
EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision, in relating to trials by court-martial, equivalent to the new prosecution right of appeal under Part 9 of the Criminal Justice Act 2003 (“the 2003 Act”). The power for the Secretary of State to make such equivalent provision in consequence of criminal justice enactments derives from section 31 of the Armed Forces Act 2001.

Article 3 establishes the right of appeal for the prosecution in relation to a trial by court-martial and provides that such an appeal, subject to the granting of leave, lies to the Courts-Martial Appeal Court.

Article 4 makes provision, equivalent to the general right of appeal in section 58 of the 2003 Act, establishing a right of appeal for the prosecution against a ruling of a judge advocate at Court-Martial which either is terminating of itself, or which would otherwise have the effect of terminating proceedings in that the prosecution would offer no, or no further, evidence.

Article 5 makes provision, equivalent to that in section 59 of the 2003 Act, in relation to appeals following either an expedited or a non-expedited route. Article 6 allows for proceedings to continue in respect of any charge which is not the subject of an appeal.

Article 7 establishes powers for the Courts-Martial Appeal Court to confirm, reverse or vary any ruling to which the appeal relates equivalent to those in section 61 of the 2003 Act. Article 8 mirrors the legal test that must be met before the Courts-Martial Appeal Court may reverse a ruling from a judge advocate at a court-martial.

Article 9 amends provisions of the Courts-Martial Appeal Act 1968 so as to provide for a right of appeal to lie to the House of Lords against any decision of the Courts-Martial Appeal Court in relation to an appeal under this Order and to mirror the provisions of the Criminal Appeal Act 1968 in relation to the granting of bail to an accused who has so appealed to the House of Lords.

Articles 10 and 11 make provision equivalent to sections 71 and 72 of the 2003 Act in relation to restrictions on reporting of appeals under this Order, and associated offences for contravention of reporting restrictions. Finally, article 12 sets out certain miscellaneous and supplemental provisions in relation to the general application of the right of appeal under the Order.

Provision for Rules of Court is not made within this Order as separate provision is made in consequence of the Criminal Procedure Rules 2005 by virtue of the power conferred on the Secretary of State in section 31(3)(c) of the Armed Forces Act 2001.