EXPLANATORY MEMORANDUM TO

THE COURTS-MARTIAL (ARMY) (AMENDMENT) RULES

2005 No. 3483

THE COURTS-MARTIAL (ROYAL NAVY) (AMENDMENT) RULES

2005 No.3484

THE COURTS-MARTIAL (ROYAL AIR FORCE) (AMENDMENT) RULES

2005 No.3485

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 amend the Courts-Martial (Army) (Amendment) Rules 1997 (S.I. 1997/169), the Courts-Martial (Royal Navy) (Amendment) Rules 1997 (S.I. 1997/170) and the Courts-Martial (Royal Air Force) (Amendment) Rules 1997 (S.I 1997/171) to enable the powers conferred on a court-martial by the Armed Forces Proceedings (Costs) Regulations 2005 (S.I. 2005/3478) to be exercised by a judge advocate sitting alone. The powers concerned enables a court-martial to order one party's costs to be paid by the other if the court is satisfied that those costs have been incurred as a result of that other party's unnecessary or improper act or omission. In addition, a court-martial is given power to disallow costs incurred as a result of a legal or other representative's improper, unreasonable or negligent act or omission and may order a legal or other representative to meet a party's costs wasted as a result of any such act or omission.

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

3.1 None.

4. Legislative Background

4.1 These Rules are made under section 103(2) of the Army Act 1955, section 58(2) of the Naval Discipline Act 1957 and section 103(2) of the Air Force Act 1955 (the services Acts). These sections empower the Secretary of State to make rules in relation to proceedings at courts-martial. They were amended by section 28(4) and (5) of the Armed Forces Act 2001 to allow the Secretary of State to make rules enabling any jurisdiction conferred on a court-martial by sections 26 to 28 of the Act to be exercised by a judge advocate sitting alone. Sections 26 to 28 of the Armed Forces Act 2001 allow the Secretary of State to make regulations empowering the courts with jurisdiction over offences committed under any of the services Acts (including courts-martial) to make orders for the payment to a party of costs incurred as a result of another party's unnecessary or improper act or omission and of wasted costs incurred

by a party as a result of a legal or other representative's improper, illegal or negligent act or omission. The Armed Forces Proceedings (Costs) Regulations 2005 (S.I.2005/3478) enable the relevant courts to exercise these powers by making orders for the payment of costs in the circumstances described in sections 26 to 28 of the Armed Forces Act 2001. These Rules amend the courts-martial rules for the armed forces to enable a judge advocate sitting alone to exercise the jurisdiction of the court to make an order for the payment of costs incurred by a party as a result of another party's unnecessary or improper act or omission or to disallow or order a legal or other representative to meet wasted costs.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

7.1 These Rules are intended to facilitate the exercise by courts-martial of the powers to make orders as to costs conferred on them under the Armed Forces Proceedings (Costs) Regulations 2005 by allowing the powers to be exercised by the judge advocate sitting alone as provided for by the amendments made by section 28(4) and (5) of the Armed Forces Act 2001 to the power of the Secretary of State in the services Acts to make courts-martial rules. As an experienced lawyer, the judge advocate may be the most appropriate member of the court to assess whether the powers to make a costs order against a party or an order as to wasted legal costs should be exercised in a particular case.

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.

8.2 The impact on the public sector is likely to be minimal.

9. Contact

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