

2006 No. 2887

DEFENCE

The Youth Justice and Criminal Evidence Act 1999 (Application to the Courts-Martial Appeal Court) Order 2006

<i>Made</i>	- - - -	<i>30th October 2006</i>
<i>Laid before Parliament</i>		<i>6th November 2006</i>
<i>Coming into force</i>	- -	<i>6th December 2006</i>

The Secretary of State, in exercise of the powers conferred upon him by section 61(1) of the Youth Justice and Criminal Evidence Act 1999(a), makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Youth Justice and Criminal Evidence Act 1999 (Application to the Courts-Martial Appeal Court) Order 2006 and shall come into force on 6th December 2006.

(2) In this Order—

“the Act” means the Youth Justice and Criminal Evidence Act 1999;

“continuing proceedings” means proceedings instituted before the date on which this Order comes into force;

“existing special measures power” has the meaning given in paragraph 1 of Schedule 7 to the Act;

“special measures direction” means a direction under section 19 of the Act.

(3) For the purposes of this Order, proceedings on appeal are to be taken to be instituted when the application for leave to appeal is lodged in accordance with section 9 of the Courts-Martial (Appeals) Act 1968(b) or (as the case may be) the reference under section 34 of that Act is made.

Application of the Act

2. The provisions of the Act which are specified in column 1 of the Schedule to this Order shall apply to proceedings before the Courts-Martial Appeal Court, subject to the modifications specified in column 2 of the Schedule.

Transitional provisions

3.—(1) A special measures direction may be given in relation to a witness in continuing proceedings unless the court has before the date this Order comes into force—

(a) 1999 c. 23.
(b) 1968 c. 20.

- (a) given leave in relation to the witness in connection with those proceedings under section 32 (evidence through television links) or section 32A (video recordings of testimony of child witnesses) of the Criminal Justice Act 1988(a); or
- (b) exercised any existing special measures power in relation to the witness in connection with those proceedings.

(2) Nothing in—

- (a) Chapter 2,
- (b) Chapter 3, and
- (c) Chapter 5,

of Part 2 of the Act applies in relation to continuing proceedings.

30th October 2006

Derek Twigg
Parliamentary Under Secretary of State
Ministry of Defence

(a) 1988 c. 33. Sections 32(1) to (3), 32A and 34A applied to proceedings before service courts by virtue of the Criminal Justice Act 1988 (Application to Service Courts) (Evidence) Order 1996 (S.I. 1996/2592) subject to the modifications specified in that Order. That Order has now been revoked by the Criminal Justice Act 1988 (Application to Service Courts) (Evidence) Order 2006 (S.I. 2006/2890) with a saving for section 32(1)(a) and (3) which continues to have effect in relation to proceedings before service courts subject to the modifications specified in that Order.

SCHEDULE

Article 2

Application and Modification of the Act

<i>Column 1</i>	<i>Column 2</i>
<i>Provisions applied</i>	<i>Modifications</i>
<p>In section 16— subsection (1)</p> <p>subsections (2)–(5)</p> <p>In section 17— subsection (1)</p> <p>subsections (2)–(4)</p> <p>Section 18</p> <p>In section 19— subsection (1)</p> <p>subsections (2)–(6)</p> <p>In section 20— subsections (1)–(4)</p> <p>subsection (5)</p> <p>subsection (6)</p> <p>In section 21— subsection (1)</p> <p>subsection (2)</p> <p>subsections (3)–(9)</p> <p>In section 22— subsection (1)</p>	<p>For the words “criminal proceedings” there shall be substituted the words “proceedings before the Courts-Martial Appeal Court”.</p> <p>For the words “criminal proceedings” there shall be substituted the words “proceedings before the Courts-Martial Appeal Court”.</p> <p>For the words “criminal proceedings” there shall be substituted the words “proceedings before the Courts-Martial Appeal Court”.</p> <p>The words “and, if it is a magistrates’ court, must cause them to be entered in the register of its proceedings” shall be omitted.</p> <p>For the words “Criminal Procedure Rules” there shall be substituted the words “Rules of court”.</p> <p>In paragraph (a), for the words “criminal proceedings” there shall be substituted the words “proceedings before the Courts-Martial Appeal Court”.</p> <p>In paragraph (b)— After the words “relate is” there shall be inserted the words “an offence under either section 70 of the Army Act 1955 or of the Air Force Act 1955, or section 42 of the Naval Discipline Act 1957, of which the corresponding civil offence (within the meaning of those Acts) is”(a).</p> <p>For the words “criminal proceedings” there shall be substituted the words “proceedings before the Courts-Martial Appeal Court”.</p> <p>In paragraph (a), for the words “criminal proceedings” there shall be substituted the words “proceedings before the Courts-Martial Appeal Court”.</p> <p>In paragraph (b)— After the words “relate is” there shall be inserted the words “an offence under either section 70 of the Army Act 1955 or of the Air Force Act 1955, or section 42 of the Naval Discipline Act 1957, of which the corresponding civil offence (within the meaning of those</p>

(a) Army Act 1955 (c. 18); Air Force Act 1955 (c. 19); Naval Discipline Act 1957 (c. 53).

	Acts) is”.
subsection (2) In section 23— subsection (1) subsection (2)	For paragraph (a) there shall be substituted the following paragraph: “(a) the judges;”.
subsection (3) In section 24— subsections (1)–(4) subsection (8) Section 25 Section 26 In section 27— subsections (1)–(3) subsection (4)	In paragraph (b), for the words “Criminal Procedure Rules” there shall be substituted the words “rules of court”.
subsections (5)–(9) subsection (11) In section 29— subsections (1) and (2) subsection (3)	For the words “Criminal Procedure Rules” there shall be substituted the words “rules of court”. In paragraph (a), for the words “judge or justices (or both)” there shall be substituted the word “judges”. In paragraph (a), the word “and” shall be omitted. Paragraph (b) shall be omitted.
subsection (4) subsection (5)	For the words “Criminal Procedure Rules” there shall be substituted the words “rules of court”.
subsections (6) and (7) Section 30 In section 31— subsection (1)	For the words “criminal proceedings” there shall be substituted the words “proceedings before the Courts-Martial Appeal Court”.
subsections (2)–(4) subsection (5)	For the words “criminal proceedings” there shall be substituted the words “proceedings before the Courts-Martial Appeal Court”.
subsections (6)–(8) Section 33 Section 34	For the words “criminal proceedings” there shall be substituted the words “proceedings before the Courts-Martial Appeal Court”.
In section 35— subsection (1)	For the words “criminal proceedings” there shall be substituted the words “proceedings before the Courts-Martial Appeal Court”.
subsection (2) subsection (3)	For the words “The offences to which this section applies are—” there shall be substituted the words “This section applies to any offence under either section 70 of the Army Act 1955 or of the Air Force Act 1955, or section 42 of the Naval Discipline Act 1957, of which the corresponding civil offence (within the meaning of those Acts) is—”. In paragraph (a), for the word “any” there shall be substituted the word “an”.

subsections (4) and (5)	
In section 36—	
subsubsection (1)	For the words “criminal proceedings” there shall be substituted the words “proceedings before the Courts-Martial Appeal Court”.
subsections (2)–(4)	
In section 37—	
subsections (1)–(3)	
subsubsection (4)	The words “and, if it is a magistrates’ court, must cause them to be entered in the register of its proceedings” shall be omitted.
subsubsection (5)	For the words “Criminal Procedure Rules” there shall be substituted the words “rules of court”.
In section 38—	
subsections (1)–(3)	
subsubsection (4)	The word “qualified” shall be omitted.
subsubsection (5)	
subsections (6) and (7)	For the words “Criminal Procedure Rules” there shall be substituted the words “Rules of court”.
subsubsection (8)	In paragraph (a), the word “and” shall be omitted. Paragraph (b) shall be omitted.
In section 41—	
subsubsection (1)	
subsubsection (2)	In paragraph (b), the words “the jury or (as the case may be)” shall be omitted.
subsections (3)–(8)	
In section 42—	
subsubsection (1)	
subsubsection (3)	Paragraphs (a), (b) and (c) shall be omitted.
In section 43—	
subsubsection (1)	
subsubsection (2)	The words “(but in the absence of the jury, if there is one)” shall be omitted. The words “and, if it is a magistrates’ court, must cause those matters to be entered in the register of its proceedings” shall be omitted.
subsubsection (3)	For the words “Criminal Procedure Rules” there shall be substituted the words “Rules of court”.
Section 53	For the words “criminal proceedings” wherever they appear there shall be substituted the words “proceedings before the Courts-Martial Appeal Court”.
In section 54—	
subsubsection (1)	For the words “criminal proceedings” there shall be substituted the words “proceedings before the Courts-Martial Appeal Court”.
subsections (2) and (3)	
subsubsection (5)	
In section 55—	
subsubsection (1)	For the words “criminal proceedings” there shall be substituted the words “proceedings before the Courts-Martial Appeal Court”.
subsections (2)–(4)	
subsections (6)–(8)	
In section 56—	
subsections (1)–(3)	For the words “criminal proceedings” wherever they appear there shall be substituted the words “proceedings before the Courts-Martial Appeal Court”.
subsubsection (4)	For the words “A court in criminal proceedings” there shall be

	substituted the words “The Courts-Martial Appeal Court”.
In section 57— subsection (1)	For the words “criminal proceedings” there shall be substituted the words “proceedings before the Courts-Martial Appeal Court”.
subsections (2) and (3)	
In section 62— subsection (1)	After the word “any” there shall be inserted the words “offence under either section 70 of the Army Act 1955 or of the Air Force Act 1955, or section 42 of the Naval Discipline Act 1957, of which the corresponding civil offence (within the meaning of those Acts) is an”.
subsection (2)	
In section 63— subsection (1)	For the words “criminal proceedings” wherever they appear there shall be substituted the words “proceedings before the Courts-Martial Appeal Court”. For the definition of “court” there shall be substituted the following definition— ““court” means the Courts-Martial Appeal Court;”. For the definition of “legal representative” shall be substituted the following definition— ““legal representative” means any person who— (i) is an authorised advocate or authorised litigator (as defined by section 119(1) of the Courts and Legal Services Act 1990); (ii) is an advocate or solicitor in Scotland; (iii) is a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland; or (iv) has in any Commonwealth country rights and duties similar to those of a barrister or solicitor in England and Wales, and is subject to punishment or disability for breach of professional rules;”.
subsection (2)	
In section 65— subsection (1)	For the words “Criminal Procedure Rules” there shall be substituted the words “Rules of court”.
subsection (2)	For subsection (2) there shall be inserted the following subsection— “(2) In this Act “rules of court” means rules made under section 49 of the Courts-Martial (Appeals) Act 1968 or as otherwise provided for in this Act.”.
subsection (3)	

EXPLANATORY NOTE

(This note is not part of the Order)

This Order applies, with modifications, Chapters 1 to 3 and 5 of Part 2 of the Youth Justice and Criminal Evidence Act 1999 (c. 23) (“the Act”) to proceedings before the Courts-Martial Appeal Court. These Chapters contain a range of measures designed to help young, disabled, vulnerable or intimidated witnesses give evidence in criminal proceedings.

Article 3 contains transitional provisions in respect of proceedings commenced prior to the date this Order comes into force.

The Order applies to the Courts-Martial Appeal Court, with modifications, the provisions of Chapter 1 of Part 2 of the Act. This Chapter sets out which witnesses are eligible for assistance and the special measures available to assist them (including the use of screens, live television links and video-recorded evidence).

The Order also applies, with modifications, the provisions of Chapter 2, which provide protection for vulnerable witnesses from cross-examination by an accused in person, and the provisions of Chapter 3, which provide further protection to complainants in proceedings for sexual offences by restricting evidence or questioning about the complainant’s sexual history.

The Order also applies, with modifications, the provisions of Chapter 5, which deal with competence of witnesses and capacity to be sworn.

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