EXPLANATORY MEMORANDUM TO

THE COSTS IN THE COURT MARTIAL APPEAL COURT (AMENDMENT) RULES 2024

2024 No. 1062

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 Luke Pollard MP, Minister for the Armed Forces 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 Costs in the Court Martial Appeal Court (Amendment) Regulations 2024 amend the Costs in the Court Martial Appeal Court Regulations 2012 to enable them to accommodate appeals against review of sentence under sections 304D or 304E 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 instruments 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 instruments produce a practical effect) is the same as their 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 The Costs in the Court Martial Appeal Court Regulations 2012 (CMAC Costs Regulations) are being amended, so as to allow them to accommodate appeals against review of sentence under sections 304D or 304E of AFA 2006.

5.2 Sections 304D and 304E of AFA 2006 are part of a wider package of measures introduced by sections 7 to 12 of the Armed Forces Act 2016, which are designed to incentivise offenders to assist investigators and prosecutors in the service justice system. Sections 304D and 304E of AFA 2006 apply to a person who has already been sentenced and received a reduced sentence under Section 304C. They allow the Director of Service Prosecutions ("DSP") to refer the case back to the Court Martial for review. The Court Martial can further reduce a sentence in light of further assistance received, or increase a sentence in light of a failure to provide the agreed assistance.

5.3 Sections 304D and 304E allow both the DSP and the offender to appeal to the Court Martial Appeal Court against decisions of the Court Martial on review of sentence. The Armed Forces (Appeals Against Review of Sentence) Regulations 2024 (the "Appeals Regulations") set out the main substantive provisions governing such appeals. In keeping with the statutory powers, the Appeals Regulations reproduce large parts of the Court Martial Appeals Act 1968 (the "1968 Act") and include powers to make regulations as to costs. The present statutory instrument uses the powers in the Appeals Regulations to amend the CMAC Costs Regulations to enable them to apply to appeals against review of sentence. This is intended to ensure that a single, consistent set of costs regulations applies to all appeals to the Court Martial Appeal Court.

What was the previous policy, how is this different?

5.4 This secondary legislation is being made as part of the programme implementing sections 304A to 304H of the AFA 2006, which introduce 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 The Rules amend the CMAC Costs Regulations so that they apply to the appeals against review of sentence under section 304D or 304E of AFA 2006. The amendment provides for the CMAC Cost Regulations to be modified when applies to appeals against review of sentence. The modifications ensure that references to the 1968 Act are read as references to the equivalent provisions in the Appeal Regulations, and that references to the "appellant" under the 1968 Act are read as references to the "offender" under the Appeals Regulations.

Why was this approach taken to change the law?

6.2 Amending the existing CMAC Costs Regulations so that they apply to appeals under section 304D or 304E of AFA 2006 ensures a consistent set of cost regulations applies across all appeals to the Court Martial Appeal Court.

7. Consultation

Summary of consultation outcome and methodology

7.1 There has been no formal consultation on these instruments. However, a range of stakeholders have been consulted on the development of the policy and processes which underpin the Regulations and 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 legislation 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.

9.2 While this legislation will provide for the costs incurred through proceedings by an offender whose appeal is successful to be reimbursed. Any costs would be met through existing MOD budgets, although these costs are expected to negligible based on the equivalent 'review of sentence' measure in the civilian criminal justice system is only used in rare circumstances, which means there will be very few appeals and associated costs in the Service justice system.

Impact on businesses, charities and voluntary bodies

9.3 There is no, or no significant, impact on business, charities or voluntary bodies because this legislation relates to Service discipline.

9.4 The legislation does not impact small or micro businesses.

9.5 There is no, or no significant, impact on the public sector because the legislation relates 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 in 2025/26.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument is made under regulations 13(6)(b) and 18(1)(e) of the of the Armed Forces (Appeals Against Review of Sentence) Regulations 2024, which makes provision equivalent to provision equivalent to sections 31(5)(b) and 33B(1)(e) of the Courts-Martial (Appeals) Act 1968.

11.2 As with sections 31(5)(b) and 33B(1)(e) of the 1968 Act, regulations 13(6)(b) and 18(1)(e) of the Appeals Regulations requires regulations about costs to be made by the Lord Chancellor.

12. European Convention on Human Rights

12.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

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