

Chapter 15

Summary hearing review and appeal

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Chapter 15

Summary hearing review and appeal

Introduction

1. This chapter provides guidance for those required to administer discipline at unit and higher authority (HA) level. Part 1 provides guidance in relation to: the review of summary hearings; where a finding that a charge is proved has been recorded; and the review of an order to activate a suspended sentence of detention. Part 2 focuses on unit actions relating to the Summary Appeal Court (SAC) following the award of a finding and sentence at summary hearing, including an appeal following the activation of a suspended sentence of detention. Part 2 does not explain how the SAC (or the judge advocates sitting alone) will conduct itself or what will occur in any hearing conducted by the SAC or the judge advocate. Guidance on these issues is contained in [Chapter 27](#) (Summary Appeal Court). Part 3 covers transitional guidance. This Chapter should be read in conjunction with [Chapter 9](#) (Summary hearing and activation of suspended sentences of Service detention).

Part 1 – Summary hearing review

Review of summary hearing findings and sentence

2. **Purpose of review.** The finding or punishment awarded may be reviewed following a summary hearing or an activation hearing where either a finding that a charge is proved has been recorded or a decision has been made to activate a suspended sentence of detention. The purpose of review is to identify if there are any reasons for referring the summary finding, sentence or activation order to the SAC. From a policy perspective, the review of summary and activation hearings identifies disciplinary trends and issues as well as helping to achieve a common approach to summary findings and punishments (including the making of activation orders) within the Services as a whole.
3. **Time limits.** There is no time limit as to when the review might take place and review is not precluded by any appeal to the SAC, but see paragraph 10 below.
4. **Reviewing officer.** A review may be carried out at any time after a summary hearing by the Defence Council or by an officer appointed by the Defence Council¹. An officer appointed for this purpose is known as a reviewing officer (RO). In practice, the Defence Council will appoint ROs in each of the Services to conduct the review function.
5. **Role of a RO.** A RO may refer a case to the SAC, but this does not affect the offender's right to appeal, see paragraph 61a below. A RO can assess matters such as whether they consider the correct procedure was followed at the summary hearing or whether the punishment awarded was reasonable. However, a RO is not legally qualified and has no judicial function; therefore, they cannot determine that errors of law may have occurred at the summary hearing and this is a matter for the SAC.
6. **Appointment of a RO.** The officers appointed by the Defence Council to act as ROs are:
 - a. **RN¹.** Lawyers on the staff of DNLS of the rank of not less than SO1, on reference from the Summary Hearing Review Cell.
 - b. **Army.** DPS(A) and staff.
 - c. **RAF.** ACOS A1 and staff, HQ Air Command.

Reviews involving activation of a suspended sentence of detention

7. A review of a summary hearing findings and sentence may include the review of any order that is made (in the summary hearing) to activate a suspended sentence of detention, see paragraphs 8 and 9 below. A review may also be carried out where a commanding officer (CO) has activated a suspended sentence of detention in a separate hearing, which for the purposes of this chapter will be described as an activation hearing.
8. A RO may review the activation of a suspended sentence of detention regardless of whether the order to activate was made in a summary hearing or an activation hearing, see [Chapter 13](#) (Summary hearing sentencing and punishments). Where a RO reviews an order

¹ Section 152 of the Act.

that is made to activate a suspended sentence of detention, they will treat the order as a punishment for the original offence for which the accused received the suspended sentence².

Case Study

1. If, in a summary hearing, a Service person receives a suspended sentence of detention for offence X, the RO may review the finding or punishment. If the Service person commits a second offence (which is proved in a subsequent summary hearing and is within the operational period of offence X) the officer conducting the summary hearing may award a punishment for the 2nd offence and activate the suspended sentence of detention by making an activation order. The RO may then review the finding and punishment for the 2nd offence and the activation order. The activation order for these purposes is treated as the punishment for offence X.
2. Similarly, if the Service person commits a second offence (for which he was convicted by the civilian court in the British Islands) their CO may activate the suspended sentence of detention. The RO may then review the activation order. The activation order for these purposes is treated as the punishment for offence X.

9. In both cases 1 and 2 in the case study above, where an activation order is reviewed, the RO will need to consider the factors that were relevant in hearing the charge in the original summary hearing (i.e. the hearing in respect of offence X) and the factors that were considered by the CO who activated the order. The RO will therefore need the written records from any relevant hearings, the Record of Summary Hearing (RSH), see [Chapter 9](#) (Summary hearing and activation of suspended sentence of Service detention) from the original summary hearing related to offence X and the subsequent hearing at which the activation order was made.

Procedures for review of summary hearings and activation orders

10. **Time limits.** Although there are no time limits within which a review must be conducted, the utility of the review will be reduced if there is a substantial delay between the summary hearing and the review. Therefore, in order to be effective, the RO should conduct a preliminary screening within 48 hours³ of the award of the punishment at the summary hearing or activation hearing, as appropriate. Where detention⁴ has been awarded and the offender has chosen to start their sentence, the review should take place as a matter of the highest priority.

11. **Initial action by unit.** As soon as reasonably practicable after the hearing of a charge (normally within 24 hours), which may or may not include a decision to activate a suspended sentence of detention, the unit should ensure that a JPA 'SL Progress to SH Review' task is created and assigned to the relevant Service RO. The JPA 'SL Suspect Service Request' should contain all the information detailed in form T-SL-SHR01 at [Annex A](#), which may be used and faxed or emailed as a fallback if JPA is unavailable. Likewise, following an activation hearing as a result of a conviction by a civilian court in the British

² Section 195(1) of the Act.

³ Other than for detention, this should be considered to be 2 working days.

⁴ This is particularly important where the accused is already serving the sentence of detention which may occur because he has elected to start it on the day the punishment was awarded – see section 290(2) of the Act.

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Islands⁵, where a suspended sentence has been activated, unit staffs should complete an Activation hearing review form (T-SL-AHR01) at [Annex B](#) and forward it to the RO within the same timelines (normally not later than 24 hours).

Procedures for review by the RO of summary hearing

12. **Initial actions by the RO.** The RO will use the JPA 'SL Suspect SR' (or the Summary hearing review form T-SL-SHR01 at [Annex A](#)) to review both finding and punishment by checking the following:

- a. The offence was capable of being heard summarily⁶;
- b. The legality of the punishment, i.e. that the punishment is within the powers of the CO or subordinate commander who awarded it;
- c. The officer who heard the charge was empowered to do so⁷ (for example, a subordinate commander must be at least of the rank of naval lieutenant, military or marine captain or flight lieutenant);
- d. Where the CO is below the rank of rear admiral, major general, or air vice-marshal and extended powers of punishment have been used, that permission had been granted by HA;
- e. Where the offence is one that requires the permission⁸ of HA to hear summarily, that permission had been granted;
- f. The punishment is appropriate to the rank of the accused⁹;
- g. Where punishments are conjoined, that the resulting punishment is legal¹⁰; and
- h. The severity of the punishment is commensurate with the offence proven¹¹ (Note: a manifestly excessive punishment may be deemed unlawful).

Where the summary hearing includes the activation of a suspended sentence of detention the RO will also check:

- i. Whether the suspended sentence had previously been awarded by a CO or the SAC¹² (a CO may not consider the activation of a suspended sentence of detention awarded by the CM); and
- j. Whether the subsequent offence, which triggered the requirement to consider activating the suspended sentence, was committed within the operational period¹³ of that sentence.

⁵ For definition of British Islands see Schedule 1 section 5 of the Interpretation Act 1978. It means the UK, the Channel Islands and the Isle of Man.

⁶ See section 52 of the Act

⁷ See [Chapter 9](#) (Summary hearing and activation of suspended sentences of Service detention).

⁸ Section 54(2), of the Act.

⁹ See [Chapter 13](#) (Summary hearing sentencing and punishments).

¹⁰ See [Chapter 13](#) (Summary hearing sentencing and punishments).

¹¹ See [Chapter 13](#) (Summary hearing sentencing and punishment) and [Chapter 14](#) (The summary hearing sentencing guide).

¹² If awarded by the Court Martial (CM) then any suspended sentence can not be activated by the CO.

¹³ This can be anywhere between 3 and 12 month from the date the suspended sentence came into effect.

13. **Action by unit.** The unit will be requested to provide the following only where the RO discovers any matter that may require further examination and where there is a possibility of grounds for an appeal to the SAC¹⁴:

- a. A copy of the RSH;
- b. A copy of the charge sheet;
- c. A copy of the case summary;
- d. A copy of the disciplinary record of the offender;
- e. A copy of the written evidence relevant to the charge;
- f. A copy of the unused written evidence gathered as part of the investigation;
- g. Details of all exhibits that form part of the evidence and where and when they can be inspected;
- h. Details of unused exhibits gathered as part of the investigation of the charge and where and when they can be inspected; and
- i. A copy of any notification from HA that permission to hear a charge summarily¹⁵ and/or permission to use extended powers of punishment had been granted¹⁶.

Where the summary hearing also involves the activation of a suspended sentence of detention, the unit will be required to provide a copy of the RSH during which the suspended sentence was awarded and the associated papers which relate to that summary hearing, see sub-paragraphs 13b – i above.

14. **Subsequent action by the RO.** The RO is to inquire into those matters they judge require further examination (see paragraph 12 above) with a view to seeking leave to refer a case to the SAC or by notifying the SAC of matters arising at or from the summary hearing/activation hearing, bearing in mind their powers as outlined at paragraphs 21 and 22 below. Such action should be taken as soon as reasonably practicable and the unit of the individual concerned should be notified of any action taken on review and should be provided with feedback where remedial action is required by the unit.

Procedures for review by the RO of activation orders

15. **Initial actions by the RO following an activation hearing after a civil court conviction.** The RO will use the Activation hearing review form (T SL-AHR01) at [Annex B](#) to review the activation of the suspended sentence by checking the following:

- a. The accused was subject to Service law, see [Chapter 3](#) (Jurisdiction and time limits) at the time of the activation hearing and the offence was committed in the operational period of the suspended sentence;

¹⁴ Protocols within the Services for the provision of documentation to the RO may differ in this respect.

¹⁵ See section 54 of the Act - If an officer has summarily heard a charge that requires HA's permission to be dealt with summarily and that permission has not been given, the summary hearing will be a nullity. The RO should therefore seek the advice of a staff legal adviser and should not refer the case to the SAC.

¹⁶ This function can only be undertaken by a CO, see [Chapter 9](#) (Summary hearing and activation of suspended sentences of Service detention).

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b. The officer who was carrying out the activation hearing was empowered to do so¹⁷; and

c. The sentence activated was warranted in the circumstances as a whole (i.e. by reference to the original Service offence, the subsequent civil offence and how far into the operational period of the suspended sentence the subsequent civil offence was committed).

16. **Action by unit.** The unit will be requested to provide the following only where the RO discovers any matter that may require further examination and where there is a possibility of grounds for an appeal to the SAC¹⁸:

a. A copy of the RSH or written record of any proceedings before the SAC at which the suspended sentence was awarded;

b. Details known to the CO of all offences proven to have been committed by the offender during the operational period of the suspended sentence of detention. This includes the report of the officer who attended the civil court on behalf of the unit;

c. Copies of the written records of all summary hearings, the written records of any other hearings, any records of proceedings before the SAC at which power to activate the suspended sentence arose but was not exercised and where reasons were given for that decision;

d. A copy of the offender's disciplinary record; and

e. A copy of any notification from HA that permission to hear a charge summarily¹⁹ and/or permission to use extended powers of punishment had been granted²⁰.

17. **Subsequent action by the RO.** The RO is to inquire into those matters they judge require further examination (see paragraph 15 above) with a view to seeking leave to refer a case to the SAC or by notifying the SAC of matters arising at or from the summary hearing/activation hearing, bearing in mind their powers as outlined at paragraphs 21 and 22 below. Such action should be taken as soon as reasonably practicable and the unit of the individual concerned notified of any action taken on review and should be provided with feedback where remedial action is required by the unit.

Procedure for review by the RO of multiple charges

18. In cases where a summary hearing was conducted involving more than one charge and the hearing in respect of at least one of these charges is clearly a nullity (see paragraph 23 below) while another is not, the RO should seek staff legal advice on how best to proceed. For example, a CO holds a summary hearing in respect of two charges. One of these charges is a charge the CO does not have the power under the Act to hear summarily, while the other is a charge the CO is empowered to hear. Having found both charges 'proved' they then gives a global award of punishment; it is likely that the appropriate course

¹⁷ See [Chapter 9](#) (Summary hearing and activation of suspended sentences of Service detention).

¹⁸ Protocols within the Services for the provision of documentation to the RO may differ in this respect.

¹⁹ See section 54 of the Act - If an officer has summarily heard a charge that requires HA's permission to be dealt with summarily and that permission has not been given, the summary hearing will be a nullity. The RO should therefore seek the advice of a staff legal adviser and should not refer the case to the SAC.

²⁰ This function can only be undertaken by a CO, see [Chapter 9](#) (Summary hearing and activation of suspended sentences of Service detention).

of action is to bring an appeal against the punishment to the SAC, but this is a matter upon which the staff legal adviser will be able to advise.

Review by the RO in relation to a Service person from another Service

19. Where a RO undertakes a review in relation to a Service person from another Service and decides that no further action is necessary, they are to send a copy of the Summary hearing review form (T-SL-SHR01) at [Annex A](#) to their counterpart in the appropriate Service. This will ensure that the parent Service takes the administrative action that it considers appropriate and takes action to notify the relevant personnel agency to ensure the individual's record is annotated appropriately. Where the RO refers the case to the SAC or notifies the SAC of any matters arising at or from the summary hearing/activation hearing of which the court was not aware and which should have been brought to the attention of the SAC, they are to inform their counterpart in the parent Service of the outcome of the review.

Feedback by the RO

20. The RO will provide feedback to units as soon as reasonably practicable following review to ensure that common errors are corrected expeditiously and lessons are learnt from mistakes identified. This is especially the case when matters are referred to the SAC for resolution.

Powers of the RO

21. **Rectification of minor errors post summary hearing/activation hearing.** The RO may, after²¹ the summary hearing, order the unit to correct minor typographical errors, which can have no disadvantageous effect for the accused. The RO may not, however, order the unit to correct errors of law or procedure. Where there is any doubt, where the error is substantial²² or where there has been disadvantage to the accused, the RO should refer the case or notify the matter to the SAC.

22. **Referral or notification to the SAC.** When the RO refers a matter to the SAC, it is treated as if it were an appeal brought by the person to whom the finding or sentence relates, see paragraphs 53 to 61 below. In other words, the appeal is treated as if the individual himself had appealed and they are the appellant; but see paragraphs 57 and 61. Although there is no time limit as to when a review might be undertaken, the powers of a RO will vary depending on whether the person to whom the review relates has brought an appeal to the SAC and whether the appeal has been completed.

a. Where the person to whom the review relates has not brought an appeal²³ within the 14 day appeal period (or any extension to that period that has been authorised²⁴) the RO may refer the finding or punishment (or both) to be considered by the SAC as if on appeal.

b. Where the person has appealed to the SAC and the SAC has not completed the hearing of the appeal and a RO considers that the SAC should be aware of any matter arising at or from the summary hearing/activation hearing, the RO may notify the SAC of the matter. The SAC may take such matters into consideration.

²¹ A CO has some power to correct errors during the summary hearing, see [Chapter 9](#) (Summary hearing and activation of suspended sentences of Service detention)

²² Where the mistake nullifies the entire proceedings see paragraph 23 below.

²³ Section 141(2) of the Act.

²⁴ Section 141(1) of the Act.

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c. Where the person has appealed to the SAC and that appeal has been completed, the RO may refer a finding or punishment to the SAC to be considered by it as an appeal, if they are of the opinion that:

(1) There are matters arising at/or from the summary hearing/activation hearing of which the SAC was not aware; or

(2) Such matters should have been brought to the attention of the SAC.

For this purpose the finding or punishment includes any finding or punishment previously substituted or awarded by the SAC.

23. **Nullity.** There are some cases where the errors are so serious that the law regards the proceedings as not having taken place, i.e. a nullity; for example, where an officer purports to hear a case which it is not within their powers to consider. In such circumstances, the RO should consult the Office of the Judge Advocate General immediately.

24. **Procedure.** The procedure to be followed when the RO decides to apply for leave to appeal or considers that the SAC should be notified of any matter arising at or from the summary hearing/activation hearing is at paragraphs 53 to 61 below.

Part 2 - Appeals made from summary hearings

Introduction

25. The person who brings the appeal is the appellant, however, in those cases where the RO has referred a matter to the SAC, it is still the person in relation to whom the finding and punishment was awarded who is the appellant. The respondent to the appeal (the person contesting the appeal) will, in all cases, be the Director of Service Prosecutions (DSP).

26. Servicemen who have been dealt with at a summary hearing/activation hearing have an automatic right of appeal to the SAC, a court which is compliant with the European Convention on Human Rights (ECHR). The automatic right of appeal to the SAC assists in making the overall summary process compliant with the ECHR. Although there is an automatic right of appeal to the SAC, the leave (permission) of the SAC must be obtained in some circumstances before an appeal may be brought. This is the case where the person who is seeking to bring the appeal, wishes to do so outside the ordinary time limits and where a RO is seeking to refer a finding or a sentence to the SAC.

27. Any person who is unable to bring an appeal (or is unsure as to whether they want to appeal) within the first 14 days following the summary hearing, may within the 14-day period, apply for the SAC's leave to bring an appeal after the 14 day period. If the SAC grants such leave, the prospective appellant does not need to ask for further permission of the SAC to bring the appeal as long as the appeal is brought within the extended time limit authorised by the SAC.

Hearing of appeals²⁵ and powers of the court

28. **Contested appeal against finding.** Where the DSP opposes an appeal against finding, the proceedings take the form of a rehearing of the charge. The SAC may confirm a finding, quash it or substitute it with a finding that another charge has been proved. Where the SAC quashes a finding it must also quash any accompanying punishment. After rehearing the evidence in respect of punishment, the SAC may confirm the punishment or quash it and substitute another punishment. The SAC cannot substitute a punishment unless the substituted punishment was capable of being awarded by the hearing officer who awarded the original punishment at the summary hearing²⁶ and it is a punishment that the SAC considers is no more severe than the original punishment. Where the appellant was convicted of multiple charges and decides to appeal against finding and/or punishment on one of the charges, the SAC, should it allow the appeal, will adjust accordingly the global sentence that the appellant originally received²⁷.

29. **Uncontested appeal against finding.** If the appeal is uncontested, where the DSP as respondent does not oppose the appeal, the finding being appealed against will be quashed²⁸ by the SAC. Where the appeal is uncontested the powers of the SAC may be exercised by the Judge Advocate General without a hearing and the Court Administration Officer (CAO) is responsible for informing the appellant, the appellant's CO and the DSP of the outcome.

²⁵ Section 146 of the Act.

²⁶ See section 147(3)(b)(i) of the Act.

²⁷ [Chapter 13](#) (Summary hearing sentencing and punishment) provides guidance on global sentences.

²⁸ Rule 20(1) of the Armed Forces (Summary Appeal Court) Rules 2009/1211.

30. **Appeal against punishment.** The powers of the court on an appeal against punishment are:

- a. To confirm the punishment awarded; or
- b. To quash the punishment and award in substitution for it any punishment that it would have been in the powers of the officer who held the summary hearing to award and in the opinion of the court is no more severe than the punishment originally awarded.

Bringing of appeals

31. When an individual wishes to appeal²⁹ against a finding and/or punishment awarded at summary hearing, including an appeal following the activation of a suspended sentence of detention, they are to complete the Notice of appeal form (T-SL-SAC01) at [Annex C](#). A person who has been dealt with summarily need only submit one Notice of appeal form in relation to two or more charges where those charges were dealt with together at a summary hearing. They are to submit the Notice of appeal form to their CO within one of the following periods:

- a. Fourteen days (the initial period) of:
 - (1) The date on which the finding and punishment were awarded (day one is the day on which the punishment was awarded); or
 - (2) The date on which the activation order was made³⁰, where a suspended sentence of detention has been activated by an order.
- b. Any extended period that the SAC has authorised, see paragraph 49 below.

32. Arrangements do not differ even if a suspended sentence is activated and the CO orders that the activated sentence be served at the end of (i.e. consecutive to) another sentence of detention. The crucial date is the date on which the punishment was awarded or the date on which the activation order was made, not the date on which the sentences were to be carried out.

Legal aid

33. Legal aid is available for the hearing of the appeal before the SAC. At the point of bringing an appeal, the appellant may apply for legal aid by completing the appropriate form within JSP 838 (The Armed Forces Legal Aid Scheme). Unit staff and/or the appellant's assisting officer (see paragraphs 38 and 39) should provide assistance in this regard.

Action by CO

34. On receipt of a notice of appeal the CO should, as soon as reasonably practicable (normally within 2 working days), forward the notice of appeal to the CAO. At the same time the CO is to send a copy of the notice of appeal to the respondent (the DSP) with the material outlined in a to k below:

- a. A copy of the RSH;

²⁹ Section 141 of the Act.

³⁰ Rule 15 of the Armed Forces (Summary Appeal Court) Rules 2009/1211 and section 195 of the Act.

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- b. A copy of the charge sheet;
- c. A copy of the case summary;
- d. A copy of the formal discipline record of the appellant;
- e. A copy of the written evidence relevant to the charge;
- f. A copy of the unused written evidence gathered as part of the investigation;
- g. Details of all exhibits that form part of the evidence and where and when they can be inspected;
- h. Details of unused exhibits gathered as part of the investigation of the charge and where and when they can be inspected;
- i. Any material in the CO's possession that is not referred to in the RSH but, which in their opinion, may be relevant to the proceedings before the SAC, e.g. any new evidence that comes into the possession of the CO subsequent to the summary hearing;
- j. A copy of any notification from HA that permission to hear a charge summarily³¹ and/or permission to use extended powers of punishment had been granted³²; and
- k. A document specifying the appellant's age, rank or rate, Service record and any acts of gallantry.

If the information at g. above is not available within this timeframe, every effort should be made to acquire it; however, this must not delay submission of the remainder of the material³³.

Action by respondent

35. The respondent to the appeal (the DSP) will decide whether to contest the appeal. They must inform the CAO of their decision within 28 days³⁴ and notify the CO of the appellant. Where the respondent decides to contest an appeal against finding, they are to give notice to the CAO and serve on the CAO³⁵, the appellant and their legal representative (if any) the following (known as 'advance information'):

- a. Copies of the statements of those witnesses on whom the DSP intends to rely;
- b. A list of all exhibits which the DSP intends to adduce in evidence and a statement of where any non-documentary exhibits are held;

³¹ See section 54 of the Act. If an officer has summarily heard a charge that requires HA's permission to be dealt with summarily and that permission has not been given, the summary hearing will be a nullity. The RO should therefore seek the advice of a staff legal adviser and should not refer the case to the SAC.

³² This function can only be undertaken by a CO, see [Chapter 9](#) (Summary hearing and activation of suspended sentences of Service detention).

³³ Rule 15(1) of the Armed Forces (Summary Appeal Court) Rules 2009/1211.

³⁴ If this is not achievable the DSP may request an extension from the Judge Advocate General– see rule 19(4) Armed Forces (Summary Appeal Court) Rules 2009/1211.

³⁵ Rule 42, Armed Forces (Summary Appeal Court) Rules 2009/1211.

- c. A transcript of any sound recording of an interview with the appellant.

Where an appeal relates only to the award of punishment and there are disputed facts in the case, the respondent may call any witness to give evidence that the judge advocate directs³⁶.

36. If at any time before the commencement of the hearing of an appeal, the respondent wishes to produce any additional evidence to that referred to above, they are to copy it to the CAO and the appellant's CO. Where this is not practical for any reason, the respondent is to notify the CAO and the appellant's CO of the nature of the evidence and details of its location including the name and address of the person who has custody of it. The CO is to serve this additional evidence on the appellant as soon as reasonably practicable.

37. The respondent may at any time prior to the hearing of the appeal, give notice that they no longer intends to contest it. The DSP must inform the CAO and the appellant's CO to ensure that the appellant is notified and that the record of the appellant's conviction to which the appeal relates is removed from their record as appropriate.

Appellant's assisting officer

38. The appellant may nominate an assisting officer³⁷ to assist them with the preparations for the appeal hearing and during the appeal hearing (although they may not represent the appellant). For example, the assisting officer may assist with the completion of the various applications that may be appropriate in the case, including that for legal aid and the abandonment of appeals by the appellant (see paragraph 61 below). The assisting officer's primary duty is to assist the appellant; however, they may also liaise between the appellant's legal representative and the Service. The appellant may nominate any officer who falls within the criteria set out in sub-paragraphs 38 a – c below. This could usually include the officer who acted as their accused assisting officer (AAO) in the summary hearing (which is the subject of the appeal). There is no necessity for the appellant to nominate this officer but they may wish to do so, particularly as this officer will be familiar with the case. An individual may only be nominated as an assisting officer if that person:

- a. Is subject to Service law and continues to be so subject while carrying out this function;
- b. Is of at least the rank or rate of petty officer, military, marine or air force sergeant; and
- c. Agrees to assist the appellant.

39. The appellant may select another assisting officer if the original person selected has to relinquish the function. If the appellant cannot find an officer who consents to assist them, they may ask their CO for assistance in finding a suitable nominee. The CO should provide a list of at least two suitable officers who are available to act. The appellant may then nominate a person from the list. If, however, the appellant is unwilling to nominate anyone from the list, they will be free to try and find another who can assist them. Ultimately, the appellant may be required to proceed without the assistance of an assisting officer because they cannot be allowed to frustrate the process by refusing to nominate an assistant.

³⁶ Rule 84(1), Armed Forces (Summary Appeal Court) Rules 2009/1211.

³⁷ See 'Your rights if you are accused of an offence under the Service Justice System' booklet, Annex G to [Chapter 6](#) (Investigation, charging and mode of trial).

Legal representation of appellant on appeal

40. An appellant³⁸ has the right to be legally represented³⁹ at a hearing before the SAC (including a preliminary hearing and an appeal brought following a referral by the RO) and may instruct a qualified legal representative⁴⁰ for that purpose. The appellant's CO is to ensure that the appellant is afforded reasonable opportunity of communicating with their legal representative for the purposes of preparing their case for appeal. The legal representative will be required to provide the following information to the CAO:

- a. Their name and address;
- b. The name, rank or rate, Service number, Service and unit or establishment of the person for whom they are acting; and
- c. The proceedings before the SAC in connection with which they have been instructed.

41. The appellant is to notify the CO or the CAO in writing when they have either transferred their instructions to a different legal representative or dispensed with the services of a legal representative. Where the appellant has dispensed with legal representation, the CO should ensure that the appellant is content to proceed without legal representation.

Applications for leave to extend time to appeal and for leave to appeal out of time

42. Action by the appellant.

a. Where a potential appellant, before the expiry of the 14-day appeal period (the initial period)⁴¹, considers that this period is insufficient⁴² and that they need more time than 14 days to decide whether to appeal, they may apply to the SAC (via their CO) for permission for more time⁴³. In all cases, they are to complete the Notice of application to extend the period of time for bringing an appeal form (T-SL-SAC02A) at [Annex D](#), which among other things, will require them to state the reasons for the application. The individual is, at the same time, to include with their application any documents they consider relevant to the application. This additional material is described below as the supporting documentation.

b. Where the initial period (or any extended period that the SAC has granted) has expired and a person decides that they wish to appeal⁴⁴, they may apply to the SAC via their CO for leave to do so. They are to complete the Notice of application for leave to appeal out of time form (T-SL-SAC02B) at [Annex E](#), which will require them to provide the grounds for the application⁴⁵. The individual is to, at the same time, include with their application any documents they consider relevant to the application. This additional material is described as the supporting documentation including the proposed notice of appeal. Where the individual is in detention when

³⁸ Under section 141 of the Act.

³⁹ See 'Your rights if you are accused of an offence under the Service Justice System' booklet, Annex G to [Chapter 6](#) (Investigation, charging and mode of trial).

⁴⁰ Subject to rule 41, Armed Forces (Summary Appeal Court) Rules 2009/1211.

⁴¹ This is the 14 day period that begins on the day the punishment is awarded or, in the case of an order to activate a suspended sentence of detention, the date the order is made.

⁴² Under section 141(2)(b) of the Act.

⁴³ Under section 141(2)(b) of the Act.

⁴⁴ Under section 141(3) of the Act.

⁴⁵ Rule 16(1) of the Armed Forces (Summary Appeal Court) Rules 2009/1211.

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they decide to apply for leave to appeal out of time, they are not released from detention unless and until a judge advocate decides that the case has merit and grants leave to appeal.

43. **Action by CO.** On receipt of a Notice of application to extend the period of time for bringing an appeal form or a Notice of application for leave to appeal out of time form, the CO is to, as soon as is reasonably practicable (but normally within 2 working days), forward it and any supporting documentation to the CAO. The CO is also to send a copy of the application and supporting documentation to the DSP, as respondent, along with the documentation as listed at paragraph 34 above. If any of this information is not available within this timeframe, every effort should be made to acquire it; however, this must not delay submission of the remainder of the material.

44. **Withdrawal of application to appeal.** Where the person has applied for leave in accordance with paragraphs 42 and 43 above, they may at any time before the determination of the application, apply to their CO in writing to withdraw their application using the Notice of withdrawal of application for leave to extend time to appeal or leave to appeal out of time form (T-SL-SAC02C) at [Annex F](#). The CO is to forward the application for withdrawal to the CAO.

45. **Determination of applications for leave to extend time to appeal and leave to appeal out of time.** Applications for leave to extend time to appeal and for leave to appeal out of time will be decided by a judge advocate sitting alone. A judge advocate will make a decision based on the papers alone, unless they direct that a hearing should take place.

a. Where a judge advocate intends to refuse an application on the papers alone, the CAO is to give notice in writing to the applicant and their CO of the judge advocate's intentions. The applicant is to be made aware by their CO of the significance of this decision as soon as possible so that they can take advice and decide whether they wish to apply for a hearing. To apply for a hearing, the applicant must submit a notice in writing to the CAO (through their CO) using the Request for a hearing by an applicant requesting leave to extend time to appeal or leave to appeal out of time form (T-SL-SAC02D) at [Annex G](#). The request must be submitted before the end of a period of 14 days beginning with the date that the notice from the CAO was received.

b. Where the judge advocate receives a specific request from an appellant for a hearing, they must make a direction that a hearing will take place to determine the application.

46. **Arranging a hearing to determine the application.** Where an applicant requests a hearing, the CAO will at the judge advocate's direction, decide when and where the hearing is to take place and will advise the applicant (through their CO) and the DSP, of the arrangements made for the hearing. The CO should notify the applicant of the details of the hearing as soon as is reasonably practicable.

47. **Notice of decision of the judge advocate on an application for leave to extend time to appeal and for leave to appeal out of time.** The judge advocate will give notice in writing to the CAO of their decision on an application for leave to extend time to appeal and for leave to appeal out of time, setting out the period of time that the applicant has to bring an appeal or their reasons for refusing the application. The CAO will serve it on:

- a. The applicant;
- b. The applicant's CO; and

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- c. The DSP as respondent.

48. **Implications of refusal of request to extend time to appeal.** If the application to extend time to appeal beyond the initial 14 day period is unsuccessful, the applicant should be advised by the CAO (through their CO) that this does not affect their right to apply for leave to appeal out of time.

Abandonment of appeal

49. **When an appeal is abandoned.** An appeal will be abandoned when the CO receives a notice of an abandonment of the appeal from the appellant. In some cases an offender may be deemed to have abandoned an appeal, see paragraph 51 below.

50. **Abandonment of appeal prior to determination.** An appellant may abandon an appeal whether wholly or in part at any time prior to its determination; however, while the appellant has the absolute right to abandon an appeal it would be in their interests to discuss this matter with their legal representative and/or their assisting officer before doing so. It may be advisable for the appellant to await the outcome of the DSP's consideration of whether to contest the case, before abandoning an appeal. An appellant may give notice to abandon an appeal by serving on the CAO the Notice of abandonment of appeal form (T-SL-SAC04) at [Annex H](#). The CAO is responsible for serving a copy of the notice on:

- a. The DSP;
- b. The appellant's CO;
- c. The Judge Advocate General; and
- d. The RO⁴⁶, where the appeal has been referred by that officer.

51. **Abandonment of appeal by failure to attend an appeal hearing.** The judge advocate in relation to the proceedings may direct that the appeal be treated as abandoned⁴⁷ where:

- a. an appellant fails to appear before the court at the time appointed for the commencement or resumption of the appellate proceedings, and
- b. the judge advocate considers that there is no reasonable explanation for the failure to appear.

The form at [Annex I](#) (Notice to offender that appeal has been treated as abandoned) may be used by the judge advocate (T-SL-SAC06).

52. **Effect on sentences of detention when appeal is abandoned.** Where notice of abandonment relates to the whole of any appeal and the punishment which would have been the subject of the appeal was detention, the offender will start or resume their sentence of detention on the date on which the copy of the notice is received by the appellant's CO⁴⁸ (see also paragraph 64). Abandonment will not affect other types of punishments because

⁴⁶ Under section 152(4) of the Act.

⁴⁷ Rule 24 of the Armed Forces (Summary Appeal Court) Rules 2009/1211.

⁴⁸ Section 290(3)(b) of the Act.

all other punishments except detention and Service compensation orders⁴⁹ have effect from the day that they are awarded in the summary hearing.

Application for leave to refer a case to the SAC by a RO⁵⁰

53. A RO may apply to the SAC to refer a finding or a punishment of a summary hearing or activation hearing for it to be considered as an appeal, even where the person to whom the review relates has not brought an appeal⁵¹ within the 14-day appeal period (or any extension to that period that has been authorised⁵²). The RO does this by submitting to the CAO the Application from a RO for leave to refer a finding and/or punishment to be considered by the SAC as on appeal form (T-SL-SAC03) at [Annex J](#), stating why he considers it appropriate that the court consider an appeal and attaching any documents they consider relevant to the application⁵³ (see paragraph 22 above).

54. The CAO having received the Application from a RO for leave to refer a finding and/or punishment to be considered by the SAC as on appeal is to, as soon as is reasonably practicable, notify:

- a. The Judge Advocate General;
- b. The offender;
- c. The offender's CO; and
- d. The DSP (as respondent).

55. The CO will ensure that the offender is advised of the application made by the RO and the implications of such an application, see paragraph 61. The RO is to send to the CAO (copied to the DSP) the following⁵⁴ in respect of a referral following a review of a summary hearing:

- a. The application;
- b. Any other documents they consider relevant to determining the application, including: the documents previously forwarded under paragraph 13 and The Information for the Service courts (T-SL-SC01) (Annex R) to [Chapter 29](#) (Court Martial proceedings)⁵⁵ form.

56. The RO is to send to the CAO (copied to the DSP) the following in respect of a referral following a review of an activation hearing (following civil conviction):

- a. The application;
- b. Any other documents they consider relevant to determining the application, including the documents previously forwarded under paragraph 16 and The

⁴⁹ Section 176(1) of the Act.

⁵⁰ Rule 17, Armed Forces (Summary Appeal Court) Rules 2009/1211 & sections 152(4) & (7) of the Act.

⁵¹ Under section 141(2) of the Act.

⁵² Under section 141(1) of the Act.

⁵³ Rule 17(2) Armed Forces (Summary Appeal Court) Rules 2009/1211.

⁵⁴ See rule 17 Armed Forces (Summary Appeal Court) Rules 2009/1211.

⁵⁵ To be provided by the unit.

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Information for the Service courts (T-SL-SC01) (Annex R) to [Chapter 29](#) (Court Martial proceedings)⁵⁶ form.

57. The RO may withdraw an application made in accordance with paragraphs 53 - 56 above at any time before the determination of the application, by notifying the CAO in writing⁵⁷.

58. **Determination of application for leave to refer a case by the RO.** The Judge Advocate General sitting alone with or without a hearing will consider an application for leave⁵⁸ made by a RO. Where the Judge Advocate General is minded to dismiss the application without a hearing the CAO shall notify the RO, the offender and their CO in writing. The application shall be considered as dismissed unless the RO gives notice in writing to the CAO or the offender gives notice in writing to their commanding officer, as the case may be, within 14 days that they require a hearing of the application⁵⁹. The CO must forward any such notice from the offender to the CAO and the DSP⁶⁰.

59. Where the Judge Advocate General directs the CAO to convene a hearing for the purposes of determining the application, or if either the RO or then offender requires one, the CAO in consultation with the JAG will decide on when and where the hearing is to take place. The CAO will notify the following of the arrangements for the hearing:

- a. The RO;
- b. The offender;
- c. The CO of the offender; and
- d. The DSP (as respondent).

60. **Status of appeal.** When the RO refers a matter to the SAC in the circumstances above, the appeal against the finding or punishment or both, is treated as if it were an appeal brought by the person to whom the finding or sentence relates.

61. **Guidance to the offender.** Where a RO has asked for leave to refer a case to the SAC, the CO of the offender should advise them that:

- a. The application made by the RO does not affect their right to appeal or abandon the appeal;
- b. There will be no difference in the way the appeal is dealt with;
- c. They have a right to legal representation and they may be eligible for legal aid, see paragraph 40 above;
- d. They are entitled to an assisting officer, see paragraph 38 above;

⁵⁶ To be provided by the unit.

⁵⁷ Rule 17(4) of the Armed Forces (Summary Appeal Court) Rules 2009/1211.

⁵⁸ Under sections 152(4) or (7) of the Act.

⁵⁹ Rule 17(7) Armed Forces (Summary Appeal Court) Rules 2009/1211.

⁶⁰ Rule 17(8) Armed Forces (Summary Appeal Court) Rules 2009/1211.

- e. They should seek assistance from their assisting officer and/or their legal representative if they are at all unsure of any part of the process, but especially if they are thinking of abandoning the appeal; and
- f. They may abandon an appeal, wholly or in part, at any time prior to the appeal's determination using the Notice of abandonment of appeal form (T-SL-SAC04) at [Annex H](#).

Notification to the SAC

62. Where a RO considered that the SAC should be aware of any matter arising at/or from a summary/activation hearing and the SAC has not completed its hearing of the appeal, they may notify the SAC thereof. Form T-SL-SAC05 ([Annex L](#)) Notification from a RO of a matter relating to a finding and/or punishment to be considered by the SAC, is to be used for their purpose.

Effect of appeal on summary punishments

63. Where a punishment is awarded at a summary hearing, in most cases it will take effect immediately⁶¹. A sentence of detention, however, cannot take effect immediately unless the offender indicates that they want this to occur at the time the punishment is awarded. A sentence of detention that is suspended will not take effect unless or until an order that is made to activate the suspended sentence takes effect. An order made by a CO to activate a suspended sentence of detention will not have effect immediately unless the person against whom the order is made elects (when the order is made) for it to become effective immediately. The practical effect is that an offender cannot be put into detention immediately after a summary hearing unless they elect to do so or unless the accused is already serving a sentence of detention imposed for another offence when the punishment or order is imposed. Where COs are in any doubt, they should seek staff legal advice before placing an offender into any form of Service custody.

Offender's choice as to when to start a sentence of detention

64. The offender has the right to elect to begin their sentence of detention immediately when the punishment is awarded. If they do not do so, their detention will start:
- a. After the 'initial period' for bringing an appeal to the SAC (i.e. after 14 days starting with the day on which the punishment was awarded by the CO) if the offender does not bring an appeal within that appeal period. Thus if an award of detention is made on 1st Feb, the punishment would take effect and the offender would start their sentence on the 15th Feb;
 - b. If the offender brings an appeal within the initial period, on the beginning of the day when the appeal is either abandoned or determined; or
 - c. If an offender brings an appeal within any extended appeal period (i.e. where the appellant has successfully applied for permission to bring an appeal outside the initial 14-day period), on the beginning of the day when the appeal is either abandoned or determined.

⁶¹ A CO may delay the date on which some punishments will take effect, see [Chapter 13](#) (Summary hearing sentencing and punishments). See also paragraph 71 below.

Where the offender elects to begin a sentence of detention immediately, and brings an appeal outside the initial appeal period (or any extended appeal period), their sentence of detention will immediately cease to have effect and they must be released from detention. The sentence will not resume again until the appeal has been abandoned or determined.

Activation of suspended sentences

65. The appeal arrangements vary slightly where a charge has been proved in a summary hearing and the accused was subject to an operational period⁶² of a suspended sentence when they committed the further offence (for these purposes this latter offence will be described as the trigger offence).

a. Where the CO has made an order to activate the suspended sentence, the offender may:

(1) Bring an appeal against the finding and punishment of the trigger offence in which case the SAC will automatically treat this as an appeal against the order. This is so even if the appellant is not appealing the order to activate the suspended sentence of detention; or

(2) Bring an appeal against the order in which case the SAC will automatically treat this as an appeal against the punishment for the trigger offence. Again this is so even if the appellant is not appealing the punishment for the trigger offence.

b. Where the CO decided not to make any order (and therefore did not activate the suspended sentence in the summary hearing) the offender may bring an appeal against the finding and or punishment of the trigger offence. If this occurs, the SAC may⁶³ have the power to activate the suspended sentence if the appeal is against punishment or where it is against finding and the SAC confirms the original finding or substitutes an alternative finding. Where it does so the SAC cannot impose a punishment which is more severe than that originally awarded.

66. A Service person will also be able to bring an appeal to the SAC where an activation order has been awarded by a CO in an activation hearing⁶⁴ (i.e. following a civilian conviction). In such cases, the activation order will be treated as a punishment awarded for the offence for which the suspended sentence was originally awarded.

67. Commencement of sentence where a suspended sentence has been activated.

Where a suspended sentence has been activated the arrangements for commencing the sentence are the same as those that apply where a sentence of detention has been awarded in a summary hearing, see paragraph 64 above. Therefore, where a CO makes an order activating a suspended sentence of detention, the order cannot take effect immediately unless the person against whom the order is made elects for it to do so. The person, however, can only make this election at the time the order is made. The sentence will commence or resume in the same circumstances as are set out in paragraph 64 above. Thus, for example, if the offender has not brought an appeal within 14 days of the order being awarded (the initial period for bringing an appeal), the offender will begin to serve their sentence on the 15th day.

⁶² This can be anywhere between 3 and 12 months from the date the suspended sentence came into effect.

⁶³ Subject to section 195(6) - (8) of the Act.

⁶⁴ See section 193(2)(b) of the Act.

68. In cases of doubt and in more complicated cases (for example when concurrent sentences of detention are imposed by the CO at the same time and the offender elects to start one sentence but not the other) staff legal advice should be sought before the offender is placed into detention.

Service of documents by the CO on the applicant or appellant

69. Where a document or notice has been sent to the CO, they must serve it on the applicant or appellant as soon as reasonably practicable and notify the person on whose behalf the document has been served of the time and date of service⁶⁵. The CO or the person acting on their behalf will usually be required to return a proof of service slip.

Post appeal action by unit staff

70. Where the SAC has considered an appeal it may confirm a finding, quash it or substitute it with a finding that another charge has been proved. Where the SAC quashes a finding it must also quash any accompanying punishment. For an appeal against punishment, the SAC may confirm the punishment or quash it and/or substitute another punishment. The outcome of an appeal will be notified (for result notification, see [Chapter 27](#) Summary Appeal Court) to unit staffs in accordance with single-Service arrangements⁶⁶. Where the SAC has decided, in effect, to alter the outcome of a summary hearing by upholding an appeal in whole or in part, action must be taken by unit staff to reflect such changes on the appellant's records and pay account. The JPA Business Process Guide, Service Law – Administration of Appeals Process, should be followed. A copy of the Result notification should be retained with the unit copy of the RSH to which the appeal relates.

71. **Action where sentence of detention is confirmed or awarded (Army and RAF only).** Where the SAC has decided to confirm or vary an original award of detention (including the activation of a suspended sentence of detention), that sentence is to take effect immediately and the necessary arrangements made with MCTC Colchester (or other relevant custody facility, if appropriate); the Committal order for use at the Court Martial, summary hearings and the Summary Appeal Court form (T-SL-CUSO5), see Annex K to [Chapter 9](#) (Summary hearing and activation of suspended sentence of Service detention), is to be completed. The date of committal is the date on which the appeal is concluded.

72. **Action in relation to a Service compensation order (SCO).** A SCO awarded at a summary hearing may only be actioned once the CO is satisfied that, disregarding any power of the court to grant leave to appeal out of time, there is no further possibility of an appeal that could result in the order being varied or quashed (see [Chapter 13](#) (Summary hearing sentencing and punishments)). Therefore, where an appeal brought within the 14-day appeal period relates to a SCO and the award has been confirmed or varied, action is to be taken to effect the award. Where an appeal is brought out of time (after the 14-day appeal period and thus the award has already been effected) and the SCO is varied, quashed or substituted by the court for another punishment, action must be taken to recover the SCO in whole or in part. See the JPA Business Process Guide, Service law – Administration of Appeals Process.

⁶⁵ For further guidance on service of documents see part 2 of the Armed Forces (Summary Appeal Court) Rules 2009/1211 and [Chapter 27](#) (Summary Appeal Court).

⁶⁶ For RN – SAC – Result Notification is sent by the NCAO to the relevant Ship/Unit and the Central Criminal Records Intelligence Office (CCRIO).

For Army - SAC – Result Notification is sent to by PS2(A) PTS to the relevant Bde/Garrison HQ, APC Glasgow, Unit staffs and CCRIO RMP.

For RAF – SAC - Result Notification is sent by the RAF CAU to ACOS A1 Casework Staffs, Unit staffs and the CCRIO.

Part 3 – Transitional guidance

Appeals

73. A transitional situation could arise at commencement in the following situations:
- (a) Where a charge under the AA 1955, AFA 1955 or the NDA 1957 (the SDAs) has been heard summarily and a finding that the charge has been proved has been recorded but no appeal has yet been brought.
 - (b) Where an appeal to a summary appeal court was brought pre-commencement (before 31 October 2009), and by commencement the court has not begun to hear the appeal and the appeal has not been abandoned.
74. Staff legal advice should be sought in either of these situations

Review

75. Where a charge was heard summarily and a finding that the charge has been proved was recorded under the SDAs, post commencement review powers apply. For example, the power to quash a finding and punishment will not be available.