

**EXPLANATORY MEMORANDUM TO**  
**THE CRIMINAL PROCEDURE AND INVESTIGATIONS ACT 1996**  
**(APPLICATION TO THE ARMED FORCES) ORDER 2008**

**2008 No. 635**

**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 This Order makes provisions with respect to proceedings before courts-martial constituted under the Service Discipline Acts (the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957) and before the Standing Civilian Court constituted under the Armed Forces Act 1976. The provisions are equivalent, with modifications, to those of Part I of the Criminal Procedure and Investigations Act 1996 which impose duties of disclosure on prosecutors and accused.

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

3.1 None.

**4. Legislative Background**

4.1 Part I of the Criminal Procedure and Investigations Act 1996 (as amended by the Criminal Justice Act 2003) introduced a statutory regime governing the disclosure of unused material by the prosecution and the disclosure of the defence case by the defence. Section 78 (2) provided an order-making power to allow those provisions to be applied to courts-martial and the Standing Civilian Court.

**5. Extent**

5.1 This instrument applies to all of the United Kingdom. It also applies to Service courts, 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 Criminal Procedure and Investigations Act (Application to the Armed Forces) Order 2008 is compatible with the Convention rights.

**7. Policy background**

7.1 The application of the provisions of the Criminal Procedure and Investigations Act 1996 to the Service Justice System is intended to mirror the application of those provisions in the civilian system and thus improve the efficiency of the Service justice system. Courts-martial and the Standing Civilian Court have hitherto used common law rules

of disclosure, which has perpetuated problems of case management in the Service justice system compared with its civilian equivalent.

7.2 The content of the order has been subject to extensive internal consultation, including with the staff of the three Service legal directors, and has been agreed by the Office of the Judge Advocate General. A briefing on its provisions has been provided to a wide range of civilian solicitors and barristers.

7.3 The modifications provided for in the order are to adjust the working of the provisions to the circumstances of, and legislation governing, proceedings before courts-martial and Standing Civilian Courts, an important example being the fact that courts-martial are not standing 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.

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.