**EXPLANATORY MEMORANDUM TO THE**

**THE ARMED FORCES (FINANCIAL PENALTY ENFORCEMENT ORDERS) (AMENDMENT) REGULATIONS 2013**

**2013 No. 1761**

**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 The Armed Forces Act 2011 inserts new sections 269A and 269B in the Armed Forces Act 2006. Section 269A requires the Court Martial, when imposing a fine, to make an order fixing a term for which the person liable to pay the fine may be committed to prison if the fine is not paid. Section 269B enables the Court Martial, when making a service compensation order, to specify a maximum term for which the person liable to pay the compensation may be committed to prison if the compensation is not paid. These regulations amend the Armed Forces (Financial Penalty Enforcement Orders) Regulations 2009 to give effect to an order made under section 269A or 269B in courts in the United Kingdom.

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

3.1 None.

## 4. Legislative Context

4.1 The Armed Forces (Financial Penalty Enforcement Orders) Regulations 2009 provide for the enforcement by a civilian court in the United Kingdom or the Isle of Man ("the relevant court") of a financial penalty imposed under the Armed Forces Act 2006. The Armed Forces (Financial Penalty Enforcement Orders) (Amendment) Regulations 2013 amend the 2009 Regulations by inserting two new regulations so as to provide, respectively, for the effect of an order under section 269A and of an exercise of the power under section 269B.

4.2 Under new regulation 3A, an order under section 269A has effect as if it were an order by the Crown Court in England and Wales under section 139(2) of the Powers of Criminal Courts (Sentencing) Act 2000 in respect of a fine imposed by that court (and, if the relevant court is in Scotland or Northern Ireland, as if the enforcement of that fine had been transferred to Scotland or Northern Ireland under section 90 of the Magistrates' Courts Act 1980).

4.3 Under new regulation 3B, where a period has been specified under section 269B, that period is treated as if it had been specified by the Crown Court in England and Wales under section 41(8) of the Administration of Justice Act 1970 in respect of a compensation order made by that court.

## 5. Territorial Extent and Application

5.1 This instrument extends to the United Kingdom and applies in relation to persons subject to service law wherever they are in the world. It also applies to

"civilians subject to service discipline", which means persons who are not subject to service law but who satisfy the requirements of any paragraph of Part 1 of Schedule 15 to the Armed Forces Act 2006.

## 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 These Regulations amend the Armed Forces (Financial Penalty Enforcement Orders) Regulations 2009. The 2009 Regulations permit the making of an order for the registration by a civilian court ("the relevant court") of a financial penalty imposed under the Armed Forces Act 2006. Regulation 3(5) of the 2009 Regulations provides that the sum certified in the order as being outstanding is to be treated for all purposes as if it had been a fine imposed upon conviction by the relevant court.

7.2 Section 16(1) of the 2011 Act inserts new sections 269A and 269B into the Armed Forces Act 2006. The new section 269A requires the Court Martial, when imposing a fine on a person aged 18 or over, to fix the term of imprisonment which may be imposed if the fine is not paid. The new section 269B empowers the Court Martial, when making a service compensation order against a person aged 18 or over, to specify the maximum term of imprisonment which may be imposed if the compensation is not paid. These powers are broadly similar to powers in the criminal courts in England and Wales.

7.3 These Regulations are required to give effect to orders made under sections 269A and 269B in civil courts in the United Kingdom.

7.4 An Order made under new section 269A or 269B will only take effect if the financial penalty is registered by a civilian court in the United Kingdom. Where the relevant court is situated in England and Wales, an order made under section 269A has effect as if the fine had been imposed by the Crown Court in England and Wales and the order had been made by that court under the corresponding civilian provision, viz. section 139(2) of the Powers of Criminal Courts (Sentencing) Act 2000. An exercise of the power under section 269B has effect as if the service compensation order were a compensation order made by the Crown Court in England and Wales, and the period specified under section 269B had been specified by that court under the corresponding civilian provision, viz. section 41(8) of the Administration of Justice Act 1970.

7.5 Where the relevant court is situated in Scotland or Northern Ireland, in the case of an order under section 269A the order has effect as if the fine had been imposed by the Crown Court in England and Wales, and the order made by that court, and enforcement of the fine had been transferred to Scotland or Northern Ireland. This provides the court in Scotland or Northern Ireland with the same powers that it would have in relation to an order made in the civil criminal courts of England and Wales and subsequently transferred. No provision has been made for enforcement of the order if the relevant court is in the Isle of Man. This is in line with the civilian position where there is no provision enabling an Isle of Man court to give effect to an order made in the courts in England and Wales. In the case of an order made under section 269B no provision has been made for enforcement of the order in Scotland,

Northern Ireland or the Isle of Man. This is in line with the civilian position where there is no provision enabling a Scottish, Northern Ireland or Isle of Man court to give effect to a compensation order made by the Crown Court in England and Wales.

## 8. Consultation outcome

8.1 As financial penalty enforcement orders will be enforced in prescribed civilian courts the Ministry of Justice has been consulted about the impact these regulations will have on the work of the civilian courts. In addition, the devolved administrations have been consulted concerning the enforcement of financial penalties in local courts. No public consultation has been undertaken in connection with these regulations, but there has been rigorous consultation with the Services to ensure that the policy goals have been achieved and that the provisions of this instrument will work in practice.

## 9. Guidance

9.1 The Manual of Service Law provides guidance and supplementary information to Armed Forces personnel involved in the administration of the single system of Service law established under the 2006 Act and is available on the internet at https://www.gov.uk/government/publications/joint-services-publication-jsp-830-manual-of-service-law-msl.

9.2 It is not proposed to issue guidance to civilian court staff as the arrangements for registering and enforcing a financial penalty enforcement order will be unaffected by these Regulations.

## 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 main legislation governing the armed forces (currently the Armed Forces Act 2006) requires renewal annually by Order in Council (with the consent of both Houses of Parliament) and renewal by Act of Parliament every five years. Its provisions were subjected to a review as part of work to prepare for the 2011 Act and will be reviewed again as part of work to prepare for the next Armed Forces Bill, which we plan to introduce towards the end of 2015.

## 13. Contact

13.1 Group Captain Philip Spinney RAF at the Ministry of Defence telephone 020 7218 8339 or email philip.spinney633@mod.uk can answer any queries regarding the instrument.