EXPLANATORY MEMORANDUM TO

THE COURTS-MARTIAL (ROYAL NAVY, ARMY AND ROYAL AIR FORCE) (EVIDENCE) RULES 2006.
2006 No.2889

THE STANDING CIVILIAN COURT (EVIDENCE) RULES 2006.
2006 No.2891

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 The above Rules set out the procedure and court forms necessary to give effect to the provisions of Part 2 of the Youth Justice and Criminal Evidence Act 1999 ("the 1999 Act") which are to be brought into force for service courts.

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

3.1 None

4. Legislative Background

4.1 Part 2 of the 1999 Act contains a range of measures designed to protect vulnerable or intimidated witnesses when giving evidence in criminal proceedings. These measures include special measures directions (e.g. screening of witnesses, evidence by live link or video recorded evidence), protection of witnesses from cross-examination by accused in person, protection of complainants in proceedings for sexual offences and the ordering of reporting restrictions. These Rules set out the procedure for applying these measures in courts-martial and Standing Civilian Courts. The Rules make equivalent provision to the rules applicable to the Crown Court and Magistrates' Courts in England and Wales, which are contained in the Criminal Procedure Rules 2005 ("CPR 2005"). The Rules also contain consequential amendments to the Courts-Martial (Army) Rules 1997, the Courts-Martial (Royal Air Force) Rules 1997, the Courts-Martial (Royal Navy) Rules 1997 and the Standing Civilian Courts Order 1997.

4.2 It should be noted that no rules have been produced for the Courts-Martial Appeal Court. This is because the CPR 2005 does not yet contain rules in respect of the above measures for the Court of Appeal, because the Secretary of State has not yet given notification under section 18(2) of the 1999 Act that facilities for vulnerable witnesses are available in the Court of Appeal. This applies also to the Courts-Martial Appeal Court.

5. Extent

5.1 The instruments apply to proceedings before courts-martial and Standing Civilian Courts whether in the United Kingdom or elsewhere.

6. European Convention on Human Rights

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

7. Policy background

7.1 The policy objective of the Rules is to give courts-martial and Standing Civilian Courts equivalent procedures to those of criminal courts in England and Wales, whilst at the same time ensuring that the procedures can operate wherever in the world the service court may be sitting.

7.2 These Rules are concerned exclusively with procedures before service courts. Consultation took place with the Office of the Judge Advocate General, the three service Prosecuting Authorities and the Military Courts Service by circulating drafts of the Rules and seeking comment. Consultation also took place with the Department for Constitutional Affairs and the Home Office to the extent of their interest in the application of the 1999 Act to service courts

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.

9. Contact

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

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