STATUTORY INSTRUMENTS

1961 No. 1015

COURTS-MARTIAL (APPEALS)

The Courts-Martial Appeal (Amendment) Rules, 1961

Made - - - -	*29th May*, 1961
Laid before Parliament	*2nd June*, 1961
Coming into Operation	*1st July*, 1961

I, Hubert Lister, Baron Parker of Waddington, Lord Chief Justice of England, in exercise of the powers conferred upon me by the Courts-Martial (Appeals) Act, 1951(a) as extended by paragraph 4 of the First Schedule to the Administration of Justice Act, 1960(b), and the powers conferred upon me by section 13 of the last-mentioned Act, and with the approval of the Lord Chancellor, do hereby make the following Rules:—

1.—(1) These Rules may be cited as the Courts-Martial Appeal (Amendment) Rules, 1961, and shall come into operation on the first day of July, 1961.

(2) The Interpretation Act, 1889(c), shall apply to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.

(3) A Rule or Schedule referred to by number in these Rules means, unless the context otherwise requires, the Rule or Schedule so numbered in the Courts-Martial Appeal Rules, 1952(d).

2. The following definitions shall be inserted after the definition of "Exhibits" in paragraph (1) of Rule 2:—

"'Prisoner of war' means a person protected by the Convention set out in the Third Schedule to the Geneva Conventions Act, 1957(e).

'Prisoner of war court-martial' means a court-martial for the trial of prisoners of war constituted under a Royal Warrant governing the maintenance of discipline among prisoners of war.

'Protecting power' means the power or organisation which is carrying out, in the interests of the power of whose forces a prisoner of war is or was at any material time a member, the duties assigned to protecting powers under the Convention set out in the Third Schedule to the Geneva Conventions Act, 1957."

3. The following words shall be added at the end of paragraph (5) of Rule 4:—

"and

(c) where an applicant for leave to appeal is a prisoner of war who has a protecting power, to inform the registrar in writing of the name of the protecting power, the date on which the protecting power received notice that the applicant's right of appeal has become exercisable and the date on which the applicant received notice that the protecting power had been notified to that effect."

(a) 14 & 15 Geo. 6. c. 46. (b) 8 & 9 Eliz. 2. c. 65. (c) 52 & 53 Vict. c. 63.
(d) S.I. 1952/194 (1952 I, p. 648). (e) 5 & 6 Eliz. 2. c. 52.

4. The following Rule shall be substituted for Rule 6:—

" 6.—(1) The period within which a person convicted by a court-martial, other than a person sentenced to death, must, as a condition precedent to the exercise of his right of appeal, present, under section 3 (2) (*a*) of the Act, to the appropriate authority a petition praying that his conviction be quashed shall be :—

(*a*) in the case of a conviction by a naval court-martial:

(i) 40 days next following that on which the conviction was pronounced, if the court-martial was held in the United Kingdom; and

(ii) 60 days next following that on which the conviction was pronounced, in any other case.

(*b*) in the case of a conviction by an army or air force court-martial (other than a conviction by a prisoner of war court-martial of a prisoner of war who has a protecting power):

(i) 40 days next following that on which the finding of the court-martial was promulgated, if the court-martial was held in the United Kingdom; and

(ii) 60 days next following that on which the finding of the court-martial was promulgated in any other case.

(*c*) In the case of a conviction by a prisoner of war court-martial of a prisoner of war who has a protecting power:

(i) 40 days next following that on which he received notice that the protecting power had been notified of the promulgation of the finding of the court-martial, if the court-martial was held in the United Kingdom; and

(ii) 60 days next following that on which he received such notice, in any other case.

(2) The period at the expiration of which, by virtue of section 3 (2) (*b*) of the Act, a person, not previously notified that his petition has not been granted, becomes entitled to exercise his right of appeal shall be—

(*a*) 40 days next following that on which that person presented his petition, if the court-martial was held in the United Kingdom;

(*b*) 60 days next following that on which he presented his petition, if the court-martial was held outside the United Kingdom.

(3) The period within which an application for leave to appeal to the Court must, under section 4 (1) of the Act, be lodged, shall be 10 days beginning with the day on which the appellant's right to appeal to the Court becomes exercisable:

Provided that, where a prisoner of war who has a protecting power has been convicted by a prisoner of war court-martial, this period shall not expire earlier than 10 days next following that on which the prisoner of war receives, from the officer commanding the prisoner of war camp or other place in which he is detained, notice that the protecting power has been notified that his right of appeal has become exercisable."

5. Rule 8 shall be amended as follows:—

(1) The following sentence shall be added at the end of paragraph (2):—

"Where the appellant is a prisoner of war who has a protecting power, the registrar shall also notify the protecting power of the decision and the appellant of the receipt of notification by the protecting power."

(2) The following proviso shall be added at the end of paragraph (3):—

"Provided that, if the appellant is a prisoner of war who has a protecting power, the said period shall not elapse earlier than 10 days next following that on which the prisoner of war receives, from the officer commanding the prisoner of war camp or other place in which he is detained, notice that the protecting power has been notified in accordance with the last foregoing paragraph."

(3) The following paragraph shall be added and shall stand as paragraph (5):—

"(5) References in this Rule to any of the powers of the Court under section 21 of the Act shall, in relation to applications made after the Court's determination of an appeal, be construed as including references to the powers of the Court mentioned in section 9 (4) of the Administration of Justice Act, 1960, as applied by section 10 of that Act."

6. The following Rule shall be inserted after Rule 17:—

"*Applications in relation to appeals to the House of Lords*

17A.—(1) An application to the Court—

(*a*) for leave to appeal to the House of Lords from a decision of the Court under section 1, as applied by section 10, of the Administration of Justice Act, 1960;

(*b*) to extend by virtue of section 2, as applied by section 10, of the said Act the time for making an application for leave to appeal;

(*c*) to grant legal aid under section 10 of the said Act, as applied by paragraph 3 of the First Schedule to the Administration of Justice Act, 1960; or

(*d*) for leave to be present at the hearing of any application to which this paragraph applies—

shall, unless made orally at the hearing before the Court, be made, with appropriate modifications, in the form prescribed by Rules of Court made under section 18 of the Criminal Appeal Act, 1907(a), as extended by section 9 of the Administration of Justice Act, 1960, for making applications for the like purposes to the Court of Criminal Appeal.

(2) Rules 10, 11, 12, 13, 16 and 17 of these Rules shall apply to the applications mentioned in the preceding paragraph as they apply to applications for leave to appeal to the Court.

(3) Where, in the case of an appeal to the House of Lords under section 13 of the Administration of Justice Act, 1960, from an order or decision of the Court, in the exercise of jurisdiction to punish for contempt of court, the appellant is in custody, the Court, or any Judge thereof acting in exercise of the powers conferred upon him by section 9 (4) as applied by section 10 of the said Act, may, on the application of

(a) 7 Edw. 7. c. 23.

the appellant, order his release on his giving security (whether by recognizance, with or without sureties, or otherwise and for such reasonable sum as the Court may fix) for his appearance, within ten days after the judgment of the House of Lords on the appeal shall have been given, before the Court, unless the order or decision is reversed by that judgment; and the said order for the release of the appellant may be granted subject to the like conditions and other incidents and subject to the like power of variation and revocation as in the case of bail granted by the Court of Criminal Appeal."

7. Rule 18 shall be amended as follows:—

(1) The following paragraph shall be substituted for paragraph (1):—

"(1) On the determination of any appeal to the Court or to the House of Lords or of any application relating thereto, the registrar shall, unless it appears to him unnecessary to do so, give to the appellant and the respondent and, where the appellant or (in the event of an appeal or proposed appeal from the Court) the respondent is in custody, to the person in charge of the place where he is confined, written notice of the determination."

(2) In paragraph (2), after the words "leave to appeal", where they first occur, there shall be inserted the words "to the Court or to the House of Lords".

(3) Where in accordance with this Rule the registrar gives any written notice to a prisoner of war who has a protecting power, he shall also give a copy of the written notice to the protecting power and shall inform him of the date on which the protecting power received that copy.

8. The following Rule shall be substituted for Rule 19:—

"19.—(1) Where any property or money has been ordered to be delivered, restored or paid under section 138 of the Army Act, 1955(a), section 138 of the Air Force Act, 1955(b), or section 76 of the Naval Discipline Act, 1957(c), and the operation of the order—

(*a*) has been suspended under section 138 (9) of either of the two first-mentioned Acts or under section 77 (1) of the Naval Discipline Act, 1957, as the case may be, or

(*b*) has been further suspended under section 7 (1) of the Administration of Justice Act, 1960, as modified by paragraph 2 of the First Schedule thereto,—

then, unless the property or money is in the custody of the registrar, the authority which made the order shall cause the said property or money to be kept in safe custody for any period during which the operation of the order is suspended.

(2) Any person in whose favour or against whom such an order as aforesaid has been made and, with the leave of the Court, any other person shall be entitled to have any representations considered, before the Court makes any order under section 138 (9) (*d*) of the Army Act, 1955, or of the Air Force Act, 1955, or under section 77 (2) of the Naval Discipline Act, 1957."

(a) 3 & 4 Eliz. 2. c. 18. (b) 3 & 4 Eliz. 2. c. 19. (c) 5 & 6 Eliz. 2. c. 53.

9. The following item shall be added at the end of the Second Schedule—

"8. Appellant who is a prisoner of war	The officer commanding the prisoner of war camp or other place in which the prisoner of war is held."

10. The Courts-Martial Appeal (Amendment) Rules, 1954(a) and 1955(b), are hereby revoked.

Dated the 29th day of May, 1961.

Parker of Waddington, C.J.

Approved

Kilmuir, C.

EXPLANATORY NOTE

(This Note is not part of the Rules, but is intended to indicate their general purport.)

These Rules amend the Court-Martial Appeal Rules, 1952—

(*a*) to prescribe the procedure of the Courts-Martial Appeal Court in proceedings preliminary or incidental to an appeal from that Court to the House of Lords under sections 10 and 13 of the Administration of Justice Act, 1960 (Rules 5 (3), 6 and 7). Rule 6 provides that an application to the Courts-Martial Appeal Court for leave to appeal, to extend the time for appealing or for legal aid, or for leave to be present at the hearing of such an application, should, unless made orally at the hearing before the Court, be made, with appropriate modifications, in the form prescribed for making similar applications to the Court of Criminal Appeal;

(*b*) to prescribe the procedure to be followed in the case of prisoners of war who have a protecting power within the meaning of the Geneva Conventions Act, 1957, and who have been convicted by a prisoner of war court-martial (Rules 3, 4, 5 (1) and (2) and 9); and

(*c*) to adapt the provisions relating to the restitution of stolen property to take account of the coming into operation of the Naval Discipline Act, 1957, and the Administration of Justice Act, 1960 (Rule 8).

The Courts-Martial Appeal (Amendment) Rules, 1954 and 1955, are revoked, but Rule 4 re-enacts the substance of the Rules of 1954.

(a) S.I. 1954/1557 (1954 I, p. 544). (b) S.I. 1955/1883 (1955 I, p. 554).