

**2009 No. 2569**

**DEFENCE**

**The Court Martial Appeal Court (Evidence) Order 2009**

<i>Made</i> - - - -	<i>17th September 2009</i>
<i>Laid before Parliament</i>	<i>28th September 2009</i>
<i>Coming into force</i> - -	<i>31st October 2009</i>

The Secretary of State, in exercise of the powers conferred by section 146 of, and paragraph 8 of Schedule 13 to, the Criminal Justice Act 1988(a) and section 61(1) of the Youth Justice and Criminal Evidence Act 1999(b), makes the following Order:

**Citation and commencement**

1. This Order may be cited as the Court Martial Appeal Court (Evidence) Order 2009 and shall come into force on 31st October 2009.

**Interpretation**

2.—(1) In this Order—

“the 1988 Act” means the Criminal Justice Act 1988;

“the 1999 Act” means the Youth Justice and Criminal Evidence Act 1999.

**Application and modification of section 32 of the 1988 Act**

3.—(1) Section 32(1) and (3) of the 1988 Act(c) shall have effect in relation to proceedings before the Court Martial Appeal Court subject to the modifications for which paragraph 8(2)(a) of Schedule 13 to that Act(d) provides, and to the modification specified in paragraph (2).

(2) Section 32(1) of the 1988 Act shall have effect as if for the words “to which subsection (1A) below applies” there were substituted “before the Court Martial Appeal Court”.

**Application and modification of Chapter 1A of Part 2 of the 1999 Act**

4.—(1) Sections 33A to 33C of the 1999 Act shall apply to proceedings before the Court Martial Appeal Court, subject to the modifications specified in paragraphs (2) to (5).

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- (a) 1988 c. 33; paragraph 8 of Schedule 13 is amended by the Youth Justice and Criminal Evidence Act 1999 (c. 23), section 67(3) and Schedule 6. Section 146 and Schedule 13 are amended with effect on 31st October 2009 by paragraphs 113 and 115 of Schedule 16 to the Armed Forces Act 2006 (c. 52); the changes made by those paragraphs include changes to refer to the Court Martial Appeal Court, instead of the Courts-Martial Appeal Court.
- (b) 1999 c. 23.
- (c) Section 32 was amended by the Criminal Justice Act 1991 (c. 53), section 55. Section 32(1)(b), (2), (3A) to (3E) and (6) were repealed by the Youth Justice and Criminal Evidence Act 1999, section 67(3) and Schedule 6.
- (d) Paragraph 8(2)(b) of Schedule 13 was repealed by the Youth Justice and Criminal Evidence Act 1999, section 67(3) and Schedule 6.

(2) In sections 33A to 33C of the 1999 Act any reference to the accused is to be read as a reference to the person charged with an offence to which the proceedings before the Court Martial Appeal Court relate (whether or not he has been convicted).

(3) Section 33A(1) of the 1999 Act has effect as if for the words “(whether in a magistrates’ court or before the Crown Court) against a person for an offence” there were substituted “before the Court Martial Appeal Court”.

(4) Section 33A(8) of the 1999 Act has effect as if the words “and, if it is a magistrates’ court, it must cause those reasons to be entered in the register of its proceedings” were omitted.

(5) Section 33B(2)(a) of the 1999 Act has effect as if for the words “judge or justices (or both)” to the end there were substituted “judge or judges”.

#### **Application and modification of sections 63 and 65 of the 1999 Act**

5.—(1) Sections 63 and 65 of the 1999 Act, so far as having effect for the purposes of Chapter 1A of Part 2 of that Act, shall apply in relation to proceedings before the Court Martial Appeal Court, subject to the modifications specified in paragraphs (2) to (3).

(2) Section 63(1) of the 1999 Act has effect as if—

- (a) for the definition of “court” there were substituted ““court” means the Court Martial Appeal Court;”;
- (b) for the definition of “legal representative” there were substituted ““legal representative” means a person appointed as a legal representative under rules under section 49 of the Court Martial Appeals Act 1968;”(a); and
- (c) in the definition of “witness” the reference to criminal proceedings were a reference to proceedings before the Court Martial Appeal Court.

(3) Section 65(1) of the 1999 Act has effect as if for the words “Criminal Procedure Rules” there were substituted “Rules under section 49 of the Court Martial Appeals Act 1968”.

17th September 2009

*Kevan Jones*  
Parliamentary Under Secretary of State  
Ministry of Defence

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(a) 1968 c. 20; with effect on 31st October 2009 the Courts-Martial (Appeals) Act 1968 is renamed the Court Martial Appeals Act 1968 by paragraph 53 of Schedule 8 to the Armed Forces Act 2006.

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

Article 3 of this Order provides for section 32(1) and (3) of the Criminal Evidence Act 1988 (c. 33) to have effect, with a modification, in relation to proceedings before the Court Martial Appeal Court. Section 32(1) allows a witness who is not in the country where the court is sitting to give evidence through a live television link.

Articles 4 and 5 of this Order apply, with modifications, the provisions of Chapter 1A of Part 2 (and sections 63 and 65 so far as having effect for the purposes of that Chapter) of the Youth Justice and Criminal Evidence Act 1999 (c. 23) to proceedings before the Court Martial Appeal Court. Chapter 1A of Part 2 makes provision under which certain vulnerable accused persons may be permitted to give evidence through a live link.

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