

EXPLANATORY MEMORANDUM (SUPPLEMENTARY) TO

THE ARMED FORCES (SERVICE COURTS RULES) (AMENDMENT) RULES 2015

2015 No. 1812

1. Introduction

- 1.1 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 These rules amend the Armed Forces (Summary Appeal Court) Rules 2009, the Armed Forces (Court Martial) Rules 2009 and the Armed Forces (Service Civilian Court) Rules 2009 (“the Service Courts Rules”). It also modifies the effect of certain other provisions of Part 2 for the purposes of proceedings before the Summary Appeal Court. The amendments are intended to give effect to the requirements of articles 3, 7, 10, 23 and 24 of Directive 2012/29/EU of the European Parliament and of the Council of 23 October 2012 establishing minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA (“the Directive”). It is one of a number of statutory instruments giving effect to the Directive (details of the other instruments are set out at paragraph 4.2 below).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 These rules amend the Service Courts Rules. The amendments are intended to give effect to the requirements of articles 3, 7, 10, 23 and 24 of the Directive insofar as those requirements apply to the Summary Appeal Court, the Court Martial and the Service Civilian Court. They require the provision, where necessary, of interpretation services for complainants who need such services as a witness before those courts. They also give the court administration officer power to appoint an interpreter for other witnesses and give judge advocates an express power to require written translation of documents for witnesses who need interpretation. In addition, these rules amend the Service Courts Rules so as to make provision for the Director of Service Prosecutions to provide an impact statement of the effect of an offence on a victim, their family or others before sentencing or punishment. Finally, these rules provide the Summary Appeal Court with powers and procedures to give special measures directions for witnesses.

- 4.2 The transposition note for this Memorandum contains entries relating to how these rules transpose the relevant articles of the Directive. Other changes are being made to both the armed forces' criminal justice system and the criminal justice system in England and Wales to meet the requirements of the Directive. Other statutory instruments being laid in respect of the transposition of the Directive are:

The Court Martial Appeal Court (Amendment) Rules 2015

The Criminal Justice (Armed Forces Code of Practice for Victims of Crime) Regulations 2015

The Domestic Violence, Crime and Victims Act 2004 (Victims' Code of Practice) Order 2015

The Summary Appeal Court (Youth Justice and Criminal Evidence Act 1999) Rules 2015

The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) (Amendment) (No.2) Order 2015.

- 4.3 These rules come into force on 16 November 2015.
4.4 The scrutiny history for the Directive is set out in the transposition note.

5. Extent and Territorial Application

- 5.1 This instrument applies to all of the United Kingdom.
5.2 This instrument applies to the Summary Appeal Court, the Court Martial and the Service Civilian Court in places outside the United Kingdom where they 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

What is being done and why

- 7.1 Article 1 of the Directive sets out its purpose: "to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings". Article 3 of the Directive requires appropriate measures to be taken for victims to understand and be understood during necessary interaction with competent authorities in the context of criminal proceedings. Article 7 of the Directive specifically addresses interpretation in court hearings. Article 10 sets out the victim's right to be heard during criminal proceedings, while articles 23 and 24 set out special measures for victims with specific protection needs, including children.
- 7.2 These rules provide a system of mechanisms and powers intended to enable and ensure that the aim of receiving appropriate support and protection to participate in criminal proceedings is met in relation to victims who are witnesses before the

Summary Appeal Court, Court Martial and Service Civilian Court. They specifically address articles 3, 7, 10, 23 and 24 of the Directive.

8. Consultation outcome

- 8.1 The amendments made by these rules were proposed by the government. No public consultation has been undertaken in connection with these rules. Consultation has taken place with the Ministry of Justice and the Service Court Rules Review Committee.

9. Guidance

- 9.1 The Manual of Service Law provides guidance and supplementary information to Armed Forces personnel and others involved in the administration of the single system of Service law established under the 2006 Act and is available on the internet at <https://www.gov.uk/government/publications/joint-services-publication-jsp-830-manual-of-service-law-msl>. These will be amended to give further guidance related to these rules. Guidance is issued to judge advocates through the Judge Advocate General's practice memoranda. The Service Prosecuting Authority will issue their own guidance as necessary.

10. Impact

- 10.1 The government believes the changes will have no impact on business, charities or voluntary bodies.
- 10.2 There is not expected to be any impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 The main legislation governing the armed forces (currently the Armed Forces Act 2006) requires renewal annually by Order in Council (with the consent of both Houses of Parliament) and renewal by Act of Parliament every five years. Its provisions were subjected to a review as part of work to prepare for the 2011 Act and will be reviewed again in the Armed Forces Bill 2015/2016, which was introduced on 16 September 2015.
- 12.2 The rules of court for the Summary Appeal Court, Court Martial and Service Civilian Court are subject to review by the Service Courts Rules Review Committee, which is a non-statutory body chaired by the Judge Advocate General, that reports to the Secretary of State.

13. Contact

- 13.1 Tracy Sexton at the Ministry of Defence Telephone: 020 7218 0564 or email: tracy.sexton743@mod.uk can answer any queries regarding the instrument.