

EXPLANATORY MEMORANDUM TO
THE ARMED FORCES (MINOR PUNISHMENTS AND LIMITATION ON
POWER TO REDUCE IN RANK) REGULATIONS 2009

2009 No. 1215

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 the instrument

2.1 This instrument authorises minor punishments which may be imposed on offenders by the Court Martial and by commanding officers who have heard charges summarily subject to certain limitations on the rank of those receiving such punishments. The punishments authorised are: stoppage of leave, restriction of privileges and admonitions. It also prevents the Court Martial from reducing a member of Her Majesty's air forces to a rank below the highest he has held as an airman (ranks below that of Corporal). A similar limitation is placed by section 135(3) of the Armed Forces Act 2006 on commanding officers' powers to impose reduction in rank.

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

3.1 None.

4. Legislative context

4.1 The Court Martial's power to impose a particular punishment is provided for at section 164 of the Armed Forces Act 2006 and that of the commanding officer at section 132 of the same Act. Those provisions empower the Court Martial and commanding officers respectively to award such minor punishments as may be authorised by regulations made by the Defence Council.

4.2 Both sections provide that if the person being sentenced is a warrant officer or non-commissioned officer, they may be reduced in rank. Section 164(4) of the Act allows the Defence Council to make regulations to restrict the extent to which persons of a specified description may be reduced in rank or disgraced.

5. Territorial extent and application

5.1 This instrument extends to the United Kingdom, the Isle of Man and British overseas territories and applies to persons subject to Service law wherever they are in the world.

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 regulations is to enhance and widen the range of powers of a Court Martial and those of the commanding officers in the armed forces who have heard a charge summarily to impose punishment. The aim is to provide increased flexibility in general sentencing matters whilst applying a specific restriction to reducing in the ranks, members of Her Majesty's air force. This reflects the fact that a member of the air forces reduced below the highest rank he has reached as an airman would effectively be rendered unemployable in his 'reduced' rank.

7.2 Additional policy considerations were given to the award of Restriction of Privileges (ROPs) to Military Cadet Officers only. This reflects the wishes, ethos and concepts adopted at RMAS Sandhurst and in the Army as a whole in terms of their structure, functions and ways of working and supports the use of ROPs during initial officer training. The RAF does not adopt this approach and prefer to maintain a regime of minor administrative action to re-inforce remedial training rather than a purely disciplinary route. This is consistent with their ethos, training regime and future employment of officers. This does not apply to the RN as Officers are commissioned on joining the Service.

8. Consultation outcome

8.1 A memorandum about consultation on the Armed Forces Act 2006 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. The individual instruments under the 2006 Act have been the subject of rigorous consultation with relevant stakeholders (such as the Services and the Judge Advocate General) over a period of many months, to ensure that the policy goals have been achieved and that the provisions of each instrument will work in practice.

9. Guidance

9.1 A new Manual of Service Law will provide guidance and supplementary information to Armed Forces personnel (including the Service Police) on the single system of Service law established under the Armed Forces Act 2006. The first volume of three within the manual, which is intended for commanding officers and those who administer the Service justice system, includes a chapter on summary hearing punishments. A training version of 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, and will subsequently the final version will be available to the general public on the internet.

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 and 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

13.1 Mr Nick Shaw at the Ministry of Defence, telephone 020 7218 0564 or email nick.shaw460@mod.uk, is the point of contact regarding this instrument.