EXPLANATORY MEMORANDUM TO

THE SUMMARY APPEAL COURT (ARMY) (AMENDMENT) RULES

2005 No. 3486

THE SUMMARY APPEAL COURT (NAVY) (AMENDMENT) RULES

2005 No. 3487

THE SUMMARY APPEAL COURT (AIR FORCE) (AMENDMENT) RULES

2005 No. 3488

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 Summary Appeal Court (Army) Rules 2000 (S.I. 2000/2371), the Summary Appeal Court (Navy) Rules 2000 (S.I. 2000/2370) and the Summary Appeal Court (Air Force) Rules 2000 (S.I 200/2372) to enable the powers conferred on a summary appeal court by the Armed Forces Proceedings (Costs) Regulations 2005 (S.I. 2005/3478) to be exercised by a judge advocate sitting alone. The powers concerned enable a summary appeal court 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 summary appeal court 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 83ZJ of the Amy Act 1955, section 52FP of the Naval Discipline Act 1957 and section 83ZJ of the Air Force Act 1955 (the services Acts). These sections empower the Secretary of State to make rules in relation to practice and procedure in the summary appeal court, including the circumstances in which the jurisdiction of the court may 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 a summary appeal court) 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 cost 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 summary appeal court 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 will facilitate the exercise by summary appeal courts of the powers to make orders as to costs conferred on them by the Armed Forces Proceedings (Costs) Regulations 2005. 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

Sue McIntosh at the Ministry of Defence Tel: 0207 218 0564 or e-mail: sue.mcintosh641@mod.uk can answer any queries regarding the instrument.