

**EXPLANATORY MEMORANDUM TO
THE ARMED FORCES (UNFITNESS TO STAND TRIAL AND INSANITY)
REGULATIONS 2009**

2009 No. 1213

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 Regulations make provision for Service supervision orders. Such orders may be made by the Court Martial or the Court Martial Appeal Court in respect of persons who are found to be unfit to stand trial (but to have done what they are charged with doing) or not guilty by reason of insanity.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative context**
 - 4.1 These Regulations, made under section 170 of the Armed Forces Act 2006 (c. 52), replace SI 2005 Nos. 1388 – 1390 which were made for the same purpose for courts-martial under the Army Act 1955 (c. 18), the Air Force Act 1955 (c. 19) and the Naval Discipline Act 1957 (c. 53). Those Acts are repealed by the 2006 Act. These Regulations also make similar provision for the Court Martial Appeal Court.
 - 4.2 The Regulations are based on the provisions for supervision orders applicable to civilian courts which are contained in Schedule 1A to the Criminal Procedure (Insanity) Act 1964 (c. 25). That Schedule was inserted by the Domestic Violence, Crime and Victims Act 2004 (c. 28).
5. **Territorial Extent and application**
 - 5.1 This instrument extends to the United Kingdom, the Isle of Man and British overseas territories and applies to defendants wherever in the world the Court Martial sits.
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 These Regulations make provision with respect to the power of the Court Martial under the Armed Forces Act 2006 and the Court Martial Appeal Court (under

the Court Martial Appeals Act, as amended by the 2006 Act) to make Service Supervision Orders. The Orders require a person to be under the supervision of a specified person and may require a person to undertake specific medical treatment. Such Orders may only be made where the Court Martial or the Court Martial Appeal Court finds a defendant before it to be unfit to stand trial (but to have done what they are charged with doing) or to be not guilty by reason of insanity. The power is alternative to a power to commit such a person to hospital. The regulations maintain the substance of regulations made in relation to courts-martial under the Armed Forces legislation which is repealed by the Armed Forces Act 2006.

8. Consultation outcome

8.1 A memorandum about consultation on the Armed Forces Act 2006 primary legislation was submitted in written evidence to the Select Committee on the Armed Forces Bill and published on 9 May 2006 in its Special Report of Session 2005-06 (HC 828-II, page Ev 136). This memorandum explained how stakeholder consultation had been carried out and listed the individuals and organisations consulted. The individual instruments under the 2006 Act have been the subject of rigorous consultation with relevant stakeholders (in this case the Services, the Home Office and the Soldiers, Sailors, Airmen and Families Association) over a period of many months, to ensure that the policy goals have been achieved and that the provisions of each instrument will work in practice.

9. Guidance

9.1 A new Manual of Service Law will provide guidance and supplementary information to Armed Forces personnel on the single system of Service law established under the Armed Forces Act 2006. The first volume of three within the Manual, which is intended for commanding officers and those who administer the Service justice system, includes a chapter on Court Martial sentencing. The Manual of Service Law will be available in time to allow Service personnel to be trained ahead of full implementation of the 2006 Act, and will subsequently will be available to the general public on the internet. Guidance will be promulgated to judge advocates through the Judge Advocate General's practice memoranda.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no 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 and review

12.1 The Armed Forces Act 2006 is subject to a requirement for renewal each year by Order in Council (approved in draft by both Houses of Parliament) and renewal by Act of Parliament every five years. In response to these requirements the Act and the

provisions made under it will be subject to continuing monitoring and a general review will be conducted in order to provide for the Act of Parliament which will be required in 2011.

13. Contact

13.1 Mr Nick Shaw at the Ministry of Defence, telephone 020 7218 0564 or email nick.shaw460@mod.uk is the point of contact regarding this instrument.