

**EXPLANATORY MEMORANDUM TO  
THE CRIMINAL JUSTICE ACT 1988 (APPLICATION TO SERVICE COURTS)  
(EVIDENCE) (REVOCATION) ORDER 2009**

**2009 No.994**

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 Order revokes the Criminal Justice Act 1988 (Application to Service Courts) (Evidence) Order 2006. This is necessary as similar provisions are contained in new rules applicable to Service Courts that have been made under the Armed Forces Act 2006 (the 2006 Act).
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None.
4. **Legislative Context**
  - 4.1 The rules for Service courts (the Court Martial Rules, the Service Civilian Court Rules and the Summary Appeal Court Rules) made under the 2006 Act, and for the Court Martial Appeal Court, made under the Court Martial Appeal Act 1968, make new provisions for the giving of evidence in those courts by live link. The provisions in those rules make the provisions within the revoked statutory instrument unnecessary.
5. **Territorial Extent and Application**
  - 5.1 This instrument extends to the United Kingdom and to proceedings before Service courts wherever in the world they may be held.
6. **European Convention on Human Rights**

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 2006 Act is major updating legislation affecting the Service criminal justice system and the rules made under it contain the provisions by which the Service courts operate, including the reception of evidence by live link.
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. The individual instruments under the 2006 Act have been the subject of rigorous consultation with relevant stakeholders (such as the Services, the Service police, the Judge Advocate General and the Military Court Service) 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 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 a chapter on Court Martial 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 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.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is nil.

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

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 2006 Act is subject to quinquennial review. Following full implementation of the Act in October 2009 the provisions will be monitored and reviewed leading up to the first quinquennial review in 2011.

## **13. Contact**

Mr Nick Shaw at the Ministry of Defence, telephone 020 7218 0564 or email [nick.shaw460@mod.uk](mailto:nick.shaw460@mod.uk), is the point of contact regarding this instrument.