EXPLANATORY MEMORANDUM TO

THE ARMED FORCES (REVIEW OF COURT MARTIAL SENTENCE) (AMENDMENT AND SUPPLEMENTARY PROVISION) REGULATIONS 2026

2026 No. 693

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 Calvin Bailey MBE MP, Minister for Veterans and People (MinVP) at the Ministry for Defence confirms that this Explanatory Memorandum meets the required standard.

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

3. Contact

3.1 Rhea Gaim at the Ministry for Defence can be contacted by email at the following address with any queries regarding the instrument: rhea.gaim100@mod.gov.uk. Alternatively, the department can be contacted by telephone: +44303 388 0564.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

This instrument amends the Service Justice System's (SJS) Unduly Lenient Sentence (ULS) scheme, which allows certain sentences imposed by the Court Martial to be referred by the Attorney General to the Court Martial Appeal Court for review. To bring the SJS ULS scheme up to date with the ULS scheme in the Criminal Justice System (CJS) in England and Wales it widens the offences within scope of the SJS scheme; and ensures the period for the Attorney General to review a request is able to be extended to allow sufficient time to consider requests received late in the statutory period.

Where does the legislation extend to, and apply?

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument form part of the law of) is the United Kingdom.

4.2 The territorial application of this instrument is worldwide as it amends statutory instruments relating to service offences; those offences apply to service personnel and civilians subject to service discipline wherever they are and proceedings for such offences can take place anywhere in the world.

5. Policy Context

What is being done and why?

5.1 The ULS scheme allows the Attorney General to refer certain sentences to an appellate court where they are considered unduly lenient. In the SJS, under section

273 of the Armed Forces Act 2006, this applies to sentences imposed by the Court Martial where the offence is triable only on indictment or specified in an order made by the Secretary of State. The objective of this instrument is to ensure that the scheme operates effectively within the SJS, supporting fair and consistent sentencing outcomes and maintaining confidence in the justice system for service personnel and victims. This is in line with wider Government commitments, including the Code of Practice for Victims of Crime in England and Wales which sets out the services and a minimum standard that must be provided to victims of crime. This includes the right to be given information about the outcome of a case and any appeals.

5.2 The civilian ULS scheme has been expanded to increase the range of offences in scope and to reform the time available for referrals. Therefore, this statutory instrument updates SJS relevant provisions to reflect these changes and ensure alignment across the two systems. By removing these differences in the ULS schemes, this statutory instrument also removes the risk that they might cause comparable cases to be treated differently in each system. It also supports fairness for victims and helps to ensure the Attorney General can operate the scheme efficiently, including where cases are received later in the statutory period.

What was the previous policy, how is this different?

5.3 Under the previous policy, the SJS ULS scheme applied a fixed 28-day period for referrals, regardless of when requests were received. It operated within an offence list set out in secondary legislation that no longer reflects the range of offences covered by the civilian scheme. This means that some cases are capable of review in the civilian system but not in the SJS. The instrument addresses this by aligning the offences within scope of the SJS scheme with those in the civilian scheme, and by ensuring the Attorney General has a minimum 14-day period to consider requests received in the final 14 days of the standard 28-day period for making an application.

6. Legislative and Legal Context

How has the law changed?

6.1 The civilian ULS scheme, governed by sections 35 and 36 and Schedule 3 of the Criminal Justice Act 1988 (CJA) and the Criminal Justice Act 1988 (Review of Sentencing) Order 2006 (as expanded in 2017 and 2019), has been amended by section 13 of the Victims and Courts Act 2026 to ensure that the Attorney General has at least 14 days to consider requests made in the final 14 days of the standard 28-day period for making an application. The SJS ULS scheme, established by section 273 of the Armed Forces Act 2006 and given effect through secondary legislation including the Armed Forces (Review of Court Martial Sentence) Order 2009, is amended by this instrument to update the offences in scope, and the Armed Forces (Review of Court Martial Sentence) (Supplementary Provision) Regulations 2009 is being updated to mirror the recent CJS changes by introducing the same 14-day extension to the existing referral window.

6.2 There are two historic offences included in the civilian Order which have not been added to the SJS ULS regulations due to their age and lack of practical relevance. These are:

- section 5(1) of the Criminal Law Amendment Act 1885 (defilement of a girl aged 13-16) and;
- section 52 of the Offences Against the Person Act 1861 (indecent assault of a girl under 12)

6.3 Both offences have long been repealed and replaced by more recent legislation, and would only apply to conduct occurring over 70 years ago. As such, it is highly unlikely for such cases to arise in the SJS or be applicable to persons that currently fall under the remit of the SJS.

6.4 Some offences that have been repealed since their introduction are being added by this instrument as it is possible that charges might be brough for historic offences under those repealed provisions.

Why was this approach taken to change the law?

6.5 The approach taken ensures that the SJS can maintains alignment with the civilian system. Alternative approaches were considered, such as amendments to primary legislation. However, this would reduce the flexibility of the scheme because any future updates to its scope or operation would require further primary legislation.

6.6 This instrument relies on section 105 of the Deregulation Act 2015, which allows provision that may be made by order or regulations to be made by either form of secondary legislation. This power is used to enable the amendment of both the Armed Forces (Review of Court Martial Sentence) Order 2009 and the Armed Forces (Review of Court Martial Sentence) (Supplementary Provision) Regulations 2009 in one instrument.

7. Consultation

Summary of consultation outcome and methodology

7.1 This instrument has been the subject of stakeholder engagement from September 2024 to May 2026 including the relevant police force and Service Prosecuting Authority, the Association of Military Court Advocates, Military Court Service, and the Judge Advocate General.

7.2 Stakeholders broadly supported the proposed amendments. In particular, they agreed with the policy objective of maintaining consistency between the SJS and the CJS and recognised the need to address operation constraints arising from the current time limits.

7.3 Public consultation was not undertaken as the changes are technical in nature and relate to the operation of an existing judicial process.

8. Applicable Guidance

8.1 The MOD Chapter 31, JSP830 Manual of Service Law (and a Defence Instruction and Notice (DIN), if appropriate) will be updated in due course to communicate the changes and ensure a consistent understanding of the increased scope of the scheme, and extension to the Attorney General's decisions making period. This will support implementation of the changes for those who apply, administer or rely on the scheme such as the Service Prosecuting Authority, Military Court Service, Judge Advocates and Victims and Care Unit.

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 no impact on business is foreseen. This instrument will amend the operation of an existing sentencing review mechanism within the SJS.

9.2 An Equality Analysis has been completed for this instrument in accordance with the Public Sector Equality Duty. The analysis concludes that the instrument is not expected to give rise to any differential impact on the basis of protected characteristics. The ULS scheme operates as a procedural mechanism enabling referral of sentences for appellate review and applies equally to all individuals within the SJS. The amendments do not create new offences, alter sentencing thresholds, or affect judicial discretion. Decisions within the scheme are based on the nature of the offence, the sentence imposed and relevant legal thresholds.

Impact on businesses, charities and voluntary bodies

9.3 There is no, or no significant, impact on business, charities or voluntary bodies because the instrument relates only to the operation of sentencing review within the SJS.

9.4 The instrument does not impact small or micro businesses.

9.5 There is no, or no significant, impact on the public sector because the amendments operate within existing legal and administrative structures.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 This legislation is subject to periodic review as part of the quinquennial review of the Armed Forces Act 2006. This Act must be kept in force by an annual continuation order and requires a further Act of Parliament at least every 5 years to keep it in force. The service justice system is subject to review as part of work to prepare for each 5-yearly Act and the next such Act must be passed before the end of 2026. The rules of court for the service courts are also kept under regular review to ensure the provisions remain relevant to the Armed Forces.

10.2 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. The European Convention of Human Rights

12.1 The Minister for Veterans and People has made the following statement regarding Human Rights:
"In my view the provisions of the Armed Forces (Review of Court Martial Sentence) (Amendment and Supplementary Provision) Regulations 2026 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).