STATUTORY INSTRUMENTS

2024 No. 1060

COURT MARTIAL (APPEALS)

The Court Martial Appeal Court (Amendment) Rules 2024

Made - - - -	*23rd October 2024*
Laid before Parliament	*28th October 2024*
Coming into force - -	*20th November 2024*

The Lady Chief Justice, with the agreement of the Lord Chancellor, makes these Rules in exercise of the powers conferred by section 49 of the Court Martial Appeals Act 1968(**a**), including that section as extended by section 163(9) of the Armed Forces Act 2006(**b**), and regulation 39 of the Armed Forces (Appeals Against Review of Sentence) Regulations 2024(**c**).

Citation, commencement and extent

1.—(1) These Rules may be cited as the Court Martial Appeal Court (Amendment) Rules 2024.

(2) These Rules come into force on 20th November 2024.

(3) These Rules extend to England and Wales, Scotland, Northern Ireland, the Isle of Man and the British overseas territories (except Gibraltar).

Amendments to the Court Martial Appeal Court Rules 2009

2. The Court Martial Appeal Court Rules 2009(**d**) are amended as follows.

Amendment to rule 2 (interpretation)

3. In rule 2 (interpretation)—

(a) in the appropriate places insert—

> ""the 2024 Regulations" means the Armed Forces (Appeals Against Review of Sentence) Regulations 2024;";
>
> ""offender" means a person on whom the Court Martial has passed a sentence;";

(b) in the definition of "person to whom proceedings relate"—

(**a**) 1968 c. 20. Section 49 was amended and partly repealed by the Constitutional Reform Act 2005 (c. 4) (the "2005 Act"), section 12(2) and Schedule 1, Part 2, paragraph 9 and by section 146 and Schedule 18, Part 1. The amendments provide for rules under section 49 to be made in accordance with Part 1 of Schedule 1 to the 2005 Act.

(**b**) 2006 c. 52. Section 163(3)(i) of the Armed Forces Act 2006 provides that Court Martial rules may make provision for appeals against certain orders or rulings. Section 163(9) of that Act enables Court Martial rules to confer jurisdiction on the Court Martial Appeal Court and confirms that rules under section 49 of the 1968 Act may make provision about the powers of the Court Martial Appeal Court in relation to appeals made by virtue of section 163(3)(i).

(**c**) S.I. 2024/619.

(**d**) S.I. 2009/2657, amended by S.I. 2015/1814; there is another amending instrument that is not relevant.

(i) in paragraphs (a) and (b), after "defendant" insert "or offender ";

(ii) after paragraph (h) insert— ";

(i) with respect to an appeal under section 304D or 304E of the 2006 Act, the offender";

(c) in the definition of "preliminary proceedings", in paragraph (b)—

(i) after "purpose of", insert "—";

(ii) "trial proceedings against a defendant;" becomes sub-paragraph (i);

(iii) after that sub-paragraph, insert—

"(ii) proceedings under section 304D or 304E of the 2006 Act;".

Amendment to rule 26 (reference of a question to a special commissioner)

4. In rule 26(1) (reference of a question to a special commissioner), after "section 30(1)" insert "of the 1968 Act or regulation 12(1) of the 2024 Regulations".

Amendment to rule 32 (service of appeal notice)

5. In rule 32(2)(c) (service of appeal notice), after "defendant" insert "or offender".

Amendment to the heading of Part 7 (appeals against conviction, sentence, finding of insanity, unfitness to plead or hospital order)

6. In the heading of Part 7 , after "sentence," insert "review of sentence,".

Amendments to rule 45 (applicability of Part 7)

7. In rule 45 (applicability of Part 7)—

(a) after "or 25A" in both places it occurs, insert "of the 1968 Act or under section 304D or 304E of the 2006 Act";

(b) in paragraph (1), for "an individual" substitute "a party to the proceedings";

(c) in paragraph (3), for "individual" substitute "party to the proceedings".

Amendments to rule 46 (application for permission to appeal)

8. In rule 46 (application for permission to appeal), in paragraph (1)(c)—

(a) at the end of paragraph (ii), omit "or";

(b) after paragraph (ii) insert—

"(iia) decision on review of sentence under section 304D or 304E of the 2006 Act, or".

Amendments to rule 47 (prescribed period)

9. In rule 47 (prescribed period)—

(a) after "section 9(1)", insert "of the 1968 Act or regulation 4(1)(a) of the 2024 Regulations";

(b) at the end of paragraph (b), omit "or";

(c) after paragraph (b), insert—

"(ba) decision on review of sentence under section 304D or 304E of the 2006 Act, or".

Amendments to rule 52 (notification)

10. In rule 52 (notification)—

(a) after "or 36B" insert "of the 1968 Act or under regulation 20, 21 or 22 of the 2024 Regulations";

(b) for "appellant and the Director" substitute "parties to the proceedings".

Amendments to rule 53 (further applications to a judge or to the court: additional rules)

11. In rule 53 (further applications to a judge or to the court: additional rules)—

(a) at the end of paragraph (1)(a), omit "or";

(b) at the end of paragraph (1)(b) insert "or

(c) a party to proceedings under section 304D or 304E of the 2006—

(i) wants to make a requisition, in accordance with regulation 20(3) (powers under Part 2 that are exercisable by a single judge) of the 2024 Regulations, to have an application determined by the court as duly constituted,

(ii) renews, under regulation 21(3), an application for the exercise of a power conferred by regulation 21 (powers which may be exercised by the registrar) of the 2024 Regulations, or

(iii) makes an application under regulation 23(3) (appeals against procedural directions) of the 2024 Regulations,";

(c) in paragraph (3), after the words "section 36(2)", insert "of the 1968 Act or regulation 20(3) of the 2024 Regulations";

(d) in paragraph (4), in both places they occur, for the words "appellant or the Director" substitute "party";

(e) in paragraph (5) after "appellant" insert ", or the offender, as the case may be,";

(f) in paragraph (7), after the words "section 36(2)", insert "of the 1968 Act, or a party to the proceedings makes an application under regulations 20(3) of the 2024 Regulations,".

Amendments to rule 63 (applications in relation to the Supreme Court)

12. In rule 63 (applications in relation to the Supreme Court)—

(a) in paragraph (1)—

(i) in paragraph (a), after "section 39(2)" insert "of the 1968 Act or regulation 26(2) of the 2024 Regulations";

(ii) in paragraph (b), after "section 40(2)" insert "of the 1968 Act or regulation 27(4) of the 2024 Regulations";

(b) in paragraph (3)(d), after "section 40(2)" insert "of the 1968 Act or regulation 27(4) of the 2024 Regulations";

(c) in paragraph (5), after "section 48", insert "of the 1968 Act or regulation 37 of the 2024 Regulations".

Amendment to rule 66 (register and cause list)

13. In rule 66 (register and cause list), after "under the 1968 Act" insert "or under section 304D or 304E of the 2006 Act".

Amendment to rule 68 (enforcement of duties)

14. For rule 68 (enforcement of duties), substitute—

"68. The performance of any duty imposed upon any person by or under—

(a) the 1968 Act,

(b) section 304D or 304E of the 2006 Act,

(c) the 2024 Regulations, or

(d) these Rules,

may be enforced by order of the court.".

Amendment to Schedule 2

15. In Schedule 2, in the form, after the entry "Permission to appeal against sentence: Yes/No?" insert—

"Permission to appeal against review of sentence: Yes/No?"

Amendments to Schedule 3

16. Schedule 3 is amended as follows—

(a) in the heading, after the words "section 36(2)", insert "of the 1968 Act or regulation 20(3) of the 2024 Regulations";

(b) in the form after the words "section 36(2)", insert "of the 1968 Act or regulation 20(3) of the 2024 Regulations".

Sue Carr
23rd October 2024 Lady Chief Justice

I agree to the making of these Rules, which are to come into force on 20th November 2024

Heidi Alexander
Minister of State
22nd October 2024 Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Court Martial Appeal Court Rules 2009 (S.I. 2009/2657) (the "CMAC Rules"), so that they apply to appeals against review of sentence under section 304D(8) or (9) (review of sentence following offer of assistance) or section 304E(7) or (8) (review of sentence following failure to assist) of the Armed Forces Act 2006 (c. 52) (the "2006 Act"). Other provisions governing appeals against review of sentence are set out in the Armed Forces (Appeals Against Review of Sentence) Regulations 2024 (S.I. 2024/619) (the "2024 Regulations").

Rule 3 amends rule 2 (interpretation) of the CMAC Rules, so as to insert two new definitions: one defining "the 2024 Regulations"; and one defining an "offender" as meaning a person on whom the Court Martial has passed a sentence. The definition of "person to whom proceedings relate" is amended so that it includes the "offender", when applied to appeals against review of sentence. The definition of "preliminary proceedings" is amended so that it includes proceedings held for the purpose of giving any direction or making any order or ruling for the purpose of appeals against review of sentence.

Rule 4 amends rule 26 (reference of a question to a special commissioner) so that it applies to an order made under regulation 12(1) of the 2024 Regulations as it applies to an order under section 30(1) of the Court Martial Appeals Act 1968 (c. 20) (the "1968 Act").

Rule 5 amends rule 32(2)(c) (service of appeal notice) so that it applies to an offender in appeals against review of sentence proceedings under the 2006 Act as it applies to a defendant in an appeal under the 1968 Act.

Rule 6 amends the heading of Part 6, to reflect the amendments made by rules 7 to 9. Rule 7 amends rule 45 (applicability of this Part) so that Part 7 of the CMAC Rules applies to appeals against review of sentence under the 2006 Act as it applies to appeals under the 1968 Act. Rule 8 amends rule 46 (application for permission to appeal) so that, where the appellant wishes to appeal against a decision on review of sentence, the appeal notice must state and give the date of the decision under section 304D or 304E of the 2006 Act. Rule 9 amends rule 47 (prescribed period) so that the time limit for lodging an appeal notice applies to appeals against review of sentence under the 2006 Act as it applies to appeals under the 1968 Act.

Rules 10 and 11 amend rules 52 (notification) and 53 (further applications to a judge or to the court: additional rules) so that the provisions, in Part 8 of the CMAC Rules, governing appeals from a decision of the registrar or a single judge apply to decisions of the registrar or a single judge made under the 2024 Regulations as they apply to equivalent decisions made under the 1968 Act.

Rule 12 amends rule 63 (applications in relation to the Supreme Court) so that it applies to applications made under the 2024 Regulations as it applies to applications made under the 1968 Act.

Rule 13 amends rules 66 (register and cause list), so that the obligation for the registrar to keep a record of all cases in which an application for permission to appeal under the 1968 Act is received extends to applications for permission to appeal under the 2024 Regulations.

Rule 14 substitutes the existing text of rule 68 (enforcement of duties) with new text which makes clear that obligations imposed on a person by or under sections 304D and 304E of the 2006 Act

or the 2024 Regulations may be enforced by order of the court in the same way as obligations imposed on a person by or under the 1968 Act or the CMAC Rules.

Rule 15 and 16 amend the Forms in Schedules 2 and 3 to the CMAC Rules so that they apply to appeals under the 2024 Regulations as they apply to appeals under the 1968 Act.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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