

**EXPLANATORY MEMORANDUM TO
THE YOUTH JUSTICE AND CRIMINAL EVIDENCE ACT 1999 (APPLICATION TO
SERVICE COURTS) (AMENDMENT) ORDER 2015**

2015 No. 727

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 This instrument amends the Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (the “2009 Order”). The 2009 Order modifies the effect of provisions in the Youth Justice and Criminal Evidence Act 1999 (the “1999 Act”) for the purpose of proceedings before Service Courts (the Court Martial, the Service Civilian Court and the Court Martial Appeal Court). Those provisions allow those courts to impose reporting restrictions in certain proceedings.

2.2 This instrument inserts new provisions into the 2009 Order to modify the effect of new section 45 A of the 1999 Act.

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

3.1 This instrument does not specify a date on which it is to come into force but enables the date to be determined by the date of commencement of section 78 of the 2015 Act. Officials at the Ministry of Justice are responsible for commencement of section 78 of the 2015 Act and section 45 of the 1999 Act, and are keen to ensure that commencement of those provisions and this instrument is coordinated. We are assured by Ministry of Justice officials that the date on which section 78 of the 2015 Act comes into force will be more than 21 days after this instrument is laid before Parliament.

4. Legislative Background

4.1 Section 78 of the Criminal Justice and Courts Act 2015 (the “2015 Act”) amends the 1999 Act by inserting a new section 45A, which contains provisions allowing courts to

impose reporting restrictions in certain proceedings for the lifetime of witnesses and victims under the age of 18.

4.2 This instrument inserts new provisions into the 2009 Order to modify the effect of provisions in section 45A for the purposes of proceedings before Service courts. This instrument comes into force on the day on which, and immediately after Section 78 of the 2015 Act comes into force so that the modifications it makes come into force at the same time as section 45A.

5. Territorial Extent and Application

5.1 This instrument applies to the United Kingdom, the Isle of Man and British Overseas territories and applies to persons subject to Service law or civilians subject to Service discipline wherever they are in the world.

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 Subordinate legislation under the Armed Forces Act 2006 (including the 2009 Order) contains the provisions under which the Service courts operate. The 2009 Order applies and modifies the 1999 Act for application to proceedings in Service courts. This instrument amends the 2009 Order to make the necessary modifications to section 45A of the 1999 Act. The modifications to certain references in the 1999 Act are to ensure that they work for the purposes of proceedings before Service courts.

8. Consultation outcome

8.1 In view of the nature and intent of this instrument, consultation was not necessary. The 1999 Act makes it clear that the relevant provisions apply to Service courts and this instrument simply makes the necessary modifications to effect that.

9. Guidance

9.1 Guidance will be promulgated to Judge Advocates through the Judge Advocate General's practice memoranda which will be amended as appropriate to reflect the applications that can be made under section 45A of the 1999 Act. The Practice Memoranda are available on the justice.gov.uk website.

10. Impact

10.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is expected to be nil.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring and review

12.1 As the instrument makes only minor modifications to the effect of certain references in the 1999 Act, so that they work for the purposes of proceedings before Service courts, no formal monitoring or review process is felt to be necessary.

13. Contact

13.1 Tracy Sexton at the Ministry of Defence, Tel: 0207 2180564 or email CLS-Sec1@mod.uk can answer any queries regarding the instrument.