EXPLANATORY MEMORANDUM TO

THE ARMED FORCES (DRIVING DISQUALIFICATION ORDERS) REGULATIONS 2023

2023 No. 209

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 This instrument makes provision for the Court Martial and Service Civilian Court ("the service courts") related to driving disqualification orders equivalent to sections 37, 39, 40, 42, 43, 47, and 48 of the Road Traffic Offenders Act 1988 (c. 53) ("RTOA 1988"). It also makes amendments to the court rules pertaining to the service courts to introduce procedures relating to driving disqualification orders.

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 (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).

4.2 The territorial application of this instrument is worldwide as the service courts can, if necessary, sit anywhere in the world, for example to reduce disruption if defendants or witnesses are deployed overseas.

5. European Convention on Human Rights

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

"In my view the provisions of the Armed Forces (Driving Disqualification Orders) Regulations 2023 are compatible with the Convention rights."

6. Legislative Context

6.1 Section 15 of the Armed Forces Act 2021 (AFA 21) amended the Armed Forces Act 2006 (AFA 06) to extend the punishments available to the service courts to enable them to impose driving disqualification orders on an offender. Section 177M of AFA 06 (as amended) permitted the Secretary of State to make provision in relation to driving disqualification orders which is equivalent to section 37, 39, 40, 42, 43, 47 and 48 of RTOA 1988. These Regulations make provision equivalent to those sections of RTOA 1988.

6.2 Part 1 of the instrument sets out the provisions that are equivalent to the relevant provisions of RTOA 1988. These are covered in Regulations 5 to 11. They cover: the effect of a driving disqualification order; suspension of a disqualification order pending appeal; removal of a disqualification order (including when an application can be made, the factors that the service courts may take into account when determining an application); determining when the period of disqualification comes to an end; supplementary provisions (including the provision of a disqualified licence to the Secretary of State for disqualifications of more than 56 days); and, the circumstances in which a driving disqualification order may not be imposed.

6.3 Part 2 of the instrument makes provision for amendments to the rules of court for each of the service courts, in connection with driving disqualification orders. Chapter 1 deals with amendments to the Armed Forces (Service Civilian Court) Rules 2009 (the "Service Civilian Court rules"). Chapter 2 makes equivalent amendments to the Armed Forces (Court Martial) Rules 2009 (the "Court Martial rules").

7. Policy background

What is being done and why?

7.1 During preparations for the Armed Forces Bill (which became AFA 2021), it was recognised that the service courts did not have the powers to impose a punishment equal to that available in the civilian courts when a Service person (or civilian subject to service law) was found to have committed a serious or dangerous driving offence in the UK or overseas.

7.2 Section 15 of the Armed Forces Act 2021 (AFA 21) therefore contained provisions to amend section 177 of the Armed Forces Act 2006 (AFA 06) to provide for driving disqualification orders equivalent to those in sections 37, 39, 40, 42, 43, 47, and 48 of RTOA 1988. This instrument implements these amendments in the rules of court for the service courts.

Explanations

What did any law do before the changes to be made by this instrument?

7.3 As the service courts did not have the powers to impose a driving disqualification order for Service personnel (or civilians subject to service law), it meant that those who had committed serious or dangerous driving offences could not be banned from driving by the service courts.

Why is it being changed?

7.4 Introducing these new powers will close the identified gap in the sentencing powers of the service courts, enabling them to deal appropriately with serious driving offences, and aligning them more closely with the civilian courts.

What will it now do?

7.5 This instrument will enable the service courts to impose a driving disqualification order, equivalent to that available in the civilian courts. It will ensure that service personnel who commit serious driving offences are treated comparably in the service courts to members of the public who commit equivalent offences and are dealt with by the civilian courts.

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 No consolidation is planned, however the rules of court for the service courts are kept under review and if appropriate a consolidated version will be produced.

10. Consultation outcome

10.1 There has been no formal consultation on this instrument. However, a range of stakeholders have been consulted, including: the Judge Advocate General, the Military Court Service, the Service Prosecuting Authority, and the Armed Forces, to ensure that the policy goals will be achieved, and that the provisions of the instrument will work in practice.

11. Guidance

11.1 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 on the single system of service law established under the Armed Forces Act 2006 ("AFA 2006"). The Manual of Service Law will be updated to provide guidance on the changes made by this instrument. 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.

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 business.

13. Regulating small business

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

14. Monitoring & review

14.1 The approach to monitoring of this legislation is the quinquennial review of the AFA 2006, which provides the bulk of the primary legislation relating to the Service Justice System, including the service courts. The AFA 2006 must be kept in force by an annual continuation order and requires a further Act of Parliament at least every 5 years to keep it in force. The last such Act was the Armed Forces Act 2021. The SJS as a whole is subject to review as part of work to prepare for each 5-yearly Act and the next such Act must be passed before the end of 2026. The rules of court for the service courts are also kept under regular review to ensure the provisions remain relevant to the Armed Forces.

15. Contact

15.1 Lindsey Pratt at the Ministry of Defence, email: Lindsey.Pratt386@mod.gov.uk, can be contacted with any queries regarding the instrument.

15.2 Caron Tassel, Deputy Director - Discipline, Conduct and Legislation - at the Ministry of Defence, can confirm that this Explanatory Memorandum meets the required standard.

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