EXPLANATORY MEMORANDUM TO

THE COURT MARTIAL (PROSECUTION APPEALS) ORDER 2009

2009 No.

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 The Order provides for prosecution appeals from rulings made in Court Martial trials and for the procedure to be followed in such appeals. It makes provision for offences of contravention of reporting restrictions.

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

3.1 Article 9 of the Order amends provisions of the Courts-Martial (Appeals) Act 1968 so as to provide for a right of appeal to the Supreme Court against any decision of the Court Martial Appeal Court in relation to an appeal under the Order; therefore, by virtue of section 373(3)(b) of the Armed Forces Act 2006 (the 2006 Act) this instrument must be subject to the affirmative resolution procedure.

4. Legislative Context

4.1 The Order replaces and revokes two statutory instruments of 2006 (1786 and 1788) which contained similar provisions. This is necessary in order to align the provisions with the scheme and language of the 2006 Act.

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 proceedings before Service courts wherever in the world they may be held.

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State for Defence has made the following statement regarding human rights:

In my view the provisions of the Court Martial (Prosecution Appeals) Order 2009 are compatible with the Convention rights.

7. Policy background

7.1 The 2006 Act is major updating legislation affecting the Service criminal justice system and subordinate legislation made under it contains the provisions under which the Service courts operate, including prosecution appeals. The provisions of the Order are made in consequence of those relating to prosecution appeals in the civilian criminal courts.

8. Consultation outcome

8.1 There has been no consultation on this specific instrument as its policy content is broadly similar to that of the two statutory instruments of 2006. 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.

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 a chapter on Court Martial appeal. The Manual of Service Law will be available in time to allow Service personnel to be trained ahead of full implementation of the 2006 Act and subsequently will be 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 quinquennial review. Following full implementation of the Act in October 2009 the provisions will be monitored and reviewed leading up to the first quinquennial review in 2011.

13. Contact

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