

**EXPLANATORY MEMORANDUM TO THE
COURTS-MARTIAL APPEAL (AMENDMENT) RULES 2005**

2005 No. 446 L. 7

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by Command of Her Majesty.
- 2. Description**
 - 2.1. This instrument provides rules supplementing the exercise of powers conferred on the registrar of the Courts-Martial Appeal Court under section 36A of the Courts-Martial (Appeals) Act 1968. It also provides rules supplementing the exercise of the extended powers of a single judge and the registrar of that court given to them under section 90 of the Courts Act 2003.
- 3. Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1. None
- 4. Legislative background**
 - 4.1. Section 90 of the Courts Act 2003 will come into force on the 1st April 2005 (Linked legislation: The Courts Act 2003 (Commencement No.9 Savings, Consequential and Transitional Provisions) Order 2005. This section amends the Courts-Martial (Appeals) Act 1968 by amending section 36 and 36A so as to extend the powers of a single judge or the registrar of the Courts-Martial Appeal Court to include the power to order production of any document, exhibit or other thing connected with proceedings before the Courts-Martial Appeal Court. That section also inserts a new section 36B (procedural directions) and 36C (appeals against procedural directions) into that Act.
 - 4.2. The new sections extend the powers of a single judge or the registrar to give procedural directions in preparation for an appeal or application for leave to appeal to the Courts-Martial Appeal Court without troubling the full court.
 - 4.3. These rules therefore provide for necessary amendments to the Courts-Martial Appeal Rules 1968 and are consequent upon the amendments made by section 90 of the Courts Act 2003 and are necessary for the exercise of powers conferred by section 36A of the Courts-Martial (Appeals) Act 1968.
- 5. Extent**
 - 5.1. This instrument applies to all the United Kingdom .
- 6. European Convention on Human Rights**
 - 6.1. Not applicable

7. Policy Background

- 7.1. Section 90(1) and (2) amend section 36 and 36A of the Courts-Martial (Appeals) Act 1968 extending the powers of both a single judge and the registrar of the Courts-Martial Appeal Court when making directions in relation to an appeal or an application for leave to appeal to include the power to order production of any document, exhibit or other thing connected with proceedings before the Courts-Martial Appeal Court.
- 7.2. Section 90(3) also inserts two new sections into the Courts-Martial (Appeals) Act 1968. Section 36B extends the specific powers of a single judge and the registrar to determine an application for procedural directions. This will facilitate the efficient and effective preparation of an application for leave to appeal or an appeal to the Courts-Martial Appeal Court without the need to trouble the full court. Section 36C allows for the decision of a single judge in relation to an application for procedural directions upon application by either the accused or the Defence Council to be reviewed by the full appeal court and for the decision of the registrar in relation to an application for procedural directions to be reviewed by a single judge, again on application.
- 7.3. These amendments to the Courts-Martial (Appeals) Act 1968 maintain consistency with the procedure in relation to appeals and applications for leave to appeal in the Court of Appeal Criminal Division. Section 87 of the Courts Act 2003 provides for similar amendments to the Criminal Appeal Act 1968. The Auld review had recommended that a single judge of the Court of Appeal should be empowered, when considering applications for leave to appeal, to give procedural directions for the hearing of the application or of the appeal that need not trouble the full court, subject to a right on the part of the applicant and the prosecution, as the case may be, to renew the application to the full court.
- 7.4. The instrument amends the Courts-Martial Appeal Rules 1968, which govern the procedure in relation to appeals to the Courts-Martial Appeal Court. It provides rules supplementing the exercise of the powers conferred by section 36 and 36A of the Courts-Martial (Appeals) Act 1968 as amended by sections 90(1) and (2) of the Courts Act 2003 and sections 36B and 36C of the Courts – Martial (Appeals) Act 1968 (as inserted by section 90(3) of the Courts Act 2003).
- 7.5. As the Courts-Martial Appeal Rules 1968 govern the procedure in relation to appeals to the Courts-Martial Appeal Court, the Registrar and Master of the Administrative Court Office has been consulted together with the Office of the Judge Advocate General, the Ministry of Defence and the three Services. These Rules are made by the Lord Chief Justice with the approval of the Lord Chancellor. These Rules are in part consequent on changes in primary legislation and which were consulted upon on when those amendments were proposed. To the extent that these Rules supplement the exercise of powers conferred under section 36A of the Courts–Martial (Appeals) Act 1968 they are necessary to give effect to those powers. These Rules are not therefore considered to be of either significant political or legal importance.

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. N/A -these rules are intended to facilitate the work of the Courts-Martial Appeal Court.

9. Contact

- 9.1. Terence Miller, Office of the Judge Advocate General, telephone no: 020 7218 8078
email: Terence.Miller@jag.gsi.gov.uk .