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S T A T U T O R Y I N S T R U M E N T S

2009 No. 988

DEFENCE

**The Criminal Procedure and Investigations Act 1996
(Application to the Armed Forces) Order 2009**

<i>Made</i> - - - -	<i>14th April 2009</i>
<i>Laid before Parliament</i>	<i>20th April 2009</i>
<i>Coming into force</i> - -	<i>31st October 2009</i>

The Secretary of State makes the following Order in exercise of the powers conferred by section 78(2)(a) of the Criminal Procedure and Investigations Act 1996(a):

Citation, commencement, and interpretation

1.—(1) This Order may be cited as the Criminal Procedure and Investigations Act 1996 (Application to the Armed Forces) Order 2009 and shall come into force on 31st October 2009.

(2) In this Order—

- (a) references to the accused are to the person mentioned in article 2(a) or (b);
- (b) references to recording information are references to putting it in a durable or retrievable form (such as writing or tape).

(3) Where there are more than one accused in any proceedings this Order applies separately in relation to each of the accused.

(4) In this Order—

- “1996 Act” means the Criminal Procedure and Investigations Act 1996;
- “2006 Act” means the Armed Forces Act 2006(b);
- “appeal” means an appeal referred to in article 2(b);
- “civilian subject to service discipline” has the same meaning as in the 2006 Act;
- “court administration officer” means the court administration officer for the Court Martial, the Service Civilian Court and the Summary Appeal Court appointed under section 363 of the 2006 Act;
- “Director” means the Director of Service Prosecutions appointed under section 364 of the 2006 Act;
- “judge advocate” has the same meaning as in the 2006 Act;
- “legal representative” means—

(a) 1996 c. 25; a new section 78 is substituted by paragraph 137 of Schedule 16 to the Armed Forces Act 2006 (c. 52).
(b) 2006 c. 52.

- (a) a person who has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990^(a),
- (b) an advocate or solicitor in Scotland,
- (c) a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland, or
- (d) a person who has in any of the Channel Islands, the Isle of Man, a Commonwealth country or a British overseas territory rights and duties similar to those of a barrister or solicitor in England and Wales, and is subject to punishment or disability for breach of professional rules,

and in this definition the reference to the Court of Judicature of Northern Ireland is to be read as a reference to the Supreme Court of Northern Ireland until paragraph 5 of Schedule 11 to the Constitutional Reform Act 2005^(b) comes in to force;

“material” means material of all kinds, and in particular includes—

- (a) information; and
- (b) objects of all descriptions;

“prosecution” includes the respondent to an appeal under section 141 of the 2006 Act;

“relevant period” means the period provided for by article 8, apart from the reference in that article to articles 9, 10 and 11;

“service court” means the Summary Appeal Court, the Service Civilian Court, the Court Martial or the Court Martial Appeal Court; and

“subject to service law” has the same meaning as in the 2006 Act.

Application of this Order

2. Subject to article 21 (transitionals), this Order applies where—

- (a) a person is charged under section 120 or 121 of the 2006 Act and the charge is allocated for trial by the Court Martial or the Service Civilian Court; or
- (b) a person brings an appeal to the Summary Appeal Court under section 141 of the 2006 Act.

Revocation

3.—(1) Subject to paragraph (2), the Criminal Procedure and Investigations Act 1996 (Application to the Armed Forces) Order 2008^(c) is revoked.

(2) The rules of common law which—

- (a) were effective immediately before 1st January 2008, and
- (b) relate to the disclosure of material by the Director,

do not apply as regards things falling to be done after that time in relation to the alleged offence.

(3) Paragraph (2) does not affect the common law rules as to whether disclosure is in the public interest.

(a) 1990 c. 41. Subsection (6) of section 71 of the Courts and Legal Services Act 1990 was substituted by the Access to Justice Act (c.22), section 43, Schedule 6, paragraphs 4 and 9. Subsections (7) and (8) of section 71 of the 1990 Act were repealed by section 106, Schedule 15, Part 2 of the 1990 Act. Prospective amendments to section 71 of the 1990 Act are made to subsections(1) and (3) by the Constitutional Reform Act 2005 (c. 4), section 59(5), Schedule 11, Part 2, paragraph 4(1), (3). Prospective amendments are made to subsections (4) and (6) and a new subsection (6A) is inserted into section 71 of the 1990 Act by the Legal Services Act 2007 (c.29.), section 208(1), Schedule 21, paragraphs 83 and 94(a), (b) and (c).

(b) 2005 c. 4.

(c) S.I. 2008/635. Article 20 of that order made provision for the non-application of certain common law rules as to disclosure which were effective immediately before 1st January 2008.

Initial duty of Director to disclose

4.—(1) The Director must—

- (a) disclose to the accused any prosecution material which has not previously been disclosed to the accused and which might reasonably be considered capable of undermining the case for the prosecution against the accused or of assisting the case for the accused, or
- (b) give to the accused a written statement that there is no material of a description mentioned in sub-paragraph (a).

(2) For the purposes of this article prosecution material is material—

- (a) which is in the Director's possession, and came into his possession in connection with the case for the prosecution against the accused; or
- (b) which, in pursuance of a code of practice made under section 78(2)(b) of the 1996 Act, he has inspected in connection with the case for the prosecution against the accused.

(3) Where material consists of information which has been recorded in any form, the Director discloses it for the purposes of this section—

- (a) by securing that a copy is made of it and that the copy is given to the accused, or
- (b) if in the Director's opinion that is not practicable or not desirable, by allowing the accused to inspect it at a reasonable time and a reasonable place or by taking steps to secure that he is allowed to do so,

and a copy may be in such form as the Director thinks fit and need not be in the same form as that in which the information has already been recorded.

(4) Where material consists of information which has not been recorded, the Director discloses it for the purposes of this section by securing that it is recorded in such form as he thinks fit and—

- (a) by securing that a copy is made of it and that the copy is given to the accused; or
- (b) if in the Director's opinion that is not practicable or not desirable, by allowing the accused to inspect it at a reasonable time and a reasonable place or by taking steps to secure that he is allowed to do so.

(5) Where material does not consist of information, the Director discloses it for the purposes of this article by allowing the accused to inspect it at a reasonable time and a reasonable place or by taking steps to secure that he is allowed to do so.

(6) Material must not be disclosed under this article to the extent that a judge advocate, on an application by the Director, concludes it is not in the public interest to disclose it and orders accordingly.

(7) Material must not be disclosed under this article to the extent that it is material the disclosure of which is prohibited by section 17 of the Regulation of Investigatory Powers Act 2000(a).

(8) The Director must act under this article as soon as reasonably practicable after the charge is brought by the Director against the accused.

Initial duty of Director to disclose: further provisions

5.—(1) This article applies where—

- (a) the Director acts under article 4, and
- (b) before so doing he was given a document in pursuance of provision included in a code of practice made under section 78(2)(b) of the 1996 Act and referred to in section 24(3) of that Act.

(2) In such a case the Director must give the document to the accused at the same time as the Director acts under article 4.

(a) 2000 c. 23.

Disclosure of material by the Director to the accused by sending it to his commanding officer

6.—(1) This article applies if the accused is a person subject to service law or a civilian subject to service discipline.

(2) For the purposes of articles 4 and 5, the Director may send any material or written statement or document to the accused's commanding officer.

(3) On receipt of any material, written statement or document sent to him in accordance with paragraph (2) above, the accused's commanding officer must—

- (a) ensure that the accused receives it as soon as practicable; and
- (b) as soon as practicable after the accused has received it, notify the Director in writing of the date on which the accused received it.

(4) Where the Director acts under paragraph (2) for the purposes of article 4, for the purposes of this Order the date on which the Director complies with that article or purports to comply with it shall be the date on which the accused received from his commanding officer the material disclosed, or the statement or document given, by the Director.

(5) In this article, "commanding officer" means the commanding officer of the accused as determined by or under regulations made by the Defence Council under section 360 of the 2006 Act.

Compulsory disclosure by accused

7.—(1) This article applies where the Director complies with article 4 or purports to comply with it.

(2) Where this article applies, the accused must give a defence statement to—

- (a) the court administration officer; and
- (b) the Director.

(3) A defence statement is a written statement—

- (a) setting out the nature of the accused's defence, including any particular defences on which he intends to rely;
- (b) indicating the matters of fact on which he takes issue with the prosecution;
- (c) setting out, in the case of each such matter, why he takes issue with the prosecution; and
- (d) indicating any point of law (including any point as to the admissibility of evidence or an abuse of process) which he wishes to take, and any authority on which he intends to rely for that purpose.

(4) A defence statement that discloses an alibi must give particulars of it, including—

- (a) the name, address and date of birth of any witness the accused believes is able to give evidence in support of the alibi, or as many of those details as are known to the accused when the statement is given; and
- (b) any information in the accused's possession which might be of material assistance in identifying or finding any such witness in whose case any of the details mentioned in sub-paragraph (a) are not known to the accused when the statement is given.

(5) For the purposes of this article, evidence in support of an alibi is evidence tending to show that by reason of the presence of the accused at a particular place or in a particular area at a particular time he was not, or was unlikely to have been, at the place where the offence is alleged to have been committed at the time of its alleged commission.

Disclosure by accused: time limits

8.—(1) Subject to paragraph (2) and articles 9, 10 and 11, the accused must give a defence statement during the period of 28 days beginning with the day immediately after the day on which the Director complies, or purports to comply, with article 4.

- (2) If, at the start of the period referred to in paragraph (1)—
- (a) the accused has applied for the grant of legal aid in respect of his trial or appeal, and
 - (b) that application has not been determined,

then paragraph (1) shall have effect as if the period referred to in that paragraph begins with the day immediately after the day on which that application is determined.

9.—(1) The relevant period shall, if a judge advocate so orders, be extended by so many days as he specifies.

(2) The judge advocate may only make such an order if an application which complies with paragraph (3) is made by the accused during the relevant period.

- (3) An application under paragraph (2) must—
- (a) state that the accused believes, on reasonable grounds, that it is not possible for him to give a defence statement during the relevant period;
 - (b) specify the grounds for so believing; and
 - (c) specify the number of days by which the accused wishes the relevant period to be extended.

(4) A judge advocate shall not make an order under paragraph (1) unless he is satisfied that the accused cannot reasonably give or, as the case may be, could not reasonably have given a defence statement during the relevant period.

10.—(1) Where a judge advocate has made an order under article 9(1), the relevant period as extended in accordance with that order shall, if a judge advocate so orders, be further extended by so many days as he specifies.

(2) Paragraphs (2) to (4) of article 9 shall, subject to paragraph (4), apply for the purposes of an order under paragraph (1) as they apply for the purposes of an order under article 9(1).

(3) There shall be no limit on the number of applications that may be made under article 9(2) as applied by paragraph (2); and on a second or subsequent such application the judge advocate shall have the like powers under paragraph (1) as on the first such application.

(4) In the application of article 9(2) to (4) in accordance with paragraph (2), any reference to the relevant period shall be construed as a reference to that period as extended or, as the case may be, further extended by an order under article 9(1) or paragraph (1) or (3) above.

11.—(1) If the relevant period or that period as extended would, apart from this paragraph, expire on any of the days specified in paragraph (2), that period shall be treated as expiring on the next following day which is not one of those days.

(2) The days referred to in paragraph (1) are Saturday, Sunday, Christmas Day, Good Friday and, in the United Kingdom, any day which under the Banking and Financial Dealings Act 1971(a) is a bank holiday.

Disclosure by accused: further provisions

12.—(1) Where an accused's legal representative purports to give a defence statement on behalf of the accused, the statement shall, unless the contrary is proved, be deemed to be given with the authority of the accused.

(2) If it appears to the judge advocate at preliminary proceedings that an accused has failed to comply fully with article 7, so that there is the possibility of comment being made or inferences drawn under article 16(2), he shall warn the accused accordingly.

(3) In paragraph (2) "preliminary proceedings" means any proceedings held for the purpose of giving directions, orders or rulings for the purpose of trial or the hearing of an appeal.

(a) 1971 c. 80.

(4) During a trial before the Court Martial or an appeal before the Summary Appeal Court, the judge advocate—

- (a) may direct that the other members of the court be given a copy of the defence statement; and
- (b) if he does so, may direct that it be edited so as not to include references to matters evidence of which would be inadmissible.

(5) A direction under paragraph (4)—

- (a) may be made either of the judge advocate's own motion or on the application of any party;
- (b) may be made only if the judge advocate is of the opinion that seeing a copy of the defence statement would help the other members to understand the case or to resolve any issue in the case.

Continuing duty of Director to disclose

13.—(1) This article applies at all times—

- (a) after the Director has complied with article 4 or purported to comply with it; and
- (b) before the accused is acquitted or convicted or the Director decides not to proceed with the case concerned.

(2) The Director must keep under review the question whether at any given time (and, in particular, following the giving of a defence statement) there is prosecution material which—

- (a) might reasonably be considered capable of undermining the case for the prosecution against the accused or of assisting the case for the accused; and
- (b) has not been disclosed to the accused.

(3) If at any time there is any such material as is mentioned in paragraph (2) the Director must disclose it to the accused as soon as is reasonably practicable.

(4) In applying paragraph (2) by reference to any given time the state of affairs at that time (including the case for the prosecution as it stands at that time) must be taken into account.

(5) Where the accused gives a defence statement under article 7—

- (a) if as a result of that statement the Director is required by this article to make any disclosure, or further disclosure, he must do so as soon as reasonably practicable after the accused gives the defence statement; and
- (b) if the Director considers that he is not so required, he must give to the accused a written statement to that effect as soon as reasonably practicable after the accused gives that statement.

(6) For the purposes of this article prosecution material is material—

- (a) which is in the Director's possession and came into his possession in connection with the case for the prosecution against the accused, or
- (b) which, in pursuance of a code of practice made under section 78(2)(b) of the 1996 Act, he has inspected in connection with the case for the prosecution against the accused.

(7) Paragraphs (3) to (5) of article 4 (method by which the Director discloses) apply for the purposes of this article as they apply for the purposes of that.

(8) Material must not be disclosed under this article to the extent that a judge advocate, on an application by the Director, concludes it is not in the public interest to disclose it and orders accordingly.

(9) Material must not be disclosed under this article to the extent that it is material the disclosure of which is prohibited by section 17 of the Regulation of Investigatory Powers Act 2000.

Application by accused for disclosure

14.—(1) This article applies where the accused has given a defence statement under article 7 and the Director has complied with article 13(5) or has purported to comply with it or has failed to comply with it.

(2) If the accused has at any time reasonable cause to believe that there is prosecution material which is required by article 13 to be disclosed to him and has not been, he may apply to a judge advocate for an order requiring the Director to disclose it to him.

(3) For the purposes of this article prosecution material is material—

- (a) which is in the Director's possession and came into his possession in connection with the case for the prosecution against the accused;
- (b) which, in pursuance of a code of practice made under section 78(2)(b) of the 1996 Act, he has inspected in connection with the case for the prosecution against the accused; or
- (c) which falls within paragraph (4).

(4) Material falls within this paragraph if in pursuance of a code of practice made under section 78(2)(b) of the 1996 Act the Director must, if he asks for the material, be given a copy of it or be allowed to inspect it in connection with the case for the prosecution against the accused.

(5) Material must not be disclosed under this article to the extent that a judge advocate, on an application by the Director, concludes it is not in the public interest to disclose it and orders accordingly.

(6) Material must not be disclosed under this article to the extent that it is material the disclosure of which is prohibited by section 17 of the Regulation of Investigatory Powers Act 2000.

Director's failure to observe time limits

15.—(1) This article applies if the Director—

- (a) purports to act under article 4, but does not comply with the requirement to act as soon as reasonably practicable under article 4(8); or
- (b) purports to act under article 13(5), but does not comply with the requirement to act as soon as reasonably practicable.

(2) Subject to paragraph (3), the failure to comply with the relevant requirement does not on its own constitute grounds for staying the proceedings for abuse of process.

(3) Paragraph (2) does not prevent the failure constituting such grounds if it involves such delay by the Director that the accused is denied a fair trial.

Faults in disclosure by accused

16.—(1) This article applies where article 7 applies and the accused—

- (a) fails to give a defence statement;
- (b) gives a defence statement but does so after the relevant period extended (if at all) in accordance with articles 9 to 11;
- (c) sets out inconsistent defences in his defence statement; or
- (d) at his trial or appeal—
 - (i) puts forward a defence which was not mentioned in his defence statement or is different from any defence set out in that statement;
 - (ii) relies on a matter which, in breach of the requirements imposed by article 7, was not mentioned in his defence statement;
 - (iii) adduces evidence in support of an alibi without having given particulars of the alibi in his defence statement; or
 - (iv) calls a witness to give evidence in support of an alibi without having complied with article 7(4)(a) or (b) as regards the witness in his defence statement.

(2) Where this article applies—

- (a) the judge advocate of the court before which the trial or appeal is proceeding or any party other than the accused may make such comment as appears appropriate;
- (b) the Court Martial, the Service Civilian Court or the Summary Appeal Court (as the case may be) may draw such inferences as appear proper in deciding whether the accused is guilty of the offence concerned.

(3) Where—

- (a) this article applies by virtue of paragraph (1)(d)(ii), and
- (b) the matter which was not mentioned is a point of law (including any point as to the admissibility of evidence or an abuse of process) or an authority,

comment by another party under paragraph (2)(a) may be made only with the leave of the judge advocate.

(4) Where the accused puts forward a defence which is different from any defence set out in his defence statement, in doing anything under paragraph (2) or in deciding whether to do anything under it the judge advocate shall have regard—

- (a) to the extent of the differences in the defences; and
- (b) to whether there is any justification for it.

(5) A person shall not be convicted of an offence solely on an inference drawn under paragraph (2).

(6) In this article, a reference to evidence in support of an alibi shall be construed in accordance with article 7(5).

Public interest: review

17.—(1) This section applies at all times—

- (a) after a judge advocate makes an order under article 4(6), 13(8) or 14(5), and
- (b) before the accused is acquitted or convicted or the Director decides not to proceed with the case concerned.

(2) The accused may apply at any time to a judge advocate for a review of the question whether, at any given time, it is still in the public interest to disclose material affected by the order referred to in paragraph (1).

(3) Without prejudice to paragraph (2), during the trial of the accused before the Court Martial or the Service Civilian Court or his appeal before the Summary Appeal Court the judge advocate must keep the question mentioned in paragraph (2) under review without the need for an application.

(4) If the judge advocate at any time concludes that it is in the public interest to disclose material to any extent—

- (a) he shall so order, and
- (b) he shall take such steps as are reasonable to inform the Director of his order.

(5) Where the Director is informed of an order made under paragraph (4) he must act accordingly having regard to the provisions of this Order (unless he decides not to proceed with the case concerned).

Applications: opportunity to be heard

18. Where—

- (a) an application is made under article 4(6), 13(8), 14(5) or 17(2),
- (b) a person claiming to have an interest in the material applies to be heard by the judge advocate, and

- (c) he shows that he was involved (whether alone or with others and whether directly or indirectly) in the Director's attention being brought to the material,

the judge advocate must not make an order under article 4(6), 13(8), 14(5) or 17(2) (as the case may be) unless the person applying under sub-paragraph (b) has been given an opportunity to be heard.

Confidentiality of disclosed information

19.—(1) If the accused is given or allowed to inspect a document or other object under—

- (a) article 4, 5, 13 or 17, or
- (b) an order under article 14,

then, subject to paragraphs (2) to (4), he must not use or disclose it or any information recorded in it.

(2) The accused may use or disclose the object or information—

- (a) in connection with the proceedings for whose purposes he was given the object or allowed to inspect it;
- (b) with a view to the taking of further proceedings before a service court or a civilian court with regard to the matter giving rise to the proceedings mentioned in sub-paragraph (a); or
- (c) in connection with the further proceedings referred to in sub-paragraph (b).

(3) The accused may use or disclose—

- (a) the object to the extent that it has been displayed to the public in open court, or
- (b) the information to the extent that it has been communicated to the public in open court,

but the preceding provisions of this paragraph do not apply if the object is displayed or the information is communicated in proceedings to deal with a contempt of court under article 20.

(4) If—

- (a) the accused applies to a judge advocate for an order granting permission to use or disclose the object or information, and
- (b) a judge advocate makes such an order,

the accused may use or disclose the object or information for the purpose and to the extent specified by the judge advocate.

(5) An application under paragraph (4) may be made and dealt with at any time and in particular after the accused has been acquitted or convicted or the Director has decided not to proceed with the case concerned.

(6) Where—

- (a) an application is made under paragraph (4), and
- (b) the Director or a person claiming to have an interest in the object or information applies to be heard by the judge advocate,

the judge advocate must not make an order granting permission unless the person applying under sub-paragraph (b) has been given an opportunity to be heard.

Confidentiality: contravention

20.—(1) Where a person (the “offender”) who is subject to service law or a civilian subject to service discipline knowingly uses or discloses an object or information recorded in it and the use or disclosure is in contravention of article 19, he shall be guilty of an offence under section 309(1) of the 2006 Act.

(2) If the object concerned is in the offender's possession, the judge advocate of the court finding him guilty of the offence under paragraph (1) may order that the object shall be forfeited and dealt with in such manner as the judge advocate may order.

(3) The power of the judge advocate under paragraph (2) includes power to order the object to be destroyed or to be given to the Director or to be placed in his custody for such period as the judge advocate may specify.

(4) If—

- (a) the judge advocate proposes to make an order under paragraph (2), and
- (b) the person found guilty of the offence under paragraph (1), or any other person claiming to have an interest in the object, applies to be heard by the judge advocate,

the judge advocate must not make the order unless the applicant has been given an opportunity to be heard.

(5) If a copy of the object concerned is in the offender's possession, the judge advocate may order that the copy shall be forfeited and dealt with in such manner as the judge advocate may order.

(6) Paragraphs (3) and (4) apply for the purposes of paragraph (5) as they apply for the purposes of paragraph (2), but as if references to the object were references to the copy.

(7) An object or information shall be inadmissible as evidence in civil proceedings if to adduce it would in the opinion of the court be likely to constitute an offence under paragraph (1); and "the court" here means the court before which the civil proceedings are being taken.

Transitional provisions

21.—(1) In this article—

- (a) "2008 Order" means the Criminal Procedure and Investigations Act 1996 (Application to the Armed Forces) Order 2008;
- (b) "commencement" means the date on which this Order comes into force;
- (c) "relevant person" means a person who on or after 1st April 2008 was charged under section 83B of the Army Act 1955(a) or the Air Force Act 1955(b), section 52I of the Naval Discipline Act 1957(c) or article 6 of the Standing Civilian Courts Order 1997(d).

(2) In article 2(a) the reference to a person charged under section 120 or 121 of the 2006 Act includes a relevant person; and references in this Order to the accused shall be construed accordingly.

(3) Where the accused is a relevant person—

- (a) anything (including any failure or omission) done under the 2008 Order on a date before commencement by or in relation to a prosecutor (within the meaning of that order) shall be treated for the purposes of this Order as if it had been done on that date by or in relation to the Director under the equivalent provision of this Order;
- (b) anything done under the 2008 Order on a date before commencement by a judicial officer (within the meaning of that Order) shall be treated for the purposes of this Order as if it had been done on that date by a judge advocate under the equivalent provision of this Order;
- (c) any other thing (including any failure or omission) done on a date before commencement by or in relation to him shall be treated for the purposes of this Order as if it had been done by or in relation to him on that date under the equivalent provision of this Order;
- (d) any reference in this Order to a specified provision of it includes, in relation to any date before commencement, the equivalent provision of the 2008 Order;

(a) 1955 c. 18.
(b) 1955 c. 19.
(c) 1957 c. 53.
(d) S.I. 1997/172.

- (e) any reference in this Order to his “commanding officer” is, in relation to any date before commencement, his commanding officer as determined by or under section 82 of the Army Act 1955 or the Air Force Act 1955 or section 52E of the Naval Discipline Act 1957.

14th April 2009

Kevan Jones
Parliamentary Under Secretary of State
Ministry of Defence

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under section 78 of the Criminal Procedure and Investigations Act 1996 (“1996 Act”), as amended by the Armed Forces Act 2006 (“the 2006 Act”) so as to apply to the new structure of service courts set up by the 2006 Act.

The Order makes provision with respect to proceedings before the Court Martial and the Service Civilian Court and appeals to the Summary Appeal Court. The provisions are equivalent (with modifications) to provisions of Part 1 of the 1996 Act, which imposes duties of disclosure on the prosecution and accused.

The modifications provided for in the order are to adjust the working of the provisions of the 1996 Act to the circumstances of, and legislation governing, proceedings before service courts.

Regulation 3 of the Order revokes the previous order which was made under the 1996 Act by reference to the system of service courts under legislation which is repealed by the 2006 Act.

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