

**EXPLANATORY MEMORANDUM TO
THE ARMED FORCES (CONDITIONAL RELEASE FROM CUSTODY) ORDER
2009**

2009 No. 991

AND

THE COURT MARTIAL APPEAL COURT (BAIL) ORDER 2009

2009 No. 992

- 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 The first Order makes provision for bail to be granted to a person who has been sentenced by the Summary Appeal Court pending the determination of an appeal to the High Court or who has been sentenced by the Service Civilian Court pending appeal to the Court Martial.
 - 2.2 The second Order makes provision for the Court Martial Appeal Court (CMAC) to grant an appellant conditional release from custody pending appeal to that court from the Court Martial.
- 3. Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
- 4. Legislative context**
 - 4.1 The Armed Forces Act 2001, section 30, establishes the power of the Secretary of State by Order to make provision enabling a person who has been sentenced by the Summary Appeal Court or by the Service Civilian Court to be released from custody pending the determination of an appeal. Additionally the 2001 Act provides that the Secretary of State may make provision allowing a person sentenced by a service court to be released subject to conditions pending a “relevant determination”. A “relevant determination” includes the determination of an appeal to the CMAC.
- 5. Territorial Extent and Application**
 - 5.1 These Orders extend to the United Kingdom and apply to persons subject to service law wherever they are in the world.
- 6. European Convention on Human Rights**
 - 6.1 As these instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.
- 7. Policy Background**

7.1 The Armed Forces Act 2006 creates a common disciplinary system for all three Armed Forces, with common offences and common punishments. It also created a number of service courts to try persons subject to service law, and amended the Armed Forces Act 2001 to reflect the new court structure.

7.2 The first Order provides for a procedure relating to bail pending appeal which reflects the equivalent procedure in relation to criminal proceedings in the civil courts. The second Order is concerned in particular with the granting of bail pending an appeal to the Court Martial Appeal Court, again reflecting practices in the civilian system.

7.3 Both instruments will come into force at the same time as most of the provisions of the Armed Forces Act 2006 are implemented, on 31 October 2009.

8. Consultation outcome

8.1 In deciding whether to bring forward these Orders, the Department has consulted the single services, the Office of the Judge Advocate General, the Director of Service Prosecutions and the Ministry of Justice.

9. Guidance

9.1 Guidance will be promulgated to the Armed Forces through a new joint service publication, the Manual of Service Law. A version of the Manual will be available in time to allow Service personnel to be trained ahead of full implementation of the 2006 Act and it will subsequently 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 Orders do not apply to small business.

12. Monitoring and review

12.1 The Armed Forces Acts are subject to a quinquennial review; the next review is in 2011. These Orders will be monitored and reviewed accordingly.

13. Contact

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