EXPLANATORY MEMORANDUM TO

THE YOUTH JUSTICE AND CRIMINAL EVIDENCE ACT 1999 (APPLICATION TO COURTS-MARTIAL) ORDER 2006.
2006 No.2886

THE YOUTH JUSTICE AND CRIMINAL EVIDENCE ACT 1999 (APPLICATION TO THE COURTS-MARTIAL APPEAL COURT) ORDER 2006.
2006 No.2887

THE YOUTH JUSTICE AND CRIMINAL EVIDENCE ACT 1999 (APPLICATION TO STANDING CIVILIAN COURTS) ORDER 2006.

2006 No.2888.

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 Orders apply, with modifications, various provisions of Part 2 of the Youth Justice and Criminal Evidence Act 1999 ('the 1999 Act') to proceedings before service courts (i.e. to courts-martial, the Courts-Martial Appeal Court and Standing Civilian Courts respectively).

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 (Chapter 1; e.g. screening of witnesses, evidence by live link or video recorded evidence), protection of witnesses from cross-examination by accused in person (Chapter 2), protection of complainants in proceedings for sexual offences (Chapter 3), reporting restrictions (Chapter 4) and provisions on the competence of witnesses (Chapter 5). These provisions are now largely in force for criminal courts in England and Wales.

4.2 These Orders apply, with appropriate modifications, the relevant provisions of Chapters 1 to 3 and 5 of Part 2 of the 1999 Act (to the extent they are in force for criminal courts) to proceedings before service courts. The modifications are required in order to reflect the differences in terminology, procedure and jurisdiction between service courts and criminal courts but the substance of the provisions is otherwise unchanged. Chapter 4 (to the extent it has been commenced) applies directly to service courts, subject to any modifications

specified in orders made under section 61(2) of the 1999 Act. The Orders dealing with courts-martial and Standing Civilian Courts contain (in Schedule 2) modifications to Chapter 4 allowing a judge advocate or magistrate respectively to give reporting directions.

5. Extent

5.1 The instruments apply to proceedings before courts-martial, the Courts-Martial Appeal Court 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 Orders is to give service courts, as far as practicable, equivalent powers to make provision for vulnerable witness measures as can be made by the criminal courts in England and Wales, whilst at the same time ensuring that the measures can operate wherever in the world the service court may be sitting.

These Orders 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 Orders 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:

Sue McIntosh
7-C-22
Ministry of Defence
Main Building
Whitehall
SW1A 2HB
Tel: 0207 218 0564 Email: sue.mcintosh641@mod.uk