

**EXPLANATORY MEMORANDUM TO THE  
SUMMARY APPEAL COURTS (WARRANT OFFICERS) ORDER**

**2004 No.1937**

**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 This Order enables warrant officers to sit as members of the summary appeal courts established by section 83ZA of the Army Act 1955 and the Air Force Act 1955 and section 52FF of the Naval Discipline Act 1957 to hear appeals from the Armed Forces' systems of summary discipline. It details the rules covering the qualifications for warrant officer membership of summary appeal courts and the eligibility of warrant officers to sit on particular appeals.

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

3.1 None

**4. Legislative Background**

4.1 The summary appeal courts were established by the Armed Forces Discipline Act 2000 to provide a right of appeal for personnel who have been dealt with summarily (i.e generally by their commanding officers) for alleged breaches of discipline. Each summary appeal court consists of a judge advocate and two lay members, who at present are commissioned officers.

4.2 Section 20 of the Armed Forces Act 2001 provides a power to extend eligibility for summary court membership to warrant officers by statutory instrument.

**5. Extent**

5.1 This instrument applies to all of the United Kingdom.

**6. European Convention on Human Rights**

The Under Secretary of State for Defence has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Summary Appeal Court (Warrant Officers) Order 2004 are compatible with the Convention rights.

## **7. Policy background**

7.1 Section 19 of the 2001 Act extended eligibility for court-martial membership (previously restricted to commissioned officers) to warrant officers when the accused is of subordinate rank. Section 20 of the 2001 Act provides power to make a similar extension of eligibility in the case of summary appeal courts by statutory instrument. It was intended that warrant officer eligibility for summary appeal courts would be kept under review in the light of the experience of their operation and also of warrant officers sitting as members of courts-martial.

7.2 Warrant officers sitting as members of courts-martial has proved successful in reducing pressure on the Services' chains of command, who are required to release personnel from their day to day tasks for this duty. Warrant officers have considerable experience of both Service discipline and Service life in general, and trial judge advocates have commented favourably on the benefits these attributes bring to court-martial deliberations. The establishment of summary appeal courts has increased confidence in the summary discipline system and has not raised any issues that would preclude membership of warrant officers. Therefore, it has been decided to bring section 20 of the 2001 Act into force and to exercise the power it provides.

## **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**

**Mrs S J McIntosh** at the Ministry of Defence Tel: 020 7218 0564 can answer any queries regarding the instrument.