Draft Order laid before Parliament under section 35(2) of the Armed Forces Act 2001, for approval by resolution of each House of Parliament. This draft Statutory Instrument has been printed to correct a defect in the original draft and is being issued free of charge to all known recipients of that Statutory Instrument.

DRAFT STATUTORY INSTRUMENTS

2006 No.

DEFENCE

The Courts-Martial (Prosecution Appeals) Order 2006

Made - - - -

Coming into force - - 5th July 2006

The Secretary of State for Defence makes the following Order in exercise of the powers conferred by section 31(3) of the Armed Forces Act 2001(**1**);

In accordance with section 35(2) of the Armed Forces Act 2001(**2**), a draft of this instrument was laid before Parliament and approved by resolution of each House of Parliament.

Citation, commencement and application

1.—(1) This Order may be cited as the Courts-Martial (Prosecution Appeals) Order 2006 and shall come into force on 5th July 2006.

(2) This Order shall only apply to trials by courts-martial which commence on or after 5th July 2006.

(3) For the purposes of this Order, trials by courts-martial commence immediately after the last court member has been sworn.

Interpretation

2. In this Order—

"the 1955 Acts" means the Army Act 1955(**3**) and the Air Force Act 1955(**4**);

(**1**) 2001.c.19. By virtue of subsection (3)(a) of section 31 of the Armed Forces Act 2001, the Secretary of State may, if he thinks fit to do so in consequence of a criminal justice enactment, by order make provision, in relation to service courts, which is equivalent to that made by the criminal justice enactment, subject to such modifications as he thinks fit. This Order makes provision in relation to service courts in consequence of Part 9 of the Criminal Justice Act 2003 (c.44) as amended by section 30 of the Domestic Violence, Crime and Victims Act 2004 (c. 28). Section 31(7) of the 2001 Act was amended by section 91(1) of the Crime (International Co-operation) Act 2003 (c.32).

(**2**) Ibid.

(**3**) 1955 c. 18.

(**4**) 1955 c. 19.

"the 1957 Act" means the Naval Discipline Act 1957(**5**);

"the 1968 Act" means the Courts-Martial (Appeals) Act 1968(**6**);

"the 2003 Act" means the Criminal Justice Act 2003(**7**);

"charge" means a charge preferred by the prosecuting authority under section 83B of the 1955 Acts or section 52I of the 1957 Act;

"court-martial" means a court-martial convened under section 84C of the 1955 Acts or under section 53C of the 1957 Act;

"the judge advocate" means—

(i) in the case of a court-martial convened under either of the 1955 Acts, the judge advocate appointed by or on behalf of the Judge Advocate General to be a member of the court-martial(**8**); or

(ii) in the case of a court-martial convened under the 1957 Act, the judge advocate appointed by or on behalf of the Judge Advocate of Her Majesty's Fleet(**9**);

"ruling" includes a decision, determination, direction, finding, notice, order, refusal, rejection or requirement.

Prosecution rights of appeal

3.—(1) In relation to a trial by court-martial, the prosecution is to have the rights of appeal for which provision is made by this Order.

(2) But the prosecution is to have no right of appeal under this Order in respect of—

(a) an order that a court be dissolved, or

(b) a ruling from which an appeal lies to the Courts-Martial Appeal Court by virtue of any other enactment.

(3) An appeal under this Order is to lie to the Courts-Martial Appeal Court.

(4) Such an appeal may be brought only with the leave of the judge advocate or the Courts-Martial Appeal Court.

General right of appeal in respect of rulings

4.—(1) This article applies where a judge advocate makes a ruling in relation to a trial by court-martial at an applicable time and the ruling relates to one or more charges on the charge sheet.

(2) The prosecution may appeal in respect of the ruling in accordance with this article.

(3) The ruling is to have no effect whilst the prosecution is able to take any steps under paragraph (4).

(4) The prosecution may not appeal in respect of the ruling unless—

(a) following the making of the ruling, it—

(i) informs the court that it intends to appeal, or

(ii) requests an adjournment to consider whether to appeal, and

(b) if such an adjournment is granted, it informs the court following the adjournment that it intends to appeal.

(**5**) 1957 c. 53.
(**6**) 1968 c. 20.
(**7**) 2003 c 44.
(**8**) Section 84(B)(1) of the Army Act 1955 and the Air Force Act 1955.
(**9**) Section 53B(1) of the 1957 Act as amended by the Naval Discipline Act 1957 (Remedial) Order 2004, S.I. 2004/66.

(5) If the prosecution requests an adjournment under paragraph (4)(a)(ii), the judge advocate may grant such an adjournment.

(6) Where the ruling relates to two or more charges—

(a) any one or more of those charges may be the subject of the appeal, and

(b) if the prosecution informs the court in accordance with paragraph (4) that it intends to appeal, it must at the same time inform the court of the charge or charges which are the subject of the appeal.

(7) Where—

(a) the ruling is a ruling that there is no case to answer, and

(b) the prosecution, at the same time that it informs the court in accordance with paragraph (4) that it intends to appeal, nominates one or more other rulings which have been made by a judge advocate in relation to the court-martial at an applicable time and which relate to the charge or charges which are the subject of the appeal,

that other ruling, or those other rulings, are also to be treated as the subject of the appeal.

(8) The prosecution may not inform the court in accordance with paragraph (4) that it intends to appeal, unless, at or before that time, it informs the court that it agrees that, in respect of the charge or each charge which is the subject of the appeal, the accused in relation to that charge should be acquitted of that charge if either of the conditions mentioned in paragraph (9) is fulfilled.

(9) Those conditions are—

(a) that leave to appeal to the Courts-Martial Appeal Court is not obtained, and

(b) that the appeal is abandoned before it is determined by the Courts-Martial Appeal Court.

(10) If the prosecution informs the court in accordance with paragraph (4) that it intends to appeal, the ruling mentioned in paragraph (1) is to continue to have no effect in relation to the charge or charges which are the subject of the appeal whilst the appeal is pursued.

(11) If and to the extent that a ruling has no effect in accordance with this article—

(a) any consequences of the ruling are also to have no effect,

(b) the judge advocate may not take any steps in consequence of the ruling, and

(c) if he does so, any such steps are also to have no effect.

(12) Where the prosecution has informed the court of its agreement under paragraph (8) and either of the conditions mentioned in paragraph (9) is fulfilled, the judge advocate or the Courts-Martial Appeal Court must order that the accused in relation to the charge or each charge concerned be acquitted of that charge.

(13) In this article "applicable time", in relation to a trial by court-martial, means any time (whether before or after the commencement of the trial) before the time when the judge advocate starts his summing-up to the court.

Expedited and non-expedited appeals

5.—(1) Where the prosecution informs the court in accordance with article 4(4) that it intends to appeal, the judge advocate must decide whether or not the appeal should be expedited.

(2) If the judge advocate decides that the appeal should be expedited, he may order an adjournment.

(3) If the judge advocate decides that the appeal should not be expedited, he may—

(a) order an adjournment, or

(b) dissolve the court (if the court has been convened).

(4) If he decides that the appeal should be expedited, he or the Courts-Martial Appeal Court may subsequently reverse that decision and, if it is reversed, the judge advocate may act as mentioned in paragraph (3)(a) or (b).

Continuation of proceedings for charges not affected by ruling

6.—(1) This article applies where the prosecution informs the court in accordance with article 4(4) that it intends to appeal.

(2) Proceedings may be continued in respect of any charge which is not the subject of the appeal.

Determination of appeal by the Courts-Martial Appeal Court

7.—(1) On an appeal under article 4, the Courts-Martial Appeal Court may confirm, reverse or vary any ruling to which the appeal relates.

(2) Paragraphs (3) to (5) apply where the appeal relates to a single ruling.

(3) Where the Courts-Martial Appeal Court confirms the ruling, it must, in respect of the charge or each charge which is the subject of the appeal, order that the accused in relation to that charge be acquitted of that charge.

(4) Where the Courts-Martial Appeal Court reverses or varies the ruling, it must, in respect of the charge or each charge which is the subject of the appeal, do any of the following—

(a) order that proceedings for that charge may be resumed at court-martial,

(b) order that a fresh court-martial be convened to try that charge,

(c) order that the accused in relation to that charge be acquitted of that charge.

(5) But the Courts-Martial Appeal Court may not make an order under paragraph (4)(a) or (b) in respect of a charge unless it considers it necessary in the interests of justice to do so.

(6) Paragraphs (7) and (8) apply where the appeal relates to a ruling that there is no case to answer and one or more other rulings.

(7) Where the Courts-Martial Appeal Court confirms the ruling that there is no case to answer, it must, in respect of the charge or each charge which is the subject of the appeal, order that the accused in relation to that charge be acquitted of that charge.

(8) Where the Courts-Martial Appeal Court reverses or varies the ruling that there is no case to answer, it must in respect of the charge or each charge which is the subject of the appeal, make any of the orders mentioned in paragraph (4)(a) to (c) (but subject to paragraph (5)).

Reversal of rulings

8. The Courts-Martial Appeal Court may not reverse a ruling on an appeal under this Order unless it is satisfied—

(a) that the ruling was wrong in law,

(b) that the ruling involved an error of law or principle, or

(c) that the ruling was a ruling that it was not reasonable for the judge advocate to have made.

Appeals to the House of Lords

9.—(1) The 1968 Act is amended as follows.

(2) In section 39(1) (right of appeal) after "this Act" there is inserted "or the Courts-Martial (Prosecution Appeals) Order 2006".