

**EXPLANATORY MEMORANDUM TO
THE COURT MARTIAL APPEAL COURT (EVIDENCE) ORDER 2009**

2009 No. 2569

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 Court Martial Appeal Court (Evidence) Order 2009 applies certain provisions to proceedings of the Court Martial Appeal Court allowing specified persons to be permitted to give evidence to the Court through a live link in particular circumstances.

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

3.1 None.

4. Legislative Context

4.1 The order is made under the powers in section 146 of, and paragraph 8 of Schedule 13 to, the Criminal Justice Act 1988 (the 1988 Act) and section 61(1) of the Youth Justice and Criminal Evidence Act 1999 (the 1999 Act).

4.2 The order provides that section 32 of the 1988 Act shall have effect, with modifications, in relation to Court Martial Appeal Court proceedings; and applies certain provisions of the 1999 Act, again with modifications, to the same Court.

4.3 Section 32 of the 1988 Act allows a witness who is not in the country where the court is sitting to give evidence through a live television link; and the provisions of the 1999 Act allow certain vulnerable accused persons to give evidence through a live link.

5. Territorial Extent and Application

5.1 This instrument extends to all of the United Kingdom and to places outside the United Kingdom where the Court Martial Appeal Court may sit.

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 2006 Act has introduced major reforms of the Service Justice System, including the creation of standing courts for all three Services, in particular the Court Martial which replaces the historical system of *ad hoc* courts-martial that were convened as and when it was necessary to hold a trial.

7.2 The Court Martial Appeal Court exists to hear appeals from the Court Martial, and the Court Martial Appeal Court Rules govern the procedure and practice of the court when hearing such appeals.

8. Consultation outcome

8.1 A memorandum about consultation on the 2006 Act 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. Subordinate legislation made under the 2006 Act has 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. In the case of this particular instrument, consultation has focused on the Ministry of Justice, the Registrar of the Court Martial Appeal Court, his staff and the Attorney General's Office.

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 the Court Martial Appeal Court. A training version of the Manual has been made available for Service personnel to be trained ahead of full implementation of the 2006 Act in October 2009. The Manual will subsequently be made 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 five-yearly renewal by an Act of Parliament and annual renewal in the intervening years by Order in Council. Following full implementation of the 2006 Act in October 2009 its provisions and those in secondary legislation made under it will be monitored and reviewed leading up to preparation of the Armed Forces Bill 2010.

13. Contact

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