
STATUTORY INSTRUMENTS

2024 No. 619

**The Armed Forces (Appeals Against
Review of Sentence) Regulations 2024**

Part 2

**Appeals from the Court Martial under section 304D
or 304E of the Armed Forces Act 2006**

Chapter 1

Initiating appeals

Application of these Regulations

3. These Regulations apply to appeals against review of sentence, brought under sections 304D(8) or (9) (review of sentence following offer of assistance) or 304E(7) or (8) (review of sentence following failure to assist) of the 2006 Act.

Application for leave to appeal

4.—(1) Leave to appeal to the Appeal Court must not be given except on an application made by or on behalf of the appellant and lodged, within the period specified in the Rules, with the registrar.

(2) The application must—

(a) be in the form specified by the Rules;

(b) specify—

(i) the grounds on which leave to appeal is sought, and

(ii) such other particulars, if any, as may be specified in the Rules.

(3) The Appeal Court may extend the period within which an application for leave to appeal must be lodged, whether that period has expired or not.

(4) The Rules may provide that an application which is lodged with a person other than the registrar is to be treated for the purposes of paragraph (1) as having been lodged with the registrar.

(5) A person other than the registrar with whom an application is lodged in accordance with the Rules must—

(a) forward the application to the registrar with as much expedition as practicable, and

(b) if it appears to the person practicable to do so, and in all the circumstances expedient, forward the particulars of the application to the registrar before the registrar receives the application, as will enable the registrar to prepare a copy of it.

Consideration of application by Appeal Court

5. In considering whether or not to give leave to appeal, the Appeal Court must have regard to any opinion expressed by the Judge Advocate General that the case is a fit one for appeal, and if any such expression is so made they may, without more, give leave to appeal.

Detention of offender on appeal to Appeal Court

6.—(1) [This regulation](#) applies where all of the following criteria apply—

- (a) the Court Martial has substituted a lesser sentence in accordance with section 304D(6) of the 2006 Act (the “decision under appeal”);
- (b) the Appeal Court has granted the Director of Service Prosecutions permission to appeal;
- (c) the Director of Service Prosecutions seeks a longer sentence than that substituted by the Court Martial; and
- (d) the effect of the substituted sentence is such that it is likely that the offender will be liable to be released prior to the conclusion of the appeal proceedings.

(2) Where [this regulations](#) applies, the Appeal Court may make one of the following orders—

- (a) an order providing for the detention of the offender so long as the appeal is pending;
- (b) an order directing that, so long as the appeal is pending, the offender is not to be released except on bail.

(3) Where an order under [paragraph \(2\)\(b\)](#) is made, the Appeal Court may grant the offender bail, from the end of the substituted sentence, pending the appeal.

(4) An order under [paragraph \(2\)\(a\)](#) or [\(b\)](#), unless the appeal has previously been disposed of, is to cease to have effect at the expiration of the period for which the offender would have been liable to be detained but for the decision under appeal.

(5) Where an order is made under [this regulation](#) for the detention of a person who, but for the decision under appeal, would be liable to be detained in pursuance of an order or direction under United Kingdom mental health legislation (see [paragraph \(6\)](#))—

- (a) the order must authorise that person’s continued detention in pursuance of that order or direction, and
- (b) the relevant provisions of that legislation with respect to persons liable to be detained under it (including provision as to the renewal of authority for detention and the removal or discharge of patients) apply accordingly.

(6) The legislation referred to in [paragraph \(5\)](#) above is—

- (a) Part III of the Mental Health Act 1983;
- (b) the Mental Health (Care and Treatment) (Scotland) Act 2003⁽¹⁾;
- (c) the Mental Health (Northern Ireland) Order 1986⁽²⁾.

(7) The provisions of the Mental Health Act 1983⁽³⁾ with respect to community treatment orders (within the meaning of that Act) also apply for the purposes of [paragraph \(5\)](#).

(8) The offender is not liable to be detained again as a result of the decision of the Appeal Court on appeal if the Appeal Court has made an order within [paragraph \(2\)\(a\)](#) or [\(b\)](#) but the order has ceased to have effect by virtue of [paragraph \(4\)](#) or the offender has been released or discharged by virtue of [paragraph \(5\)](#).

(1) 2003 asp 13.

(2) S.I. 1986/595 (N.I. 4).

(3) 1983 c. 20.

Chapter 2

Disposal of appeal

Appeals against review of sentence

7.—(1) Where, on a single occasion, the Court Martial passes two or more sentences on an offender, an appeal or application for leave to appeal against a review of any of those sentences is to be treated as an appeal or application in respect of both or all of them.

(2) On appeal against a review of sentence the Appeal Court may quash the sentence to which the appeal relates and pass in substitution for it any sentence that—

- (a) it thinks appropriate, and
- (b) is a sentence that the Court Martial had power to pass in respect of the offence.

(3) But the Appeal Court may not exercise its powers under paragraph (2) to pass a sentence that exceeds—

- (a) if the appeal is made under section 304D(8) or (9) (review of sentence following offer of assistance) of the 2006 Act in relation to a referral under section 304D(4) of that Act, the sentence to which the referral relates, or
- (b) if the appeal is made under section 304E(7) or (8) (review of sentence following failure to assist) of the 2006 Act in relation to a referral under section 304E(2) of that Act, the sentence that the Court Martial would have passed but for the agreement to give assistance.

Terms of sentence passed under [regulation 7](#)

8. Unless the Appeal Court otherwise directs, a sentence passed by it under [regulation 7](#) takes effect from the beginning of the day on which the Court Martial passed sentence.

Chapter 3

General procedural provisions

Right of offender to be present

9.—(1) An offender (whether or not in custody) is entitled to be present at the hearing of the appeal.

(2) Paragraph (1) does not apply to an offender in custody—

- (a) where the appeal is on a ground involving only a question of law,
- (b) on an application for leave to appeal, or
- (c) on any proceedings preliminary to or incidental to an appeal,

unless the Appeal Court gives the offender leave to be present.

Evidence

10.—(1) This regulation applies in relation to an appeal or an application for leave to appeal.

(2) In this regulation “respondent” includes a person who will be a respondent if leave to appeal is granted.

(3) The Appeal Court may—

- (a) order the production of any document, exhibit or other thing connected with the proceedings, the production of which appears to the Appeal Court necessary for the determination of the case;

- (b) order any witness to attend for examination and be examined before the Appeal Court (whether or not the witness was called in the proceedings from which the appeal lies);
 - (c) receive any evidence which was not adduced in the proceedings from which the appeal lies.
- (4) The power conferred by [paragraph \(3\)\(a\)](#) may be exercised so as to require the production of any document, exhibit or other thing mentioned in that paragraph to—
- (a) the Appeal Court;
 - (b) the appellant;
 - (c) the respondent.
- (5) The Appeal Court, in considering whether to receive any evidence, must have regard in particular to—
- (a) whether the evidence appears to the Appeal Court to be capable of belief;
 - (b) whether it appears to the Appeal Court that the evidence may afford any ground for allowing the appeal.
- (6) [Paragraph \(3\)\(c\)](#) applies to any evidence of a witness (including the offender) who is competent but not compellable.
- (7) For the purposes of an appeal or an application for leave to appeal, the Appeal Court may order the examination of any witness whose attendance may be required under [paragraph \(3\)\(b\)](#) to be conducted in accordance with the Rules before—
- (a) any judge of the Appeal Court, or
 - (b) any other person appointed by the Appeal Court for that purpose,
- and allow the admission of any depositions so taken as evidence before the Appeal Court.

Power to call for report by member of the Court Martial

11. The Appeal Court may order the taking of such steps as are required to obtain from any member of the Court Martial in the proceedings from which the appeal lies, a report giving that member's opinion on the case or on any point arising in it, or containing a statement as to any facts of which the ascertainment appears to the Appeal Court to be material for the purpose of determining the case.

Other powers for facilitating the disposal of appeal

12.—(1) Where any question arising on an appeal involves prolonged examination of documents or accounts, or any scientific or local investigation, which cannot in the opinion of the Appeal Court conveniently be conducted before it, the Appeal Court may order the reference of the question, in the manner prescribed by the Rules, for inquiry and report to a special commissioner appointed by it, and act upon the report of the commissioner so far as the Appeal Court thinks fit to adopt it.

(2) The Appeal Court may appoint a person with special expert knowledge to act as assessor to the Appeal Court in any case where it appears to it that such knowledge is required for the proper determination of the case.

(3) Regulations made by the Lord Chancellor may provide for remuneration and travelling and subsistence allowances to be paid out of moneys provided by Parliament to—

- (a) a special commissioner to whom a question is referred under this regulation for an inquiry and report;
- (b) a person appointed as assessor to the Appeal Court.

Chapter 4

Costs

Costs against the Secretary of State

13.—(1) [This regulation](#) applies when the Appeal Court—

- (a) allows an appeal brought by an offender, or
- (b) dismisses an appeal or application for leave to appeal brought by the Director of Service Prosecutions.

(2) Where [this regulation](#) applies, the Appeal Court may, if it thinks fit, direct the payment by the Secretary of State of costs to the offender.

(3) The costs which may under this section be directed to be paid are such sums as appear to the Appeal Court reasonably sufficient to compensate the offender for any expenses properly incurred by the offender in the proceedings (in the Appeal Court and below), subject to [paragraph \(4\)](#), [regulation 14](#) and regulations made under [regulation 18](#).

(4) Where the Appeal Court considers that there are circumstances that make it inappropriate for the offender to recover the whole of the sums mentioned in [paragraph \(3\)](#), a direction under [this regulation](#) must be made for the payment of such lesser sums as it considers just and reasonable.

(5) The Appeal Court must fix the sums to be paid by the Secretary of State in the direction if the Appeal Court considers it appropriate to do so and—

- (a) the offender agrees the sums, or
- (b) [paragraph \(4\)](#) applies.

(6) Where the Appeal Court does not fix the sums to be paid by the Secretary of State in the direction—

- (a) it must describe in the direction any reduction required under [paragraph \(4\)](#), and
- (b) the sums must be fixed by means of a determination made by or on behalf of the Appeal Court in accordance with procedures specified in regulations made by the Lord Chancellor under [regulation 18](#).

Legal costs

14.—(1) The costs which the Appeal Court may direct the Secretary of State to pay under [regulation 13](#) do not include legal costs, except where regulations made by the Lord Chancellor provide otherwise.

(2) Regulations under this regulation may, in particular, include—

- (a) provision for an exception to arise where a determination has been made by a person specified in the regulations,
- (b) provision requiring the Appeal Court, when they direct the payment of a sum that includes a sum in respect of legal costs, to include a statement to that effect in the direction, and
- (c) provision that the Appeal Court may not direct the payment of a sum in respect of legal costs exceeding an amount specified in the regulations.

Costs against offender

15.—(1) Where the Appeal Court dismisses an appeal or an application for leave to appeal by the offender it may, if it thinks fit, order the offender to pay to the Secretary of State the whole or any part of the costs of the appeal, including the costs of copying or transcribing any documents for the use of the Appeal Court.

- (2) An order under this section may be enforced—
- (a) in the same manner as an order for costs made by the criminal division of the Court of Appeal, or
 - (b) if the offender is a member of the regular or reserve forces (as defined by section 374 of the 2006 Act), by making deductions from pay due to the offender.
- (3) The methods of enforcement listed in [paragraph \(2\)](#) may be used separately or in combination.
- (4) Any sums which by virtue of [paragraph \(2\)\(a\)](#) above are recovered from a person by the Secretary of State are to be paid into the Exchequer.

Witnesses' expenses

16.—(1) The Appeal Court may, whether or not it exercises powers under either [regulation 13](#) or [15](#), order the payment out of moneys provided by Parliament of such sums as appear to the Appeal Court reasonably sufficient to compensate any person properly attending to give evidence on appeal under these Regulations or any proceedings preliminary or incidental to the appeal (whether or not that person gives evidence) for the expense, trouble or loss of time properly incurred in or incidental to the person's attendance, subject to [paragraph \(3\)](#) and regulations made under [regulation 18\(1\)\(d\)](#).

(2) The amount of any costs to be paid under this regulation shall be ascertained as soon as practicable by the registrar.

(3) Sums ordered to be paid out of money provided by Parliament under [paragraph \(1\)](#) may not include sums in respect of expert witness costs unless regulations made by the Lord Chancellor provide otherwise.

Offender's expenses

17.—(1) Where an offender who is not in custody appears before the Appeal Court either on the hearing of the appeal or in any preliminary or incidental proceedings, the Appeal Court may direct the Secretary of State to pay the offender the expenses of that appearance.

(2) The expenses which the Appeal Court may direct the Secretary of State to pay under this regulation do not include legal costs, except where regulations made by the Lord Chancellor provide otherwise.

(3) Regulations made under this regulation may, in particular, include—

- (a) provision for an exception to arise where a determination has been made by a person specified in the regulations,
- (b) provision requiring the Appeal Court, when they direct the payment of a sum that includes a sum in respect of legal costs, to include a statement to that effect in the direction, and
- (c) provision that the Appeal Court may not direct the payment of a sum in respect of legal costs exceeding an amount specified in the regulations.

Further provision about costs

18.—(1) The Lord Chancellor may by regulations make provision—

- (a) as to the sums that may be directed or ordered to be paid under [regulations 13](#), [16](#) or [17](#), whether by specifying rates or scales or by making other provision as to the calculation of the sums;
- (b) as to the circumstances in which and conditions under which such sums may be paid or directed or ordered to be paid;
- (c) requiring such sums to be fixed having regard to regulations under paragraphs (a) and (b);

(d) requiring such sums to be calculated in accordance with such regulations (whether or not that results in the fixing of an amount that the Appeal Court considers reasonably sufficient to compensate the person concerned);

(e) as to the review of determinations of sums directed to be paid under [regulation 13](#).

(2) Regulations under this regulation may provide that provision as to the calculation of sums (whether in the form of rates or scales or other provision) may be determined by the Lord Chancellor with the consent of the Treasury.

Regulations under this Chapter

19.—(1) Regulations made under [regulations 13 to 18](#) may, in particular—

(a) make different provision in relation to different cases and different classes of case, including different provision in relation to different expenses, trouble and loss, different directions and order and different areas;

(b) make different provision in relation to the fixing of a sum in a direction or order and the fixing of a sum by means of a determination.

(2) A power to make regulations under [regulations 13 to 18](#) is exercisable by statutory instrument.

(3) A statutory instrument containing regulations under [regulations 13 to 18](#) is subject to annulment in pursuance of a resolution of either House of Parliament, subject to [paragraph \(4\)](#).

(4) A statutory instrument containing (whether alone or with any other provision) regulations under [regulations 14, 16 or 17](#) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

Chapter 5

Supplementary

Powers under [Part 2](#) that are exercisable by a single judge

20.—(1) The powers specified in [paragraph \(2\)](#) may be exercised by any judge of the Appeal Court in the same manner as they may be exercised by the Appeal Court and subject to the same provisions.

(2) The following powers of the Appeal Court are specified for the purposes of [paragraph \(1\)](#)—

(a) to give leave to appeal;

(b) to extend the period within which an application for leave to appeal must be lodged;

(c) to allow an offender to be present at any proceedings;

(d) to order witnesses to attend for examination;

(e) to make an order under [regulation 15](#) for the payment of costs;

(f) to make orders under [regulation 10\(3\)\(a\)](#) (an order for the production of any document, etc).

(3) If a judge refuses an application on the part of a party to the proceedings to exercise in that party's favour any of the powers mentioned in [paragraph \(2\)](#) other than that under [paragraph 2\(e\)](#) (power to make an order for payment of costs), that party, upon making a requisition in that behalf within the prescribed period and in the prescribed form and manner is to be entitled to have the application determined by the Appeal Court as duly constituted for the purpose in accordance with section 5 of the 1968 Act.

Power which may be exercised by the registrar

21.—(1) The powers specified in [paragraph \(2\)](#) may be exercised by the registrar in the same manner as they may be exercised by the Appeal Court and subject to the same restrictions.

(2) The following powers of the Appeal Court are specified for the purposes of [paragraph \(1\)](#)—

- (a) to extend the time within which notice of appeal or of application for leave to appeal may be given;
- (b) to order a witness to attend for examination;
- (c) to make orders under [regulation 10\(3\)\(a\)](#) (an order for the production of any document, etc).

(3) If the registrar refuses an application on the part of a party to exercise in that party's favour any power specified in [paragraph \(2\)](#), that party is to be entitled to have the application determined by any judge of the Appeal Court.

Procedural directions: powers of single judge and registrar

22.—(1) The power of the Appeal Court to determine an application for procedural directions may be exercised by—

- (a) a judge of the Appeal Court, or
- (b) the registrar.

(2) In this regulation, “procedural directions” means directions for the efficient and effective preparation of—

- (a) an application for leave to appeal, or
- (b) an appeal

under section 304D or 304E of the 2006 Act.

(3) A judge of the Appeal Court may give such procedural directions as the judge thinks fit—

- (a) when acting under [paragraph \(1\)](#);
- (b) on a reference from the registrar;
- (c) on the judge's own motion.

(4) The registrar may give such procedural directions as the registrar thinks fit—

- (a) when acting under [paragraph \(1\)](#);
- (b) on the registrar's own motion.

Appeals against procedural directions

23.—(1) [Paragraph \(2\)](#) applies if the registrar gives, or refuses to give, procedural directions within the meaning of [regulation 22](#).

(2) A judge of the Appeal Court may, on an application to the judge under [paragraph \(3\)](#)—

- (a) confirm, set aside or vary any procedural directions given by the registrar;
- (b) give such procedural directions as the judge thinks fit.

(3) An application under this regulation may be made by—

- (a) an offender, or
- (b) the Director of Service Prosecutions.

Provision of record of proceedings of the Court Martial

24. In the case of every appeal or application for leave to appeal to the Appeal Court against review of sentence, the Judge Advocate General must provide the registrar, in accordance with the Rules, with a record of the proceedings of the Court Martial.

Defence of appeals

25. It is the duty of the Director of Service Prosecutions to conduct the defence of any appeal brought by an offender under section 304D (review of sentence following offer of assistance) or 304E (review of sentence following failure to assist) of the 2006 Act.