COURTS-MARTIAL (APPEALS)

1952 No. 450 (C. 2)

The Courts-Martial (Appeals) (Commencement) Order, 1952

Made - - - - 10*th March*, 1952

At the Court at Clarence House, the 10th day of March, 1952

Present

The Queen's Most Excellent Majesty in Council

Whereas by section twenty-five of the Courts-Martial (Appeals) Act, 1951(a), it is provided that the provisions of Part I of that Act relating to appeals to the Courts-Martial Appeal Court against convictions by courts-martial and the provisions of that Part of that Act relating to references to that Court, in cases of convictions by courts-martial, of the findings of the courts-martial—

(*a*) shall have effect in relation to convictions by naval courts-martial on or after such date as Her Majesty may by Order in Council appoint in relation to such courts-martial;

(*b*) shall have effect in relation to convictions by army or air force courts-martial the findings whereof are promulgated on or after such date as Her Majesty may by Order in Council appoint in relation to such courts-martial:

Now, therefore, Her Majesty, in pursuance of the said section twenty-five, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered as follows:—

1. The first day of May, nineteen hundred and fifty-two, is hereby appointed for the purposes of the said section twenty-five in relation both to naval courts-martial and to army and air force courts-martial.

2. This Order may be cited as the Courts-Martial (Appeals) (Commencement) Order, 1952.

F. J. Fernau.

1952 No. 194 (L. 1)

The Courts-Martial Appeal Rules, 1952

Made - - - -	1*st February*, 1952
Laid before Parliament	4*th February*, 1952
Coming into Operation	1*st May*, 1952

I, Rayner, Baron Goddard, Lord Chief Justice of England, in exercise of the powers conferred upon me by the Courts-Martial (Appeals) Act, 1951(a), and with the approval of the Lord Chancellor, do hereby make the following Rules:—

Citation and commencement

1. These Rules may be cited as the Courts-Martial Appeal Rules, 1952, and shall come into operation on the first day of May, 1952.

(a) 14 & 15 Geo. 6. c. 46.

Interpretation

2.—(1) In these Rules, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say—

"The Act" means the Courts-Martial (Appeals) Act, 1951.

"Exhibits" means all documents and things which have been produced and used in evidence at a trial by court-martial, whether they are attached to the proceedings of the court-martial or not.

"Respondent" means the authority who under section 12 of the Act has the duty of undertaking the defence of the appeal.

(2) A form referred to by number means the Form so numbered in the First Schedule to these Rules, or a form as near thereto as circumstances permit.

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

Petitions

3. In any of the circumstances specified in the first column of the Second Schedule to these Rules, a petition presented by the appellant to the person specified, in relation to those circumstances, in the second column of that Schedule shall be treated, for the purposes of section 3 (2) of the Act, as having been presented to the appropriate authority.

Applications for leave to appeal and notices

4.—(1) A person desiring to appeal to the Court against his conviction by a court-martial shall make application for leave to appeal in Form 1 and shall answer the questions and comply with the requirements set forth therein.

(2) An application for leave to appeal and any notice required or authorised to be given to the Court under these Rules, other than a notice of abandonment, shall be signed by the appellant or by his representative. A notice of abandonment shall, subject to the provisions of paragraph (2) of Rule 5, be signed by the appellant himself.

(3) An application for leave to appeal and any notice required or authorised to be given to the Court under these Rules shall, subject to the next following paragraph, be addressed to the Registrar of the Courts-Martial Appeal Court, at the Royal Courts of Justice, Strand, London, W.C.2, or such other place as the Lord Chief Justice may, from time to time, direct.

(4) In any of the circumstances specified in the first column of the Second Schedule to these Rules, any application or notice which is required or authorised to be given to the Court under these Rules may be lodged with the person specified, in relation to those circumstances, in the second column of that Schedule.

(5) Where any application or notice is lodged with a person other than the registrar in accordance with the last foregoing paragraph, it shall be the duty of that person—

(*a*) to forward the said application or notice to the registrar with as much expedition as practicable; and

(a) 52 & 53 Vict. c. 63.

(*b*) if it appears to that person that it is practicable to furnish the registrar, before the receipt by him of the application or notice, with such particulars of the application or notice as will enable him to prepare a copy of it, and that in all the circumstances it is expedient so to do, forthwith to furnish him with those particulars.

(6) Where an appellant, or any other person required or authorised to make an application or give any notice for the purposes of these Rules, is unable to write, he may affix his mark thereto, in the presence of a witness who shall attest the same, and thereupon such application or notice shall be deemed to be signed by the appellant.

Abandonment of appeal

5.—(1) An appellant may, at any time after he has made application for leave to appeal, abandon his appeal by giving to the registrar notice of abandonment thereof in Form 3.

(2) Where it is contended that the appellant is insane, a notice of abandonment may be given and signed by the appellant's representative.

Time for presenting petitions and giving notices

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, 90 days next following that on which the conviction was pronounced;

(*b*) in the case of a conviction by an army or air force court-martial, 90 days next following that on which the finding of the court-martial was promulgated.

(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—

(*a*) if the appellant was, at the time of presenting his petition, in the United Kingdom, be 40 days next following that on which he presented his petition;

(*b*) if the appellant was, at the time of presenting his petition, outside the United Kingdom, be 60 days next following that on which he presented his petition.

(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.

Extension of time

7. A notice of application to the Court for an extension of time within which to make application for leave to appeal, shall be in Form 2, and shall either be sent to the registrar with the application for leave to appeal or shall be lodged in accordance with Rule 4 (4), with the application for leave to appeal.

Application to a single Judge

8.—(1) A Judge of the Court, exercising the powers of the Court under section 21 of the Act, may sit wherever convenient.

(2) Where any application has been dealt with by a Judge in exercise of the powers of the Court under section 21 of the Act, the registrar shall notify the appellant of the decision.

(3) The period within which an appellant, if the Judge refuses an application on the part of the appellant to exercise in his favour any of the powers mentioned in paragraphs (*a*) to (*d*) of section 21 of the Act, must under the said section make a requisition to have the application determined by the Court, shall be 10 days next following that on which he receives a notification under the last foregoing paragraph; and the form in which that requisition shall be made shall be that set out in Form 4.

(4) A Judge who has refused an application, in exercise of the powers of the Court under section 21, may sit as a member of the Court determining such application.

Courts-martial proceedings

9.—(1) The registrar, on receipt by him of an application for leave to appeal under the Act, or where a reference is made under section 20 of the Act, shall request the Admiralty or the Judge Advocate General to furnish to him the proceedings of the court-martial and any petition presented by the appellant praying that his conviction be quashed.

(2) After an application is finally refused or is withdrawn or the appeal is determined or abandoned, the proceedings of the court-martial and any petition shall, subject to any order which the Court may make, be returned by the registrar to the Admiralty or to the Judge Advocate General, as the case may be.

(3) A copy of any document which is required for the use of the Court may be made by such person and in such manner as the registrar may direct.

Copies of proceedings, etc.

10.—(1) At any time after the registrar has received an application for leave to appeal, an appellant or respondent may, subject to the provisions of these Rules, obtain from the registrar copies of any document in his possession for the purpose of the appeal.

(2) Copies of any document shall be supplied by the registrar to the appellant at a charge, to be paid in stamps, not exceeding fourpence a folio; but if the appellant has been assigned free legal aid, the registrar shall, unless he considers it unnecessary for the purpose of the appeal, supply such copies free of charge.

Documents and exhibits

11.—(1) The registrar may, on an application made to him by the appellant or respondent, or where he considers it necessary for the proper determination of any appeal or application, and shall, where so directed by the Court, obtain and keep available for use by the Court any document or exhibit, and, subject to the next following Rule, pending the determination of the appeal or application, such document and exhibit and the proceedings of the court-martial shall be open, as and when the registrar may arrange, for inspection by the appellant or respondent.

(2) Subject to the provisions of the next following Rule, the Court may, at any stage of an appeal, whenever it thinks it necessary or expedient in the interest of justice so to do, order any document, exhibit or other thing connected with the proceedings to be produced to the registrar or before it, by any person having the custody or control thereof.

(3) After an application is finally refused or is withdrawn or the appeal is determined or abandoned, documents and exhibits shall, subject to any order which the Court may make, be returned by the registrar to the person who produced or forwarded the same.

(4) Service of any order made under this Rule shall be personal service, unless the Court otherwise orders.

Security of documents, etc.

12. If the Admiralty or Secretary of State, or any person authorised in that behalf, certifies that, for reasons of security, the whole or part of the proceedings or other document, exhibit or other thing ought not to be disclosed otherwise than to the Court, or ought only to be disclosed subject to certain conditions specified by the person who so certifies, the registrar shall, notwithstanding any provision of these Rules to the contrary, not permit inspection or supply a copy thereof without an order of the Court which may direct upon what conditions, if any, inspection shall be permitted or a copy supplied.

13. Nothing in these Rules shall affect any rule of law which authorises or requires the withholding of any document or the refusal to answer any question on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest.

Witnesses

14.—(1) An order of the court that a witness shall attend and be examined shall be in Form 5 and shall specify the time and place at which to attend.

(2) Such order may be made on the application at any time of the appellant or respondent, but if the appellant is in custody and is not legally represented the application shall be made by him in Form 6.

(3) Where the Court orders the examination of any witness to be conducted otherwise than before the Court itself, such order shall specify the person appointed as examiner to take the examination, the place thereof and the witness to be examined.

(4) The registrar shall, subject to the provisions of Rule 12 and any direction given by the Court, furnish to the person appointed to take an examination such document, exhibit or other thing relating to the appeal as he may require, or the registrar may furnish copies thereof made in such manner as may be suitable. Such document and exhibit and other thing shall, after the examination has been concluded, be returned to the registrar by the examiner together with any depositions taken by him under this Rule.

(5) When the examiner has appointed the day and time for the examination he shall request the registrar to notify the appellant and respondent thereof, and also, when the appellant is in custody, the person in charge of the place where the appellant is confined, and the registrar shall thereupon cause to be served on every witness to be examined a notice in Form 5.

(6) An examiner shall have power to administer an oath to, or take the affirmation of, any witness, and to require any such person to take such oath or make such affirmation and to answer any question to which the examiner may legally require an answer.

(7) The examination of every witness before an examiner shall be taken in the form of a deposition, and unless otherwise ordered shall be taken in private. The caption in Form 7 shall be attached to any such deposition.

(8) Service of any order or notice required by this Rule to be given to any witness shall be personal service, unless the Court otherwise orders.

Special commissioner

15.—(1) When an order of reference is made by the Court under section 8 (1) (*e*) of the Act, the question to be referred, and the person to whom as special commissioner the same shall be referred, shall be specified in such order which may require the special commissioner to make interim reports to the Court from time to time.

(2) The Court may order that copies of any report made by a special commissioner shall be furnished to the appellant and respondent.

Register and cause list

16.—(1) The registrar shall keep a register of all cases in which he shall receive an application for leave to appeal under the Act, and the register shall be open for public inspection in such place and at such hours as the registrar, subject to the approval of the Court, shall decide.

(2) The registrar shall also prepare a list of appeals and applications which the Court may consider on the days on which the Court, as constituted for the hearing and determination of appeals under the Act, shall sit, and shall cause such list to be published at such times, in such places and in such a manner as he, subject to the approval of the Court, shall think convenient for giving due notice to any parties interested therein of the hearing of the cases in such list by the Court.

Presence of appellant at hearing

17. Where an appellant is in custody and has obtained leave to be present at the hearing and determination of his application or appeal, or at an examination or investigation, or at any stage thereof, the registrar shall notify the appellant, the person in charge of the place where the appellant is confined, and the Admiralty or the Secretary of State or the Prison Commissioners, as the case may be, of the probable date thereof.

Notifying results of appeals, etc.

18.—(1) On the final determination of any appeal or of any application, the registrar shall, unless it appears to him unnecessary to do so, give to the appellant, the respondent, and, where the appellant is in custody, to the person in charge of the place where he is confined, written notice of the determination.

(2) In the case of an appeal against a conviction involving sentence of death, the registrar shall, on receiving an application for leave to appeal, send a copy thereof to the Admiralty or Secretary of State, as the case

may be, and, where leave to appeal is refused and on the final determination of an appeal, shall forthwith give written notice to the appellant, and to the Admiralty or Secretary of State, as the case may be, and to the person in charge of the place where the appellant is confined.

Restitution order

19.—(1) When any property has been the subject of a restitution order made under section 75 of the Army Act or section 75 of the Air Force Act, and the operation of the order has been suspended under section 15 of the Act, unless the property is in the custody of the registrar, the authority which made the order shall cause the said property to be kept in safe custody for the period during which the operation of the order is suspended.

(2) Any person in whose favour or against whom a restitution order has been made, and, with the leave of the Court, any other person, shall, on the final hearing by the Court of the appeal against the conviction on which such order was made, be entitled to have any representations that he may make considered by the Court before any order is made under section 15 (2) of the Act.

Right of audience

20.—(1) In any proceedings before the Court any of the following persons may address the Court:—

(*a*) a barrister or an advocate of the Scottish bar retained by or on behalf of the appellant or respondent;

(*b*) the appellant, if he has leave of the Court to be present; and

(*c*) where the Court is directed to sit at a place outside the United Kingdom, any other person allowed by leave of the Court to appear on behalf of the appellant or respondent.

(2) In this Rule, the reference to a barrister shall be construed as a reference to one who is a member of the bar either of England or of Northern Ireland, whether or not he is a member of the bar of the other country also.

Non-compliance with Rules

21. Non-compliance with these Rules by an appellant shall not prevent the further prosecution of his appeal, unless the Court or a Judge thereof otherwise directs. The registrar shall forthwith notify the appellant of any directions given by the Court or a Judge thereof under this Rule, where the appellant was not present at the time when such directions were given.

Enforcement of duties

22. The performance of any duty imposed upon any person under the Act or these Rules may be enforced by order of the Court.

Goddard, C.J.

Dated the first day of February, 1952.

Approved, *Simonds*, C.

FIRST SCHEDULE

FORM 1

TO THE REGISTRAR OF THE COURTS-MARTIAL APPEAL COURT,
Royal Courts of Justice,
Strand, London, W.C.2

APPLICATION FOR LEAVE TO APPEAL AGAINST CONVICTION

Name of Appellant.....Number.....

Unit or Ship.....Rank.....

Convicted by court-martial held at.....

Offence of which convicted.....

Sentence.....Date when conviction pronounced or finding promulgated.....

Date when petition presented.....Date when notified that petition refused.....

Name of Prison or place of detention(1).....

I, the above-named Appellant hereby give you notice that I desire to appeal to the Courts-Martial Appeal Court against my conviction on the following grounds(2).

(Signed)(3).....Appellant

Dated the (4).....day of.....19...

QUESTIONS(5)	ANSWERS
1. Have you been granted legal aid by the Service Authorities for the purposes of your appeal? If not, answer question 2.	.....
2. Do you desire the Court to assign you legal aid?	.....
If your answer to this question is "Yes" then answer the following questions:	
(*a*) What pay, salary, income or allowances were you receiving before your conviction?	.....
(*b*) What other means have you? (This information is required to show whether your means are insufficient to enable you to obtain legal aid for yourself.)	.....
3. Is any Solicitor or other person now acting for you? If so, give his name and address.	.....
4. Do you desire to be present when the Court considers your appeal?	.....
5. Do you desire to apply for leave to call any witnesses on your appeal?	.....
If your answer to this question is "Yes", you must also fill in Form 6, and send it with this form.	

(1) If not in custody set out Appellant's address in full.

(2) Here set out clearly and concisely the reasons why you consider your conviction should be quashed.

(3) This notice must be signed by the appellant or by his representative. If the appellant cannot write he must affix his mark in the presence of a witness. The name and address of such attesting witness must be given.

(4) If this form is lodged more than ten days after the appellant has become entitled to apply for leave to appeal he must also fill in Form 2, and send it *with this form.*

(5) The appellant must answer these questions.

FORM 2

TO THE REGISTRAR OF THE COURTS-MARTIAL APPEAL COURT,
Royal Courts of Justice,
Strand, London, W.C.2

NOTICE OF APPLICATION FOR EXTENSION OF TIME WITHIN WHICH TO APPLY FOR LEAVE TO APPEAL

I,[1]

having been convicted of the offence of[2]

by court-martial held at

on the day of 19 ,

and being now at[3]

give you notice, that I hereby apply to the Court for an extension of the time within which I may give notice of application for leave to appeal, on the grounds following[4]:—

(Signed)

Appellant.

Dated the day of 19 .

Form 1 must be filled up and sent *with this notice* to the Registrar.

[1] Insert name, number, rank and unit or ship

[2] State shortly the offence or offences.

[3] Set out address in full.

[4] Here set out clearly and concisely *the reasons for the delay* in giving such notice, and the grounds on which you submit the Court should extend the time.

FORM 3

TO THE REGISTRAR OF THE COURTS-MARTIAL APPEAL COURT,
Royal Courts of Justice,
Strand, London, W.C.2.

NOTICE OF ABANDONMENT

Name of Appellant.....Number.....

Unit or Ship.....Rank.....

Convicted by court-martial held at.....

Offence of which convicted.....

.....

Name of prison or place of detention(1).....

.....

(1)If not in custody set out Appellant's address in full.

I, the above-named Appellant, having been convicted and sentenced as above stated and having duly sent to the Registrar of the Court notice that I desired to appeal DO NOW HEREBY GIVE NOTICE that I do not intend further to prosecute my appeal but THAT I HEREBY ABANDON all proceedings in regard thereto as from the date hereof. Dated the.....day of.....19....

(Signed)(2).....

(2)This notice must be signed in the presence of a witness.

Appellant.

This notice was signed by the above-named Appellant on the day above stated in my presence.

Signature of Witness.....

Address of Witness.....

Occupation of Witness.....

FORM 4

TO THE REGISTRAR OF THE COURTS-MARTIAL APPEAL COURT,
Royal Courts of Justice,
Strand, London, W.C.2.

NOTICE OF APPEAL FROM JUDGE UNDER SECTION 21 OF THE COURTS-MARTIAL (APPEALS) ACT, 1951

(1)Insert name, number, rank and unit or ship.

I,(1)

having received your notification that my applications for:—

(*a*) Leave to appeal;

(*b*) Extension of the period within which application for leave to appeal may be made;

(*c*) Legal aid;

(*d*) Permission to be present at the proceedings in the appeal;

have been refused by a Judge of the Court, DO HEREBY GIVE YOU NOTICE that I desire that the said applications shall be considered and determined by the full Court.

(Signed)

Appellant.

Dated the day of , 19 .

(2)You must not repeat reasons that you have already stated in previous applications.

If you wish to state any reasons, in addition to those set out by you in your original application(2), upon which you submit that the Court should grant this application, you may do so in the space below.

FORM 5

FROM THE REGISTRAR OF THE COURTS-MARTIAL APPEAL COURT
Royal Courts of Justice,
Strand, London, W.C.2.

ORDER TO WITNESS TO ATTEND FOR EXAMINATION

(1)Name and address of witness.

To(1)

Whereas, on good cause shown to the Courts-Martial Appeal Court, you have been ordered to attend and be examined as a witness before the Court/an Examiner upon the appeal of(2)

(2)Name, number and rank of appellant.

This is to give you notice to attend before the Court/Examiner at o'clock in the noon on the day of 19 , at the Royal Courts of Justice, Strand, London, W.C.2.(3)

(3)Or other address for examination.

You are also required to have with you at the said time and place the following books, papers or other things relating to the appeal.

Registrar.

Dated the day of 19 .

FORM 6

TO THE REGISTRAR OF THE COURTS-MARTIAL APPEAL COURT,
Royal Courts of Justice,
Strand, London, W.C.2.

APPELLANT'S APPLICATION TO CALL FURTHER EVIDENCE

I,(1) , having applied for leave to appeal to the Courts-Martial Appeal Court, hereby give notice that I desire the Court to order the following witness(es) to attend the Court and be examined on my behalf.

(1)Insert name, number, rank and unit or ship.

(Signed)

Appellant.

Dated the day of 19 .

You are required to complete the following form(2)

(2)If more than one witness is desired, the information must be given in respect of each witness.

1. Name and address of witness:
2. Was the witness examined at your court-martial?
3. If not, state the reason why he was not examined:
4. State shortly the evidence you think he can give:

FORM 7

COURTS-MARTIAL (APPEALS) ACT, 1951

CAPTION FOR DEPOSITION OF WITNESS EXAMINED BEFORE EXAMINER

Appellant.

The depositions on oath taken before me the undersigned, being an Examiner duly appointed by the Courts-Martial Appeal Court, of of and of witnesses, examined before me under an order of the said Court dated day of 19 , in the presence of the said appellant (or of his counsel or solicitor) and the respondent (or his counsel or solicitor) at on the day of 19 , which said appellant and respondent (personally, or by their counsel or solicitors respectively) had full opportunity of asking questions of the said witnesses, to whom the depositions following were read by me before being signed by them the said witnesses respectively.

The deposition of of who upon oath duly administered by me saith as follows:—

(Here follows deposition)

(Signed)

Witness.

Taken before me the day of 19 .

Examiner.

SECOND SCHEDULE

Circumstances	Person to whom a Petition is Presented under Rule 3 or Person with whom an Application or Notice is Lodged under Rule 4 (4)
1. Appellant serving in or in custody on board H.M. ship.	Captain of the ship.
2. Appellant in custody on board a ship other than one of H.M. ships.	Officer commanding Forces on board.
3. Appellant serving with an army, air-force or Royal Marines unit.	Officer commanding the unit.
4. Appellant confined in naval detention quarters.	Officer in charge of the naval detention quarters.
5. Appellant confined in military or air-force corrective establishment, prison or detention barrack.	Commandant of such establishment, prison or barrack.
6. Appellant confined in a civil prison.	Governor of the prison.
7. Appellant who is a civilian and is outside the United Kingdom.	Officer commanding at the nearest naval, army or air-force headquarters.

EXPLANATORY NOTE

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

These Rules prescribe the procedure to be followed in proceedings before the Courts-Martial Appeal Court.

Rule 3 provides that a petition presented by an appellant shall be treated as though it were presented to the appropriate authority, as required by section 3 (2) (*a*) of the Courts-Martial (Appeals) Act, 1951, if it is presented by the appellant to the captain of his ship or to his commanding officer or other appropriate person in accordance with the Second Schedule. Rule 4 (4) makes similar provision with regard to the lodging of applications and notices, and Rule 4 (5) requires a person with whom an application or notice is lodged to forward it to the registrar as quickly as possible.

Rule 6 prescribes (*a*) the period within which a person convicted by court-martial must present a petition, as a condition precedent to the exercise of his right of appeal; (*b*) the period at the expiration of which a person not notified that his petition has been granted may appeal; and (*c*) the period within which a person must lodge his application for leave to appeal.