

**EXPLANATORY MEMORANDUM TO
THE COURTS-MARTIAL (ROYAL NAVY) RULES 2007**

2007 No. 3443

THE COURTS-MARTIAL (ARMY) RULES 2007

2007 No. 3442

AND

THE COURTS-MARTIAL (ROYAL AIR FORCE) RULES 2007

2007 No. 3444

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 These instruments will replace the current Courts-Martial Rules for each of the Services, incorporating provisions consequential to amendments made to the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957 (“the Service Discipline Acts”) by the Armed Forces Act 2006 (“the 2006 Act”) and aligning the Rules with provisions of the 2006 Act in order to ease the introduction next year of new rules under that Act.

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

3.1 None.

4. Legislative Background

4.1 The 2006 Act received Royal Assent on 8 November 2006. Under its provisions there is established a standing Court Martial and Rules will be made under the 2006 Act that relate to this new court. Until such time as the provisions in the 2006 Act that are concerned with the Court Martial are commenced, the three Services will continue to hold ad hoc courts-martial established under the Service Discipline Acts. The Service Discipline Acts provide that Rules may be made in connection with such courts-martial.

4.2 The 2006 Act made certain amendments to the Service Discipline Acts (such as provision about binding pleas) that required supplementary provisions to be made in Rules. Rather than simply amend the existing three sets of Courts-Martial Rules a decision was taken to streamline the Rules and, within the vires of the Service Discipline Acts, to make them as similar as possible to the Rules that will be made under the 2006 Act. For this reason the current sets of Courts-Martial Rules are to be revoked and replaced with the attached Rules.

4.2 These Orders will reduce the differences in the procedure and practice of courts-martial among the three Services, and will also facilitate a smooth transition to the 2006 Act system by introducing certain streamlining and modernising aspects ahead of the planned implementation of 2009.

5. Extent

5.1 These instruments apply to all of the United Kingdom. The primary legislation under which they are made applies to those who are subject to military law, air force law or naval discipline, wherever they are throughout the world; and to courts-martial whether or not they are held in the United Kingdom.

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State for Defence has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Courts-Martial (Royal Navy) Rules 2007, the Courts-Martial (Army) Rules 2007 and the Courts-Martial (Royal Air Force) Rules 2007 are compatible with the Convention rights.

7. Policy background

7.1 The policy objective is that the three new statutory instruments will align the provisions, procedures and practices for courts-martial across the Services, as closely as is possible within the framework of the three current Service Discipline Acts. This alignment will ensure a smoother transition to the new unified rules under the 2006 Act and allow a number of stakeholders (including the Military Courts Service, the Office of the Judge Advocate General, the prosecuting authorities and defence advocates) more time to prepare for the single Court Martial. The introduction of these “interim” Rules at this time will therefore reduce the change management burden on the Services in the run up to full implementation of the 2006 Act in 2009.

7.2 These three statutory instruments replace the Courts-Martial (Army) Rules 1997, Courts-Martial (Royal Air Force) Rules 1997 and the Courts-Martial (Royal Navy) Rules 1997 and their respective subsequent amendments.

7.3 The “interim” rules are also necessary to reflect the introduction of provisions in the rule making powers equivalent to provisions of the Criminal Procedure and Investigations Act 1996 and various other amendments to the Service Discipline Acts that were included in Schedule 16 to the 2006 Act.

7.4 These “interim” rules reflect changes to court-martial proceedings, including the adoption of provisions allowing an accused to be arraigned before a judge advocate alone (as opposed to a fully constituted and sworn court-martial board), and new powers for a judge advocate to issue summonses compelling the attendance of witnesses (including civilians).

7.5 As far as practicable, the “interim” rules have been modelled on Crown Court practice as regulated by the consolidated Criminal Procedure Rules 2005. A number of unavoidable differences remain between the rules governing courts-martial in the different Services. These differences are reduced, however, by these three statutory instruments. The unified rules, which are due to be brought forward next year, will create a single court system for all of the Services.

7.6 In drafting the Rules the Department has consulted widely with relevant stakeholders such as the policy and legal branches of the Services, the Office of the Judge Advocate General and the Military Court Service.

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.

8.2 The impact on the public sector is expected to be nil.

9. Contact

9.1 Mrs S J McIntosh at the Ministry of Defence (telephone: 020 7218 0564) can answer any queries regarding the instrument.