

**EXPLANATORY MEMORANDUM TO  
THE CRIMINAL JUSTICE ACT 1988 (APPLICATION TO SERVICE  
COURTS) (EVIDENCE) ORDER 2006.**

**2006 No.2890**

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 revokes, with savings, the Criminal Justice Act 1988 (Application to Service Courts) (Evidence) Order 1996 (“the 1996 Order”) which applied sections 32(1) to (3), 32A and 34A of the Criminal Justice Act 1988 (“the 1988 Act”) to service courts. These provisions related to, *inter alia*, live television links for child witnesses and overseas witnesses.
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 Sections 32(1) to (3), 32A and 34A of the 1988 Act (with the exception of section 32(1)(a) and (3) dealing with live links for overseas witnesses) have been repealed for criminal courts in England and Wales, having been superseded by provisions in the Youth Justice and Criminal Evidence Act 1999 (“the 1999 Act”). Sections 32(1) to (3), 32A and 34A of the 1988 Act were applied to service courts by the 1996 Order. However, these sections are now redundant for service courts as a consequence of bringing into force the provisions of the 1999 Act for service courts. This Order revokes the 1996 Order, and therefore revokes those redundant provisions for service courts, but retains section 32(1)(a) and (3), thereby bringing service courts into line with criminal courts in England and Wales. The power to use live links for overseas witnesses is therefore retained for service courts.
5. **Extent**
  - 5.1 The instrument applies to proceedings before courts-martial, the Courts-Martial Appeal Court and Standing Civilian Courts whether in the United Kingdom or elsewhere.
6. **European Convention on Human Rights**
  - 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required..
7. **Policy background**

- 7.1 The policy objective of the Order is to retain for service courts equivalent powers to those of criminal courts in England and Wales to allow a witness who is not in the country where the court is sitting to give evidence through a live television link, whilst at the same time ensuring that the measures can operate wherever in the world the service court may be sitting.

This Order is concerned exclusively with procedures before service courts. Consultation took place with the Office of the Judge Advocate General, the three service Prosecuting Authorities and the Military Courts Service by circulating drafts of the Order and seeking comment. Consultation also took place generally with the Department for Constitutional Affairs and the Home Office to the extent of their interest in the application of the 1999 Act to service courts.

## **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:

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

Tel: 0207 218 0564

Email: sue.mcintosh641@mod.uk