

EXPLANATORY MEMORANDUM TO
THE COURT MARTIAL APPEAL COURT RULES 2009

2009 No. 2657

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 This instrument sets out rules governing the procedure and practice of the Court Martial Appeal Court (known as the Courts-Martial Appeal Court until 31 October 2009). Among other things, it makes provision with respect to the hearing of appeals from the Court Martial by persons against conviction and/or sentence, as well as appeals against orders and rulings made in preliminary proceedings of the Court Martial and orders made by a judge advocate restricting the reporting of and public access to proceedings of that court.

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

3.1 None.

4. Legislative Context

4.1 This instrument is being made under section 49 of the Courts-Martial (Appeals) Act 1968 (“the 1968 Act”), including that section as extended by section 163(9) of the Armed Forces Act 2006 (“the 2006 Act”), as amended by section 12(2) of and Part 2 of Schedule 1 to the Constitutional Reform Act 2005 which provides that the rules are ‘designated rules’ to be made by the Lord Chief Justice with the agreement of the Lord Chancellor. The 1968 Act has also been substantially amended by section 272 of and Schedule 8 to the 2006 Act.

4.2 Section 163(3)(i) of the 2006 Act provides that Court Martial rules may provide for appeals against orders and rulings made in preliminary proceedings of the Court Martial and against orders restricting the reporting of and public access to proceedings of that court. Section 163(9) of the 2006 Act enables Court Martial rules to confer jurisdiction on the Court Martial Appeal Court in respect of appeals against such orders and rulings and confirms that rules made under section 49 of the 1968 Act (these Rules) may make provision about the powers of the Court Martial Appeal Court in relation to such appeals.

4.3 The Rules are one part of the implementation of the reforms made under the 2006 Act, which renames the Courts-Martial Appeal Court and makes other amendments to the 1968 Act. These Rules are being made to support these reforms.

5. Territorial Extent and Application

5.1 This instrument extends to all of the United Kingdom and it applies 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 and Service law generally that have as their centre-piece 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. The Court Martial Appeal Court Rules govern the procedure and practice of the court when hearing such appeals. They are based partly on the Courts-Martial Appeal Rules 1968, but with extensive modernisation of the language and structure. Changes to the Rules have also been made to correspond with the approach taken in the Armed Forces (Court Martial) Rules 2009 which are made under the 2006 Act, for example Part 2, which deals with service of documents. Further, wherever practicable, the Rules follow the approach and structure of the Criminal Procedure Rules 2005.

7.3 Part 6 of the Rules makes provision for appeals against orders or rulings made in preliminary proceedings of the Court Martial; or against an order of that court prohibiting or restricting the publication of any matter or restricting public access to any of its proceedings. Chapter 3 of Part 6 makes provision with respect to the powers of the court and the registrar in relation to appeals to which Part 6 applies. It does not do this for other appeals or references as equivalent provision for them is made in the 1968 Act itself.

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 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.