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STATUTORY INSTRUMENTS

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**2000 No. 2372**

**DEFENCE**

**The Summary Appeal Court (Air Force) Rules 2000**

*Made* - - - - *4th September 2000*  
*Laid before Parliament* *7th September 2000*  
*Coming into force* - - *2nd October 2000*

The Secretary of State, in exercise of the powers conferred on him by sections 83ZA(6), 83ZC(2), 83ZF(3) and 83ZJ of the Air Force Act 1955(1), hereby makes the following Rules:—

**PART I**  
**GENERAL**

**Citation and commencement**

1. These Rules may be cited as the Summary Appeal Court (Air Force) Rules 2000 and shall come into force on 2nd October 2000.

**Interpretation**

2.—(1) In these Rules—

“the Act” means the Air Force Act 1955;

“the court” means the summary appeal court established under section 83ZA of the Act;

“the court administration officer” means the person appointed to be the court administration officer for the court in accordance with section 83ZA of the Act;

“judge advocate” means a judge advocate appointed under section 83ZB of the Act;

“the judge advocate”, in relation to the hearing of an appeal under section 83ZE of the Act, means the judge advocate specified to hear the appeal in accordance with section 83ZD(1)(a) and (3) of the Act;

“proper address”, in relation to any person, shall be construed in accordance with rule 3(2) and Schedule 1;

“Record of Summary Dealing” shall have the meaning assigned to it by rule 8(4).

(2) Where these Rules provide for the jurisdiction of the court to be exercised by a judge advocate sitting alone, the judge advocate who is to exercise the jurisdiction of the court in a particular case shall be specified by or on behalf of the Judge Advocate General.

- (3) In these Rules, the expression “commanding officer” in relation to any person means—
- (a) where the person is subject to military law, such officer as would be determined by regulations of the Defence Council under section 82(1) of the Act as the commanding officer of that person if that person were charged with an offence under the Act;
  - (b) where the person has ceased to be subject to military law (except to the extent that he is treated as being so subject by virtue of section 131 of the Act), the officer for the time being in command of the unit to which that person belonged immediately before he ceased to be subject to military law;
  - (c) where the person was dealt with summarily for the offence to which the appeal or proposed appeal relates because at the material time he was a person to whom Part II of the Act applied by virtue of section 209 of the Act—
    - (i) the officer who exercised the functions of the commanding officer under section 76 of the Act in relation to the offence; or
    - (ii) where that officer no longer holds the post which he held when exercising those functions, the officer who for the time being holds that post.

### **Service of documents**

**3.—(1)** Subject to rule 30(2), any notice or other document required by these Rules to be served on a person may be served on that person by—

- (a) delivering it to him;
- (b) leaving it at his proper address;
- (c) sending it by post to that address; or
- (d) transmitting it to him by FAX or other means of electronic data transmission in accordance with rule 4.

(2) For the purposes of these Rules, the reference to a person’s proper address shall be to such address determined in accordance with Schedule 1.

(3) Paragraph (4) applies to the service of any document on a person bringing an appeal under section 83ZE of the Act, where—

- (a) notice has been served in accordance with rule 6(4) of the name and address of the legal adviser appointed by that person; and
- (b) no notice of the revocation of that appointment has been given in accordance with rule 6(5).

(4) Where this paragraph applies (and without prejudice to paragraph (1)), the document may be served on the appellant by—

- (a) delivering it to his legal adviser;
- (b) leaving it at the address notified to the court administration officer in accordance with rule 6(4);
- (c) sending it by post to his legal adviser at that address; or
- (d) transmitting it to his legal adviser by FAX or other means of electronic data transmission in accordance with rule 4.

(5) Paragraph (6) applies to the service of a document on a person bringing an appeal under section 83ZE of the Act in any case not falling within paragraph (3).

(6) Where this paragraph applies (and without prejudice to paragraph (1)), the document may be served by—

- (a) delivering it to the appellant’s commanding officer;
- (b) leaving it at the proper address of the appellant’s commanding officer;
- (c) sending it by post to the appellant’s commanding officer at that address; or
- (d) transmitting it to his commanding officer by FAX or other means of electronic data transmission in accordance with rule 4.

(7) Where a document is received by a person’s commanding officer in accordance with paragraph (6), he shall as soon as practicable serve it on that person.

(8) In these Rules, “FAX” means the making of a facsimile copy of a document by the transmission of electronic signals.

**Service by FAX or other means of electronic data transmission**

4.—(1) A document may be transmitted by FAX to a person if—

- (a) where the person is the legal adviser of the person to whom the proceedings relate, it is transmitted to the FAX number of any FAX machine at the address notified in accordance with rule 6(4); and
- (b) in any other case, it is transmitted to the FAX number of any FAX machine at his proper address.

(2) Paragraph (1) shall not apply if the person concerned has indicated in writing that he is not willing to regard a document as having been duly served on him if it is transmitted to a specified FAX number falling within that paragraph.

(3) In paragraph (1), the reference to a FAX machine is to any machine which is capable of receiving documents transmitted by FAX.

(4) A document may also be transmitted by FAX where the person to be served has indicated in writing to the person serving the document that he is willing to regard a document as having been duly served on him if it is transmitted to a specified FAX number and the document is transmitted to that number.

(5) Paragraph (4) shall apply with appropriate modification to a transmission of electronic data other than by FAX as it applies to a transmission by FAX.

(6) In paragraph (4), the reference to the person to be served is—

- (a) in a case falling within rule 3(4)(d), a reference to the legal adviser appointed by the person to whom the proceedings relate; and
- (b) in a case falling within rule 3(6)(d), a reference to the commanding officer.

(7) Where a document is transmitted by FAX in accordance with this rule, the person to whom the document is addressed shall be specified in the FAX.

**Summary appeal court sitting in camera or closed court**

5.—(1) Without prejudice to rules 34 and 36, the court may sit in camera for the whole or any part of a hearing where the court considers that—

- (a) it is necessary to do so in the interest of morals or public order;
- (b) it is necessary to do so for the purpose of safeguarding the interests of persons under the age of 18 years or protecting the private life of the appellant; or
- (c) the interests of justice would be prejudiced by the hearing, or that part of it taking place in public.

(2) The court may order that, subject to any exceptions the court may specify, the public shall be excluded from all or any part of a hearing if it appears to the court that it would be against the interests of national security to allow any evidence to be given or statement to be made in public in the course of the hearing or (as the case may be) that part of it.

(3) The court may sit in closed court when the members of the court hearing an appeal are deliberating on any matter raised on that appeal.

(4) Where the court sits in closed court under paragraph (3) no person shall be present other than the members of the court except any person under instruction who is permitted to be present by the members of the court hearing the appeal.

(5) It shall be the duty of the judge advocate to ensure that, where any person under instruction is permitted to be present when the members of the court are deliberating on any matter in closed court, that person takes no part in the deliberations and expresses no opinion to the members of the court.

### **Representation of appellant in proceedings on an appeal**

6.—(1) Subject to rule 7, a person bringing an appeal under section 83ZE of the Act—

- (a) shall have the right to be legally represented at a hearing before the court (including a preliminary hearing);
- (b) may appoint a person (referred to in these Rules as his “legal adviser”) to act for him in connection with the conduct of the proceedings on the appeal.

(2) The appellant’s commanding officer shall secure that the appellant is afforded reasonable opportunity of communicating with his legal adviser for the purposes of preparing his case on the appeal.

(3) Without prejudice to paragraph (1)(a), where paragraph (4) applies, any right conferred or duty imposed by these Rules on the appellant may be exercised or, as the case may be, performed by his legal adviser on his behalf.

(4) This paragraph applies where a legal adviser appointed under this rule serves notice on the court administration officer specifying—

- (a) his name and address;
- (b) the name and, where applicable, the rank, service number and unit of the person in respect of whom he is acting; and
- (c) the proceedings before the court in connection with which he has been appointed.

(5) Where the appellant revokes his legal adviser’s appointment, he shall as soon as reasonably practicable serve notice on the court administration officer and his commanding officer of that fact.

### **Qualifications to be held by legal representatives**

7. A person may only represent a person bringing an appeal under section 83ZE of the Act at a hearing before the court or act as his legal adviser if—

- (a) he is a person who has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990(2);
- (b) he is an advocate or a solicitor in Scotland;
- (c) he is a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland;

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(2) 1990 c. 41; subsection (6) of section 71 was substituted, and subsections (7) and (8) were repealed, by the Access to Justice Act 1999 (c. 22).

- (d) he is a person who has in any Commonwealth country or any colony rights and duties similar to those of a barrister or solicitor in England and Wales, and is subject to punishment or disability for breach of professional rules.

## PART II

### BRINGING AND ABANDONMENT OF APPEALS

#### **Bringing of appeals**

**8.—(1)** For the purposes of section 83ZE(2) of the Act—

- (a) a person brings an appeal when he serves on his commanding officer a notice in writing in the form set out in Schedule 2; and
- (b) the date on which the appeal is brought is—
- (i) where the notice is delivered to the commanding officer or left at his proper address, the date on which it is so delivered or left;
  - (ii) where the notice is sent by post to the commanding officer at his proper address, the date on which it is received at that address; or
  - (iii) where the notice is transmitted by FAX or other means of electronic data transmission, the date on which it is so transmitted.

(2) Where two or more charges have been tried summarily together and an appeal is brought against more than one of the findings made in respect of those charges, it shall be sufficient for the purposes of paragraph (1) for the appellant to serve a single notice of appeal relating to all matters against which an appeal is brought.

(3) Where notice of appeal is served on a person's commanding officer in accordance with paragraph (1), the commanding officer shall as soon as reasonably practicable—

- (a) forward it to the court administration officer; and
- (b) serve a copy of it on the prosecuting authority together with—
- (i) the Record of Summary Dealing;
  - (ii) a list of persons whose evidence was not adduced in the proceedings on summary dealing but who appear to the commanding officer to be potential witnesses in the proceedings before the court;
  - (iii) any material in the possession of the commanding officer which is not annexed to or referred to in the Record of Summary Dealing but which in his opinion may be material to the proceedings before the court;
  - (iv) copies of any conduct sheets of the appellant; and
  - (v) a document specifying the appellant's age and, where applicable, his rank, service record and any recognised acts of gallantry.

(4) In these Rules, the reference to the Record of Summary Dealing is to any record of proceedings on summary dealing required to be made in accordance with regulations under section 83 of the Act in respect of the charge to which the appeal relates.

#### **Application for leave to extend time for appealing and for leave to bring an appeal out of time**

**9.—(1)** This rule and rules 10 and 11 shall have effect in relation to—

(a) an application under section 83ZE(2) of the Act to extend the period of time for bringing an appeal; and  
(b) an application under section 83ZE(3) for leave to bring an appeal out of time,  
and any reference in this rule and rules 10 and 11 to an application or an applicant shall be construed accordingly.

(2) Notice of an application shall be given in the form set out in Schedule 2 and shall be served on the commanding officer of the person making the application.

(3) A person who has given notice of an application in accordance with paragraph (2) may withdraw that notice at any time before the determination of the application by giving notice in writing to his commanding officer who shall forward it to the court administration officer.

(4) Where a person gives notice of an application in accordance with paragraph (2), he may at the same time serve on his commanding officer any documents he considers relevant to the determination of the application.

(5) On receipt of a notice of application under paragraph (2), the commanding officer shall as soon as reasonably practicable—

- (a) forward it to the court administration officer together with any documents served on him under paragraph (4); and
- (b) serve on the prosecuting authority copies of any documents forwarded under subparagraph (a) together with the documents and any other material referred to in paragraphs (i) to (v) of rule 8(3)(b).

### **Determination of applications**

**10.**—(1) The powers of the court to determine an application shall be exercised by a judge advocate sitting alone; and, except as provided by the following provisions of this rule, an application shall be determined without a hearing.

(2) There is to be a hearing for the purposes of determining an application if—

- (a) the applicant requests a hearing in accordance with paragraph (4); or
- (b) the judge advocate specified to determine the application so directs.

(3) Where the judge advocate is minded to refuse an application without a hearing, the court administration officer shall give notice in writing of that fact to the applicant.

(4) On receipt of a notice under paragraph (3), the applicant may request a hearing of the application by giving notice in writing to the court administration officer before the end of the period of 14 days beginning with the date of the notice under paragraph (3).

(5) Where there is a requirement for a hearing, the court administration officer shall—

- (a) determine the time and place of the hearing; and
- (b) serve notice of those matters on the applicant and the prosecuting authority.

(6) If, having notified a person in accordance with paragraph (5), the court administration officer changes the time or place of the hearing, he shall notify the person of the change.

### **Notice of decision of the judge advocate on an application**

**11.**—(1) The judge advocate shall give notice in writing of his decision on an application to the court administration officer who shall serve a copy of it on—

- (a) the applicant;
- (b) the applicant's commanding officer;

(c) the prosecuting authority;

(2) Where the judge advocate refuses an application, he shall set out in writing his reasons for doing so, and those reasons shall be included in the notice given in accordance with paragraph (1).

### **Application by the authority carrying out a review for leave to refer a case to the summary appeal court**

**12.**—(1) This rule and rule 13 shall have effect in relation to a reference made under section 115(5A) or (5B) of the Act<sup>(3)</sup> by the authority carrying out a review under that section.

(2) The authority shall give notice to the court administration officer in the form set out in Schedule 2 that he is applying for the leave of the summary appeal court to refer a finding recorded, or punishment awarded, for the court to consider or reconsider as on an appeal.

(3) The authority may withdraw the notice given under paragraph (2) at any time before the determination of the application for leave by giving notice in writing to the court administration officer.

(4) Where the authority gives notice in accordance with paragraph (2), he shall at the same time serve on the court administration officer any documents he considers relevant to the determination of the application.

(5) Where notice is given in accordance with paragraph (2) or (3), the court administration officer shall as soon as reasonably practicable notify—

- (a) the Judge Advocate General;
- (b) the person to whom the application relates;
- (c) that person's commanding officer; and
- (d) the prosecuting authority,

of that fact.

(6) On being notified under paragraph (5)(c) of the fact that the authority is applying for the leave of the court under section 115(5A) or (5B) of the Act, the commanding officer of the person to whom the application relates shall serve on the prosecuting authority the documents and any other material referred to in paragraphs (i) to (v) of rule 8(3)(b).

### **Determination of application for leave by the authority carrying out a review**

**13.**—(1) The powers of the court under section 115(5A) or (5B) of the Act shall be exercised by a judge advocate sitting alone.

(2) The judge advocate may determine an application for leave made under section 115(5A) or (5B) of the Act without a hearing.

(3) Where the judge advocate directs the court administration officer to convene a hearing for the purposes of determining the application, the court administration officer shall—

- (a) determine the time and place of the hearing; and
- (b) serve notice of those matters on—
  - (i) the authority making the application;
  - (ii) the person to whom the application relates;
  - (iii) that person's commanding officer; and
  - (iv) the prosecuting authority.

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(3) Section 115 was substituted by the Armed Forces Act 1996 (c. 46), Schedule 5, paragraph 7. Subsections (5A) and (5B) of section 115 were inserted by the Armed Forces Discipline Act 2000 (c. 4), Schedule 3, paragraph 19(4).

(4) If, having notified a person in accordance with paragraph (3), the court administration officer changes the time or place of the hearing, he shall notify the person of the change.

(5) The judge advocate shall give notice in writing of his decision to the court administration officer who shall serve a copy of it on the persons listed in paragraph (3)(b).

(6) Where the judge advocate refuses an application for leave made under section 115(5A) or (5B) of the Act, he shall set out in writing his reasons for doing so, and those reasons shall be included in the notice given in accordance with paragraph (5).

(7) For the purposes of these Rules, a reference to the court under section 115(5A) or (5B) of the Act shall be treated as an appeal brought by the person to whom the finding or punishment relates against the finding or punishment.

### **Hearings of applications**

**14.**—(1) Subject to rule 5, the court shall sit in open court when hearing an application in accordance with rule 10 or 13.

(2) The applicant shall be entitled to address the court, and for that purpose to be legally represented, at any hearing held in accordance with rule 10.

(3) The authority making the application and the person to whom the application relates shall be entitled to address the court, and for that purpose to be legally represented, at any hearing held in accordance with rule 13.

(4) The judge advocate may give leave for the prosecuting authority to address the court at any hearing held in accordance with rule 10 or 13.

(5) For the purposes of this rule, any legal representation shall be by a person who has one or more of the qualifications listed in rule 7.

### **Abandonment of appeals**

**15.**—(1) A person may abandon an appeal under section 83ZE of the Act (whether wholly or in part) at any time prior to its determination.

(2) Where an appellant exercises the right conferred on him by paragraph (1) prior to the hearing of the appeal, he shall do so by serving notice on the court administration officer in the form set out in Schedule 2 (referred to in this rule as “the notice of abandonment”).

(3) The court administration officer shall serve a copy of the notice of abandonment on—

- (a) the prosecuting authority;
- (b) the appellant’s commanding officer;
- (c) the Judge Advocate General; and,
- (d) where the appeal falls to be considered by the court on a reference made under section 115(5A) or (5B) of the Act by the authority carrying out a review under that section, that authority.

(4) Where the notice of abandonment relates to the whole of any appeal under section 83ZE of the Act, the appeal shall be treated for the purposes of section 118ZA(3)(b) and (4) of the Act (commencement of sentences of detention) as having been determined on the date on which the copy of the notice is received by the appellant’s commanding officer in accordance with paragraph (3).



## PART III

### PROCEDURE ON THE BRINGING OF AN APPEAL

#### **Respondent to give notice of intentions on receipt of notice of appeal**

**16.—(1)** Where—

- (a) a notice of appeal under rule 8;
- (b) a notice under rule 11(1) that an application under section 83ZE(3) of the Act for leave to bring an appeal out of time has been granted; or
- (c) a notice under rule 13(5) that an application for leave by the reviewing authority has been granted,

has been served on the prosecuting authority and that notice relates to one or more appeals against finding, he shall as the respondent give notice in writing to the court administration officer indicating whether or not he intends to contest any such appeal.

(2) Where the respondent has given notice under paragraph (1) that he intends to contest an appeal against finding, he may at any time prior to the hearing of the appeal give notice that he no longer intends to contest it; and any such notice shall have effect for the purposes of these Rules as a notice under that paragraph that he does not intend to contest the appeal.

#### **Uncontested appeals**

**17.—(1)** Where the respondent gives notice under rule 16(1) that he does not intend to contest an appeal, the court shall quash the finding against which the appeal is brought.

(2) Where any punishment awarded relates to one or more findings—

- (a) each of which is the subject of an appeal, and
- (b) in respect of each of which the respondent has given notice under rule 16(1) that he does not intend to contest the appeal,

the powers of the court under section 83ZG of the Act with respect to each of the findings and the punishment shall be exercised by a judge advocate sitting alone; and any decision of the judge advocate in exercise of those powers shall be recorded in writing and dated and signed by him.

(3) The court administration officer shall serve a copy of any decision of the judge advocate under this rule on—

- (a) the appellant;
- (b) the appellant's commanding officer; and
- (c) the respondent.

#### **Respondent's papers**

**18.—(1)** Where the respondent gives notice that he intends to contest an appeal against finding, he shall serve the following (referred to in these Rules as "the respondent's papers") on the appellant's commanding officer and the court administration officer—

- (a) a copy of the Record of Summary Dealing;
- (b) a summary of the facts and matters of which the respondent proposes to adduce evidence at the hearing of the appeal;
- (c) a list of all the persons whose evidence the respondent proposes to rely on at the hearing of the appeal ("the respondent's witnesses");

- (d) copies of every written statement made by the respondent's witnesses which contain information as to the facts and matters of which the prosecutor proposes to adduce evidence at the hearing of the appeal;
- (e) a list of any exhibits which the respondent proposes to put in evidence and copies of those exhibits;
- (f) copies of all unused material; and
- (g) a statement of the information which the respondent proposes to present to the court in pursuance of rule 60(2).

(2) Where it is not practicable or desirable to make a copy of any exhibit, the respondent shall include in the document prepared in accordance with paragraph (1)(e) details of the whereabouts of the exhibit and the name and address of the person who has custody of it.

(3) On receipt of the respondent's papers, the appellant's commanding officer shall as soon as reasonably practicable serve them on the appellant, together with—

- (a) a statement explaining the requirements of section 11 of the Criminal Justice Act 1967(5) (notice of alibi) as modified by Part II of Schedule 3 to these Rules; and
- (b) a statement explaining that any person whom the appellant reasonably requires to give evidence may be summoned on his behalf in accordance with rule 30 and Schedule 4.

(4) Paragraph (3)(a) only applies where the respondent requests the appellant's commanding officer to serve the statement referred to in that sub-paragraph on the appellant.

### **Service of additional evidence**

**19.**—(1) If at any time before the commencement of the hearing of an appeal, it appears to the respondent that he will want to adduce at the hearing any evidence additional to that contained, or referred to, in the respondent's papers, he shall serve a copy of the additional evidence on the appellant's commanding officer and on the court administration officer.

(2) Where it is not practicable or desirable to make a copy of any evidence to which paragraph (1) applies, the respondent shall instead give notice in writing to the appellant's commanding officer explaining—

- (a) the nature of the evidence, and
- (b) details of its whereabouts and the name and address of the person who has custody of it.

(3) On receipt of any additional evidence under paragraph (1) or a notice under paragraph (2), the appellant's commanding officer shall as soon as reasonably practicable serve it on the appellant.

### **Witness not called by respondent**

**20.**—(1) This rule applies where the respondent does not intend to call as a witness—

- (a) any person whose statement has been served on the appellant as part of the evidence for the respondent; or
- (b) any person in respect of whose evidence he has served notice under rule 48 below.

(2) Where this rule applies, unless the appellant waives the requirement, the respondent shall—

- (a) serve notice in writing on the appellant that he does not intend to call that person; or
- (b) tender that person at the hearing of the appeal for cross-examination by the appellant.

### **Service of statement of relevant matters by respondent in an appeal against punishment**

**21.**—(1) Where the appeal relates only to any punishment awarded, the respondent shall serve on the appellant’s commanding officer—

- (a) a statement of the information which the respondent proposes to present to the court in pursuance of rule 60; and
- (b) a copy of the Record of Summary Dealing.

(2) On receipt of the documents referred to in paragraph (1), the appellant’s commanding officer shall as soon as reasonably practicable serve them on the appellant.

(3) On receipt of the statement referred to in paragraph (1)(a), the appellant shall as soon as reasonably practicable give notice in writing to the respondent of any fact or matter contained in the statement on which he takes issue with the respondent.

### **Notification of the time and place for the hearing of an appeal**

**22.**—(1) The court administration officer shall give notice in writing of the time which has been fixed for the hearing of an appeal to begin, and the place where the court is to sit, to—

- (a) the appellant;
- (b) the appellant’s commanding officer;
- (c) the respondent;
- (d) the Judge Advocate General; and
- (e) the persons referred to in paragraph (3).

(2) The court administration officer shall consult the Judge Advocate General before specifying the time and place for the hearing of an appeal.

(3) Any notice given under paragraph (1) shall include the relevant particulars of—

- (a) the persons (other than the judge advocate) specified to sit as members of the court for the purposes of hearing the appeal; and
- (b) the person who has been specified as the waiting member in accordance with rule 25.

(4) If, having notified a person in accordance with paragraph (1), the court administration officer—

- (a) changes the time or place for the hearing of the appeal; or
- (b) specifies a person to sit as a member of the court, or to be a waiting member, in place of one of the persons already notified to that person,

he shall notify the person of that fact and, in a case falling within sub-paragraph (b), of the relevant particulars of the person concerned.

(5) In this rule, any reference to the relevant particulars of a person are—

- (a) in the case of an officer who is subject to air-force law, to his name, rank and unit;
- (b) in the case of an officer who is subject to the Naval Discipline Act 1957(6), to his name, rank and (as the case may be) ship, naval establishment or unit;
- (c) in the case of an officer who is subject to military law, to his name, rank and regiment or corps;
- (d) in any other case, to his name and the position held by him in the service of the Crown.

## PART IV

### CONSTITUTION OF SUMMARY APPEAL COURT TO HEAR PARTICULAR APPEALS

#### **Officers qualified for membership of the summary appeal court**

**23.**—(1) Subject to section 83ZC of the Act and rule 24, a naval or military officer falling within paragraph (2) shall be qualified under that section for membership of the court for the purposes of hearing an appeal if the court administration officer considers that the necessary number of military officers so qualified is not (with due regard to the public service) available to sit as members of the court for the purposes of that hearing.

(2) A naval or military officer falls within this paragraph if he has held a commission in any of Her Majesty’s naval, military or air forces for a period of not less than two years or for periods amounting in the aggregate to not less than two years.

(3) In this rule—

“military officer” means an officer belonging to Her Majesty’s military forces and subject to military law; and

“naval officer” means an officer belonging to Her Majesty’s naval forces and subject to the Naval Discipline Act 1957.

#### **Officers who are ineligible to hear particular appeals**

**24.** An officer shall not be eligible to sit as a member of the court for the purposes of hearing an appeal (although otherwise qualified under section 83ZC of the Act or rule 23) if—

- (a) he has been the appellant’s commanding officer at any time between—
  - (i) the date on which any offence to which the appeal relates was reported to the appellant’s commanding officer under section 76(1) of the Act, and
  - (ii) the date of the hearing of the appeal;
- (b) he acted as the appropriate superior authority under section 76B of the Act in relation to any charge to which the appeal relates;
- (c) he was the higher authority to whom any charge to which the appeal relates was referred under section 76(5) of the Act;
- (d) as higher authority, he approved or otherwise consented to any punishment awarded in respect of any charge to which the appeal relates;
- (e) he has at any time investigated the subject matter of any charge to which the appeal relates;
- (f) he has at any time held, or has acted as one of the persons holding, an inquiry into matters relating to the subject matter of any charge to which the appeal relates.

#### **Waiting member**

**25.** The court administration officer shall specify one person, who is qualified for membership of the court under section 83ZC of the Act or rule 23, to be a reserve member of the court for the purposes of hearing the appeal (referred to in these Rules as “the waiting member”).

#### **Appointment of court officials**

**26.** The court administration officer may at any time appoint a person or persons to act as—

- (a) court recorder;

(b) interpreter,  
at a hearing before the court (including a hearing before a judge advocate sitting alone).

## PART V EVIDENCE

### Rules of evidence etc.

**27.**—(1) The following enactments, namely—

- (a) section 99(1) and (3) of the Act(7) (rules of evidence);
- (b) section 99A(1), (2) and (5) of the Act(8) (proof by written statement);
- (c) section 12 of the Criminal Justice Act 1967(9) (application of sections 10 and 11 of that Act to courts-martial);
- (d) section 113(12) of the Police and Criminal Evidence Act 1984(10) (application of Parts VII and VIII of that Act to the armed forces);
- (e) paragraphs 1 to 6 of Schedule 13 to the Criminal Justice Act 1988(11) (evidence before courts-martial etc.),

shall apply in relation to proceedings before the court as they apply in relation to proceedings before courts-martial under the Act, subject to the modifications referred to in paragraph (2).

(2) In relation to proceedings before the court—

- (a) the reference in section 99(1) of the Act to service modifications shall have effect as a reference to the provisions of this Part of these Rules;
- (b) the reference in section 99A(1) of the Act to service modifications shall have effect as a reference to the modifications to section 9 of the Criminal Justice Act 1967(12) specified in Part I of Schedule 3;
- (c) the reference in section 12 of the Criminal Justice Act 1967 to such modifications as may be prescribed by the Secretary of State by regulations shall have effect as a reference to the modifications to sections 10 and 11 of that Act specified in Part II of Schedule 3; and
- (d) the reference in section 113(12) of the Police and Criminal Evidence Act 1984 to modifications which the Secretary of State may by order specify shall have effect as a reference to the modifications to Parts VII and VIII of that Act specified in Part III of Schedule 3.

### Admission of facts or matters contained in the respondent's papers

**28.**—(1) The appellant may admit any fact or matter specified in the respondent's papers, being a fact or matter which the respondent has indicated he proposes to adduce in evidence at the hearing

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(7) Subsection (1) of section 99 was amended by the Armed Forces Act 1976 (c. 52), Schedule 5, paragraph 3; by the Police and Criminal Evidence Act 1984 (c. 60), Schedule 6, paragraph 29(2)(a); by the Armed Forces Act 1991 (c. 62), Schedule 2, paragraph 4; and by the Armed Forces Act 1996 (c. 46), Schedule 1, paragraph 45(2). Subsection (3) was amended by the Armed Forces Act 1996, Schedule 1, paragraph 45(3).

(8) Sections 99A was inserted by the Armed Forces Act 1976, Schedule 5, paragraph 1.

(9) Section 12 was amended by the Armed Forces Act 1976, Schedule 5, paragraph 3 and by the Armed Forces Act 1996, Schedule 1, paragraph 99 and Schedule 7, Part I.

(10) 1984 c. 60.

(11) 1988 c. 33; Schedule 13 was amended by the Armed Forces Act 1996, Schedule 1, paragraph 109.

(12) Section 9 was amended by the Courts Act 1971 (c. 23), Schedule 8, paragraph 49; by the Criminal Justice and Public Order Act 1994 (c. 33), Schedule 9, paragraph 6(1); and by section 69 of the Criminal Procedure and Investigations Act 1996 (c. 25).

of the appeal, and the admission shall as against the appellant be conclusive evidence in the appeal of the fact or matter admitted.

(2) An admission under this rule—

- (a) may be made before or at the hearing of the appeal to which it relates;
- (b) if made otherwise than at the hearing, shall be in writing; and
- (c) may only be made if the appellant is legally represented and, where it is made in writing, shall be signed by the appellant’s legal adviser on his behalf.

(3) An admission under this rule may be withdrawn with the leave of the court.

(4) This rule is without prejudice to section 10 of the Criminal Justice Act 1967 (as it has effect in relation to proceedings before the court by virtue of rule 27 and Schedule 3).

#### **Evidence through television link etc.**

**29.**—(1) A person other than the appellant may give evidence through a live television link or other similar arrangements (“live link”) if the witness is not in the country where the court is sitting for the purposes of hearing the appeal; but evidence may not be so given without the leave of the court.

(2) Where an application for leave for a witness to give evidence through a live link is made at the hearing of the appeal, it shall be made as soon as practicable after the commencement of the hearing.

(3) Where such an application is to be made at the hearing of the appeal, it may not be made without the leave of the judge advocate unless not less than 7 days before the commencement of the hearing the party making the application has served a notice on the other party and the court administration officer stating—

- (a) the grounds of the application;
- (b) the name of the witness;
- (c) where the witness is under the age of 18 years, the date of birth of the witness;
- (d) the country and place where it is proposed the witness will be when giving evidence; and
- (e) the name, occupation and relationship to the witness of any person proposed to accompany the witness and the grounds for believing that person should accompany the witness when giving evidence.

(4) The court may make the grant of leave subject to such conditions as it considers necessary with respect to the manner in which the evidence is to be given, including—

- (a) specifying the place where the witness is to give evidence; and
- (b) specifying the persons in whose presence the witness is to give evidence.

(5) Where an application for leave for a witness to give evidence through a live link is made at a preliminary hearing, the powers of the court to grant leave shall be exercised by the judge advocate before whom the hearing takes place.

#### **Witness summons**

**30.**—(1) Schedule 4 shall have effect with respect to summoning persons—

- (a) to give evidence, or
- (b) to produce any document or thing,

for the purposes of proceedings on an appeal under section 83ZE of the Act.

(2) A witness summons issued in accordance with Schedule 4 shall be served on the witness—

- (a) by delivering it to him;

- (b) by leaving it for him with a person at his usual place of abode;
- (c) by post in a letter addressed to him at his last known or usual place of abode; or
- (d) where the witness is subject to military law, air-force law or the Naval Discipline Act 1957, by serving it on his commanding officer.

(3) Where a witness summons is served on a person's commanding officer in accordance with paragraph (2)(d), the commanding officer shall serve the witness summons on that person.

### **Oaths and affirmations**

**31.**—(1) An oath shall be administered to any person attending a hearing of the court as an officer or other person under instruction or interpreter.

(2) A witness before the court—

- (a) shall be examined on oath if he has attained the age of 14 years;
- (b) shall give evidence unsworn if he is under that age.

(3) Unsworn evidence admitted by virtue of paragraph (2)(b) may corroborate evidence (sworn or unsworn) given by any other person.

(4) If—

- (a) a person required to take an oath for the purposes of proceedings before the court objects to being sworn, or
- (b) it is not reasonably practicable to administer an oath to such a person as aforesaid in the manner appropriate to his religious belief,

he shall be permitted to make a solemn affirmation instead of taking an oath.

(5) A person who may be permitted under this rule to make his solemn affirmation may also be required to do so, and for the purposes of this rule "reasonably practicable" means reasonably practicable without inconvenience or delay.

(6) Any oath or affirmation shall be administered in the form and manner set out in Schedule 5 by the judge advocate, or, where the judge advocate so directs, by any other member of the court acting on his behalf.

## **PART VI**

### **MATTERS PRELIMINARY TO THE HEARING OF AN APPEAL**

#### **Power of the summary appeal court to hear more than one appeal at the same time**

**32.**—(1) The court may decide to hear two or more appeals at the same time where it appears to be in the interests of justice to do so.

(2) The court may make a determination under paragraph (1) of its own motion or on the application of the prosecuting authority or of a person who is the appellant in one or more of the appeals to which the application relates.

(3) The power of the court to make a determination under paragraph (1) shall be exercised by a judge advocate sitting alone.

(4) Before refusing an application under paragraph (2) or making a determination under paragraph (1), the judge advocate shall afford the prosecuting authority and any person who is the appellant in any of the appeals to which the application or determination relates the opportunity of making representations to him.

(5) Where a judge advocate makes a determination under paragraph (1), he shall direct the court administration officer to specify the same time and place for the hearing of each of the appeals to which the determination relates.

### **Preliminary hearings**

**33.**—(1) The court may direct the court administration officer to convene a hearing prior to the commencement of the hearing of the appeal—

- (a) of its own motion; or
- (b) on the application of the respondent or the appellant,

and such a hearing shall be referred to in these Rules as a preliminary hearing.

(2) The power to direct a preliminary hearing under paragraph (1) may be exercised notwithstanding that a preliminary hearing has already been held by virtue of that paragraph.

(3) An application under paragraph (1)(b) shall be made in writing in the form set out in Schedule 2 and shall be served on the court administration officer.

(4) The applicant shall serve a copy of the notice given under paragraph (3) on the other party to the proceedings.

(5) Before directing the court administration officer to convene a preliminary hearing the court shall afford the appellant and the respondent the opportunity of making written representations to it.

(6) Paragraph (5) shall not oblige the court to afford any party the opportunity of making representations where it appears to it that it would be impracticable to do so, or would cause unnecessary delay.

(7) The functions of the court under this rule and rule 34 shall be exercised by a judge advocate.

(8) On receipt of a direction under paragraph (1), the court administration officer shall—

- (a) specify the time and place for the preliminary hearing to take place;
- (b) serve notice in writing of those matters on the parties to the appeal;
- (c) arrange for the attendance at the hearing of a court recorder and, if the judge advocate or any party so requests, an interpreter.

(9) Paragraphs (4) to (6) and (8) are subject to rule 34.

### **Preliminary hearing without notice to the appellant**

**34.**—(1) This rule applies where the respondent applies for a preliminary hearing to be held in accordance with rule 33, but considers that it is in the public interest for the hearing to be held without the participation of the appellant.

(2) The respondent shall include with the notice under rule 33(3) a statement that he considers that it is in the public interest for a preliminary hearing to be held without the participation of the appellant and the reasons why he considers that to be the case.

(3) Rule 33(4) (requirement to serve a copy of the notice of application for a preliminary hearing on the other party) shall not apply.

(4) The court shall determine whether in the interests of justice a preliminary hearing should take place without the participation of the appellant; and where it so determines—

- (a) paragraphs (5) and (6) of rule 33 shall not apply in relation to the application for a preliminary hearing by the respondent; and
- (b) paragraph (8)(b) of that rule shall have effect as if it required the court administration officer only to serve notice of the date, time and place of the preliminary hearing on the respondent.



### **Matters capable of being dealt with at a preliminary hearing**

**35.**—(1) Any matter relating to or affecting the hearing of the appeal may be considered at a preliminary hearing including—

- (a) any question as to the admissibility of evidence;
- (b) any question as to the jurisdiction of the court in relation to any issue raised on the appeal;
- (c) any question as to whether the whole or any part of the hearing of the appeal should not be held in open court;
- (d) any question as to the exercise by the court of its powers under rule 32;
- (e) any matter relating to the evidence to be given at the hearing of the appeal, including any matter relating to the persons who are or may be required to give evidence as witnesses at the hearing;
- (f) any question relating to the summoning of witnesses (including whether a witness summons should be held to be of no effect);
- (g) any other question of law, or of the practice or procedure of the court, relevant to the proceedings on the appeal.

(2) A preliminary hearing shall be a hearing before a judge advocate sitting alone, and he may give such orders, rulings or directions relating to any matter raised at the hearing as he thinks fit.

(3) Any ruling or order made at a preliminary hearing shall have effect until the conclusion of the proceedings on the appeal unless it appears to a judge advocate on application at any stage during the proceedings (including at a subsequent preliminary hearing) that the order or ruling should be varied or discharged.

### **Preliminary hearings in chambers**

**36.**—(1) A preliminary hearing shall take place before a judge advocate in chambers.

(2) Except with the leave of the judge advocate, and subject to paragraph (3) and rule 34, the only persons entitled to be present at a preliminary hearing are the court administration officer, the respondent, the appellant, any legal representative of the appellant, the clerk of the court, the court recorder and any interpreter.

(3) Where any question as to the exercise by the court of its powers under rule 32 falls to be considered at a preliminary hearing, any person who is an appellant in any of the appeals which may be affected and any legal representative of his shall be entitled to be present at the hearing.

### **Presence at preliminary hearing by live TV link**

**37.**—(1) Subject to paragraph (3), a person mentioned in paragraph (2) shall be treated as being present at a preliminary hearing (and shall be entitled to be heard as if so present) if, whether by means of a live television link or similar arrangements (“live link”), he is able to see and hear and to be seen and heard by—

- (a) the judge advocate before whom the hearing is taking place;
- (b) any witness giving evidence at the hearing; and
- (c) the other persons who are entitled to be present at the hearing in accordance with rule 36.

(2) The persons are the respondent, the appellant, any legal representative of the appellant, any interpreter and any person entitled to be present at the hearing by virtue of rule 36(3).

(3) Paragraph (1) shall only have effect in relation to the presence of any person at a preliminary hearing if prior to the hearing—

- (a) the appellant,

- (b) the respondent, and
- (c) any person entitled to be present at the hearing by virtue of rule 36(3) (other than in the capacity of legal representative),

have given notice in writing to the court administration officer that they consent to the person's presence at the hearing by live link.

## PART VII

### PRACTICE AND PROCEDURE OF THE SUMMARY APPEAL COURT IN RELATION TO THE HEARING OF AN APPEAL

#### **Sittings and adjournments**

**38.**—(1) The court shall sit at such times and for such periods of the day as seem to the members of the court hearing an appeal to be reasonable.

(2) The court shall not sit on Saturday or Sunday unless in the opinion of the members of the court hearing an appeal it is necessary to do so.

(3) The judge advocate may direct that the hearing of an appeal be adjourned if he is satisfied that an adjournment is necessary in the interests of justice.

(4) Where—

- (a) the hearing of an appeal is adjourned, and
- (b) the time and place for the hearing to resume is not fixed by the court at the adjourned hearing,

the court administration officer shall notify the parties in writing of the time fixed for the hearing to resume and the place where the court is to sit for the resumed hearing.

#### **Challenges by the appellant**

**39.**—(1) An appellant shall be entitled to object, on any reasonable grounds, to any member of the court hearing his appeal or any interpreter.

(2) Any objection to a member of the court shall be made immediately before the opening of the respondent's case.

(3) Every objection made by the appellant shall be determined by the judge advocate who shall announce his decision in open court.

(4) If more than one member of the court is objected to, the objection to each shall be considered in the following order—

- (a) the judge advocate;
- (b) the other members of the court specified to hear the appeal in order of seniority.

(5) If an objection to the judge advocate is allowed, the hearing of the appeal shall be postponed.

(6) If an objection to any member of the court is allowed, a waiting member in respect of whom no objection is made shall take his place; and, if there is no such member, the hearing of the appeal shall be postponed.

(7) Where the hearing of an appeal is postponed in accordance with paragraph (5) or (6), the court shall be reconstituted for the purposes of hearing the appeal.

(8) In any case where the court was to hear appeals by more than one appellant together at the same time, the judge advocate may direct that a postponement under paragraph (5) or (6) shall only

apply to the hearing of the appeal of any appellant whose objection had given rise to, or contributed to the need for, the postponement.

(9) In this rule, any reference to a waiting member is to an officer specified as such in accordance with rule 25.

#### **Interruption of hearing where a member of the court is unable to continue**

40. Where, after the commencement of the hearing of an appeal, a member of the court dies or is for any other reason unable to continue hearing the appeal, the hearing shall be discontinued and the court shall be reconstituted for the purposes of beginning again the hearing of the appeal.

#### **Refixing of postponed and interrupted hearings**

41. Where the hearing of an appeal is postponed in accordance with rule 39(5) or (6) or discontinued in accordance with rule 40, rule 22 shall have effect with respect to the reconvened hearing.

#### **Procedure to be adopted where more than one appeal against finding**

42. Where at a hearing it is necessary for the court to determine more than one appeal against a finding, those appeals shall be heard at the same time and shall be determined before any appeal against punishment awarded in respect of any finding is heard.

#### **Questions of practice and procedure not covered by the Act or the Rules**

43. Any matter relating to the practice or procedure of the court raised at the hearing of an appeal shall, to the extent that it is not provided by the Act or these Rules, be determined by the judge advocate; and, in exercising his powers under this rule, the judge advocate shall adopt such course as appears to him will best serve the interests of justice.

## **PART VIII**

### **APPEALS AGAINST FINDING**

#### **Application of Part VIII**

44. This Part shall apply to the hearing of an appeal against a finding that a charge has been proved.

#### **Power of respondent to give notice that he no longer contests an appeal against finding**

45. The respondent may at any time during the hearing of an appeal against finding give notice that he no longer intends to contest the appeal; and, where he does so, the court shall quash the finding.

#### **Addresses to the court**

46.—(1) Without prejudice to paragraphs (3) and (4), the respondent and the appellant may each address the court once with respect to the case against the appellant on the charges being heard by the court.

(2) For the purposes of paragraph (1)—

(a) the respondent shall address the court immediately before adducing any evidence; and

(b) the appellant shall address the court immediately after the close of his case or, where there is more than one appellant, after the close of the case of each of the appellants.

(3) The respondent or appellant may with the leave of the court address it at any time during the hearing on any matter relating to the appeal or the charges which are being heard by the court.

(4) The court shall not exercise its powers under section 83ZG(1)(b) of the Act to substitute another finding without affording the appellant and the respondent an opportunity to address it on the exercise of those powers in the particular case.

### **Provisions which are to apply where there are two or more appellants**

47.—(1) The following provisions of this rule shall apply where in accordance with rule 32 the court has decided to hear appeals by more than one appellant at the same time.

(2) The respondent's case on each of the charges before the court shall be put before the case of any of the appellants, and he may make only one address in pursuance of rule 46(1).

(3) The judge advocate shall decide immediately before the hearing of the appeals the order in which the appellants are to put their case and to address the court in pursuance of rule 46(1).

(4) Before making a determination under paragraph (3) the judge advocate shall afford the respondent and each of the appellants the opportunity of making representations to him.

(5) Where the same legal representative represents two or more appellants, he may make only one address to the court in pursuance of rule 46(1).

(6) The court shall not close to deliberate on its decision in relation to any of the findings until the close of the case for each of the appellants and each of the appellants have had the opportunity to address the court in pursuance of rule 46(1).

### **Additional evidence during the hearing of the appeal**

48.—(1) If after the commencement of the hearing of an appeal the respondent intends to adduce evidence other than any evidence served or notified to the appellant in accordance with rules 18 and 19, he shall where practicable serve notice in writing of such intention together with the particulars of the additional evidence on the appellant and the judge advocate.

(2) Where notice and particulars are served on the appellant in accordance with paragraph (1), or where evidence is adduced without such notice being given, he may apply to the judge advocate for an adjournment of the hearing.

### **Expert evidence**

49. Expert evidence shall not be adduced at the hearing of an appeal without the leave of the judge advocate, unless the party proposing to rely on it has served on the other party to the appeal a statement setting out the substance of the expert evidence not less than 14 days before the date on which the hearing has been fixed to begin.

### **Exhibits**

50.—(1) Any exhibit admitted in evidence shall be marked sequentially with either a number or a letter.

(2) Each exhibit or a label attached to it shall be signed by a member of the court hearing the appeal.

(3) Each exhibit shall be retained with the record of the proceedings, unless in the opinion of the judge advocate, having regard to the nature of the exhibit or for some other good reason, it is not expedient to retain the exhibit with the record.

(4) Where an exhibit is not retained with the record of proceedings, the judge advocate shall ensure that steps are taken for its safe custody.

### **Presence of witnesses**

**51.**—(1) Except where the person is the appellant, or is present to give expert evidence or evidence as to a person’s character, a person who is to be called to give evidence shall not, except by leave of the judge advocate, be present at the hearing of an appeal against a finding until he is called to give evidence and examined.

(2) If while a witness is under examination a question arises as to the admissibility of a question put to him or otherwise with regard to the evidence, the judge advocate may direct the witness to withdraw until the question is determined.

(3) The judge advocate may direct any person, who is to give expert evidence or evidence as to a person’s character, to withdraw from the court if he considers that the person’s presence is undesirable in the interests of justice.

### **Examination of witnesses**

**52.**—(1) The judge advocate may allow a request that the cross-examination or re-examination of a witness be postponed if he is satisfied that there is a good reason for such a request and there is no injustice in doing so.

(2) The judge advocate may question any witness and, if he considers it appropriate, may put to the witness a question from any other member of the court.

(3) If in the opinion of the judge advocate it is in the interests of justice to do so, the court may at any time—

- (a) call any witness whom it has not already heard;
- (b) recall a witness;
- (c) permit the appellant or the respondent to recall a witness.

### **Submission of no case to answer**

**53.**—(1) At the close of the case for the respondent the appellant may submit, in respect of any charge, that the respondent has failed to establish a case for him to answer.

(2) Where such a submission is made the respondent shall be given the opportunity to address the court on the submission.

(3) Any issue raised on such a submission shall be determined by the judge advocate who shall give such directions to the court as he thinks fit.

### **Finding that charge has not been proved after the close of the respondent’s case**

**54.**—(1) The court may at any time after the close of the case for the respondent find that a charge has not been proved, and where they so find they shall quash the finding that the charge has been proved made under section 76B of the Act.

(2) The court shall give an opportunity to the respondent to address it before making a finding under paragraph (1).

### **Witnesses for the appellant**

**55.** Except with the leave of the judge advocate, if the appellant elects to give evidence he shall be called before any other witnesses for the appellant.

### **Evidence in rebuttal**

56. With the leave of the judge advocate, the respondent may call or recall a witness to give evidence on any matter raised by the appellant in relation to a charge which the respondent could not—

- (a) properly have dealt with before the appellant disclosed his case; or
- (b) reasonably have foreseen.

### **Deliberation on finding**

57.—(1) After the close of the case for the appellant, the court shall close to deliberate on its decision in relation to each finding.

(2) During its deliberation on any such finding, the court shall not separate until the decision on the finding has been reached, unless the judge advocate directs that in the interests of justice the court may separate.

(3) The vote of each member of the court shall be given orally; and the vote of each member of the court qualified for membership under section 83ZC of the Act or rule 23 shall be given in reverse order of seniority and before the vote of the judge advocate.

(4) In paragraph (1) and in rule 58, the reference to each finding is to each finding under section 76B of the Act to which the charges heard by the court relate.

### **Record of decision of the court on finding**

58.—(1) The decision of the court on each finding, and (except where the decision is to quash the finding) the reasons for it, shall be announced separately in open court by the judge advocate.

(2) The decision of the court on a finding, shall be recorded in writing and dated and signed by the members of the court hearing the appeal.

## **PART IX**

### **PRACTICE AND PROCEDURE RELATING TO THE POWERS OF THE COURT TO VARY PUNISHMENT AWARDED**

#### **Application of Part IX**

59. This Part shall have effect in relation to the practice and procedure of the court—

- (a) with respect to the exercise of its powers under section 83ZG(2)(b) or (3) of the Act (powers of the court to vary punishment awarded); and
- (b) on an appeal against any punishment awarded.

#### **Information to be provided by the respondent**

60.—(1) The respondent shall provide the court with information concerning—

- (a) any punishment awarded on summary dealing against which an appeal is brought;
- (b) where the appeal is only against finding, any punishment awarded in respect of that finding;
- (c) where any punishment referred to in paragraphs (a) and (b) relates to any finding which is not the subject of an appeal, the particulars of the offence to which the finding relates; and

- (d) such other matters as appear to the respondent to be relevant to the exercise by the court of its powers under (as the case may be) section 83ZG(2), (3) or (4) of the Act.
- (2) The information referred to in paragraph (1)(d) shall, as far as practicable, include information concerning—
- (a) the appellant's age and rank;
  - (b) the appellant's service record;
  - (c) any recognised acts of gallantry;
  - (d) the particulars of any other offence (whether under the Act or otherwise) of which the appellant has been found guilty (during his service or otherwise), provided that any convictions treated as spent for the purposes of the Rehabilitation of Offenders Act 1974(13) shall be indicated as such; and
  - (e) particulars of any formal police caution administered to the appellant by a constable in England and Wales or Northern Ireland.
- (3) A record of antecedents signed by the appellant may be accepted in evidence by the court under paragraph (2)(d) where the appellant has admitted that he has been found guilty of each offence listed in the record and has had explained to him the purpose for which such admission was sought.
- (4) Unless the appellant so requires, the matters referred to in this rule need not be adduced in compliance with the strict rules of evidence.

#### **Determining disputes of fact**

- 61.**—(1) Where on an appeal which relates only to the award of punishment there are disputed facts in the case, any issue of fact may be tried by the court.
- (2) Where an issue of fact is tried in accordance with paragraph (1)—
- (a) the judge advocate may direct the respondent to call any witness to give evidence, and
  - (b) the respondent and the appellant may, with the leave of the judge advocate, adduce evidence.
- (3) The court shall sit in closed court while deliberating on its findings on the issue of fact.
- (4) The decision of the court on the issue of fact, and the reasons for it, shall be announced in open court by the judge advocate.

#### **Evidence on behalf of the appellant etc.**

- 62.**—(1) The appellant may—
- (a) give evidence on oath and call witnesses;
  - (b) produce to the court any document or written report;
  - (c) address the court,
- on any matter relevant to the award of punishment.
- (2) Unless the respondent requires otherwise, any document or report referred to in paragraph (1) (b) need not be adduced in compliance with the strict rules of evidence.

#### **Deliberation on punishment**

- 63.**—(1) The court shall close to deliberate on its decision on any punishment awarded.

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(13) 1974 c. 53; sections 2 and 6 were amended, and the Schedule was inserted, by the Armed Forces Act 1996 (c. 46), section 13 and Schedule 4.

(2) Any such decision, and the reasons for it, shall be announced in open court by the judge advocate.

(3) The decision of the court on any punishment awarded shall be recorded in writing and dated and signed by the members of the court hearing the appeal.

## PART X

### RECORD OF PROCEEDINGS

#### **Record of proceedings**

**64.**—(1) The record of proceedings in relation to an appeal shall include—

- (a) where appropriate, the record of the decision of the court on each finding; and
- (b) the record of the decision of the court in respect of any punishment awarded.

(2) The record of proceedings shall be kept in the custody of the court administration officer for a period of 6 years after the conclusion of the hearing of the appeal.

(3) An appellant shall be entitled to receive a copy of the record of proceedings—

- (a) on an application to the court administration officer within the relevant period, and
- (b) on payment of a fee at such rate as the court administration officer may determine.

(4) In this rule, “the relevant period” means, in relation to an appellant, the period of 6 years after the conclusion of the hearing of the appeal.

## PART XI

### APPLICATION TO SUMMARY APPEAL COURT TO STATE CASE

#### **Application for case to be stated**

**65.**—(1) An application under section 83ZH(2) of the Act to the court to have a case stated for the opinion of the High Court shall be made in writing and shall be served on the applicant’s commanding officer within 21 days after the date of the decision in respect of which the application is made.

(2) The application shall state the grounds on which the decision of the court is questioned.

(3) Where an application under section 83ZH(2) of the Act is served on the applicant’s commanding officer under paragraph (1), he shall as soon as practicable serve it on the court administration officer.

(4) After making the application in accordance with paragraph (1), the applicant shall as soon as practicable serve a copy of it on the prosecuting authority.

(5) On receipt of the application, the court administration officer shall as soon as practicable send it to the judge advocate who sat as a member of the court at the hearing to which the application relates.

(6) On receipt of the application, the judge advocate shall inform the court administration officer as to whether or not he has decided to state a case and that officer shall give notice in writing to the applicant of the judge advocate’s decision.



(7) If the judge advocate considers that the application is frivolous, he may refuse to state a case and shall in that case, if the applicant so requires, cause a certificate stating the reasons for the refusal to be given to him.

#### **Procedure on stating a case**

**66.**—(1) If the judge advocate decides to state a case the procedure to be followed shall, unless the judge advocate directs otherwise, be the procedure set out in the following provisions of this rule.

(2) The applicant shall, within 21 days of receiving the notice referred to in rule 65(6), draft a case and serve a copy of it on the court administration officer and the prosecuting authority.

(3) The prosecuting authority shall, within 21 days of receiving a copy of the draft case under paragraph (2), either—

- (a) give notice in writing to the applicant and the court administration officer that he does not intend to take part in the proceedings before the High Court; or
- (b) indicate in writing on the copy of the draft case that he agrees with it and send the copy to the court administration officer; or
- (c) draft an alternative case and serve it, together with a copy of the applicant’s case, on the court administration officer.

(4) The judge advocate shall consider the applicant’s draft case and any alternative draft case served on the court administration officer in accordance with paragraph (3)(c).

(5) The function of the court in stating a case under section 83ZH(2) of the Act shall be exercised by the judge advocate sitting alone.

(6) The judge advocate shall state and sign a case within 14 days after either—

- (a) the date on which he receives all the documents required to be served on the court administration officer under paragraph (3); or
- (b) the expiration of the period of 21 days referred to in that paragraph,

whichever is the sooner.

#### **Supplementary provisions relating to stating a case**

**67.**—(1) A case stated by the court shall state the facts found by the court, the submissions of the parties (including any authorities relied on by the parties during the course of those submissions), the decision of the court in respect of which the application is made and the question on which the opinion of the High Court is sought.

(2) Any time limit referred to in rules 65 and 66 may be extended by the judge advocate either before or after it expires.

(3) If the judge advocate decides not to state a case but the stating of a case is subsequently required by the High Court by order of mandamus, rule 66 shall apply to the stating of the case save that—

- (a) in paragraph (1), the words “If the judge advocate decides to state a case” shall be omitted; and
- (b) in paragraph (2) for the words “receiving the notice referred to in rule 65(6)” there shall be substituted the words “the day on which the order of mandamus was made”.

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4th September 2000

*Symons of Vernham Dean*  
Minister of State, Ministry of Defence

## SCHEDULE 1

Rule 3(2)

### PROPER ADDRESS

1. Subject to the following provisions of this Schedule, a reference to a person's proper address is to the address of the unit to which he belongs.
2. Where a person is on attachment to a unit, a reference to his proper address is to the address of the unit to which he is attached.
3. In the case of an appellant who—
  - (a) is not subject to air-force law, or
  - (b) is subject to air-force law only by virtue of section 131 of the Act,a reference to his proper address is to his usual or last known place of residence.
4. In the case of the Judge Advocate General, a reference to his proper address is to the address of his office in the United Kingdom or the office of his Deputy in Germany.

## SCHEDULE 2

Rules 8(1), 9(2), 12(2), 15(2) and 33(3)

### FORMS

Where any rule requires the use of a form set out in this Schedule, that requirement shall be satisfied by the use of a form substantially to the like effect as the form set out below.

Form 1—Notice of appeal

Form 2a—Notice of application to extend the period of time for bringing an appeal

Form 2b—Notice of application for leave to appeal out of time

Form 3—Notice of application for leave to refer a finding or punishment to be considered by the summary appeal court as on an appeal

Form 4—Notice of abandonment of appeal

Form 5—Notice of application for a preliminary hearing

Form INOTICE OF APPEAL

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To: COURT ADMINISTRATION OFFICER OF THE SUMMARY APPEAL COURT

I.....  
(name) (rank)

..... of.....  
(service no.) (unit/address)

DO HEREBY GIVE NOTICE that it is my intention to appeal against—

*[Insert here details of any finding, or any punishment awarded, against which an appeal is brought]*

imposed by way of summary dealing on the .....day of .....20....

held in .....

Date punishment awarded .....

Signature.....

Dated this.....day of.....20....

Form 2aNotice of application to extend the period of time for bringing an appeal

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To: COURT ADMINISTRATION OFFICER OF THE SUMMARY APPEAL COURT

I.....  
(name) (rank)

..... of.....  
(service no.) (unit/address)

DO HEREBY GIVE NOTICE of an application under section 83ZE(2) of the Air Force Act 1955 to extend the period of time for bringing an appeal.

The application relates to the following finding(s) and punishment—

[Insert here details of the finding or findings and punishment awarded]

imposed by way of summary dealing on the .....day of ..... 20....

held in .....

Date punishment awarded .....

The grounds for the application are—

[Insert here the matters on which you wish to rely in support of your application]

Signature.....

Dated this.....day of..... 20....

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To: COURT ADMINISTRATION OFFICER OF THE SUMMARY APPEAL COURT

I.....  
(name) (rank)  
..... of .....  
(service no.) (unit/address)

DO HEREBY GIVE NOTICE of an application under section 83ZE(3) of the Air Force Act 1955 for leave to appeal out of time.

The application relates to the following finding(s) and/or punishment:—

[Insert here details of any finding, or punishment awarded, against which the appeal is brought]

imposed by way of summary dealing on the .....day of ..... 20....  
held in .....  
Date punishment awarded.....

The grounds for the application are—

[Insert here the matters on which you wish to rely in support of your application.]

Signature.....

Dated this.....day of..... 20....

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Form 3 Notice of application for leave to refer a finding or punishment to be considered by the summary appeal court as on an appeal

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To: COURT ADMINISTRATION OFFICER OF THE SUMMARY APPEAL COURT

I DO HEREBY GIVE NOTICE of an application under section 115(5A)/115(5B)\* of the Air Force Act 1955.

The particulars of the application are as follows—

1. *Details of accused:*

Name ..... rank.....  
Service No. .... unit/address .....

2. *Details of summary dealing:*

Where held ..... Date.....  
Particulars of the charges dealt with summarily and the findings recorded in respect of each charge:

Particulars of the punishment awarded:

Date punishment awarded .....

3. *Matters to which the application relates:*

[Insert here any finding or punishment to which the application relates]

4. *Grounds for the application:*

Signature .....

Name..... Rank .....

Date.....

[\*Delete as appropriate]



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Form 4 Notice of abandonment of appeal

To: COURT ADMINISTRATION OFFICER OF THE SUMMARY APPEAL COURT

I.....  
(name) ..... (rank)  
..... of .....  
(service no.) ..... (unit)

DO HEREBY GIVE NOTICE that it is my intention to abandon my appeal against—  
[Insert here details of any finding, or punishment awarded, to which the notice relates]

imposed by way of summary dealing on the .....day of .....20....  
held in .....

Date punishment awarded .....

Signature.....  
Dated this.....day of.....20....

Form 5 Notice of application for a preliminary hearing

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From *[full name]*

To: COURT ADMINISTRATION OFFICER OF THE SUMMARY APPEAL COURT

APPLICATION FOR A PRELIMINARY HEARING IN THE MATTER OF

*[Insert here particulars of the appeal to which the application relates including the rank, name and service number of Appellant]*

As \*respondent/appellant/appellant's legal adviser, I hereby apply for a preliminary hearing to take place before the commencement of the hearing of the appeal.

I would wish to address the following matters at the preliminary hearing:  
*[List matters which you wish to be considered at the preliminary hearing]*

I estimate that the length of time required for such a preliminary hearing will be:  
*[Estimate length of time required for preliminary hearing]*

It is requested that the witnesses whose details are given below be summoned by the Court to attend the hearing:  
*[List witnesses and their addresses]*

*signed*  
*date*

*[\*Delete as appropriate]*

**Send copies to:**

*Appellant*  
*Appellant's Legal Adviser*  
*or*  
*Air Force Prosecuting Authority*

SCHEDULE 3

Rule 27(2)

EVIDENCE

PART I

MODIFICATIONS TO SECTION 9 OF THE CRIMINAL JUSTICE ACT 1967

1. Section 9 of the Criminal Justice Act 1967 shall have effect in relation to proceedings before the court subject to the modifications specified in the following provisions of this Part of this Schedule.

2. In subsection (2)—

(a) in paragraph (c), after the word “proceedings” there shall be inserted—

“and the court administration officer”; and

(b) in paragraph (d), for the words “solicitors” there shall be substituted the words “legal representatives”.

3. For subsection (5) there shall be substituted—

“(5) An application under subsection (4)(b) above to the summary appeal court may be made before the hearing of the appeal and on any such application the powers of the court shall be exercised by a judge advocate sitting alone.”.

4. For subsection (8) there shall be substituted—

“(8) A document required by this section to be served on any person may be served—

(a) by delivering it to him;

(b) by addressing it to him and leaving it at the address of his unit;

(c) by sending it by post addressed to him at the address of his unit;

(d) in the case of a person bringing an appeal under section 83ZE of the Air Force Act 1955, by serving it on—

(i) his legal representative; or

(ii) where he is subject to air-force law otherwise than by virtue of section 131 of that Act, his commanding officer,

in any of the ways provided by paragraphs (a) to (c) above.”.

5. After subsection (8), there shall be inserted—

“(9) Where the person to be served is not subject to air-force law or is subject to air-force law only by virtue of section 131 of the Air Force Act 1955, any reference in subsection (8) above to the address of his unit shall have effect as a reference to his usual or last known place of residence.

(10) Where a document is received by the commanding officer of a person bringing an appeal in accordance with subsection (8)(d) above, he shall deliver it (or cause it to be delivered) to that person as soon as practicable.

(11) For the purposes of subsection (2)(d) above, a document served on the commanding officer of a person shall not be treated as having been served on that person until it is delivered to him by his commanding officer.

(12) In this section—

“commanding officer”, in relation to any person, means such officer as would be determined by regulations of the Defence Council under section 82(1) of the Air Force

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Act 1955 as the commanding officer of that person if that person were charged with an office under that Act;

“the court administration officer” means the person appointed to that office under section 83ZA of the Air Force Act 1955;

“judge advocate” means a judge advocate appointed under section 83ZB of the Air Force Act 1955; and

“the summary appeal court” means the summary appeal court established under section 83ZA of the Air Force Act 1955.”.

## PART II

### MODIFICATIONS TO SECTIONS 10 AND 11 OF THE CRIMINAL JUSTICE ACT 1967

**6.** Sections 10 and 11 of the Criminal Justice Act 1967 shall have effect in relation to proceedings before the court subject to the modifications specified in the following provisions of this Part of this Schedule.

**7.** In section 10(1), for the words “prosecutor or defendant” there shall be substituted the words “respondent or appellant”.

**8.** In section 10(2)—

- (a) for the words “a defendant”, wherever they appear, there shall be substituted the words “the appellant”;
- (b) for the words “counsel or solicitor”, wherever they appear, there shall be substituted the words “legal representative”; and
- (c) in paragraph (e), for the words “the trial” there shall be substituted the words “the hearing of the appeal”.

**9.** In section 11, for the word “defendant”, wherever it appears, there shall be substituted the word “appellant”.

**10.** In section 11(1), for the words “On a trial on indictment the defendant” there shall be substituted the words “Subject to subsection (1A) below, on the hearing of an appeal under section 83ZE of the Air Force Act 1955 the appellant”.

**11.** After section 11(1), there shall be inserted—

“(1A) Subsection (1) shall not apply where the appellant adduced evidence of an alibi in the proceedings under section 76B of the Air Force Act 1955 to which the appeal relates, and the particulars of the alibi raised in those proceedings are substantially the same as those which he would be required to include in the notice of alibi under subsection (1) above.”.

**12.** In section 11(2), for the word “trial” there shall be substituted the word “hearing”.

**13.** In section 11(3), for the words from “in accordance with” to the end of the subsection there shall be substituted—

“in accordance with rules made under section 83ZJ of the Air Force Act 1955 of the requirements of this section”.

**14.** In section 11(5), for the word “solicitor” there shall be substituted the words “legal representative”.

**15.** For section 11(6) there shall be substituted—

“(6) Any notice under this section shall be given in writing to the respondent.”.

16. Section 11(7) shall be omitted.
17. In section 11(8), for the definition of “the prescribed period” there shall be substituted—  
““the prescribed period” means the period of 14 days beginning with the date on which the respondent’s papers are served on the appellant in accordance with rules made under section 83ZJ of the Air Force Act 1955”.

### PART III

#### MODIFICATIONS TO PARTS VII AND VIII OF THE POLICE AND CRIMINAL EVIDENCE ACT 1984

18. In relation to proceedings on an appeal under section 83ZE of the Act—
- (a) Parts VII and VIII shall have effect as if any reference to proceedings included a reference to the proceedings on the appeal;
  - (b) Section 74 shall have effect as if any reference to the accused included a reference to the appellant;
  - (c) sections 76 and 78(1) shall have effect as if—
    - (i) any reference to an accused person included a reference to the appellant; and
    - (ii) any reference to the prosecution included a reference to the respondent;
  - (d) section 77 shall not have effect;
  - (e) section 79 shall have effect as if any reference to the defence or the accused included a reference to the appellant;
  - (f) section 80 shall have effect as if—
    - (i) any reference to the accused included a reference to the appellant;
    - (ii) any reference to the prosecution included a reference to the respondent; and
    - (iii) any reference to a person jointly charged with the accused included a reference to any person whose appeal under section 83ZE of the Act is being heard by the court at the same time as the appellant’s appeal; and
  - (g) section 81 shall not have effect.

#### SCHEDULE 4

Rule 30

#### WITNESS SUMMONS

- 1.—(1) This paragraph applies where the court is satisfied that—
- (a) a person is likely to be able to give evidence likely to be material evidence, or produce any document or thing likely to be material evidence, in proceedings on an appeal under section 83ZE of the Act; and
  - (b) the person will not voluntarily attend as a witness or will not voluntarily produce the document or thing.
- (2) In such a case the court shall, subject to the following provisions of this paragraph, issue a summons (a witness summons) directed to the person concerned and requiring him to—
- (a) attend before the court at the time and place stated in the summons, and
  - (b) give evidence or produce the document or thing.

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(3) A witness summons issued under this paragraph shall be in the form specified in the Appendix to this Schedule.

(4) A witness summons may only be issued under this paragraph on an application made in accordance with paragraph 3; and the court may refuse to issue the summons if any requirement relating to the application is not fulfilled.

(5) Until the hearing of the appeal begins, the jurisdiction of the court in relation to its functions under this Schedule shall be exercised by a judge advocate sitting alone.

(6) An application for a witness summons may be made by the appellant or the respondent.

2. A witness summons which is issued under paragraph 1 and which requires a person to produce a document or thing as mentioned in paragraph 1(2) may also require him to produce the document or thing—

(a) at a place stated in the summons, and

(b) at a time which is so stated and precedes that stated under paragraph 1(2),

for inspection by the person applying for the summons.

3.—(1) Subject to sub-paragraph (2), an application for a witness summons shall be made in writing to the court administration officer and shall—

(a) contain a brief description of the stipulated evidence, document or thing;

(b) set out the reasons why the applicant considers that the stipulated evidence, document or thing is likely to be material;

(c) specify the grounds for believing that the directed person is likely to be able to give the stipulated evidence or to produce the stipulated document or thing;

(d) set out the reasons why the applicant considers that the directed person will not voluntarily attend as a witness or produce the stipulated document or thing;

(e) if the witness summons is proposed to require the directed person to produce a document or thing, state whether the applicant seeks a requirement also to be imposed under paragraph 2 and, if such a requirement is sought, specify the place and time at which the applicant wishes the document or thing to be produced.

(2) In the case of an application for a witness summons which is made during the hearing of the appeal or at a preliminary hearing, such application shall be made orally to the court, or (as the case may be) the judge advocate, who shall determine the application and give such directions as appear to be appropriate.

(3) In this Schedule—

(a) references to any stipulated evidence, document or thing are to any evidence, document or thing whose giving or production is proposed to be required by the witness summons; and

(b) references to the directed person are to the person to whom the witness summons is proposed to be directed.

4.—(1) If—

(a) a document or thing is produced in pursuance of a requirement imposed by a witness summons under paragraph 2,

(b) the person applying for the summons concludes that a requirement imposed by the summons under paragraph 1(2) is no longer needed, and

(c) he makes an application to the court in accordance with paragraph 5 that the summons shall be of no further effect,

the court may direct accordingly.

(2) If a direction is given under this paragraph the court administration officer shall notify the person to whom the witness summons is directed as to the effect of the direction.

5.—(1) An application for a direction under paragraph 4 that a witness summons shall be of no further effect shall be made in writing to the court administration officer as soon as reasonably practicable after the document or thing has been produced for inspection in pursuance of a requirement imposed by the witness summons under paragraph 2.

(2) The application shall state that the applicant concludes that the requirement imposed by the witness summons under paragraph 1(2) is no longer needed.

6.—(1) A person to whom a witness summons issued under paragraph 1 is directed may apply to the court for a direction that the summons shall be of no effect.

(2) The court may make such a direction if it is satisfied that the person concerned cannot give any evidence likely to be material evidence or, as the case may be, produce any document or thing likely to be material evidence or that for any other reason the witness summons should be of no effect.

(3) The court may refuse to make a direction if any requirement relating to the making of an application for a direction under this paragraph is not fulfilled.

7.—(1) Subject to sub-paragraph (5), an application for a direction under paragraph 6 shall be made in writing to the court administration officer and shall set out—

- (a) the reasons why the applicant considers that he cannot give any evidence likely to be material evidence or, as the case may be, produce any document or thing likely to be material evidence; or
- (b) where there are any other reasons why the applicant considers that the witness summons should be of no effect, those reasons.

(2) On receiving the application, the court administration officer shall serve notice of the application on the person on whose application the witness summons was issued.

(3) The court shall not grant or, as the case may be, refuse the application unless the applicant and the person on whose application the witness summons has been issued have been given an opportunity of making representations, whether at a hearing or (where they agree to do so) in writing without a hearing.

(4) In a case where the witness summons to which the application relates imposed a requirement to produce any document or thing, then if—

- (a) the applicant can produce that document or thing, but
- (b) he seeks to satisfy the court that the document or thing is not likely to be material evidence or that for some other reason it should not be produced,

the applicant must, unless the court directs otherwise, arrange for the document or thing to be available at the hearing of the application.

(5) In the case of an application which is made during the hearing of the appeal or at a preliminary hearing, such application shall be made orally to the court, or (as the case may be) the judge advocate, who shall determine the application and give such directions as appear to be appropriate.

(6) Where the application is made otherwise than at the hearing of the appeal or at a preliminary hearing, the court administration officer shall notify the applicant and the person on whose application the witness summons was issued of the decision of the court in relation to the application.

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To:

Of:

**Summons to Witness**

*(\* Delete as appropriate)*

**PROCEEDINGS BEFORE THE SUMMARY APPEAL COURT**

Name of the person bringing the appeal under section 83ZE of the Air Force Act 1955:

**You are hereby summoned** to appear on *(date)* at *(time)*  
at *(place)*

to \*give evidence  
\*produce the document[s] or thing[s] specified in the Schedule hereto

\* at a preliminary hearing to be held in connection with the proceedings on the appeal  
\* at the hearing of the appeal

brought by the above-named person.

**\*You are also hereby summoned** to appear on *(date)*.....at *(time)*.....  
at *(place)*..... to produce the document[s] or thing[s] specified in Part II of the Schedule hereto.

**You will wish to note that:**

*(Where the witness is subject to service law)* **\*Failure to comply with this summons is an offence under:**

**\*section 57 of the Air Force Act 1957 as amended by paragraph 2 of Schedule 3 to the Armed Forces Discipline Act 2000;**

**\*section 38 of the Naval Discipline Act 1957 as amended by paragraph 3 of Schedule 3 to the Armed Forces Discipline Act 2000.**

**\*section 57 of the Army Act 1955 as amended by paragraph 1 of Schedule 3 to the Armed Forces Discipline Act 2000;**

*(Where the witness is not subject to air-force law)* **\*Failure to comply with this summons may render you liable to punishment for contempt of court by virtue of section 101 of the Air Force Act 1955 as amended by paragraph 6 of Schedule 3 to the Armed Forces Discipline Act 2000.**

*(signed)*

Judge Advocate

*(date)*

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**SCHEDULE OF DOCUMENTS OR THINGS  
TO BE PRODUCED**

*Part I—Documents etc. to be produced only at the hearing*

*Part II—Documents etc. to be produced prior to as well as at the hearing*



SCHEDULE 5

Rule 31

OATHS AND AFFIRMATIONS

PART I

MANNER OF ADMINISTERING OATHS AND AFFIRMATIONS

1. The person taking the oath shall hold the New Testament, or if a Jew the Old Testament, in his uplifted hand and shall say or repeat after the person administering it the oath provided in Part II of this Schedule for that category of person.

2. If any person to whom an oath is administered desires to swear in the form and manner in which an oath is usually administered in Scotland, he may do so with uplifted hand and saying or repeating after the person administering it the Scottish oath provided in Part III of this Schedule.

3. If none of the forms of oath provided in this Schedule is appropriate to the religious beliefs of the person taking the oath, an oath may be administered in such form and manner as the person taking the oath declares to be binding on his conscience in accordance with his religious beliefs.

4. A person making a solemn affirmation instead of taking an oath shall say or repeat after the person administering it the affirmation provided in this Schedule for that category of person.

PART II

FORMS OF OATHS

**Persons under instruction**

5. I swear by Almighty God that I will not on any account, at any time whatsoever, disclose the vote or opinion of any member of the summary appeal court given in these proceedings unless thereunto required in due course of law.

**Interpreter**

6. I swear by Almighty God that I will well and faithfully interpret and make true explanation of all such matters and things as shall be required of me according to the best of my skill and understanding.

**Witness aged 18 years or over**

7. I swear by Almighty God that the evidence which I shall give shall be the truth, the whole truth, and nothing but the truth.

**Witness under the age of 18 years**

8. I promise before Almighty God that the evidence which I shall give shall be the truth, the whole truth, and nothing but the truth.

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## PART III

### FORMS OF SCOTTISH OATHS

9. The form of Scottish oath shall in each case be the same as the form of oath set out above except that for the words “I swear by Almighty God” there shall be substituted the words “I swear by Almighty God and as I shall answer to God at the Great Day of Judgement”.

## PART IV

### FORM OF SOLEMN AFFIRMATION

10. The form of affirmation shall in each case be the same as the form of oath set out above except that for the words “I swear by Almighty God” or, as the case may be, “I promise before Almighty God” there shall be substituted the words “I solemnly, sincerely, and truly declare and affirm”.

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### EXPLANATORY NOTE

*(This note is not part of the Rules)*

These Rules regulate the practice and procedure to be followed in proceedings before the summary appeal court. The summary appeal court is established under section 83ZA of the Air Force Act 1955 (“the Act”), as inserted by section 14 of the Armed Forces Discipline Act 2000, to hear appeals against findings recorded and punishments awarded on summary dealing.

*Part I* of the Rules contains provisions which apply generally to proceedings before the summary appeal court. These include provisions dealing with the service of documents (*rules 3 and 4*), the circumstances in which hearings before the court may be held in camera (*rule 5*), and the legal representation of appellants (*rules 6 and 7*).

*Part II* makes provision with respect to the bringing and abandonment of appeals. *Rule 8* and *Schedule 2* specify the form in which notice of appeal is to be given. Section 83ZE(2) and (3) of the Act enables the court to give leave to extend the period for bringing an appeal and to give leave for an appeal to be brought out of time. *Rules 9 to 11* specify the practice and procedure to be followed in determining an application for leave under either of those subsections. Section 115(5A) and (5B) of the Act allows the authority carrying out a review under that section, with the leave of the summary appeal court, to refer any finding or punishment awarded to the court to be considered or re-considered by it as on an appeal. *Rules 12 and 13* specify the practice and procedure to be followed in determining an application for leave made under either of those subsections. *Rule 15* enables an appeal to be abandoned at any time before its determination, and specifies the procedure to be followed where the appeal is abandoned prior to the hearing.

*Part III* specifies the procedure to be followed on the bringing of an appeal. *Rule 16* requires the prosecuting authority as the respondent to give notice indicating whether or not he intends to contest an appeal against finding. *Rule 17* prescribes the practice to be followed by the court where the respondent gives notice that he does not intend to contest an appeal, including specifying the circumstances in which the functions of the court can be exercised by a judge advocate sitting alone. *Rules 18, 19 and 21* make provision as to the documents and other material to be made available by the respondent to the appellant. *Rule 22* requires the court administration officer to give notice of

the time and place fixed for the hearing of the appeal, and to give particulars of the persons (other than the judge advocate) who are to hear the appeal.

*Part IV* makes provision with respect to the constitution of the summary appeal court in hearing particular appeals. *Rule 23* specifies the circumstances in which persons who are not qualified for membership of the court under section 83ZC of the Act may nevertheless sit as members of the court hearing an appeal. *Rule 24* identifies the persons who, although otherwise qualified for membership of the court, cannot sit as members of the court to hear particular appeals. *Rule 25* requires the court administration officer to specify a reserve member for the hearing of an appeal (known as a “waiting member”). *Rule 26* makes provision for the appointment of court officials.

*Part V* makes provision with respect to the admissibility of evidence (*rules 27 and 28*); the circumstances in which evidence can be given by live TV link (*rule 29*); the summoning of witnesses (*rule 30 and Schedule 4*); and the administration of oaths and affirmations to witnesses and other persons attending hearings of the court (*rule 31 and Schedule 5*).

*Part VI* specifies the practice and procedure to be followed by the court in deciding to hear two or more appeals at the same time (*rule 32*), and provides for preliminary hearings to take place before judge advocates (*rules 33 to 37*). *Rule 35* specifies the matters which are capable of being dealt with at a preliminary hearing. *Rules 34, 36 and 37* deal with attendance at preliminary hearings, which includes attendance by live TV link in specified circumstances.

*Part VII* makes provision with respect to sittings and adjournments (*rule 38*) and challenges by the appellant to members of the court or any interpreter (*rule 39*). It also includes provision for refixing the hearing of any appeal where for any reason the hearing is unable to continue (*rule 41*). *Rule 43* provides that, to the extent that any matter relating to the practice and procedure of the court at a hearing is not provided by the Act or the Rules, it shall be determined by the judge advocate.

*Part VIII* makes specific provision with respect to the hearing of an appeal against a finding that a charge has been proved. *Rule 46* allows the appellant and the respondent each to address the court at least once. *Rule 47* makes provision as to the practice and procedure to be adopted where the court is hearing appeals by more than one appellant at the same time. Other provisions in *Part VIII* closely follow provisions which apply to the hearing of a charge by a court-martial. *Rule 58* provides for the decision of the court in relation to each finding, and the reasons for it (except where the decision is to quash the finding), to be announced in open court.

*Part IX* deals with the practice and procedure of the court in relation to the exercise of its powers to vary any punishment awarded on summary dealing. *Rule 60* specifies the information which is to be provided to the court by the respondent. Other provisions relating to the determination of disputes of fact (*rule 61*) and the giving of evidence on behalf of the appellant (*rule 62*) closely follow equivalent provisions in the Courts-Martial (Royal Air Force) Rules 1997. *Rule 63* requires any decision of the court and the reasons for it to be announced in open court.

*Part X* provides for the keeping of the record of proceedings for a period of 6 years after the conclusion of the hearing of the appeal (*rule 64*). It also provides for an appellant to be entitled to receive a copy of the record of proceedings on application to the court administration officer.

*Part XI* specifies the procedure which is to apply with respect to applications to the court to have a case stated for the opinion of the High Court (*rules 65 to 67*). The procedure closely follows that which applies in relation to applications to the Crown Court to have a case stated.