

2005 No. 1536

DEFENCE

The Summary Appeal Courts (Amendment) Rules 2005

<i>Made</i> - - - -	<i>8 June 2005</i>
<i>Laid before Parliament</i>	<i>10 June 2005</i>
<i>Coming into force</i> - -	<i>1 July 2005</i>

The Secretary of State, in exercise of the powers conferred upon him by section 83ZJ of the Army Act 1955(a), section 83ZJ of the Air Force Act 1955(b), section 52FP of the Naval Discipline Act 1957(c), and sections 111 and 132 of the Criminal Justice Act 2003(d), hereby makes the following Rules:

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Summary Appeal Courts (Amendment) Rules 2005 and shall come into force on 1 July 2005.

(2) In these Rules—

“the Army Rules” means the Summary Appeal Court (Army) Rules 2000(e);

“the Air Force Rules” means the Summary Appeal Court (Air Force) Rules 2000(f); and

“the Navy Rules” means the Summary Appeal Court (Navy) Rules 2000(g).

Amendments to the Army Rules, the Air Force Rules and the Navy Rules

2.—(1) The Army Rules, the Air Force Rules and the Navy Rules are amended as follows.

(2) In rule 2(1) after the definition of “the Act” there is inserted—

““the 2003 Act” means the Criminal Justice Act 2003;”

(3) After rule 29 there is inserted—

(a) 1955 c. 18.

(b) 1955 c. 19.

(c) 1957 c. 53.

(d) 2003 c. 44: by virtue of section 113 of, and paragraph 5 of Schedule 6 to, the Criminal Justice Act 2003 (“the 2003 Act”), section 111 has effect as if, in subsection (7), the definition of “rules of court” included rules regulating the practice and procedure of service courts. By virtue of section 135 of, and paragraph 2(6) of Schedule 7 to, the 2003 Act, section 132 is modified so that in its subsection (10), the definition of “rules of court” includes rules regulating the practice and procedure of service courts. By virtue of paragraph 6 of Schedule 6 and paragraph 8 of Schedule 7, “service court” includes a summary appeal court and “summary appeal court” means a summary appeal court constituted under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957.

(e) S.I. 2000/2371 as amended by S.I. 2004/1950.

(f) S.I. 2000/2372 as amended by S.I. 2004/1951.

(g) S.I. 2000/2370 as amended by S.I. 2004/1949.

“Procedure for the admission of evidence of bad character

29A.—(1) Where a party to the proceedings wishes to obtain the leave of the court under section 100(4) of the 2003 Act to adduce evidence of the bad character of a person other than an appellant, he shall apply in the form set out in Schedule 2 and the application must be received by the court administration officer and all other parties to the proceedings—

- (a) where that party is an appellant or co-appellant, not more than 7 days after service on him of the respondent’s papers by his commanding officer in accordance with rule 18(3); or
- (b) where that party is the respondent, not more than 7 days after he has given notice of his intention to contest an appeal against finding in accordance with rule 16(1); or
- (c) where the application concerns a person other than an appellant who is invited to give (or has given) evidence for an appellant, as soon as reasonably practicable.

(2) A party to the proceedings who receives a copy of an application under paragraph (1) may oppose that application by giving notice in writing to the court administration officer and all other parties to the proceedings not more than 7 days after receiving that application.

(3) Where a respondent wishes to adduce evidence of an appellant’s bad character he shall give notice in the form set out in Schedule 2 to the court administration officer and all other parties to the proceedings not more than 7 days after he has given notice of his intention to contest an appeal against finding in accordance with rule 16(1).

(4) Where a co-appellant wishes to adduce evidence of an appellant’s bad character he shall give notice in the form set out in Schedule 2 to the court administration officer and all other parties to the proceedings not more than 7 days after service on him of the respondent’s papers by his commanding officer in accordance with rule 18(3).

(5) Where an appellant wishes to apply under section 101(3) of the 2003 Act to exclude evidence of his bad character he shall apply in the form set out in Schedule 2 and the application must be received by the court administration officer and all other parties to the proceedings not more than 7 days after the appellant receives a notice under paragraph (3) or (4).

(6) An appellant entitled to receive a notice under this rule may waive his entitlement by so informing the court administration officer and the party who would otherwise have given the notice.

(7) The judge advocate may—

- (a) allow a notice or application required under this rule to be given or made in a different form, or orally; or
- (b) reduce a time limit under this rule, or extend it whether or not it has expired,

if it is in the interests of justice to do so.

(8) Where this rule requires a notice or application to be given or made it may be given or made by fax or other means of electronic communication.

Procedure for the admission of hearsay evidence

29B.—(1) Where a party to the proceedings wishes to adduce hearsay evidence on one or more of the grounds in section 114(1) of the 2003 Act, he shall give notice in the form set out in Schedule 2 and such notice must be received by the court administration officer and all other parties to the proceedings—

- (a) where that party is an appellant or co-appellant, not more than 7 days after service on him of the respondent’s papers by his commanding officer in accordance with rule 18(3); or
- (b) where that party is the respondent, not more than 7 days after he has given notice of his intention to contest an appeal against finding in accordance with rule 16(1).

(2) A party to the proceedings who receives a notice under paragraph (1) may oppose the admission of the hearsay evidence by giving notice in the form set out in Schedule 2 to the court administration officer and all other parties to the proceedings not more than 7 days after receiving that notice.

(3) A party entitled to receive a notice under this rule may waive his entitlement by so informing the court administration officer and the party who would otherwise have given the notice.

(4) The judge advocate may—

- (a) dispense with the requirement to give notice of an intention to adduce hearsay evidence;
- (b) allow a notice required under this rule to be given in a different form, or orally; or
- (c) reduce a time limit under this rule, or extend it whether or not it has expired,

if it is in the interests of justice to do so.

(5) Where this rule requires a notice to be given it may be given by fax or other means of electronic communication.

Application of rules 29A and 29B

29C. Rules 29A and 29B shall only apply in relation to proceedings in which no notice of intention to contest an appeal against finding has been given by the respondent in accordance with rule 16(1) before 1 July 2005.”.

Forms relating to the admission of evidence of bad character

3.—(1) In Schedule 2 to each of the Army Rules and Air Force Rules, after “Rules 8(1), 9(2), 12(2), 15(2)” there is inserted “, 29A(1), (3), (4) and (5), 29B(1) and (2)”.

(2) In Schedule 2 to the Navy Rules, after “Rules 8(1), 9(2) and (3), 12(2) and (3), 15(2)” there is inserted “, 29A(1), (3), (4) and (5), 29B(1) and (2)”.

(3) In Schedule 2 to each of the Army Rules, Air Force Rules and Navy Rules, before “Form 1—Notice of appeal” there is inserted—

“Form BC1—Notice of application for leave to adduce evidence of the bad character of a person other than an appellant

Form BC2—Notice of intention to adduce evidence of appellant’s bad character

Form BC3—Notice of application to exclude evidence of appellant’s bad character

Form H1—Notice of intention to adduce hearsay evidence

Form H2—Notice of intention to oppose admission of hearsay evidence”.

(4) The forms set out in the Schedule to these Rules are inserted before Form 1 in Schedule 2 to each of the Army Rules, Air Force Rules and Navy Rules.

SCHEDULE 1

Rule 3

Form BC1	
NOTICE OF APPLICATION FOR LEAVE TO ADDUCE EVIDENCE OF THE BAD CHARACTER OF A PERSON OTHER THAN AN APPELLANT (Section 100(4) of the 2003 Act)	
<i>Details required</i>	<i>Notes</i>
<p>1. Details of applicant</p> <p>Name:</p> <p>Service No. (if applicable)</p> <p>Unit/address</p>	
<p>2. Case details</p> <p>Name of appellant(s):</p> <p>Name of judge advocate (where appointed):</p> <p>Date of Summary Appeal:</p> <p>Offence(s):</p>	<p><i>Give brief details of the offence or offences to which this application applies.</i></p>
<p>3. Details of this application</p> <p>Please provide the following details</p> <p>(a) the particulars of the bad character evidence including how it is to be introduced or elicited in the proceedings. This should also include the names of the relevant non-appellants and all other relevant witnesses; and</p> <p>(b) the grounds of admissibility under section 100 of the 2003 Act.</p>	<p><i>Section 100 of the 2003 Act</i></p> <p><i>Please attach any relevant documentation.</i></p>
<p>4. Extension of time</p> <p>Are you applying for an extension of time for service? (yes/no)</p> <p>If so please provide details.</p>	
<p>Signed:</p>	
<p>Dated:</p>	

Form BC2	
NOTICE OF INTENTION TO ADDUCE EVIDENCE OF APPELLANT'S BAD CHARACTER (Section 101(1) of the 2003 Act)	
<i>Details required</i>	<i>Notes</i>
<p>1. Details of party giving notice</p> <p>Name:</p> <p>Whether respondent or co-appellant:</p>	
<p>2. Case details</p> <p>Name of appellant(s):</p> <p>Name of judge advocate (where appointed):</p> <p>Date of Summary Appeal:</p> <p>Offence(s):</p>	<p><i>Give brief details of the offence or offences to which this application applies.</i></p>
<p>3. Details of this Notice</p> <p>To the named appellant:</p> <p>You are hereby given notice that bad character evidence, particulars of which are detailed below, is to be adduced or elicited in these proceedings.</p> <p>The particulars of that bad character evidence are as follows.</p>	<p><i>In this section state:</i></p> <p><i>a) a description of the bad character evidence and how it is to be adduced or elicited in the proceedings (including the names of any relevant witnesses); and</i></p> <p><i>b) the grounds for the admission of evidence of the appellant's bad character under section 101 of the 2003 Act.</i></p> <p><i>Please attach any relevant documentation.</i></p>
<p>4. Extension of time</p> <p>Are you applying for an extension of time for service? (yes/no).</p> <p>If yes, state your reasons.</p>	
<p>Signed:</p> <p>Dated:</p>	

Form BC3

NOTICE OF APPLICATION TO EXCLUDE EVIDENCE OF APPELLANT'S BAD CHARACTER
(Section 101(3) of the 2003 Act)

<i>Details required</i>	<i>Notes</i>
<p>1. Details of the appellant</p> <p>Name:</p> <p>Address/unit</p> <p>Date of Birth:</p>	
<p>2. Case details</p> <p>Date of Summary Appeal:</p> <p>Offence(s):</p> <p>Date that you were served with the notice that bad character evidence is to be adduced in these proceedings:</p>	
<p>3. Details of the application</p> <p>Include the following information:</p> <p>(a) why the admission of bad character evidence would have such an adverse effect on the fairness of the proceedings that the court should not admit it;</p> <p>(b) details as to the length of time between the matters to which the bad character evidence relates and the matters which form the subject of the finding appealed against.</p> <p>(c) if you are applying for the exclusion of this evidence on grounds other than section 101(3) of the 2003 Act, please set out such objections.</p>	<p><i>Note that an application to exclude this evidence under section 101(3) of the 2003 Act can only be made if you have been notified of a party's intention to adduce this evidence under subsection 101(1)(d) (it is relevant to an important matter in issue between the appellant and the respondent) or subsection 101(1)(g) (that the appellant has made an attack on another person's character). Section 101(4) of the 2003 Act.</i></p>
<p>4. Extension of time</p> <p>Are you applying for an extension of time for service (yes/no)</p> <p>If so, state your reasons</p>	
<p>Signed:</p>	
<p>Dated:</p>	

Form H1	
NOTICE OF INTENTION TO ADDUCE HEARSAY EVIDENCE (Section 114(1) of the 2003 Act)	
<i>Details required</i>	<i>Notes</i>
<p>1. Details of party giving notice</p> <p>Name:</p> <p>Whether respondent, appellant or co-appellant:</p>	
<p>2. Case details</p> <p>Name of appellant(s):</p> <p>Name of judge advocate (where appointed):</p> <p>Date of Summary Appeal:</p> <p>Offence(s):</p>	<p><i>Give brief details of those offences to which this application applies.</i></p>
<p>3. Details of this Notice</p> <p>Notice is hereby given of my intention to adduce hearsay evidence in these proceedings, particulars of which are detailed below.</p> <p>The particulars of that hearsay evidence are as follows.</p> <p>a. Details of hearsay evidence to be adduced.</p> <p>b. Specific grounds under s.114(1) of the 2003 Act relied upon.</p> <p>c. Further details of grounds (if appropriate).</p>	<p><i>In this section enter:</i></p> <p><i>a) a detailed description of the hearsay evidence to be adduced; and</i></p> <p><i>b) the grounds for the admission of hearsay evidence under section 114(1) of the 2003 Act.</i></p> <p><i>c) where the ground relied upon is that it is in the interests of justice for it to be admitted (s.114(1)(d)) the relevant factors to which the court must have regard in s.114(2) are to be set out.</i></p> <p><i>Please attach any relevant documentation.</i></p>
<p>4. Extension of time</p> <p>Are you applying for an extension of time for service? (yes/no).</p> <p>If yes, state your reasons.</p>	
<p>Signed:</p> <p>Dated:</p>	

Form H2

NOTICE OF INTENTION TO OPPOSE ADMISSION OF HEARSAY EVIDENCE

<i>Details required</i>	<i>Notes</i>
<p>1. Details of party opposing the admission of hearsay evidence</p> <p>Name:</p> <p>Whether respondent, appellant or co-appellant:</p>	
<p>2. Case details</p> <p>Date of Summary Appeal:</p> <p>Offence(s):</p> <p>Date that you were served with the notice of intention to adduce hearsay evidence:</p>	
<p>3. Details of this notice</p> <p>Include the following information:</p> <p>a. Details of the hearsay evidence that you want to exclude:</p> <p>b. Grounds for excluding the evidence:</p>	<p><i>Give a description of the hearsay evidence that you want to exclude from the proceedings. Specify whether you object to all or part of that evidence.</i></p> <p><i>Set out the grounds for excluding the hearsay evidence that you object to. Any relevant skeleton argument or case law that might bear on the issue may be attached to this notice.</i></p>
<p>4. Extension of time</p> <p>Are you applying for an extension of time within which to give notice (yes/no)</p> <p>If so, state your reasons</p>	
<p>Signed:</p> <p>Dated:</p>	

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Summary Appeal Court (Army) Rules 2000, the Summary Appeal Court (Air Force) Rules 2000 and the Summary Appeal Court (Navy) Rules 2000 (“the Summary Appeal Court Rules”). Rule 2(3) inserts new rules into each of the Summary Appeal Court Rules to provide for the procedure for the admission of evidence of bad character and hearsay evidence under Chapters 1 and 2 of Part 11 of the Criminal Justice Act 2003. By virtue respectively of section 113 and Schedule 6, and section 135 and Schedule 7, of that Act, Chapters 1 and 2 have effect, subject to modification, in relation to proceedings before summary appeal courts. Rule 3 of these Rules inserts the forms relating to the admission of evidence of bad character and hearsay evidence into each of the Summary Appeal Court Rules. The new rules only apply to proceedings in relation to which the respondent gives notice of an intention to contest an appeal against finding on or after 1 July 2005.

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The Summary Appeal Courts (Amendment) Rules 2005

£3.00

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Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament.

E0915 6/2005 150915T 19585

ISBN 0-11-072935-8



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