EXPLANATORY MEMORANDUM TO

THE ARMED FORCES (COURT MARTIAL) (AMENDMENT) RULES 2024

2024 No. 1036

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Defence and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Alistair Carns, Parliamentary Under-Secretary of State for Veterans and People at the Ministry of Defence confirms that this Explanatory Memorandum meets the required standard.

2.2 Caron Tassel, Deputy Director for Service Justice, Discipline and Conduct, at the Ministry of Defence, can confirm that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Richard Hartell at the Ministry of Defence, email: Richard.Hartell101@mod.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The Armed Forces (Court Martial)(Amendment) Rules 2024 amends the Armed Forces (Court Martial) Rules 2009 (the "Court Martial Rules") so as to make provision for the procedures the Court Martial is to follow when reviewing a sentence under sections 304D (review of sentence following offer of assistance) and section 304E (review of sentence following a failure to assist) of the Armed Forces Act 2006 (AFA 2006).

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom, the Isle of Man and the British overseas territories (except Gibraltar).

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the same as its extent.

4.4 However, it should be noted that Service Law applies to persons subject to Service law or civilians subject to Service discipline wherever they are in the world.

5. Policy Context

What is being done and why?

5.1 These rules are being made as part of the implementation of sections 7 to 12 of the Armed Forces Act 2016 ("AFA 2016"). Sections 7 to 12 of AFA 2016 amend AFA

2006 by inserting new sections 304A to 304H of the AFA 2006. These create a scheme to incentivise offenders to assisting investigators and prosecutors in the service justice system. They do that by creating a statutory framework for immunity from prosecution, restrictions on the use of evidence and sentence reductions for offenders who co-operate in investigations and prosecutions.

5.2 Secondary legislation is required in order to introduce new procedures before the Court Martial to deal with reviews of sentence following either an offer of assistance, or a failure to assist.

What was the previous policy, how is this different?

5.3 Sections 304A to 304H of the AFA 2006 introduces a new statutory framework for the Service Justice System. This policy is equivalent to a framework that already exists in the civilian criminal justice system, which is provided for by sections 71 to 75 of the Serious Organised Crime and Police Act 2005.

6. Legislative and Legal Context

How has the law changed?

6.1 These rules insert a new Part 14A into the Court Martial Rules, to make provision for review of sentencing proceedings. These make provision as to how the Court Martial should deal with disputes of fact, attendance by lay members, decisions on review of sentence, and when a substituted sentence should normally commence. These rules also amend the general procedural rules of the Court Martial to clarify how they apply to review of sentence proceedings.

Why was this approach taken to change the law?

6.2 The rules are intended to fit into the existing scheme of the Court Martial Rules. They therefore apply parts of the existing rules where possible. Where it was necessary to make specific provision for review of sentence proceedings, these reflect similar service justice proceedings as far as possible.

7. Consultation

Summary of consultation outcome and methodology

7.1 There has been no formal consultation on this instrument. However, a range of stakeholders have been consulted on the development of the policy and processes which underpin these rules, including the single Services, the Judge Advocate General, and the Director of Service Prosecutions.

8. Applicable Guidance

8.1 Guidance on service law is contained in the Manual of Service Law (Joint Services Publication 830 (JSP 830)). This provides guidance and supplementary information to Armed Forces personnel and civilians subject to service discipline on the single system of service law established under the Armed Forces Act 2006. The Manual of Service Law is available to the public at: https://www.gov.uk/government/publications/joint-services-publication-jsp-830-manual-of-service-law-msl.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because the SI relates to service discipline. As such there is no impact on the public sector nor is there an impact on business, charities, or voluntary bodies.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because this relates to service discipline.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because the rules relate to service discipline.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is the 2006 Act which is subject to quinquennial review, with the last such Act being the Armed Forces Act 2021. As such, the provisions of the 2006 Act will be monitored and reviewed in advance of the next Armed Forces Bill.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 Sections 304D and 304E provide for a right of appeal to the Court Martial Appeals Court, against the Court Martial's decisions on review of sentence. The Court Martial Appeal Court (Amendment) Rules 2024 and the Armed Forces (Appeals Against Review of Sentence) Regulations 2024 will introduce further provision in relation to the conduct of proceedings on appeals against decisions made under sections 304D and 304E.

12. European Convention on Human Rights

12.1 The Parliamentary Under-Secretary of State for Veterans and People at the Ministry of Defence has made the following statement regarding Human Rights:

"In my view the provisions of the Armed Forces (Court Martial) (Amendment) Rules 2024 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").