

2022 No. 605

DEFENCE

**The Armed Forces (Service Court Rules) (Amendment) Rules
2022**

<i>Made</i> - - - -	<i>1st June 2022</i>
<i>Laid before Parliament</i>	<i>8th June 2022</i>
<i>Coming into force</i> - -	<i>4th July 2022</i>

The Secretary of State makes the following Rules in exercise of the powers conferred by section 61(1) of the Youth Justice and Criminal Evidence Act 1999(a) and sections 158, 163, 288 and 373(5) of the Armed Forces Act 2006(b).

Citation and commencement

1.—(1) These Rules may be cited as the Armed Forces (Service Court Rules) (Amendment) Rules 2022.

(2) These Rules come into force on 4th July 2022.

Extent

2.—(1) These Rules extend to England and Wales, Scotland, Northern Ireland, the Isle of Man and the British overseas territories (except Gibraltar), subject to paragraph (2).

(2) Rules 3 to 5 extend to England and Wales, Scotland and Northern Ireland.

Amendments to the 2009 Order

3. The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009(c) is amended as follows.

4. In article 3 (application of special measures provisions)(d)—

(a) in paragraph (1)—

(i) for “(g)” substitute “(ga)”; and

(ii) after “(n),” insert “(nb),”;

(b) after paragraph (2) insert—

“(2A) The special measures provision in paragraph (3)(na) applies in relation to proceedings before—

(a) 1999 c. 23.

(b) 2006 c. 52.

(c) S.I. 2009/2083.

(d) There are amendments to article 3 but none are relevant.

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

as it applies in relation to criminal proceedings, subject to the modifications specified in article 4.”; and

(c) in paragraph (3)—

(i) after sub-paragraph (g) insert—

“(ga) section 22A (special provision relating to sexual offences)(a);” and

(ii) after sub-paragraph (n) insert—

“(na) section 28(1) (video recorded cross-examination or re-examination);

(nb) section 28(2) to (7) (video recorded cross-examination or re-examination);”.

5. In article 4 (modification of special measures provisions), after paragraph (10), insert—

“(10A) Section 22A of the Act has effect in relation to proceedings before the Court Martial Appeal Court as if—

(a) in subsection (1) the reference to a sexual offence included an offence under section 42 of the 2006 Act (criminal conduct) as respects which the corresponding offence under the law of England and Wales is an offence referred to in section 62(1)(b) of the Act(b); and

(b) in subsection (2) for the words “if the place of trial is a magistrates’ court” there were substituted the words “if the corresponding offence in respect of that offence for the purposes of section 42 is a summary offence under the law of England and Wales”.”.

Amendments to Court Martial rules

6. The Armed Forces (Court Martial) Rules 2009(c) are amended as follows.

7. In rule 2(2) (interpretation: proceedings and parties)(d) at the appropriate place insert—

““domestic abuse” has the same meaning as in the Domestic Abuse Act 2021(e);”.

8. In rule 89(1) (interpretation of Chapter 6), in the definition of “sexual offence”—

(a) for sub-paragraph (a) and (b) substitute—

“(a) an offence which is—

(i) an offence under Part 1 of the Sexual Offences Act 2003(f), or

(ii) a relevant superseded offence as defined by section 62(1A) of the 1999 Act(g) (meaning of “sexual offence” and other references to offences);

(b) an offence of attempting or conspiring to commit, or of aiding, abetting, counselling or procuring or inciting the commission of, such an offence; or”.

9. For rule 91(2)(a) (witnesses eligible for assistance on grounds of fear or distress about testifying)(h), substitute—

“(a) the proceedings are in respect of—

(i) a sexual offence;

(a) Section 22A was inserted by section 101 of the Coroners and Justice Act 2009 (c. 25).

(b) Section 62(1)(b) was inserted by S.I. 2016/244.

(c) S.I. 2009/2041.

(d) There are amendments to rule 2(2) but none are relevant.

(e) 2021 c. 17.

(f) 2003 c. 42.

(g) Section 62(1A) was inserted by paragraph 37(3) of Schedule 26 to the Criminal Justice and Immigration Act 2008 (c. 4).

(h) Rule 91(2)(a) was amended by S.I. 2015/1472.

- (ii) a modern slavery offence; or
- (iii) any other offence where it is alleged that the behaviour of the defendant amounted to domestic abuse.”.

10. In rule 92 (special measures available)—

- (a) in paragraph (1) for “, 25 to 27, 29 and 30” substitute “and 25 to 30”; and
- (b) in paragraph (2) for “25 to 27” substitute “25 to 28”; and
- (c) after paragraph (3) insert—

“(4) In a domestic abuse case a special measure for which provision is made by any of sections 23 and 25 to 28 of the 1999 Act is only available under paragraph (2) if section 62 of the Domestic Abuse Act 2021 (special measures in criminal proceedings for offences involving domestic abuse) is in force for the purposes of that section of the 1999 Act.

(5) In this rule “domestic abuse case” means proceedings falling within rule 91(2)(a) by virtue only of paragraph (iii) of that sub-paragraph.”.

11. After rule 93 (special measures direction relating to eligible witness) insert—

“Special provisions relating to a child witness

93A.—(1) Where the judge advocate is considering giving a special measures direction under rule 93(1) in relation to a child witness, the judge advocate must—

- (a) first have regards to paragraphs (2) to (6) below; and
- (b) then have regard to rule 93(1);

and if the judge advocate is required by paragraphs (2) to (6) to give such a direction, any special measure which must be provided for in the direction under paragraph (2) or (4) is to be treated for the purposes of rule 93(1)(b), as it then applies to the witness, as one which is likely to improve the quality of evidence given by the witness (whether on its own or in combination with any other special measure).

(2) The primary rule in the case of a child witness is that the judge advocate must give a special measures direction in relation to the witness which provides for any relevant recording to be admitted under section 27 of the 1999 Act (video recorded evidence in chief).

(3) The primary rule is subject to the following limitations—

- (a) the requirement contained in paragraph (2) has effect subject to rule 95(1);
- (b) if the witness informs the judge advocate of the witness’s wish that the primary rule should not apply or should apply only in part, the rule does not apply to the extent that the judge advocate is satisfied that not complying with the rule would not diminish the quality of the witness’s evidence; and
- (c) the rule does not apply to the extent that the judge advocate is satisfied that compliance with it would not be likely to improve the quality of the witness’s evidence (whether because the application to that evidence of one or more other special measures available in relation to the witness would have that result or for any other reason).

(4) Where as a consequence of all or part of the primary rule being disapplied under paragraph (3)(b) a witness’s evidence or any part of it would fall to be given as testimony in court, the judge advocate must give a special measures direction making such provision as is described in section 23 of the 1999 Act (screening witness from the accused) for the evidence or that part of it.

(5) The requirement in paragraph (4) is subject to the following limitations—

- (a) if the witness informs the judge advocate of the witness’s wish that the requirement in paragraph (4) should not apply, the requirement does not apply to

the extent that the judge advocate is satisfied that not complying with it would not diminish the quality of the witness's evidence; and

- (b) the requirement does not apply to the extent that the judge advocate is satisfied that making such a provision would not be likely to improve the quality of the witness's evidence (whether because the application to that evidence of one or more other special measures available in relation to the witness would have that result or for any other reason).

(6) In making a decision under paragraph (3)(b) or (5)(a), the judge advocate must take into account the following factors (and any others it considers relevant)—

- (a) the age and maturity of the witness;
- (b) the ability of the witness to understand the consequences of giving evidence otherwise than in accordance with the requirements in paragraph (2) or (as the case may be) in accordance with the requirements in paragraph (4);
- (c) the relationship (if any) between the witness and the defendant;
- (d) the witness's social and cultural background and ethnic origins;
- (e) the nature of the alleged circumstances of the offence to which the proceedings relate.

(7) Where a special measures direction is given in relation to a child witness who is not also an eligible witness in accordance with rule 90(2), then—

- (a) subject to paragraph (8) below; and
- (b) except where the witness has already begun to give evidence in the proceedings;

the direction shall cease to have effect at the time when the witness attains the age of 18.

(8) Where a special measures direction is given in relation to a child witness who is not also an eligible witness in accordance with rule 90(2) and—

- (a) the direction provides—
 - (i) for any relevant recording to be admitted under section 27 of the 1999 Act as evidence in chief of the witness; or
 - (ii) for the special measure available under section 28 of the 1999 Act (video recorded cross-examination or re-examination) to apply in relation to the witness; and
- (b) if it provides for that special measure to so apply, the witness is still under the age of 18 when the video recording is made for the purposes of section 28;

then, so far as it provides as mentioned in sub-paragraph (a)(i) or (ii) above, the direction shall continue to have effect even though the witness subsequently attains that age.

(9) In this rule—

- (a) a witness is a "child witness" if the witness is an eligible witness by reason of rule 90(1) (whether or not the witness is an eligible witness by reason of any other provision of rule 90 or 91); and
- (b) a relevant recording, in relation to a child witness, is a video recording of an interview of the witness made with a view to its admission as evidence in chief of the witness.

Extension of provisions of rule 93A to certain witnesses over 18

93B.—(1) Rule 93(1) and 93A(1) to (3) and (6), so far as relating to the giving of a direction complying with the requirement contained in rule 93A(2), apply to a qualifying witness in respect of a relevant recording made in relation to the witness, as they apply to a child witness (within the meaning of rule 93A).

(2) In this rule—

- (a) a witness (other than the defendant) is a "qualifying witness" if the witness—

- (i) is not an eligible witness, but
 - (ii) was under the age of 18 when the relevant recording was made in relation to the witness; and
- (b) a “relevant recording”, in relation to a witness, is a video recording of an interview of the witness made with a view to its admission as evidence in chief of the witness.

Special provisions relating to sexual offences

93C.—(1) This rule applies where in proceedings relating to a sexual offence or an offence of human trafficking for sexual exploitation (or to such an offence and other offences) the complainant in respect of that offence is a witness in the proceedings.

(2) This rule does not apply if the offence is a summary offence.

(3) This rule does not apply if the complainant is an eligible witness by reason of rule 90(1) (whether or not the complainant is an eligible witness by reason of any other provision of rule 90 or 91).

(4) If a party to the proceedings makes an application for a special measures direction in relation to the complainant, the party may request that the direction provide for any relevant recording to be admitted under section 27 of the 1999 Act (video recorded evidence in chief).

(5) Paragraph (6) applies if—

- (a) a party to the proceedings makes a request under paragraph (4) with respect to the complainant; and
- (b) the judge advocate determines for the purposes of rule 93(1) that the complainant is eligible for assistance by virtue of rule 90(2) or 91.

(6) The judge advocate must —

- (a) first have regard to paragraphs (7) to (9); and
- (b) then have regard to rule 93(1);

and if the judge advocate is required by paragraphs (7) to (9) to give such a direction, any special measure which must be provided for in the direction under paragraph (2) is to be treated for the purposes of rule 93(1)(b), as it then applies to the witness, as one which is likely to improve the quality of evidence given by the witness (whether on its own or in combination with any other special measure).

(7) The judge advocate must give a special measures direction in relation to the complainant that provides for any relevant recording to be admitted under section 27 of the 1999 Act.

(8) The requirement in paragraph (7) has effect subject to rule 95(1).

(9) The requirement in paragraph (7) does not apply to the extent that the judge advocate is satisfied that compliance with it would not be likely to improve the quality of the complainant’s evidence (whether because the application to that evidence or one or more other special measures available in relation to the complainant would have that result or for any other reason).

(10) In this rule—

- (a) an “offence of human trafficking for sexual exploitation” is an offence under section 42 (criminal conduct) as respects which the corresponding offence under the law of England and Wales is—

- (i) an offence under section 2 of the Modern Slavery Act 2015 (human trafficking)(a) committed with a view to exploitation that includes behaviour within section 3(3) of that Act (meaning of exploitation);
 - (ii) an offence of attempting or conspiring to commit an offence mentioned in sub-paragraph (i); or
 - (iii) an offence under Part 2 of the Serious Crime Act 2007 where the offence (or one of the offences) which the offender intended or believed would be committed is an offence mentioned in sub-paragraph (i);
- (b) a sexual offence or offence of human trafficking for sexual exploitation is a summary offence if the corresponding offence in respect of that offence for the purposes of section 42 is a summary offence under the law of England and Wales;
- (c) a “relevant recording”, in relation to a complainant, is a video recording of an interview of the complainant made with a view to its admission as the evidence in chief of the complainant.”.

12. For rule 94(a) (evidence given in private) substitute—

- “(a) the proceedings are in respect of—
- (i) a sexual offence,
 - (ii) a modern slavery offence, or
 - (iii) any other offence where it is alleged that the behaviour of the defendant amounted to domestic abuse.”.

13. For rule 95(5)(a) (video recorded evidence in chief) substitute—

- “(a) the witness must be called by the party tendering it in evidence, unless –
- (i) a special measures direction provides for the witness’s evidence on cross-examination to be given in any recording admissible under section 28 of the 1999 Act (video recorded cross-examination or re-examination), or
 - (ii) the parties to the proceedings have agreed that there is no need for the witness to be called; and”.

14. After rule 95 (video recorded evidence in chief) insert—

“Video recorded cross-examination or re-examination

95A.—(1) Where a special measures direction provides for a video recording to be admitted under section 28 of the 1999 Act (video recorded cross-examination or re-examination), such a recording must be made in the presence of such persons as the direction may provide and in the absence of the defendant, but in circumstances in which—

- (a) the judge advocate and legal representatives acting in the proceedings are able to see and hear the examination of the witness and to communicate with the persons in whose presence the recording is being made; and
- (b) the defendant is able to see and hear any such examination and to communicate with any legal representative acting for the defendant (and for this purpose any impairment of eyesight or hearing is to be disregarded).

(2) Where two or more legal representatives are acting for a party to the proceedings, paragraph (1)(a) and (b) are to be regarded as satisfied in relation to those representatives if at all material times they are satisfied in relation to at least one of them.

(3) Where a special measures direction provides for a recording to be admitted under section 28 of the 1999 Act, the judge advocate may nevertheless subsequently direct that it

(a) 2015 c. 30.

is not to be so admitted if any requirement of paragraph (1), these Rules or the direction has not been complied with to the satisfaction of the judge advocate.

(4) Where in pursuance of section 28(1) of the 1999 Act a recording has been made of any examination of the witness, the witness may not be subsequently cross-examined or re-examined in respect of any evidence given by the witness in the proceedings (whether in any recording admissible under section 27 (video recorded examination in chief) or 28 of the 1999 Act or otherwise than in such a recording) unless the judge advocate gives a further special measures direction making such provision as is mentioned in section 28(1)(a) and (b) of the 1999 Act in relation to any subsequent cross-examination, and re-examination, of the witness.

(5) The judge advocate may only give such a further direction if it appears to the judge advocate—

- (a) that the proposed cross-examination is sought by a party to the proceedings as a result of that party having become aware, since the time when the original recording was made in pursuance of section 28(1) of the 1999 Act, of a matter which that party could not with reasonable diligence have ascertained by then; or
- (b) that for any other reason it is in the interests of justice to give further direction.

(6) Nothing in this rule shall be read as applying in relation to any cross-examination of the witness by the defendant in person (in a case where the defendant is to be able to conduct any such cross-examination).”.

Amendments to the Service Civilian Court rules

15. The Armed Forces (Service Civilian Court) Rules 2009(a) are amended as follows.

16. In rule 2(2) (interpretation: proceedings and parties), at the appropriate place insert—

““domestic abuse” has the same meaning as in the Domestic Abuse Act 2021;”.

17. In rule 74(1) (interpretation of Chapter 6), in the definition of “sexual offence”—

(a) for sub-paragraph (a) and (b) substitute—

“(a) an offence which is—

- (i) an offence under Part 1 of the Sexual Offences Act 2003, or
- (ii) a relevant superseded offence as defined by section 62(1A) of the 1999 Act(b) (meaning of “sexual offence” and other references to offences);

(b) an offence of attempting or conspiring to commit, or of aiding, abetting, counselling or procuring or inciting the commission of, such an offence; or”.

18. For rule 76(2)(a) (witnesses eligible for assistance on grounds of fear or distress about testifying), substitute—

“(a) the proceedings are in respect of—

- (i) a sexual offence,
- (ii) a modern slavery offence, or
- (iii) any other offence where it is alleged that the behaviour of the defendant amounted to domestic abuse;”.

19. In rule 77 (special measures available)—

(a) in paragraph (1) for “, 25 to 27, 29 and 30” substitute “and 25 to 30”;

(b) in paragraph (2) for “25 to 27” substitute “25 to 28”; and

(c) after paragraph (3) insert—

(a) S.I. 2009/1209.

(b) Section 62(1A) was inserted by paragraph 37(3) of Schedule 26 to the Criminal Justice and Immigration Act 2008 (c. 4).

“(4) In a domestic abuse case a special measure for which provision is made by any of sections 23 and 25 to 28 of the 1999 Act is only available under paragraph (2) if section 62 of the Domestic Abuse Act 2021 (special measures in criminal proceedings for offences involving domestic abuse) is in force for the purposes of that section of the 1999 Act.

(5) In this rule “domestic abuse case” means proceedings falling within rule 91(2)(a) by virtue only of paragraph (iii) of that sub-paragraph.”.

20. After rule 78 (special measures direction relating to eligible witness) insert—

“Special provisions relating to a child witness

78A.—(1) Where the court is considering giving a special measures direction under rule 78(1) in relation to a child witness the court must—

- (a) first have regards to paragraphs (2) to (6) below; and
- (b) then have regard to rule 78(1);

and if the judge advocate is required by paragraphs (2) to (6) to give such a direction, any special measure which must be provided for in the direction under paragraph (2) or (4) is to be treated for the purposes of rule 78(1)(b), as it then applies to the witness, as one which is likely to improve the quality of evidence given by the witness (whether on its own or in combination with any other special measure).

(2) The primary rule in the case of a child witness is that the court must give a special measures direction in relation to the witness which provides for any relevant recording to be admitted under section 27 of the 1999 Act (video recorded evidence in chief).

(3) The primary rule is subject to the following limitations—

- (a) the requirement contained in paragraph (2) has effect subject to rule 80(1);
- (b) if the witness informs the court of the witness’s wish that the primary rule should not apply or should apply only in part, the rule does not apply to the extent that the court is satisfied that not complying with the rule would not diminish the quality of the witness’s evidence; and
- (c) the rule does not apply to the extent that the court is satisfied that compliance with it would not be likely to improve the quality of the witness’s evidence (whether because the application to that evidence of one or more other special measures available in relation to the witness would have that result or for any other reason).

(4) Where as a consequence of all or part of the primary rule being disapplied under paragraph (3)(b) a witness’s evidence or any part of it would fall to be given as testimony in court, the court must give a special measures direction making such provision as is described in section 23 of the 1999 Act (screening witness from accused) for the evidence or that part of it.

(5) The requirement in paragraph (5) is subject to the following limitations—

- (a) if the witness informs the court of the witness’s wish that the requirement in paragraph (4) should not apply, the requirement does not apply to the extent that the court is satisfied that not complying with it would not diminish the quality of the witness’s evidence; and
- (b) the requirement does not apply to the extent that the court is satisfied that making such a provision would not be likely to improve the quality of the witness’s evidence (whether because the application to that evidence of one or more other special measures available in relation to the witness would have that result or for any other reason).

(6) In making a decision under paragraph (3)(b) or (5)(a), the court must take into account the following factors (and any others it considers relevant)—

- (a) the age and maturity of the witness;

- (b) the ability of the witness to understand the consequences of giving evidence otherwise than in accordance with the requirements in paragraph (2) or (as the case may be) in accordance with the requirements in paragraph (4);
- (c) the relationship (if any) between the witness and the defendant;
- (d) the witness's social and cultural background and ethnic origins;
- (e) the nature of the alleged circumstances of the offence to which the proceedings relate.

(7) Where a special measures direction is given in relation to a child witness who is not also an eligible witness in accordance with rule 75(2), then—

- (a) subject to paragraph (8) below; and
- (b) except where the witness has already begun to give evidence in the proceedings, the direction shall cease to have effect at the time when the witness attains the age of 18.

(8) Where a special measures direction is given in relation to a child witness who is not also an eligible witness in accordance with 75(2) and—

- (a) the direction provides—
 - (i) for any relevant recording to be admitted under section 27 of the 1999 Act as evidence in chief of the witness, or
 - (ii) for the special measure available under section 28 of the 1999 Act (video recorded cross-examination or re-examination) to apply in relation to the witness; and
- (b) if it provides for that special measure to so apply, the witness is still under the age of 18 when the video recording is made for the purposes of section 28;

then, so far as it provides as mentioned in sub-paragraph (a)(i) or (ii) above, the direction shall continue to have effect even though the witness subsequently attains that age.

(9) In this rule—

- (a) a witness is a “child witness” if the witness is an eligible witness by reason of rule 75(1) (whether or not the witness is an eligible witness by reason of any other provision of rule 75 or 76); and
- (b) a “relevant recording”, in relation to a child witness, is a video recording of an interview of the witness made with a view to its admission as evidence in chief of the witness.

Extension of provisions of rule 78A to certain witnesses over 18

78B.—(1) Rule 78(1) and 78A(1) to (3) and (6), so far as relating to the giving of a direction complying with the requirement contained in rule 78A(2), apply to a qualifying witness in respect of a relevant recording made in relation to the witness, as they apply to a child witness (within the meaning of rule 78A).

(2) In this rule—

- (a) a witness (other than the defendant) is a “qualifying witness” if the witness—
 - (i) is not an eligible witness, but
 - (ii) was under the age of 18 when the relevant recording was made was made in relation to the witness; and
- (b) a “relevant recording”, in relation to a witness, is a video recording of an interview of the witness made with a view to its admission as evidence in chief of the witness.”.

21. For rule 79(a) (evidence given in private), substitute—

- “(a) the proceedings relate to—
 - (i) a sexual offence,

- (ii) a modern slavery offence, or
- (iii) any other offence where it is alleged that the behaviour of the defendant amounted to domestic abuse; or”.

22. For rule 80(5)(a) (video recorded evidence in chief) substitute—

- “(a) the witness must be called by the party tendering it in evidence, unless –
- (i) a special measures direction provides for the witness’s evidence on cross-examination to be given in any recording admissible under section 28 of the 1999 Act (video recorded cross-examination or re-examination), or
 - (ii) the parties to the proceedings have agreed that there is no need for the witness to be called; and”.

23. After rule 80 (video recorded evidence in chief) insert—

“Video recorded cross-examination or re-examination

80A.—(1) Where a special measures direction provides for a video recording to be admitted under section 28 of the 1999 Act (video recorded cross-examination or re-examination), such a recording must be made in the presence of such persons as the direction may provide and in the absence of the defendant, but in circumstances in which—

- (a) the court and legal representatives acting in the proceedings are able to see and hear the examination of the witness and to communicate with the persons in whose presence the recording is being made; and
- (b) the defendant is able to see and hear any such examination and to communicate with any legal representative acting for the defendant (and for this purpose any impairment of eyesight or hearing is to be disregarded).

(2) Where two or more legal representatives are acting for a party to the proceedings, paragraph (1)(a) and (b) are to be regarded as satisfied in relation to those representatives if at all material times they are satisfied in relation to at least one of them.

(3) Where a special measures direction provides for a recording to be admitted under section 28 of the 1999 Act, the court may nevertheless subsequently direct that it is not to be so admitted if any requirement of paragraph (1), these Rules or the direction has not been complied with to the satisfaction of the court.

(4) Where in pursuance of section 28(1) of the 1999 Act a recording has been made of any examination of the witness, the witness may not be subsequently cross-examined or re-examined in respect of any evidence given by the witness in the proceedings (whether in any recording admissible under section 27 (video recorded examination in chief) or 28 of the 1999 Act or otherwise than in such a recording) unless the court gives a further special measures direction making such provision as is mentioned in section 28(1)(a) and (b) of the 1999 Act in relation to any subsequent cross-examination, and re-examination, of the witness.

(5) The court may only give such a further direction if it appears to the court—

- (a) that the proposed cross-examination is sought by a party to the proceedings as a result of that party having become aware, since the time when the original recording was made in pursuance of section 28(1) of the 1999 Act, of a matter which that party could not with reasonable diligence have ascertained by then; or
- (b) that for any other reason it is in the interests of justice to give further direction.

(6) Nothing in this rule shall be read as applying in relation to any cross-examination of the witness by the defendant in person (in a case where the defendant is to be able to conduct any such cross-examination).”.

Leo Docherty
Parliamentary Under Secretary of State
Ministry of Defence

1st June 2022

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules make amendments to the Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 1999/2083) (“the 1999 Order”), the Armed Forces (Court Martial) Rules 2009 (S.I. 2009/2041) (“the Court Martial rules”) and the Armed Forces (Service Civilian Court) Rules 2009 (S.I. 2009/1209) (“the Service Civilian Court rules”). These amendments relate to the provision of special measures for vulnerable and intimidated witnesses in proceedings in the service courts.

The amendments made by these Rules to the 1999 Order are to Articles 3 and 4 of that Order, which applies provisions of the Youth Justice and Criminal Evidence Act 1999 (c. 23) (“the 1999 Act”) on the use of special measures in civilian criminal proceedings to the service courts, allowing these special measures to be used in proceedings in the service courts. The amendments firstly apply section 22A of the 1999 Act to proceedings in the Court Martial Appeal Court, which provides rules on the use of video recorded evidence in chief in proceedings relating to sexual offences. The amendments also apply section 28 of the 1999 Act to proceedings in the Court Martial Appeal Court and section 28(1) to proceedings in the Court Martial and Service Civilian Court, allowing the use of video recorded cross-examination or re-examination as a special measure in these courts.

The amendments made by these Rules to the Court Martial rules and Service Civilian Court rules firstly insert new rules 93A to 93B in the Court Martial rules and 78A to 78B in the Service Civilian Court rules, which are based on section 21, 22 of the 1999 Act on the use of video recorded evidence in chief for child witnesses. A new rule 93C is inserted in the Court Martial rules, which is based on section 22A of the 1999 Act on the use of video recorded evidence in chief in proceedings for sexual offences. The amendments also insert a new rule 95 in the Court Martial rules and 80A in the Service Civilian Court rules, which are based on section 28(2) to (7) of the 1999 Act, to supplement section 28(1) of that Act, which will apply in the Court Martial and Service Civilian Court under the amendment made by these Rules to the 1999 Order.

Finally, these Rules make amendments relating to eligibility for special measures of witnesses in proceedings for offences relating to domestic abuse and allowing for such witnesses to give evidence in private to mirror changes made to equivalent provisions in the 1999 Act by section 62 of the Domestic Abuse Act 2021 (c. 17).

A full impact assessment has not been prepared for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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