EXPLANATORY MEMORANDUM TO

THE COURTS-MARTIAL (REVIEW OF SENTENCING) (CATEGORIES OF OFFENCES) ORDER 2007

2007 No. 711

THE COURTS-MARTIAL (REVIEW OF SENTENCING) REGULATIONS 2007

2007 No. 660

THE COURTS-MARTIAL APPEAL (AMENDMENT) RULES 2007

2007 No. 710

1. This explanatory memorandum has been (jointly) prepared by the Ministry of Defence and the Department for Constitutional Affairs and is laid before the House of Commons by Command of Her Majesty.

2. Description

2.1 The above Instruments enable the Attorney General to refer a case in respect of a specified offence for review where he considers a court-martial has passed an unduly lenient sentence (ULS scheme). The avenue of referral is to the Courts-Martial Appeal Court (CMAC). In cases referred to it, the CMAC will be able to substitute another sentence that would have been available to a court-martial. The provisions apply to courts-martial and CMAC in respect of sentences preferred on or after 31st March 2007.

2.2 This Explanatory Memorandum has been prepared in order to assist the reader in understanding the Instruments. It does not form part of the Instruments.

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

3.1 None.

4. Legislative Background

4.1 The relevant provisions in the Service Discipline Acts (the Army and Air Force Acts 1955 and the Naval Discipline Act 1957) will be commenced to apply the ULS scheme automatically to cases where the corresponding civil offence is triable on indictment only.

4.2 The Courts-Martial (Review of Sentencing) (Categories of Offences) Order 2007 is required to further extend the Attorney General's powers set out in the Service Discipline Acts to cases where the specified corresponding civil offence is triable either summarily or on indictment. The offences to which the ULS scheme will apply are specified in the schedule.

4.3 The procedure governing an application to review an unduly lenient sentence is provided for by the Courts-Martial (Review of Sentencing) Regulations 2007 which make supplementary provision broadly equivalent to that set out in schedule 3 to the Criminal Justice Act 1988.

4.4 It has further been necessary to amend the CMAC Rules to take account of the person to whose sentencing such a reference or application relates so they can obtain from the registrar any documents or thing required for the reference or application. This instrument makes provision broadly equivalent to Part 70 of the Criminal Procedure Rules 2005.

5. Extent

5.1 These instruments apply to proceedings before a court-martial and to the CMAC whether sitting in the United Kingdom or elsewhere.

6. European Convention on Human Rights

6.1 As the instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

7.1 By specifying the offences to be subject to review should an unduly lenient sentence be passed, and the procedure governing the exercise of a review, the policy objective for the Armed Forces is to mirror, as far as practicable, the procedures and practices in place in the civilian criminal courts in England and Wales.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for these instruments as they have no impact on business, charities or voluntary bodies.

9. Contact

9.1 Sue McIntosh at the Ministry of Defence can answer any queries regarding the instrument. Her contact details are:

Sue McIntosh
7-C-22
Ministry of Defence
Main Building
Whitehall
SW1A 2HB

Tel: 0207 218 0564

Email: sue.mcintosh641@mod.uk