EXPLANATORY MEMORANDUM TO

THE ARMED FORCES (ENTRY, SEARCH AND SEIZURE) (AMENDMENT)

ORDER 2008

2008 No. 1698

1. This explanatory memorandum has been prepared by the Ministry of Defence and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This order amends the Armed Forces (Entry, Search and Seizure) Order 2003 Articles 12(1) and 13(1) in consequence of the alignment measures we have introduced to the existing Service Discipline Acts (the Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957, collectively known as the SDAs) in relation to the powers of arrest by Service policemen and others. This order ensures that certain provisions in the Armed Forces (Entry, Search and Seizure) Order 2003 reflect the position in the aligned SDA provisions. The order also corrects some drafting errors in the Armed Forces (Entry, Search and Seizure) Order 2006. This order is subject to the negative resolution procedure and as such is separated from the alignment order, which requires affirmative action. The two cannot be combined.

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

3.1 None.

4. Legislative Background

4.1 This order amends the Armed Forces (Entry, Search and Seizure) Order 2003 consequent upon changes we are making to the SDAs through the Armed Forces (Alignment of Service Discipline Acts) Order 2008. That order is made under section 381 of the Armed Forces Act 2006 (AFA06), which provides for the amendment or repeal of any of the provisions of the SDAs for the purpose of reducing or eliminating any differences between their effects now and the effects of AFA06 when it is brought into force in January 2009. This is the process of alignment.

4.2 One of the alignment measures we have undertaken concerns the powers of arrest by Service police and others. In particular, the alignment provisions will allow Service police to arrest an officer of any rank and any Service person of, or below, the rank or rate of warrant officer, without seeking prior authority (thus aligning the SDAs with section 67 of AFA06). It will also provide the Service police with the power to arrest any person who is reasonably suspected of being about to commit an offence (as under section 69 of AFA06). These powers are greater than those currently provided to the Service police (but analogous to those of the civil police).

4.3 The order also takes the opportunity to correct certain drafting errors in the Armed Forces (Entry, Search and Seizure) Order 2006, which makes provision corresponding to Part 2 of the Criminal Justice and Police Act 2001.

5. Territorial Extent and Application

5.1 This instrument extends to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Under Secretary of State has made the following statement regarding Human Rights:

In my view, the provisions of the Armed Forces (Entry, Search and Seizure) (Amendment) Order 2008 are compatible with the Convention Rights.

7. Policy Background

7.1 This order ensures that suitable amendments are made that will reflect the changes effected as a result of the alignment measures taken concerning powers of arrest. The order also corrects drafting errors in the Armed Forces (Entry, Search and Seizure) Order 2006.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

9.1 Mrs S McIntosh at the Ministry of Defence, telephone 020 7218 0564 or email sue.mcintosh641@mod.uk, is the point of contact regarding this instrument.