EXPLANATORY MEMORANDUM TO

THE COURT MARTIAL AND SERVICE CIVILIAN COURT (YOUTH JUSTICE AND CRIMINAL EVIDENCE ACT 1999) (AMENDMENT) RULES

2015 No. 726

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 This instrument amends the Court Martial and Service Civilian Court (Youth Justice and Criminal Evidence Act 1999) Rules 2009 (SI 2009/2100) ("the 2009 Rules"). Part 4 of the 2009 Rules contains provision relating to applications, in proceedings in Service courts, for directions under section 46 of the Youth Justice and Criminal Evidence Act 1999 ("the 1999 Act") restricting the reporting of proceedings.

2.2 This instrument inserts into part 4 of the 2009 Rules provisions in relation to applications, in proceedings in Service courts, for directions under section 45 or 45A of the 1999 Act restricting the reporting of proceedings.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument does not specify a date on which it is to come into force but enables the date to be determined by the date of commencement of section 78 of the 2015 Act. Officials at the Ministry of Justice are responsible for commencement of section 78 of the 2015 Act and section 45 of the 1999 Act, and are keen to ensure that commencement of those provisions and this instrument is coordinated. We are assured by Ministry of Justice officials that the date on which section 78 of the 2015 Act comes into force will be more than 21 days after this instrument is laid before Parliament.

4. Legislative background

4.1 Chapter 4 of Part 2 of the 1999 Act (sections 44-52 inclusive) has effect for the purposes of proceedings before civilian criminal courts and proceedings before Service courts. Under section 45 of the 1999 Act, a court may impose a reporting restriction until a

witness or person against or in respect of whom proceedings are taken reaches the age of 18. Under section 45A of the 1999 Act, a court may impose a reporting restriction in relation to a witness or victim the age of 18 for the lifetime of that person. Under section 46, a court may impose a reporting restriction in relation to an adult witness.

4.2 Section 46 is currently in force. Section 45A is to be inserted by section 78 of the Criminal Justice and Courts Act 2015 ("the 2015 Act"). At the same time as section 78 comes into force, section 45 of the 1999 Act will be brought into force.

4.3 Section 65(1) of the 1999 Act provides so that Criminal Procedure Rules may make provision for the purposes of the 1999 Act. The effect of Articles 13(3) and 2(1) of the Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (SI 2009/2083) is that the reference in section 65(1) to Criminal Procedure Rules is to be read, for the purposes of proceedings in Service courts, as a reference to rules of evidence and procedure for proceedings before Service courts. Section 163 of the Armed Forces Act 2006 ("the 2006 Act") gives the Secretary of State power to make such rules (by statutory instrument) with respect to the Court Martial. Section 288 of the 2006 Act gives the Secretary of State power to make such rules (by statutory instrument) with respect to the Service Civilian Court.

4.4 The rules in Part 4 of the 2009 Rules were made under section 65(1) of the 1999 Act and sections 163 and 288 of the 2006 Act. Part 4 of the 2009 Rules contains provision relating to applications, in proceedings in Service courts, for directions under section 46 of the 1999 Act restricting the reporting of proceedings.

4.5 This instrument inserts into part 4 of the 2009 Rules provisions in relation to applications, in proceedings in Service courts, for directions under section 45 or 45A of the 1999 Act restricting the reporting of proceedings.

4.6 This instrument provides so that rules governing applications for directions under section 45 or 45A of the 1999 Act come into force on the day on which, and immediately after, section 78 of the 2015 Act (which inserts section 45A into the 1999 Act) comes into force

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom..

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

7.1 Subordinate legislation under the Armed Forces Act 2006 (including the 2009 Rules) provides Service courts with rules equivalent (with some modifications) to those of civilian criminal courts in England and Wales. The 2009 Rules govern proceedings in the Court Martial and the Service Civilian Court with respect to measures in the 1999 Act which allow courts to impose restrictions on the reporting of proceedings.

7.2 This instrument amends the 2009 Rules to include in them rules governing applications under section 45 or 45A of the 1999 Act to restrict the reporting of criminal proceedings.

8. Consultation outcome

8.1 The members of the Service Court Rules Review Committee (SCRRC), which is responsible for reviewing and, where appropriate, recommending changes to the rules of the Service courts, have been consulted about the changes that will be made by this instrument and have not raised any concerns. The members of the SCRRC include a member of the Tri-Service Practitioners' Liaison Group, the Judge Advocate General, The Director of Service Prosecutions, a civilian defence advocate nominated by the Association of Military Court Advocates and the Ministry of Defence lawyer who heads the legislation team in Central Legal Services at the Ministry of Defence.

9. Guidance

9.1 Guidance will be promulgated to Judge Advocates through the Judge Advocate General's practice memoranda which will be amended as appropriate to reflect the

applications that can be made under sections 45 and 45A of the 1999 Act. The Practice Memoranda are available on the justice.gov.uk website.

10. Impact

10.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is expected to be nil.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring and review

12.1 The SCRRC conducts regular reviews of the Service Court Rules to identify whether changes are needed.

13. Contact

13.1 In the event of any enquiries about this instrument, please contact Tracy Sexton of Central Legal Services at the Ministry of Defence by telephoning 0207 218 0564 or by emailing tracy.sexton743@mod.uk.