

EXPLANATORY MEMORANDUM TO
THE COURTS-MARTIAL (ARMY) (AMENDMENT) RULES 2007

2007 No. 2397

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

2. Description

2.1 The above Rules amend the Courts-Martial (Army) Rules 1997 to provide that where a civilian accused is to be tried by Army court-martial, the court administration officer can appoint as a lay member of the court-martial any person who is not subject to military law, air force law or the Naval Discipline Act 1957.

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

3.1 None

4. Legislative Background

4.1 A civilian may be tried by Army court-martial by virtue of the jurisdiction conferred by section 209 of the Army Act 1955 (“the 1955 Act”), which applies Part II of the 1955 Act to certain categories of civilians such as dependants and contractors accompanying the British Army overseas.

4.2 Section 84D of the 1955 Act provides for the appointment of military officers and warrant officers to sit as lay members of courts-martial, regardless of whether the accused is military or civilian. Section 381 of the Armed Forces Act 2006 (“the 2006 Act”) makes provision for the 1955 Act, *inter alia*, to be amended for the purposes of reducing or eliminating any differences between the 1955 Act and the 2006 Act before the latter comes fully into force (thereby repealing the 1955 Act). Under section 381, section 209 of the 1955 Act has been amended to provide that rules governing the practice and procedure of courts-martial (made under section 103 of the 1955 Act) may make provision for the appointment of persons *other than* military officers or warrant officers to sit as lay members of courts-martial under section 84D of the 1955 Act where the accused is a civilian.

5. Extent

5.1 The instrument applies to Army courts-martial, whether in the United Kingdom or elsewhere, where the accused is a civilian.

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 the Rules is to ensure that civilians who are tried by Army courts-martial may be tried before a court composed of civilian lay members, rather than military officers and warrant officers. The Rules are made in response to the judgment of the European Court of Human Rights in the case of *Martin v UK* in which it was held that only in exceptional circumstances would it be appropriate to try a civilian accused before a court made up of military members. Subordinate legislation to be made under the 1955 Act and the 2006 Act will make detailed provision for the trial of civilians but these Rules operate as an interim measure to ensure maximum fairness to civilian accused before the introduction of that new legislation in 2008.
- 7.2 The Rules are concerned exclusively with procedures before Army courts-martial. Consultation took place with the Office of the Judge Advocate General, the Army Prosecuting Authority and the Military Courts Service

8. Impact

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

- 9.1 Sue McIntosh at the Ministry of Defence can answer any queries regarding the instrument. Her contact details are:

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