

**EXPLANATORY MEMORANDUM TO
THE COURTS-MARTIAL (PROSECUTION APPEALS) (SUPPLEMENTARY
PROVISIONS) ORDER 2006**

2006 No.1788

1. This explanatory memorandum has been prepared by the Ministry of Defence and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. **Description**

- 2.1 The above Order provides for the procedure to be followed in the event of a prosecution appeal against a terminating ruling made at court-martial. The avenue of appeal is to the Courts-Martial Appeal Court. The provisions apply to court-martial proceedings in respect of which charges are preferred on or after 1 August 2006.

- 2.2 This Explanatory Memorandum has been prepared by the Ministry of Defence in order to assist the reader in understanding the Order. It does not form part of the Order.

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

- 3.1 None.

4. **Legislative Background**

- 4.1 Part 7 of the Courts Act 2003 provided for the creation of the Criminal Procedure Rule Committee as the single forum responsible for the development of rules governing the practices and procedures to be adopted on criminal proceedings in England and Wales. Their work resulted in the Criminal Procedure Rules 2005 (SI 2005/384) (“the Procedure Rules”), Part 66 of which related to the procedure to be adopted in respect of prosecution appeals against terminating rulings.

- 4.2 This Order makes equivalent provision for procedure at courts-martial as for Part 66 of the Procedure Rules. It supplements the Courts-Martial (Prosecution Appeals) Order 2006 (SI 2006/1786) which introduced a power for the prosecution at court-martial to appeal to the Courts-Martial Appeal Court against a terminating ruling. This power of appeal mirrors that provided for by Part 9 of the Criminal Justice Act 2003.

5. Extent

5.1 This instrument applies to proceedings before courts-martial whether in the United Kingdom or elsewhere.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 By specifying the procedure governing the exercise of a prosecution right of appeal at trial by court-martial, the policy objective for the Armed Forces is to mirror, as far as practicable, the procedures and practices in place in the civilian criminal courts in England and Wales. This is achieved by the Order making for equivalent provision to those set out in Part 66 of the Procedure Rules, including the forms to be used in applying for leave to appeal, setting out grounds of appeal, opposing an appeal and determination of an appeal.

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 the instrument. Her contact details are:

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