EXPLANATORY MEMORANDUM TO

THE SUMMARY APPEAL COURT (YOUTH JUSTICE AND CRIMINAL EVIDENCE ACT 1999) RULES 2015

2015 No. 1813

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 These rules are intended to give effect to the requirements of articles 18 and 21 of Directive 2012/29/EU of the European Parliament and of the Council of 23 October 2012 establishing minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA ("the Directive"). This instrument is one of a number of statutory instruments giving effect to the Directive (details of the other instruments are set out at paragraph 4.2 below). The rules set out the procedures necessary to give effect to certain provisions in the Youth Justice and Criminal Evidence Act 1999 ("the 1999 Act").

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

3.1 None.

4. Legislative Context

4.1 Chapters 2 and 4 of Part 2 of the 1999 Act contains a range of measures dealing with the protection of victims from cross-examination by an accused in person and reporting restrictions. These provisions are applied to the Summary Appeal Court by the Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009, as amended by the Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) (Amendment) (No. 2) Order 2015. These rules set out the procedures making provision for restricting cross-examination of a witness by an appellant acting in person in the Summary Appeal Court. The rules also contain provisions setting out powers to restrict reporting of proceedings in the Summary Appeal Court.

4.2 The transposition note for this Memorandum contains entries relating to how these rules transpose the relevant articles of the Directive. Other changes are being made to both the armed forces' criminal justice system and the criminal justice system in England and Wales to meet the requirements of the Directive. Other statutory instruments being laid in respect of the transposition of the Directive are:

The Armed Forces (Service Courts Rules) (Amendment) Rules 2015

The Court Martial Appeal Court (Amendment) Rules 2015

The Criminal Justice (Armed Forces Code of Practice for Victims of Crime) Regulations 2015

The Domestic Violence, Crime and Victims Act 2004 (Victims' Code of Practice) Order 2015

The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) (Amendment) (No. 2) Order 2015.

4.3 These rules come into force on 16 November 2015.

4.4 The scrutiny history for the Directive is set out in the transposition note.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

5.2 This instrument applies to the Summary Appeal Court in places outside the United Kingdom where it may sit.

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 Article 1 of the Directive sets out its purpose: "to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings". Article 18 of the Directive requires protection of the dignity of victims when testifying. Article 21 makes provision for protection of privacy.

7.2 Subordinate legislation under the Armed Forces Act 2006 (including these rules) provides Service courts, including the Summary Appeal Court, with rules equivalent (with some modifications) to those of civilian criminal courts in England and Wales. These rules govern proceedings in the Summary Appeal Court with respect to measures in the 1999 Act which allow courts to impose restrictions on the cross-examination of witnesses by an accused acting in person and on the reporting of proceedings. They accordingly address articles 18 and 21 of the Directive.

8. Consultation outcome

8.1 These rules were proposed by the government. No public consultation has been undertaken in connection with these rules. Consultation has taken place with the Ministry of Justice and the Service Court Rules Review Committee.

9. Guidance

9.1 The Manual of Service Law provides guidance and supplementary information to Armed Forces personnel and others involved in the administration of the single system of Service law established under the 2006 Act and is available on the internet at https://www.gov.uk/government/publications/joint-services-publication-jsp-830-manual-of-service-law-msl. These will be amended to give further guidance related to these rules. Guidance is issued to judge advocates through the Judge Advocate General's practice memoranda. The Service Prosecuting Authority will issue its own guidance as necessary.

10. Impact

10.1 The government believes the changes will have no impact on business, charities or voluntary bodies.

10.2 There is not expected to be any impact on the public sector.

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 & review

12.1 The main legislation governing the armed forces (currently the Armed Forces Act 2006) requires renewal annually by Order in Council (with the consent of both Houses of Parliament) and renewal by Act of Parliament every five years. Its provisions were subjected to a review as part of work to prepare for the 2011 Act and will be reviewed again in the Armed Forces Bill 2015/2016, which was introduced on 16 September 2015.

12.2 The rules of court for the Summary Appeal Court are subject to review by the Service Courts Rules Review Committee, which is a non-statutory body chaired by the Judge Advocate General, that reports to the Secretary of State.

13. Contact

13.1 Tracy Sexton at the Ministry of Defence Tel: 020 7218 0564 or email: tracy.sexton743@mod.uk can answer any queries regarding the instrument.