

**EXPLANATORY MEMORANDUM TO THE
SUMMARY APPEAL COURTS (AMENDMENT) RULES 2005**

2005 No. 1536

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 Rules make amendments to 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 Courts Rules”). These amendments insert new rules into the Summary Appeal Courts Rules for each of the three services in order to specify the procedure for giving notice or making application to adduce evidence of bad character and hearsay evidence at hearings before Summary Appeal Courts. These Rules, and the related time limits provided for, only apply to proceedings in respect of which notice of an intention to contest an appeal against finding is given by the respondent prosecuting authority 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 Summary Appeal Courts.
 - 4.2 In relation to the admission of the bad character of accused persons (or appellants), 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 Summary Appeal Courts whether in the United Kingdom or elsewhere.

6. European Convention on Human Rights

- 6.1 Not applicable.

7. Policy background

- 7.1 Summary Appeal Courts are service courts which hear appeals against finding or sentence resulting from summary dealings before a Commanding Officer. The policy objective is for service courts, including Summary Appeal 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 rules adopted in relation to the 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 at the Ministry of Defence can answer any queries regarding this instrument. Her contact details are:

Sue McIntosh
7-C-22
Ministry of Defence
Main Building
Whitehall
SW1A 2HB

Tel: 0207 218 0564

Email: suemcintosh641@mod.uk