

2009 No. 2083

DEFENCE

The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009

<i>Made</i>	- - - -	<i>27th July 2009</i>
<i>Laid before Parliament</i>		<i>30th July 2009</i>
<i>Coming into force</i>	- -	<i>31st October 2009</i>

The Secretary of State, in exercise of the powers conferred by section 61(1) and (2) of the Youth Justice and Criminal Evidence Act 1999(a), makes the following Order:

Citation and commencement

1. This Order may be cited as the Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 and shall come into force on 31st October 2009.

Interpretation

2.—(1) In this Order—

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

“the 2006 Act” means the Armed Forces Act 2006(b);

“Court Martial Rules” means rules made under section 163 of the 2006 Act;

“CMAC Rules” means rules made under section 49 of the Court Martial Appeals Act 1968(c);

“SCC Rules” means rules made under section 288 of the 2006 Act;

“the competence of witnesses and capacity to be sworn provisions” has the meaning given by article 9(4);

“the general and final provisions” has the meaning given by article 11(2);

“judge advocate” has the same meaning as in section 362 of the 2006 Act;

“lay members” has the same meaning as in section 155(1) of the 2006 Act;

“the protection of complainants in proceedings for sexual offences provisions” has the meaning given by article 7(2);

“the protection of witnesses from cross-examination provisions” has the meaning given by article 5(3);

“Rules of court” means rules of evidence and procedure for proceedings before—

(a) the Court Martial;

(a) 1999 c. 23.
(b) 2006 c. 52.
(c) 1968 c. 20.

- (b) the Service Civilian Court; and
- (c) the Court Martial Appeal Court;

“the special measures provisions” has the meaning given by article 3(3).

(2) Any reference in this Order to a special measures direction is to be read—

- (a) in relation to proceedings before the Court Martial, as a reference to a special measures direction within the meaning of Court Martial Rules;
- (b) in relation to proceedings before the Service Civilian Court, as a reference to a special measures direction within the meaning of SCC Rules;
- (c) in relation to proceedings before the Court Martial Appeal Court, as a reference to a direction under section 19 of the Act.

Application of special measures provisions

3.—(1) The special measures provisions in paragraph (3)(a) to (g), (i), (k), (n), (p) and (s) shall apply in relation to proceedings before the Court Martial Appeal Court as they apply in relation to criminal proceedings, subject to the modifications specified in article 4.

(2) The special measures provisions in paragraph (3)(h), (j), (l), (m), (o), (q) and (r) shall apply in relation to proceedings before—

- (a) the Court Martial,
- (b) the Service Civilian Court, and
- (c) the Court Martial Appeal Court,

as they apply in relation to criminal proceedings, subject to the modifications specified in article 4.

(3) In this Order “the special measures provisions” means the following provisions of the Act—

- (a) section 16 (witness eligible for assistance on grounds of age or incapacity);
- (b) section 17 (witness eligible for assistance on grounds of fear or distress about testifying);
- (c) section 18 (special measures available to eligible witness);
- (d) section 19 (special measures direction relating to eligible witness);
- (e) section 20 (further provisions about directions: general);
- (f) section 21 (special provisions relating to child witnesses);
- (g) section 22 (extension of provisions of section 21 to certain witnesses over 17);
- (h) section 23 (screening witness from accused);
- (i) section 24(1) to (4) and (8) (evidence by live link);
- (j) section 25(1) to (3) and (5) (evidence given in private);
- (k) section 25(4) (evidence given in private);
- (l) section 26 (removal of wigs and gowns);
- (m) section 27(1) and (11) (video recorded evidence in chief);
- (n) section 27(2) to (9) (video recorded evidence in chief);
- (o) section 29(1), (2) and (5) to (7) (examination of witness through intermediary);
- (p) section 29(3) and (4) (examination of witness through intermediary);
- (q) section 30 (aids to communication);
- (r) section 31 (status of evidence given under Chapter 1 of Part 2 of the Act); and
- (s) section 33 (interpretation etc of Chapter 1).

Modification of special measures provisions

4.—(1) In their application by virtue of article 3, the special measures provisions are modified as follows.

(2) Any reference to a special measures direction has the same meaning as in this Order.

(3) Any reference to criminal proceedings is to be read as a reference to proceedings before the Court Martial, the Service Civilian Court or the Court Martial Appeal Court.

(4) Any reference to the witness is to be read as a reference to the witness to whose evidence the special measures direction applies.

(5) Any reference to the accused is to be read—

(a) in relation to—

(i) trial proceedings within the meaning of Court Martial Rules, or

(ii) trial proceedings within the meaning of SCC Rules,

as a reference to the defendant;

(b) in relation to appellate proceedings within the meaning of Court Martial Rules, as a reference to the appellant;

(c) in relation to proceedings before the Court Martial Appeal Court, as a reference to the person charged with an offence to which the proceedings relate (whether or not he has been convicted).

(6) Any reference to—

(a) the court (except in section 25(1) of the Act), or

(b) the judge,

is to be read, in relation to proceedings before the Court Martial or the Service Civilian Court, as a reference to the judge advocate.

(7) Any reference to Criminal Procedure Rules is to be read as a reference to Rules of court.

(8) Any reference to the jury is to be read, in relation to proceedings with lay members, as a reference to those lay members.

(9) Section 20(5) of the Act has effect as if the words “and, if it is a magistrates’ court, must cause them to be entered in the register of its proceedings” were omitted.

(10) Sections 21(1)(b) and 22(1)(b) of the Act have effect as if after the words “relate is” wherever they occur there were inserted “an offence under section 42 of the Armed Forces Act 2006 to which the corresponding offence under the law of England and Wales (within the meaning of that Act) is”.

(11) Section 23(2)(a) of the Act has effect, in relation to proceedings before—

(a) the Court Martial as if for the words “or justices (or both) and the jury (if there is one)” there were substituted “and any lay members”;

(b) the Service Civilian Court or the Court Martial Appeal Court as if the words “or justices (or both) and the jury (if there is one)” were omitted.

(12) Section 24(3)(b) of the Act has effect in relation to proceedings before the Court Martial or the Service Civilian Court as if for the word “its” there was substituted “his”.

(13) Section 27(7)(b) of the Act has effect in relation to proceedings before the Court Martial or the Service Civilian Court as if for the word “its” there was substituted “his”.

(14) In section 29 to 31 of the Act, references to a witness include a defendant or appellant who gives evidence.

(15) Section 29(3) of the Act has effect as if—

(a) for the words “judge or justices (or both)” in paragraph (a) there were substituted “judges”;

(b) the word “and” at the end of paragraph (a) was omitted; and

(c) paragraph (b) was omitted.

(16) Section 29(6) of the Act has effect in relation to proceedings before the Court Martial or the Service Civilian Court as if for the word “court’s” there was substituted “judge advocate’s”.

Application of protection of witnesses from cross-examination provisions

5.—(1) The protection of witnesses from cross-examination provisions in paragraph (3)(a) to (e) shall apply in relation to proceedings before—

- (a) the Court Martial,
- (b) the Service Civilian Court, and
- (c) the Court Martial Appeal Court,

as they apply in relation to criminal proceedings, subject to the modifications specified in article 6.

(2) The protection of witnesses from cross-examination provision in paragraph (3)(f) shall apply, in relation to proceedings before the Court Martial, as it applies in relation to criminal proceedings, subject to the modifications specified in article 6.

(3) In this Order “the protection of witnesses from cross-examination provisions” means the following provisions of the Act—

- (a) section 34 (complainants in proceedings for sexual offences);
- (b) section 35 (child complainants and other child witnesses);
- (c) section 36 (direction prohibiting accused from cross-examining particular witness);
- (d) section 37 (further provisions about directions under section 36);
- (e) section 38 (defence representation for purposes of cross-examination); and
- (f) section 39 (warning to jury).

Modification of protection of witnesses from cross-examination provisions

6.—(1) In their application by virtue of article 5, the protection of witnesses from cross-examination provisions are modified as follows.

(2) Any reference to criminal proceedings is to be read as a reference to proceedings before the Court Martial, the Service Civilian Court or the Court Martial Appeal Court.

(3) Any reference to—

- (a) the court, or
- (b) the judge,

is to be read, in relation to proceedings before the Court Martial or the Service Civilian Court, as a reference to the judge advocate.

(4) Any reference to the accused is to be read—

- (a) in relation to—
 - (i) trial proceedings within the meaning of Court Martial Rules, or
 - (ii) trial proceedings within the meaning of SCC Rules,as a reference to the defendant;
- (b) in relation to appellate proceedings within the meaning of Court Martial Rules, as a reference to the appellant;
- (c) in relation to proceedings before the Court Martial Appeal Court, as a reference to the person charged with an offence to which the proceedings relate (whether or not he has been convicted).

(5) Any reference to Criminal Procedure Rules is to be read as a reference to Rules of court.

(6) Any reference to the jury is to be read, in relation to proceedings with lay members (within the meaning of Court Martial Rules), as a reference to those lay members.

(7) Section 35(3) of the Act has effect as if for the words “The offences to which this section applies are—” there were substituted “This section applies to any offence under section 42 of the Armed Forces Act 2006 to which the corresponding offence under the law of England and Wales

(within the meaning of that Act) is—” and for the word “any” in paragraph (a) there was substituted “an”.

(8) Section 36(1)(b) of the Act has effect, in relation to proceedings before the Court Martial or the Service Civilian Court, as if for the words “of its” there were substituted “of his”.

(9) Section 37(2)(b) of the Act has effect, in relation to proceedings before the Court Martial or the Service Civilian Court, as if for the word “its” there was substituted “his”.

(10) Section 37(4) of the Act has effect, in relation to proceedings before—

- (a) the Court Martial or the Service Civilian Court, as if for the word “its” there was substituted “his”;
- (b) the Court Martial or the Court Martial Appeal Court, as if the words “and, if it is a magistrates’ court, must cause them to be entered in the register of its proceedings” were omitted;
- (c) the Service Civilian Court, as if for the words “and, if it is a magistrates’ court, must cause them to be entered in the register of its proceedings” there were substituted “and the judge advocate must cause them to be entered in the record of proceedings”.

(11) Section 38(2) of the Act has effect, in relation to proceedings before the Court Martial or the Service Civilian Court, as if for the words “it must” there were substituted “he must” and as if for the words “it may” there were substituted “he may”.

(12) Section 38(4) of the Act has effect as if the word “qualified” was omitted.

(13) Section 38(8) of the Act has effect as if—

- (a) the word “and” in paragraph (a), and
- (b) paragraph (b),

were omitted.

(14) Section 39(1) of the Act has effect as if the words “on a trial on indictment with a jury” were omitted.

Application of protection of complainants in proceedings for sexual offences provisions

7.—(1) The protection of complainants in proceedings for sexual offences provisions shall apply in relation to proceedings before—

- (a) the Court Martial,
- (b) the Service Civilian Court, and
- (c) the Court Martial Appeal Court,

as they apply in relation to criminal proceedings, subject to the modifications specified in article 8.

(2) In this Order “the protection of complainants in proceedings for sexual offences provisions” means the following provisions of the Act—

- (a) section 41 (restriction on evidence or questions about complainant’s sexual history);
- (b) section 42(1) and (3) (interpretation and application of section 41); and
- (c) section 43 (procedure on applications under section 41).

Modification of protection of complainants in proceedings for sexual offences provisions

8.—(1) In their application by virtue of article 7, the protection of complainants in proceedings for sexual offences provisions are modified as follows.

(2) Any reference to the court is to be read, in relation to proceedings before the Court Martial or the Service Civilian Court, as a reference to the judge advocate.

(3) Any reference to the accused is to be read—

- (a) in relation to—
 - (i) trial proceedings within the meaning of Court Martial Rules, or

- (ii) trial proceedings within the meaning of SCC Rules, as a reference to the defendant;
 - (b) in relation to appellate proceedings within the meaning of Court Martial Rules, as a reference to the appellant;
 - (c) in relation to proceedings before the Court Martial Appeal Court, as a reference to the person charged with an offence to which the proceedings relate (whether or not he has been convicted).
- (4) Any reference to Criminal Procedure Rules is to be read as a reference to Rules of court.
- (5) Section 41(2) of the Act has effect, in relation to proceedings before the Court Martial or the Service Civilian Court, as if for the words “it is satisfied” there were substituted “he is satisfied”.
- (6) Section 41(2)(b) of the Act has effect as if the words “the jury or (as the case may be)” were omitted.
- (7) Section 42(3) of the Act has effect as if paragraphs (a), (b) and (c) were omitted.
- (8) Section 42(3) of the Act has effect, in relation to proceedings before the Service Civilian Court, as if—
- (a) the word “and” at the end of paragraph (d), and
 - (b) paragraph (e),
- were omitted.
- (9) Section 43(2) of the Act has effect, in relation to proceedings before—
- (a) the Court Martial, as if for the words “the court must state in open court (but in the absence of the jury, if there is one)” there were substituted “the judge advocate must state in open court (but in the absence of any lay members)”;
 - (b) the Service Civilian Court or the Court Martial Appeal Court, as if the words “(but in the absence of the jury, if there is one)” were omitted;
 - (c) the Court Martial or the Service Civilian Court, as if for the word “its” in paragraph (a) there was substituted “his” and as if for the word “it” in paragraph (b) there was substituted “he”;
 - (d) the Service Civilian Court, as if the words “and, if it is a magistrates’ court, must cause those matters to be entered in the register of its proceedings” there were substituted “and the judge advocate must cause those matters to be entered in the record of proceedings”;
 - (e) the Court Martial or the Court Martial Appeal Court, as if the words “and, if it is a magistrates’ court, must cause those matters to be entered in the register of its proceedings” were omitted.
- (10) Section 43(3)(b) of the Act has effect, in relation to proceedings before the Court Martial or the Service Civilian Court as if for the words “it considers would assist it” there were substituted “he considers would assist him”.

Application of competence of witnesses and capacity to be sworn provisions

9.—(1) The competence of witnesses and capacity to be sworn provisions in paragraph (4)(a), (b), (e), (g), and (i) shall apply in relation to proceedings before—

- (a) the Court Martial,
- (b) the Service Civilian Court, and
- (c) the Court Martial Appeal Court,

as they apply in relation to criminal proceedings, subject to the modifications specified in article 10.

(2) The competence of witnesses and capacity to be sworn provisions in paragraph (4)(d) and (h) shall apply in relation to proceedings before—

- (a) the Court Martial, and

(b) the Service Civilian Court,
as they apply in relation to criminal proceedings, subject to the modifications specified in article 10.

(3) The competence of witnesses and capacity to be sworn provisions in paragraph (4)(c) and (f) shall apply, in relation to proceedings before the Court Martial, as they apply in relation to criminal proceedings, subject to the modifications specified in article 10.

(4) In this Order “the competence of witnesses and capacity to be sworn provisions” means the following provisions of the Act—

- (a) section 53 (competence of witnesses to give evidence);
- (b) section 54(1) to (3) and (5) (determining competence of witnesses);
- (c) section 54(4) (determining competence of witnesses);
- (d) section 54(6) (determining competence of witnesses);
- (e) section 55(1) to (4) and (6) to (8) (determining whether witness to be sworn);
- (f) section 55(5) (determining whether witness to be sworn);
- (g) section 56(1) to (4) (reception of unsworn evidence);
- (h) section 56(5) (reception of unsworn evidence); and
- (i) section 57 (penalty for giving false unsworn evidence).

Modification of competence of witnesses and capacity to be sworn provisions

10.—(1) In their application by virtue of article 9, the competence of witnesses and capacity to be sworn provisions are modified as follows.

(2) Any reference to criminal proceedings is to be read as a reference to proceedings before the Court Martial, the Service Civilian Court or the Court Martial Appeal Court.

(3) Any reference to the court is to be read—

- (a) in relation to proceedings before the Court Martial or the Service Civilian Court, as a reference to the judge advocate; or
- (b) as a reference to the Court Martial Appeal Court.

(4) Section 54(1)(b) of the Act has effect, in relation to proceedings before the Court Martial or the Service Civilian Court as if for the word “its” there was substituted “his”.

(5) Section 54(4) of the Act has effect, in relation to proceedings before the Court Martial, as if for the words “jury (if there is one)” there were substituted “any lay members”.

(6) Section 55(1)(b) of the Act has effect, in relation to proceedings before the Court Martial or the Service Civilian Court as if for the word “its” there was substituted “his”.

(7) Section 55(5) of the Act has effect, in relation to proceedings before the Court Martial, as if for the words “jury (if there is one)” there were substituted “any lay members”.

(8) Section 56(5) of the Act has effect, in relation to proceedings before the Court Martial or the Service Civilian Court, as if for the words “any of sections 2(1), 13(1) and 16(1) of the Criminal Appeal Act 1968” there were substituted “section 12(1) of the Courts-Martial (Appeals) Act 1968” and as if for the words “Court of Appeal” there were substituted “Court Martial Appeal Court”.

Application of general and final provisions

11.—(1) The general and final provisions, so far as having effect for the purposes of Chapter 1 to 3 and 5 of Part 2 of the Act, shall apply in relation to proceedings before—

- (a) the Court Martial,
- (b) the Service Civilian Court, and
- (c) the Court Martial Appeal Court,

as they apply in relation to criminal proceedings, subject to the modifications specified in article 12.

- (2) In this Order “the general and final provisions” means the following provisions of the Act—
- (a) section 62 (meaning of “sexual offence” and other references to offences);
 - (b) section 63 (general interpretation etc of Part 2); and
 - (c) section 65 (general supplementary provisions).

Modification of general and final provisions

12.—(1) In their application by virtue of article 11, the general and final provisions are modified as follows.

(2) Any reference to criminal proceedings is to be read as a reference to proceedings before the Court Martial, the Service Civilian Court or the Court Martial Appeal Court.

(3) Any reference to Criminal Procedure Rules is to be read as a reference to Rules of court.

(4) Section 62(1) of the Act has effect as if for the words “or any relevant superseded offence” there were substituted “, any relevant superseded offence or any offence under section 42 of the Armed Forces Act 2006 to which the corresponding offence in England and Wales (within the meaning of that Act) is such an offence”.

(5) Section 63(1) of the Act has effect as if—

- (a) for the definition of “court” there was substituted—

““court” (except in Chapter 4 and 5 or subsection (2)) means the Court Martial Appeal Court;”; and

- (b) for the definition of “legal representative” there was substituted—

““legal representative” means a person appointed as a legal representative under the Court Martial Rules, the SCC Rules or the CMAC Rules;”.

(6) Section 63(2) of the Act has effect as if for the word “court” there was substituted—

- (a) in relation to proceedings before the Court Martial or the Service Civilian Court, “judge advocate”; or
- (b) in relation to proceedings before the Court Martial Appeal Court, “Court Martial Appeal Court”.

(7) Section 65(3) of the Act has effect, in relation to proceedings before the Court Martial or the Service Civilian Court, as if for the word “court” there was substituted “judge advocate”.

Modification of reporting restrictions provisions

13.—(1) Chapter 4 of Part 2 (and sections 63 and 65 so far as having effect for the purposes of that Chapter) of the Act are modified as follows.

(2) Any reference to criminal proceedings is to be read as a reference to proceedings before the Court Martial, the Service Civilian Court or the Court Martial Appeal Court.

(3) Any reference to Criminal Procedure Rules is to be read as a reference to Rules of court.

(4) In relation to proceedings before the Court Martial or the Service Civilian Court—

- (a) section 45(3) to (6), (9) and (10)(b) of the Act,
- (b) section 46(1) to (5) and (8) to (11) of the Act,
- (c) section 47(2)(b)(ii) and (3) to (5) of the Act, and
- (d) section 52(1) of the Act,

have effect as if for the word “court” wherever it appears there were substituted “judge advocate”.

(5) Section 46(4)(d)(iii) and section 47(4)(a) and (5)(a) of the Act have effect as if for the word “accused” wherever it appears there were substituted—

- (a) in relation to—

- (i) trial proceedings within the meaning of Court Martial Rules, or
 - (ii) trial proceedings within the meaning of SCC Rules,
“defendant”;
 - (b) in relation to appellate proceedings within the meaning of Court Martial Rules,
“appellant”;
 - (c) in relation to proceedings before the Court Martial Appeal Court, “person charged with
an offence to which the proceedings relate (whether or not he has been convicted)”.
- (6) Section 47(2)(b) of the Act has effect, in relation to proceedings before the Court Martial or the Service Civilian Court, as if for the word “its” there was substituted “his”.
- (7) Section 63(2) of the Act has effect as if for the word “court” there was substituted—
- (a) in relation to proceedings before the Court Martial or the Service Civilian Court, “judge
advocate”; or
 - (b) in relation to proceedings before the Court Martial Appeal Court, “Court Martial Appeal
Court”.
- (8) Section 65(3) of the Act has effect, in relation to proceedings before the Court Martial or the Service Civilian Court, as if for the word “court” there was substituted “judge advocate”.

Revocations

14. The following Orders are revoked—

- (a) the Youth Justice and Criminal Evidence Act 1999 (Application to Courts-Martial) Order 2006(a);
- (b) the Youth Justice and Criminal Evidence Act 1999 (Application to the Courts-Martial Appeal Court) Order 2006(b); and
- (c) the Youth Justice and Criminal Evidence Act 1999 (Application to Standing Civilian Courts) Order 2006(c).

Kevan Jones
Parliamentary Under Secretary of State
Ministry of Defence

27th July 2009

EXPLANATORY NOTE

(This note is not part of the Order)

This Order applies, with modifications, provisions of Chapters 1 to 3 and 5 of Part 2 (and sections 62, 63 and 65 so far as having effect for the purposes of those Chapters) of the Youth Justice and Criminal Evidence Act 1999 (c. 23) (“the Act”) to proceedings before the Court Martial, the Service Civilian Court and the Court Martial Appeal Court. These Chapters contain a range of measures designed to help young, disabled, vulnerable or intimidated witnesses give evidence in criminal proceedings. This Order also modifies the effect of Chapter 4 of Part 2 (and sections 63 and 65 so far as having effect for the purposes of that Chapter) of the Act for the purposes of proceedings before the Court Martial, the Service Civilian Court and the Court Martial Appeal Court. Chapter 4 deals with reporting restrictions.

Articles 3 and 4 apply, with modifications, the provisions of Chapter 1. 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).

-
- (a) S.I. 2006/2886.
 - (b) S.I. 2006/2887.
 - (c) S.I. 2006/2888.

Articles 5 and 6 apply, with modifications, the provisions of Chapter 2. This Chapter provides protection for vulnerable witnesses from cross-examination by an accused in person.

Articles 7 and 8 apply, with modifications, the provisions of Chapter 3. This Chapter provides protection to complainants in proceedings for sexual offences by restricting evidence or questioning about the complainant's sexual history.

Articles 9 and 10 apply, with modifications, the provisions of Chapter 5, which deal with the competence of witnesses and capacity to be sworn.

Articles 11 and 12 apply, with modifications sections 62, 63 and 65 ("the general and final provisions" so far as having effect for the purposes of Chapter 1 to 3 and 5.

Article 13 modifies the effect of Chapter 4 (and sections 63 and 65 so far as having effect for the purposes of that Chapter). Chapter 4 already has effect for the purposes of proceedings before the Court Martial, the Service Civilian Court and the Court Martial Appeal Court (in so far as it has been brought into force) and contains provisions allowing a court to impose reporting restrictions in certain proceedings involving vulnerable persons. As at the date of this Order, sections 44 and 45 in Chapter 4 have not yet been commenced but article 13 contains modifications to section 45 which will take effect automatically in relation to proceedings before the Court Martial, the Service Civilian Court and the Court Martial Appeal Court when section 45 is commenced under section 68(3) of the Act. This Order does not operate to commence sections 44 or 45.

Article 14 revokes three Orders which previously applied provisions of the Act (with modifications) to service courts and which are replaced by this Order.

© Crown copyright 2009

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

STATUTORY INSTRUMENTS

2009 No. 2083

DEFENCE

The Youth Justice and Criminal Evidence Act 1999 (Application
to Service Courts) Order 2009

£5.50