

**EXPLANATORY MEMORANDUM TO THE**  
**STANDING CIVILIAN COURTS (AMENDMENT) ORDER 2005**  
**2005 No. 1534**

**1.** This Explanatory Memorandum has been prepared by the Ministry of Defence and is laid before Parliament by Command of Her Majesty.

**2. Description**

2.1 The above Order inserts new articles into the Standing Civilian Courts Order 1997 in order to specify the procedure for giving notice or making application to adduce evidence of bad character and hearsay evidence at hearings before Standing Civilian Courts. These articles, and the related time limits provided for, only apply to proceedings in respect of which charges are preferred on or after 1 July 2005.

**3. Matters of special interest to the Joint Committee on Statutory Instruments and the Select Committee on Statutory Instruments**

3.1 None

**4. Legislative Background**

4.1 Chapter 1 of Part 11 of the Criminal Justice Act 2003 (“the 2003 Act”) introduces provisions allowing for the admission, in criminal trials, of evidence of previous convictions and other misconduct while Chapter 2 of Part 11 of the 2003 Act similarly introduces provisions allowing for the admission of hearsay evidence. By virtue of sections 113 and 135 of, and Schedules 6 and 7 to, the 2003 Act, these provisions have effect, subject to modifications, in relation to proceedings before service courts (whether in the United Kingdom or elsewhere) which includes Standing Civilian Courts.

4.2 In relation to the admission of the bad character of accused persons, the 2003 Act sets out the circumstances in which such evidence can be given in order to clarify this area of the law and encourage the admission of this evidence where it will properly assist the court. The intended approach is inclusionary, but with safeguards to enable the judge advocate to exclude evidence that could have a disproportionate effect on the court. In respect of the bad character of other witnesses, the 2003 Act provides safeguards against attacks on their character where such attacks cannot be justified either as important explanatory evidence or as having substantial probative value in relation to a matter in issue.

4.3 In relation to the admission of hearsay evidence, the 2003 Act sets out the grounds for the admissibility of such evidence, the emphasis being on the inclusion of hearsay evidence where it is probative, reliable and in all other respects it is in the interests of justice to admit it. It sets out categories for the admissibility of such evidence, preserves certain of the common law

exceptions to the rule against the admission of hearsay, and allows for the making of rules to provide for notice to be given of an intention to adduce such evidence, along with a right to oppose its admission.

## **5. Extent**

- 5.1 This instrument applies to proceedings before a Standing Civilian Court. Such courts only sit outside the United Kingdom.

## **6. European Convention on Human Rights**

- 6.1 Not applicable.

## **7. Policy background**

- 7.1 A Standing Civilian Court is a service court which deals with civilians subject to service law when accompanying HM forces overseas. The policy objective is for service courts, including Standing Civilian Courts, to mirror, as far as practicable, the procedures and practices (including adoption of rules of evidence) in place in the civilian criminal courts. The procedures adopted in relation to admission of evidence of bad character and hearsay evidence are therefore similar to those set out in the Criminal Procedure Rules 2005.

## **8. Impact**

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

## **9. Contact**

- 9.1 Sue McIntosh in the Ministry of Defence can answer any queries regarding the instrument. Her contact details are:

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