EXPLANATORY MEMORANDUM TO

THE ARMED FORCES ACT 2006 (CONTINUATION) ORDER 2023

2023 No. 1086

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.

2. Purpose of the instrument

2.1 The instrument provides for the continuation in force of the Armed Forces Act 2006 ("the 2006 Act"), which would otherwise expire at the end of 14 December 2023. The instrument provides for the 2006 Act to continue in force for a further year, until the end of 14 December 2024.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument is the United Kingdom, the Isle of Man, the Channel Islands, and the British overseas territories except Gibraltar.

4.2 The territorial application of this instrument is worldwide. This instrument continues in force the 2006 Act, which applies to members of the armed forces wherever they are in the world and applies to civilians subject to service discipline in certain areas outside the United Kingdom or on service ships or aircraft. Civilians subject to service discipline are defined groups (the groups are defined in Schedule 15 to the 2006 Act) principally of persons who work or reside with the armed forces in certain areas outside the United Kingdom or are travelling on service ships or aircraft.

5. European Convention on Human Rights

5.1 The Rt Hon Dr Andrew Murrison MP, Minister for Defence People, Veterans and Service Families, has made the following statement regarding Human Rights:

"In my view the provisions of the Armed Forces Act 2006 (Continuation) Order 2023 are compatible with the Convention rights."

6. Legislative Context

6.1 The originally enacted, section 382 of the 2006 Act provided that the Act would expire one year after it received Royal Assent, unless renewed by Order in Council approved by each House of Parliament ("a continuation order"). It provided that the Act could be kept in force by a continuation order for up to a year at a time, but not beyond the end of 2011.

6.2 Section 1 of the Armed Forces Act 2011 substituted a new section 382, which provided that the 2006 Act would expire a year after the 2011 Act received Royal Assent, unless renewed by a continuation order. It provided that the 2006 Act could be

kept in force by a continuation order for up to a year at a time, but not beyond the end of 2016.

6.3 Section 1 of the Armed Forces Act 2016 substituted a new section 382, which provided that the 2006 Act would expire a year after the 2016 Act received Royal Assent, unless renewed by a continuation order. It provided that the 2006 Act could be kept in force by a continuation order for up to a year at a time, but not beyond the end of 2021.

6.4 Section 1 of the Armed Forces Act 2021 substituted a new section 382, which provided that the 2006 Act would expire a year after the 2021 Act received Royal Assent, unless renewed by a continuation order. It provided that the 2006 Act could be kept in force by a continuation order for up to a year at a time, but not beyond the end of 2026.

6.5 The 2021 Act received Royal Assent on 15 December 2021. The most recent renewal of the 2006 Act was by the Armed Forces Act (Continuation) Order 2022 (S.I. 2022/1045) which provided for the 2006 Act to continue in force from the end of 14 December 2022 to the end of 14 December 2023. This instrument provides for the 2006 Act to continue in force from the end of 14 December 2023 to the end of 14 December 2024.

7. Policy background

What is being done and why?

7.1 The 2006 Act (which came into force on 31 October 2009) established a single system of service law that applies to the personnel of all three Services wherever in the world they are operating. The Act provides nearly all the provisions for the existence of a system for the armed forces of command, discipline and justice. It covers matters such as offences, the powers of the service police, and the jurisdiction and powers of commanding officers and of the service courts, in particular the Court Martial. It also contains a large number of other important provisions as to the armed forces, such as provision for enlistment, pay and redress of complaints.

7.2 The requirement for annual renewal of the 2006 Act (under section 382 of that Act) is based on the provision in the Bill of Rights 1688 which states that [sic] "raising or keeping a standing Army within the Kingdome in time of Peace unlesse it be with Consent of Parlyament is against law". As a result of that provision, since 1688 all legislation on discipline in all the armed forces has been subject to annual renewal.

7.3 The central effect of expiry of the 2006 Act would be to end the provisions which are necessary to maintain the armed forces as disciplined bodies. Crucially, the 2006 Act confers powers and sets out procedures to enforce the duty of members of the armed forces to obey lawful commands. Without the 2006 Act, those powers and procedures would no longer have effect. Commanding officers and the Court Martial would have no powers of punishment in respect of a failure to obey a lawful command or any other form of disciplinary or criminal misconduct. Members of the armed forces would still owe allegiance to His Majesty, but the power of enforcement would be removed.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This instrument does not amend any other legislation, so no consolidation is needed.

10. Consultation outcome

10.1 There has been no formal consultation on this instrument, as it is technical in nature and does not change government policy or existing legislation.

11. Guidance

11.1 There is no guidance on this particular instrument as it is technical in nature and does not change government policy or existing legislation. The Manual of Service Law provides general guidance and supplementary information to service personnel on the single system of service law established by the 2006 Act. The Manual of Service Law is available to the public at the following address:

https://www.gov.uk/government/collections/manual-of-service-law-msl.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because there is no, or no significant, impact on the public sector.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 This instrument will not be subject to review as it only has effect until the end of 14 December 2024. The 2006 Act which this instrument keeps in force for a further 12 months must be renewed by an Act of Parliament every 5 years and it was reviewed as part of work to prepare for the Armed Forces Acts of 2011, 2016 and 2021.

15. Contact

15.1 David Harvey at the Ministry of Defence (telephone: 0207 807 8742 or email: david.harvey118@mod.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Caron Tassel, Deputy Director for People Secretariat, at the Ministry of Defence can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Dr Andrew Murrison MP, Minister for Defence People, Veterans and Service Families at the Ministry of Defence can confirm that this Explanatory Memorandum meets the required standard.