

**EXPLANATORY MEMORANDUM TO THE  
SUMMARY APPEAL COURT (NAVY) (AMENDMENT) RULES**

**2004 No. 1949**

**SUMMARY APPEAL COURT (ARMY) (AMENDMENT) RULES**

**2004 No. 1950**

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

**2004 No. 1951**

1. This explanatory memorandum has been prepared by the Ministry of Defence and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

2.1 These Rules amend each Service's rules covering summary appeal courts to enable a warrant officer to sit on promotion to an officer, to extend the circumstances in which an officer is ineligible and to require the prosecuting authority to provide the court with information about an appellant's rate of pay. They also take the opportunity to amend a drafting error in the existing legislation covering appeal deadlines, and a provision in the RAF's rules which erroneously refers to "military" instead of "air-force" personnel.

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

3.1 Rule 3 of the Rules for the Army and the Royal Navy, and rule 4 of those for the Royal Air Force, correct a drafting error in each Service's main Summary Appeal Court Rules (S.I. 2000 Nos 2370, 2371 and 2372) which was identified by the Committee in its Thirty-Second Report for 1999–2000.

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

4.2 The Summary Appeal Court Rules for the Navy, Army and Air Force are contained in S.I. 2000/2370, S.I. 2000/2371 and S.I. 2000/2372 respectively.

## **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 (Navy) (Amendment) Rules 2004, Summary Appeal Court (Army) (Amendment) Rules 2004 and Summary Appeal Court (Air Force) (Amendment) Rules 2004 are compatible with the Convention rights.

## **7. Policy background**

7.1 The successful operation of summary appeal courts, together with the benefits provided by warrant officers' membership of courts-martial, have led to a decision to bring section 20 of the 2001 Act into force and to exercise the power it provides.

7.2 Rule 4 of the Navy and Army statutory instruments and rule 5 of the Air Force statutory instrument ensure that a warrant officer retains his qualification for membership of summary appeal courts on promotion to officer. It would be anomalous for a warrant officer to lose his qualification for membership on being commissioned. Other officers have to have held a commission for at least two years in the Army and Air Force and three years in the Navy before becoming qualified for membership.

7.3 Rule 5 of the Navy and Army statutory instruments and rule 6 of the Air Force statutory instrument extend the circumstances in which an officer is ineligible to sit as a member of a summary appeal court for a particular hearing. An officer will be ineligible whenever he has considered the particular case in the role of higher authority, not merely in certain circumstances as at present. He will also be ineligible if he is under the command of the officer who dealt with the case. These rules will help to ensure the independence of the court.

7.4 Rule 6 of the Navy and Army statutory instruments and rule 7 of the Air Force statutory instrument make the logical amendment that, if a warrant officer is qualified for membership of a summary court, he should also be eligible to be nominated as a reserve member. Rule 7 of the Navy and Army statutory instruments and rule 8 of the Air Force statutory instrument require the prosecuting authority to provide the summary appeal court with information about an appellant's rate of pay, including the effect on his pay of a sentence of forfeiture of seniority, reduction in rank or disrating. This will enable the court to make a fully informed decision.

## **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: 0202 7218 0564 can answer any queries regarding the instrument.