

**EXPLANATORY MEMORANDUM TO
THE COURT MARTIAL APPEAL COURT (AMENDMENT) RULES 2015**

2015 No. 1814

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 Rule 16 of the Court Martial Appeal Court Rules 2009 (“the 2009 Rules”) provides for the appointment of interpreters for a person to whom proceedings relate who is due to attend a hearing to which those rules apply. These rules amend the 2009 Rules to implement requirements of articles 3 and 7 of Directive 2012/29/EU of the European Parliament and of the Council of 23 October 2012 establishing minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA (“the Directive”). It is one of a number of statutory instruments giving effect to the Directive (details of the other instruments are set out at paragraph 4.2 below).

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

3.1 None.

4. Legislative Context

4.1 These rules amend the 2009 Rules. The amendments are intended to give effect to the requirements of articles 3 and 7 of the Directive insofar as those requirements apply to the Court Martial Appeal Court. They require the provision, where necessary, of interpretation services for complainants who need such services as a witness at an appeal. They also give the registrar power to appoint an interpreter for other witnesses and give the court an express power to require written translation of documents for witnesses who need interpretation.

4.2 The transposition note for this Memorandum contains entries relating to how these rules transpose the relevant articles of the Directive. Other changes are being made to both the armed forces’ criminal justice system and the criminal justice system in England and Wales to meet the requirements of the Directive. Other statutory instruments made in respect of the transposition of the Directive are:

The Armed Forces (Service Courts Rules) (Amendment) Rules 2015

The Criminal Justice (Armed Forces Code of Practice for Victims of Crime) Regulations 2015

The Domestic Violence, Crime and Victims Act 2004 (Victims' Code of Practice) Order 2015

The Summary Appeal Court (Youth Justice and Criminal Evidence Act 1999) Rules 2015

The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) (Amendment) (No.2) Order 2015.

4.3 These rules come into force on 16 November 2015.

4.4 The scrutiny history for the Directive is set out in the transposition note.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

5.2 This instrument applies to the Court Martial Appeal Court in places outside the United Kingdom where it may sit.

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 Article 1 of the Directive sets out its purpose: "to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings". Article 3 of the Directive requires appropriate measures to be taken for victims to understand and be understood during necessary interaction with competent authorities in the context of criminal proceedings. Article 7 of the Directive specifically addresses interpretation in court hearings.

7.2 These rules provide a system of mechanisms and powers intended to enable and ensure that the aim of receiving appropriate interpretation support to participate in criminal proceedings is met in relation to victims who are witnesses before the Court Martial Appeal Court.

8. Consultation outcome

8.1 The amendments made by these rules were proposed by the government. No public consultation has been undertaken in connection with these rules. Consultation has taken place between the Ministry of Justice and the Ministry of Defence and the Registrar of the Court Martial Appeal Court.

9. Guidance

9.1 The Manual of Service Law provides guidance and supplementary information to Armed Forces personnel and others involved in the administration of the single system of Service law established under the 2006 Act and is available on the internet at <https://www.gov.uk/government/publications/joint-services-publication-jsp-830-manual-of-service-law-msl>. These will be amended to give further guidance related to these rules. The Service Prosecuting Authority will issue its own guidance as necessary.

10. Impact

10.1 The government believes the changes will have no impact on business, charities or voluntary bodies.

10.2 There is not expected to be any impact on the public sector. Interpretation and translation services for prosecution witnesses in court are currently funded by 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 & review

12.1 The main legislation governing the armed forces (currently the Armed Forces Act 2006) requires renewal annually by Order in Council (with the consent of both Houses of Parliament) and renewal by Act of Parliament every five years. Its provisions were subjected to a review as part of work to prepare for the 2011 Act and will be reviewed again in the Armed Forces Bill 2015/2016, which was introduced on 16 September 2015.

13. Contact

13.1 Tracy Sexton at the Ministry of Defence Tel: 020 7218 0564 or email: tracy.sexton743@mod.uk can answer any queries regarding the instrument.