

EXPLANATORY MEMORANDUM TO
THE ARMED FORCES (SUMMARY APPEAL COURT) RULES 2009
2009 No. 1211
AND
THE ARMED FORCES (SERVICE CIVILIAN COURT) RULES 2009
2009 No. 1209

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

2. Purpose of these instruments

2.1 The first instrument sets out rules governing the Summary Appeal Court (the “SAC”) which is a standing court created by the Armed Forces Act 2006 (the “2006 Act”). Under its provisions the SAC will hear appeals from Servicemen against finding and/or punishment imposed at a summary hearing.

2.2 The second instrument sets out rules governing the Service Civilian Court (the “SCC”) which is a standing court created by the 2006 Act. These rules relate to the trial by the SCC of civilians subject to Service discipline.

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

None.

4. Legislative Context

4.1 Section 140 of the 2006 Act creates a standing SAC replacing the summary appeal courts established under the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957 (the Service discipline acts (the “SDAs”)). The first instrument provides rules to govern the constitution and procedure of the SAC.

4.2 Section 277 of the 2006 Act creates a standing SCC replacing the Standing Civilian Court which was established for the Army and the Royal Air Force by the Armed Forces Act 1976. These rules provide for one SCC to serve the Armed Forces including for the first time the Royal Navy. These rules replace the Standing Civilian Court Order 1997 which provides the rules of court for the Standing Civilian Court for the Army and the Royal Air Force.

4.3 The SCC Rules contain transitional provisions some of which rely upon modifications made to the enabling powers by SI 2009/1059 which is the main transitional order under the 2006 Act.

5. Territorial Extent and Application

5.1 These instruments extend to the United Kingdom, the Isle of Man and the British overseas territories. The first instrument applies to persons subject to Service law (as defined in section 367 of the 2006 Act) both within the United Kingdom and abroad.

The second instrument applies to civilians subject to Service discipline (as defined in section 370 of the 2006 Act) outside the British Islands.

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 these instruments is that the rules will apply the provisions of the 2006 Act respectively to the new tri-Service SAC and SCC. In each case, they apply one tri-Service set of rules to each court. They form a key part of the new tri-Service system of Service discipline provided for by the 2006 Act.

7.2 The main change from the SACs that existed under the SDAs is that for the first time the armed forces will have one common court to hear cases.

7.3 Again, the main change from the Standing Civilian Court is that for the first time the armed forces will have one common court to hear cases. The SCC will be able to sit anywhere in the world where an offence is committed by a civilian subject to Service discipline, subject to the consent of the host nation and Status of Forces or other agreements. But the SCC may not sit within the British Islands. There is also provision for the SCC to refuse jurisdiction to hear cases and the constitution of the court has been amended so that in all cases the judge advocate will sit alone (rather than have any lay assessors or members in some cases).

7.4 These instruments also provide new powers for a judge advocate to issue summonses compelling the attendance of witnesses (including civilians) and include new provisions relating to evidence consistent with those pertaining to the new Court Martial.

7.5 The 2006 Act creates a number of new courts: the SCC, the SAC and the Court Martial. In drafting each set of court rules, wherever possible, efforts have been made to ensure consistency of practice and procedure between them.

8. Consultation outcome

8.1 A memorandum about consultation on the 2006 Act primary legislation was submitted in written evidence to the Select Committee on the Armed Forces Bill and published on 9 May 2006 in its Special Report of Session 2005-06 (HC 828-II, page Ev 136). This memorandum explained how stakeholder consultation had been carried out and listed the individuals and organisations consulted.

8.2 These instruments have been the subject of rigorous consultation with relevant stakeholders (such as the Services, the Director of Service Prosecutions, the Judge Advocate General and the Military Court Service), over a period of two years, to ensure that the policy goals have been achieved and that the provisions of the instruments will work in practice.

9. Guidance

9.1 A new Manual of Service Law will provide guidance and supplementary information to Armed Forces personnel on the single system of Service law established under the 2006 Act. The second volume of three within the Manual, which is intended for lawyers and those who administer the Service justice system, includes chapters, respectively, on SAC and SCC proceedings. The Manual of Service Law will be available in time to allow Service personnel to be trained ahead of full implementation of the 2006 Act on the 31st October 2009 and subsequently will be available to the general public on the internet. Guidance will be promulgated to judge advocates through the Judge Advocate General's practice memoranda. The Department has additionally held briefing talks for defence advocates.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Armed Forces Act 2006 is subject to a requirement for renewal each year by Order in Council (approved in draft by both Houses of Parliament) and renewal by Act of Parliament every five years. In response to these requirements the Act and the provisions made under it will be subject to continuing monitoring and a general review will be conducted in order to provide for the Act of Parliament which will be required in 2011.

13. Contact

Mr N Shaw, Ministry of Defence, 0207 218 0564, email nick.shaw460@mod.uk (0207 218 8291) at the Ministry of Defence is the point of contact regarding these instruments.