STATUTORY INSTRUMENTS

2004 No. 66

DEFENCE

The Naval Discipline Act 1957 (Remedial) Order 2004

Made - - - -	*14th January 2004*
Laid before Parliament	*15th January 2004*
Coming into force - -	*16th January 2004*

Whereas it appears to the Secretary of State that, having regard to a finding of the European Court of Human Rights(**a**) made after the coming into force of section 10 of the Human Rights Act 1998(**b**) in proceedings against the United Kingdom, certain provisions of the Naval Discipline Act 1957(**c**) are incompatible with an obligation of the United Kingdom arising from the Convention(**d**);

And whereas the Secretary of State considers that there are compelling reasons for proceeding by way of a remedial order(**e**) to make such amendments to the Naval Discipline Act 1957 as he considers necessary to remove the incompatibility;

And whereas it appears to the Secretary of State that, because of the urgency of the matter, it is necessary to make the order without a draft being approved by resolution of each House of Parliament;

Now, therefore, the Secretary of State, in exercise of the powers conferred upon him by section 10(2) of, and paragraph 1(1)(a), (2) and (3) of Schedule 2 to, the Human Rights Act 1998, hereby makes the following Order:

Citation and Commencement

1. This Order may be cited as the Naval Discipline Act 1957 (Remedial) Order 2004 and shall come into force on 16th January 2004.

Amendment of the Naval Discipline Act 1957

2.—(1) The Naval Discipline Act 1957 is amended as follows.

(2) In section 47M(1) and (2)(c), for "Chief Naval Judge Advocate" there is substituted "Judge Advocate of Her Majesty's Fleet"(**f**).

(**a**) In the case of *Mark Grieves v United Kingdom* (Application No. 57067/00), judgment of 16th December 2003.
(**b**) 1998 c. 42.
(**c**) 1957 c. 53.
(**d**) *See* section 21(1) of the Human Rights Act 1998 for the meaning of "the Convention".
(**e**) *See* section 21(1) of the Human Rights Act 1998 for the meaning of "remedial order".
(**f**) Section 47M was inserted by section 7(2) of the Armed Forces Discipline Act 2000 (c. 4) and subsection (2) was amended by paragraph 36(2) of Schedule 6 to the Armed Forces Act 2001 (c. 19).

(3) In section 52FG(1), for "Chief Naval Judge Advocate" there is substituted "Judge Advocate of Her Majesty's Fleet"(**a**).

(4) In section 52FJ(3), for "Chief Naval Judge Advocate" there is substituted "Judge Advocate of Her Majesty's Fleet"(**b**).

(5) In section 53B(1), for "Chief Naval Judge Advocate" there is substituted "Judge Advocate of Her Majesty's Fleet"(**c**).

(6) In section 53C(2), for "Chief Naval Judge Advocate" there is substituted "Judge Advocate of Her Majesty's Fleet"(**d**).

(7) In section 59(4A), for "Chief Naval Judge Advocate" there is substituted "Judge Advocate of Her Majesty's Fleet"(**e**).

Amendment of the Courts-Martial (Royal Navy) Rules 1997

3.—(1) The Courts-Martial (Royal Navy) Rules 1997(**f**) are amended as follows.

(2) In rule 2 in the definition of "the judge advocate", for "Chief Naval Judge Advocate" there is substituted "Judge Advocate of Her Majesty's Fleet".

(3) In rule 8(2)(b), for "Chief Naval Judge Advocate" there is substituted "Judge Advocate of Her Majesty's Fleet".

(4) In rule 9—

(a) in paragraph (1), for "Chief Naval Judge Advocate, or an officer" there is substituted "Judge Advocate of Her Majesty's Fleet, or a person"; and

(b) in paragraph (2), for "Chief Naval Judge Advocate" there is substituted "Judge Advocate of Her Majesty's Fleet".

Amendment of the Naval Custody Rules 2000

4.—(1) The Naval Custody Rules 2000(**g**) are amended as follows.

(2) In rule 2(3), for "Chief Naval Judge Advocate" there is substituted "Judge Advocate of Her Majesty's Fleet".

(3) In rule 16(1), for "Chief Naval Judge Advocate" there is substituted "Judge Advocate of Her Majesty's Fleet".

(4) In rule 18(1), for "Chief Naval Judge Advocate" there is substituted "Judge Advocate of Her Majesty's Fleet".

Amendment of the Summary Appeal Court (Navy) Rules 2000

5.—(1) The Summary Appeal Court (Navy) Rules 2000(**h**) are amended as follows.

(2) In rule 2(2), for "Chief Naval Judge Advocate" there is substituted "Judge Advocate of Her Majesty's Fleet".

(3) In rule 12(5)(a), for "Chief Naval Judge Advocate" there is substituted "Judge Advocate of Her Majesty's Fleet".

(4) In rule 15(3)(c), for "Chief Naval Judge Advocate" there is substituted "Judge Advocate of Her Majesty's Fleet".

(**a**) Section 52FG was inserted by section 15(2) of the Armed Forces Discipline Act 2000 (c. 4).
(**b**) Section 52FJ was inserted by section 17(2) of the Armed Forces Discipline Act 2000 (c. 4).
(**c**) Section 53B was inserted by paragraph 51 of Schedule 1 to the Armed Forces Act 1996 (c. 46).
(**d**) Section 53C was inserted by paragraph 51 of Schedule 1 to the Armed Forces Act 1996 (c. 46) and was amended by paragraph 15 of Schedule 2 to the Armed Forces Act 2001 (c. 19).
(**e**) Section 59(4A) was inserted by paragraph 58(6) of Schedule 1 to the Armed Forces Act 1996 (c. 46).
(**f**) S.I. 1997/170, amended by S.I. 2000/2373, 2002/231.
(**g**) S.I. 2000/2367.
(**h**) S.I. 2000/2370.

(5) In rule 22(1)(d), for "Chief Naval Judge Advocate" there is substituted "Judge Advocate of Her Majesty's Fleet".

Amendment of the Administration of Oaths (Summary Appeal Court) (Navy) Order 2000

6. In article 2(1)(a) of the Administration of Oaths (Summary Appeal Court) (Navy) Order 2000(**a**), for "Chief Naval Judge Advocate" there is substituted "Judge Advocate of Her Majesty's Fleet".

Ivor Caplin
Parliamentary Under Secretary of State
Ministry of Defence

14th January 2004

(**a**) S.I. 2000/2376.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes changes to sections 47M, 52FG, 52FJ, 53B, 53C and 59 of the Naval Discipline Act 1957 ("the Act") to remove the incompatibility of those provisions with a Convention right.

In the case of *Mark Grieves v United Kingdom* (Application No. 57067/00), the Grand Chamber of the European Court of Human Rights held that there had been a violation of Article 6(1) of the Convention in that the position of the judge advocate in the applicant's trial by court-martial did not provide a sufficient guarantee of the independence of the court-martial because, among other reasons, he had been appointed by the Chief Naval Judge Advocate, a serving naval officer.

In order to remove this incompatibility, the Order amends sections 47M(1) and (2)(c), 52FG(1), 52FJ(3), 53B(1), 53C(2) and 59(4A) of the Act to provide that the Judge Advocate of Her Majesty's Fleet, a civilian, will appoint judicial officers and judge advocates. The Order also makes consequential changes to the Courts-Martial (Royal Navy) Rules 1997, the Naval Custody Rules 2000, the Summary Appeal Court (Navy) Rules 2000 and the Administration of Oaths (Summary Appeal Court) (Navy) Order 2000.

The Order will come into force on 16th January 2004 pursuant to the "urgent" procedure prescribed in paragraph 4 of Schedule 2 to the Human Rights Act 1998. The Order will cease to have effect if, at the end of the period of 120 days beginning with the day on which the Order was made, a resolution has not been passed by each House of Parliament approving the Order.

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