military officer, the court administration officer considers that the necessary number of persons belonging to Her Majesty’s air forces and qualified for membership of the court is not (with due regard to the public service) available to sit as members of the court for the purposes of that hearing.”.

Officers who are ineligible to hear particular appeals

6.—(1) Rule 24 of the principal Rules is amended as follows.

(2) In paragraph (c), after “section 76(5)” there is inserted “, 76AA(3) or 76B(4)”.

(3) In paragraph (d), for “he approved or otherwise consented to any punishment awarded” there is substituted “he was asked to consent to the award of any punishment”.

(4) In paragraph (f), after “to which the appeal relates” there is inserted—

“; or

(g) he serves under the command of any officer falling within paragraphs (a) to (d)”.

Waiting member

7. In rule 25 of the principal Rules, after “section 83ZC of the Act” there is inserted “, an order made by virtue of section 20 of the Armed Forces Act 2001”.

Information to be provided by the respondent

8.—(1) Rule 60 of the principal Rules is amended as follows.

(2) At the end of paragraph (2)(d), “and” is omitted.

(3) In paragraph (2)(e), after “Northern Ireland” there is inserted—

“; and

(f) the appellant’s rate of pay, including any allowances to which he is entitled and any deductions to which he is liable”.

(4) After paragraph (2) there is inserted—

“(2A) If on dealing with the charge summarily a punishment under section 76C(3)(a) or (10) of the Act was awarded, the information to be provided under paragraph (2)(f) shall include—

- (a) details of the appellant’s rate of pay immediately before and after that punishment took effect, and
- (b) if there is another such punishment which the court could award, details of what his rate of pay would be if the court awarded that other punishment.”.

Transitional provisions

9.—(1) Rule 4 does not preclude a hearing of an application under section 83ZE(2) of the Air Force Act 1955 if the applicant has requested such a hearing under rule 10(4) of the principal Rules before these Rules come into force.

(2) Rules 5, 6 and 8 apply only to hearings which begin after these Rules come into force.

22nd July 2004

Ivor Caplin
Parliamentary Under-Secretary of State
Ministry of Defence

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Summary Appeal Court (Air Force) Rules 2000 (“the principal Rules”). The principal Rules govern the procedure of the summary appeal court established by section 83ZA of the Air Force Act 1955, as inserted by the Armed Forces Discipline Act 2000, to hear appeals from the Royal Air Force’s system of summary discipline.

Rule 3 corrects a drafting error in rule 2(3) of the principal Rules.

Rule 10 of the principal Rules prescribes the circumstances in which there is to be a hearing of an application. By virtue of rule 9(1) of the principal Rules, this means either an application to extend the period of time for bringing an appeal or an application for leave to bring an appeal out of time. Rule 4 of these Rules amends rule 10 of the principal Rules so that there can be a hearing only in the latter case.

Under section 83ZC(1) of the Air Force Act 1955, an air-force officer is qualified for membership of the court if he has held a commission for at least two years. Under rule 23 of the principal Rules, a naval or military officer who has held a commission for two years is also qualified if not enough qualified “military” (an error for “air-force”) officers are available. Under rule 5 of these Rules, an air-force officer is qualified (despite having held a commission for less than two years) if immediately before receiving his commission he was a warrant officer of higher rank than the appellant; and a naval or military officer who was previously a warrant officer is similarly qualified, subject to the same condition, if not enough qualified air-force personnel are available.

Rule 6 amends rule 24 of the principal Rules so as to extend the circumstances in which an officer is ineligible to sit as a member of the court for the purposes of a particular appeal. It makes him ineligible if he considered the case in the role of higher authority (irrespective of either the procedural route by which it reached him or his decision upon it), or if he serves under the command of an officer who dealt with the case.

Rule 7 makes a warrant officer eligible to be nominated as a reserve member of the court under rule 25 of the principal Rules, if he is qualified for membership of the court.

Rule 8 amends rule 60 of the principal Rules so as to require the prosecuting authority to provide the court with information about the appellant’s rate of pay. Where the original punishment included forfeiture of seniority or reduction in rank, this includes information about how his pay would be affected if the court upheld that punishment or substituted some lesser forfeiture or reduction.

Rule 9 provides for transitional cases.

These Rules do not impose any costs on business.

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