EXPLANATORY MEMORANDUM TO

THE COURT MARTIAL AND SERVICE CIVILIAN COURT (YOUTH JUSTICE AND CRIMINAL EVIDENCE ACT 1999) RULES 2009

2009 No. 2100

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 These Rules set out the procedure necessary to give effect to the provisions applied and modified by the Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 for the purposes of proceedings in the Court Martial and the Service Civilian Court.

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

3.1 None.

4. Legislative Context

4.1 Part 2 of the Youth Justice and Criminal Evidence Act 1999 contains a range of measures designed to help young, disabled, vulnerable or intimidated witnesses to give evidence in criminal proceedings. These provisions are now largely in force for criminal courts in England and Wales. The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 revokes and replaces three orders which previously applied provisions of the Act, with modifications, to Courts-Martial, the Courts-Martial Appeal Court and the Standing Civilian Court. This is necessary in order to align the provisions with the scheme and language of the Armed Forces Act 2006 (the "2006 Act").

4.2 The Court Martial and Service Civilian Court (Youth Justice and Criminal Evidence Act 1999) Rules 2009 revoke existing evidence rules for proceedings before Courts-Martial and Standing Civilian Courts respectively.

5. Territorial Extent and Application

5.1 This instrument extends to the United Kingdom, the Isle of Man and British overseas territories and applies to persons subject to Service law or civilians subject to Service discipline wherever they are in the world.

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 The 2006 Act is a major update of the legislation affecting the Service criminal justice system. It establishes a standing Court Martial and the Service Civilian Court, replacing the existing courts under the three current Service Discipline Acts (the Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957) which will be repealed. Subordinate legislation made under the 2006 Act contains the provisions under which the Service courts operate. This subordinate legislation gives Service courts procedures equivalent, with some modifications, to those of criminal courts in England and Wales. The modifications are required in order to reflect the differences in terminology, procedure and jurisdiction between Service courts and civilian criminal courts.

8. Consultation outcome

8.1 A memorandum about consultation on the 2006 Act was submitted in written evidence to the Select Committee on the Armed Forces Bill and published on 9 May 2006 in its Special Report of Session 2005-06 (HC 828-II, page Ev 136). This memorandum explained how stakeholder consultation had been carried out and listed the individuals and organisations consulted. Subordinate legislation made under the 2006 Act has been the subject of rigorous consultation with relevant stakeholders (such as the Services, the Service police, the Judge Advocate General and the Military Court Service) over a period of many months to ensure that the policy goals have been achieved and that the provisions of each instrument will work in practice.

9. Guidance

9.1 A new Manual of Service Law will provide guidance and supplementary information to Armed Forces personnel on the single system of Service law established under the 2006 Act. The second volume of three within the Manual, which is intended for lawyers and those who administer the Service justice system, includes chapters on Court Martial proceedings and Service Civilian Courts. A training version of the Manual has been made available for Service personnel to be trained ahead of full implementation of the 2006 Act in October 2009. The Manual will subsequently be made available to the general public on the internet. Guidance will be promulgated to judge advocates through the Judge Advocate General's practice memoranda.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

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

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring and review

12.1 The 2006 Act is subject to five-yearly renewal by an Act of Parliament and annual renewal in the intervening years by Order in Council. Following full implementation of the Act in October 2009 its provisions and those in secondary legislation made under it will be monitored and reviewed leading up to preparation of the Armed Forces Bill 2010.

13. Contact

13.1 Mr Nick Shaw at the Ministry of Defence, telephone 020 7218 0564 or email nick.shaw460@mod.uk, is the point of contact regarding these instruments.