Draft Rules laid before Parliament under section 373(3) of the Armed Forces Act 2006, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2022 No. 0000

DEFENCE

The Armed Forces (Court Martial) (Amendment) Rules 2022

Made - - - -	***
Coming into force - -	*1st January 2023*

The Secretary of State makes the following Rules in exercise of the powers conferred by sections 155, 163 and 373(5) of the Armed Forces Act 2006(**a**).

In accordance with section 373(3) of that Act(**b**), a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

Citation and commencement

1.—(1) These Rules may be cited as the Armed Forces (Court Martial) (Amendment) Rules 2022.

(2) These Rules come into force on 1st January 2023.

Extent

2. These Rules extend to England and Wales, Scotland, Northern Ireland, the Isle of Man and the British overseas territories (except Gibraltar).

Amendment of the Armed Forces (Court Martial) Rules 2009

3. The Armed Forces (Court Martial) Rules 2009(**c**) are amended as follows.

4. In rule 3(2) (interpretation) omit the definition of "the minimum number".

5. In rule 25(2) (termination of proceedings), in the closing words, after "minimum number" insert "required for the Court Martial to remain validly constituted".

6.—(1) Rule 29 (proceedings requiring at least five lay members) is amended as follows.

(2) In the heading, for "at least five" substitute "six".

(3) In paragraph (1), for "at least five" substitute "six".

(4) In paragraph (2)—

(a) in sub-paragraph (b), for "seven" substitute "two";

(**a**) 2006 c. 52. Section 155 was amended by paragraph 1 of Schedule 1 to the Armed Forces Act 2021 (c. 35).
(**b**) There are amendments to section 373(3) but none are relevant.
(**c**) S.I. 2009/2041, to which there are amendments not relevant to these rules.

(b) in sub-paragraph (c), for "seven" substitute "two".

(5) In paragraph (3)(b), for "seven", in both places it occurs, substitute "two".

7. For rule 30 (additional lay members) substitute—

"**Proceedings with four lay members**

30.—(1) A judge advocate may only give a direction under section 155(2A)(**a**) if the judge advocate considers it necessary to do so, having regard to the expected length and location of the proceedings.

(2) A direction may not be given under section 155(2A) after the commencement of the proceedings unless—

(a) a direction under section 155(2A) was in effect when the proceedings commenced;

(b) one or more lay members has been discharged under rule 35(4) (objections); and

(c) there are three or fewer lay members remaining (including any waiting members).

(3) A judge advocate may rescind a direction under section 155(2A) at any time before the commencement of the proceedings to which it relates.

Reduction in lay members

30A. A judge advocate may direct that the Court Martial is to remain validly constituted despite the reduction of lay members from six to five, or where a direction has been made under section 155(2A), from four to three if—

(a) the number of lay members reduces in the course of the proceedings after each of the lay members has been sworn; and

(b) the judge advocate considers it in the interests of justice that the proceedings continue.".

8.—(1) Rule 31 (warrant officers) is amended as follows.

(2) In the heading after "Warrant officers", insert "and OR-7s".

(3) In paragraph (1)—

(a) for "warrant officers" substitute "warrant officers or OR-7 ranks";

(b) for "two" substitute—

"—

(a) one, if there are three or four lay members; or

(b) two, if there are five or six lay members."; and

(c) after paragraph (1) insert—

"(1A) The number prescribed by paragraph (1) may consist of, or include no more than, one OR-7 rank if every person to whom the proceedings relate is of or below that rank or rate.".

Name
Parliamentary Under Secretary of State
Department

Date

(**a**) Section 155(2A) of the Armed Forces Act 2006 was inserted by paragraph 1(4) of Schedule 1 to the Armed Forces Act 2021 (c. 35).

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Armed Forces (Court Martial) Rules 2009 (S.I. 2009/2041) ("the Court Martial Rules") to take account of amendments made to section 155 of the Armed Forces Act 2006 (c. 52) by the Armed Forces Act 2021 (c. 35).

Rule 29 of the Court Martial Rules is amended to prescribe those proceedings required by section 155(1) (as amended) to have six, rather than three, lay members. A new rule 30 is substituted for the existing rule 30 to set out when a judge advocate can make a direction under section 155(2A) that there should be four, rather than three, lay members. A new rule 30A is also inserted for the purposes of section 155(6A) which will allow a judge advocate to direct that a Court Martial is to remain validly constituted in certain circumstances despite a reduction in the number of lay members. Rule 31 is amended to prescribe for the purposes of section 155(3)(a) the number of lay members of the Court Martial who may be warrant officers or OR-7s rather than officers. Other minor amendments are also being made to the Court Martial Rules in consequence of these changes.

A full impact assessment has not been prepared for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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