EXPLANATORY MEMORANDUM TO THE
ARMED FORCES (DISPOSAL OF PROPERTY) REGULATIONS 2009
2009 No. 1923

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 makes provision regarding the disposal of property which has come into the possession of a Service policeman or a person's commanding officer in connection with the investigation of a Service offence.

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

3.1 None.

4. Legislative context

4.1 This instrument is made under section 94 of the Armed Forces Act 2006 ("the Act"). Section 94 empowers the Secretary of State by regulations to make provision with respect to the disposal of property which has come into the possession of a Service policeman or a person's commanding officer in connection with the investigation of a Service offence.

5. Extent

5.1 This instrument extends to the United Kingdom, the Isle of Man and British overseas territories.

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 The Act will bring together the three separate discipline systems that existed under previous legislation for the Royal Navy, Army and Royal Air Force. It creates common offences and a common structure to hear charges. During the investigation of an offence, it is entirely possible that the Service police or a commanding officer will come into possession of property. The question then arises as to how the Service police or commanding officer may dispose of this property. These regulations aim to provide a framework under which a commanding officer or a judge advocate can make various orders as to the disposal of such property. For situations not covered by the regulations (for example where no person is charged, no person is claiming to be the owner, and no-one was in possession before seizure), the Service police will continue to dispose of the property as they see fit.

8. Consultation outcome

8.1 A memorandum about consultation on the Armed Forces Act 2006 primary legislation was submitted in written evidence to the Select Committee on the Armed Forces Bill and published on 9 May 2006 in its Special Report of Session 2005-06 (HC 828-II, page Ev 136). This memorandum explained how stakeholder consultation had been carried out and listed the individuals and organisations consulted. The individual instruments under the 2006 Act have been the subject of rigorous consultation with relevant stakeholders (such as the Services, the Service police, the Judge Advocate General and Director of Service Prosecutions) over a period of many months, to ensure that the policy goals have been achieved and that the provisions of each instrument will work in practice.

9. Guidance

9.1 A new Manual of Service Law will provide guidance and supplementary information to Armed Forces personnel (including the Service Police) on the single system of Service law established under the Armed Forces Act 2006. The first volume of three within the manual, which is intended for commanding officers and those administering the Service justice system, includes a chapter on police powers relating to search, entry and seizure and retention. A training version of the Manual has been produced in time to allow Service personnel (including the Service Police) to be trained ahead of full implementation of the 2006 Act on 31 October 2009. The Manual will subsequently be available to the general public on the internet.

10. Impact

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

10.2 There is no impact on 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 and review

12.1 The Armed Forces Act 2006 is subject to a requirement for renewal each year by Order in Council (approved in draft by both Houses of Parliament) and renewal by Act of Parliament every five years. In response to these requirements the Act will be subject to continuing monitoring and a general review will conducted in order to provide for the Act of Parliament which will be required in 2011.

13. Contact

13.1 Mr Nick Shaw at the Ministry of Defence, telephone 020 7218 0564 or email nick.shaw460@mod.uk, is the point of contact regarding this instrument.