EXPLANATORY MEMORANDUM TO

THE COURTS-MARTIAL (AMENDMENT) RULES 2008

2008 No.1699

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

2. Description

2.1 These rules revoke modifications made in Courts-Martial (Army), (Royal Navy) and (Royal Air Force) Rules 2007 to sections in the Service Discipline Acts (the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957) concerning the ability of prosecuting authorities to refer back to an accused's commanding officer charges other than those on which the accused elected to be tried by court-martial. The relevant provisions in the Service Discipline Acts are being repealed and hence the modifications in the three sets of Courts-Martial Rules are no longer required.

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

3.1 None.

4. Legislative background

4.1 When a person is charged with an offence and elects to be tried by court-martial, the prosecuting authority has the power under the Army and Air Force Acts 1955 section 83BB(1) or the Naval Discipline Act 1957 section 52II(1) to refer a different charge back to the accused's commanding officer. Rules 8 and 16 of the Courts-martial (Army) and (Air Force) Rules 2007 (S.I. 2007/3442 and 2007/3444) and rules 6 and 13 of the Courts-Martial (Royal Navy) Rules 2007 (S.I. 2007/3443) modify those provisions in cases where the accused elects to be tried on more than one charge. The provisions in the Service Discipline Acts are being repealed by the Armed Forces (Alignment of Service Discipline Acts) Order 2008 (S.I. 2008/1694) which has been approved by resolution of both Houses of Parliament. Therefore the Courts-Martial Rules that modify them are no longer required and so are revoked by these Rules.

5. Extent

5.1 These Rules extend to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Under Secretary of State has made the following statement regarding Human Rights:

> In my view, the rules contained in the Courts-Martial (Amendment) Rules 2008 are compatible with the Convention rights.

7. Policy Background

7.1 Under current sections of the Service Discipline Acts (s83BB of the Army Act 1955 and the Air Force Act 1955 or s52II of the Naval Discipline Act 1957) the prosecuting authorities can require an accused's commanding officer to consider a charge other than that on which the accused elected court-martial trial, without the accused's consent. This could create a disincentive to elect for trial by court-martial. The amendments contained in the Armed Forces (Alignment of Service Discipline Acts) Order 2008 repeal those provisions and so prevent the prosecuting authorities from sending a different charge back to the commanding officer where the accused has elected. In consequence, with no such provision allowing referral back in this way, the modifications made by Courts-Martial Rules (Army, Navy and Royal Air Force) 2007 relating to where an accused elects on more than one charge, are redundant and further (amendment) rules are required to revoke the modifications.

8. Impact

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

9. Contact

9.1 Mrs S McIntosh at the Ministry of Defence, telephone 020 7218 0564 or email sue.mcintosh641@mod.uk is the point of contact regarding this instrument.