

EXPLANATORY MEMORANDUM TO
THE ARMED FORCES (APPEALS AGAINST REVIEW OF SENTENCE)
REGULATIONS 2024

2024 No. 619

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Defence and is laid before Parliament by Command of His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

- 2.1 Dr Andrew Murrison, Parliamentary Under-Secretary of State for Defence People, and Service Families at the Ministry of Defence confirms that this Explanatory Memorandum meets the required standard.
- 2.2 Caron Tassel, Deputy Director for Service Justice, Discipline and Conduct, at the Ministry of Defence, can confirm that this Explanatory Memorandum meets the required standard.

3. Contact

- 3.1 Richard Hartell at the Ministry of Defence, email: Richard.Hartell101@mod.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

- 4.1 The Armed Forces (Appeals Against Review of Sentence) Regulations 2024 (the “Regulations”) provide for a right of appeal to the Court Martial Appeals Court, against the Court Martial’s decisions on review of sentence when an offender agrees to provide assistance, or fails to provide assistance after having their sentence reduced.
- 4.2 The Regulations make provision corresponding to Parts 2 to 4 of the Court Martial Appeals Act 1968.

Where does the legislation extend to, and apply?

- 4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom, the Isle of Man and the British overseas territories (except Gibraltar).
- 4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the same as its extent.
- 4.5 However, it should be noted that Service Law applies to persons subject to Service law or civilians subject to Service discipline wherever they are in the world.

5. Policy Context

What is being done and why?

- 5.1 Sections 304A to 304H of the Armed Forces Act 2006 (“AFA 2006”) create a scheme to incentivise offenders to assist investigators and prosecutors in the service justice system. They do that by creating a statutory framework for immunity from prosecution, restrictions on the use of evidence and sentence reductions for offenders who co-operate in investigations and prosecutions.
- 5.2 Sections 304D and 304E enable the Court Martial to review sentences up or down when an offender agrees to provide assistance or fails to provide assistance after having their sentence reduced. Sections 304D and 304E also create two new routes for appeal to the Court Martial Appeal Court, against the Court Martial’s decisions on review of sentence.

What was the previous policy, how is this different?

- 5.3 This secondary legislation is being made as part of the implementation of sections 7 to 12 of the Armed Forces Act 2016 (“AFA 2016”), which insert new sections 304A to 304H into AFA 2006.
- 5.4 Sections 304A to 304H of the AFA 2006 introduce a new statutory framework for the Service Justice System. This policy is equivalent to a framework that already exists in the civilian criminal justice system, which is provided for by sections 71 to 75 of the Serious Organised Crime and Police Act 2005.

6. Legislative and Legal Context

How has the law changed?

- 6.1 The Regulations reproduce the relevant procedures that are set out in the Court Martial Appeals Act 1968, but also modify procedures where required. These modifications include provision to enable the Director of Service Prosecutions to also appeal against decisions made by the Court Martial (the 1968 Act only allows appeals by the defendant/offender) in relation to sentences reviewed under sections 304D or 304E of the AFA 2006, as well as modernising language where appropriate.

Why was this approach taken to change the law?

- 6.2 The AFA 2016 did not amend the Court Martial Appeals Act 1968 to incorporate appeals under sections 304D and 304E. Instead, these provisions included a power to regulate section 304D and 304E appeals by reproducing large tracts of the 1968 Act in secondary legislation.

7. Consultation

Summary of consultation outcome and methodology

- 7.1 There has been no formal consultation on this instrument. However, a range of stakeholders have been consulted on the development of the policy and processes which underpin the Regulations and Rules, including the single Services, the Judge Advocate General, and the Director of Service Prosecutions.

8. Applicable Guidance

- 8.1 Guidance on service law is contained in the Manual of Service Law (Joint Services Publication 830 (JSP 830)). This provides guidance and supplementary information to

Armed Forces personnel and civilians subject to service discipline on the single system of service law established under the Armed Forces Act 2006. The Manual of Service Law is available to the public at:

<https://www.gov.uk/government/publications/joint-services-publication-jsp-830-manual-of-service-law-msl>.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

- 9.1 A full Impact Assessment has not been prepared for this instrument because the SI relates to service discipline. As such there is no impact on the public sector nor is there an impact on business, charities, or voluntary bodies.

Impact on businesses, charities and voluntary bodies

- 9.2 There is no, or no significant, impact on business, charities or voluntary bodies because this legislation relates to service discipline.
- 9.3 The legislation does not impact small or micro businesses.
- 9.4 There is no, or no significant, impact on the public sector because the legislation relates to service discipline.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

- 10.1 The approach to monitoring this legislation is the 2006 Act which is subject to quinquennial review, with the last such Act being the Armed Forces Act 2021. As such, the provisions of the 2006 Act will be monitored and reviewed in advance of the next Armed Forces Bill in 2025/26.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

- 11.1 An instrument containing the Armed Forces (Court Martial) (Amendment) Rules 2024 has also been laid in Parliament; this amends the Armed Forces (Court Martial) Rules 2009 so as to make provision for the procedures the Court Martial is to follow when reviewing a sentence under sections 304D (review of sentence following offer of assistance) and section 304E (review of sentence following a failure to assist) of AFA 2006.

12. European Convention on Human Rights

- 12.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

- 13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).