EXPLANATORY MEMORANDUM TO

THE ARMED FORCES (MINOR PUNISHMENTS AND LIMITATION ON POWER TO REDUCE IN RANK) REGULATIONS 2023

2023 No. 869

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 prescribes the minor punishments that may be awarded by the Court Martial and commanding officers under the Armed Forces Act 2006. It also sets out prohibited combinations of punishments as well as limits the ability to reduce a member of the RAF in rank. It also sets out rules as to the delegation of functions conferred by the Regulations.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 These Regulations revoke and, in effect, remake the Armed Forces (Minor Punishments and Limitation on Power to Reduce in Rank) Regulations 2009 (the "2009 Regulations"). The 2009 Regulations purported to have been made by the Defence Council, but were not signed by two members of the Defence Council as required by the Letters Patent establishing the Defence Council. These Regulations remake the 2009 Regulation without substantive amendment. The 2009 Regulations have been revoked for the avoidance of any doubt as to their continuing effect. They are issued for free to known recipients of the 2009 Regulations.

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. It 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 Armed Forces Act 2006), principally of persons who work or reside with the armed forces in certain areas outside the United Kingdom or arere travelling on service ships or aircraft.

5. European Convention on Human Rights

5.1 The Baroness Goldie DL, Minister of State at the Ministry of Defence, has made the following statement regarding Human Rights:

"In my view the provisions of the Armed Forces (Minor Punishments and Limitation on Power to Reduce in Rank) Regulations 2023 are compatible with the Convention rights."

6. Legislative Context

6.1 Section 132 and 164 of the Armed Forces Act 2006 set out the punishments that are available to the Court Martial and commanding officers respectively when an offender has been convicted of a service offence or the charge has been found proven. The more serious punishments are set out in the Act but it leaves the prescription of the minor punishments to regulations to be made by the Defence Council.

6.2 The Regulations also set out permitted combinations of punishments. Any other combinations may not be awarded. They also limit the power to reduce a member of the RAF in rank.

6.3 The Regulations also allow commanding officers to delegate functions in relation to punishments to persons subject to service law who are of or above specified ranks.

7. Policy background

What is being done and why?

7.1 The Armed Forces Act 2006 created a common disciplinary system for the Armed Forces, with common offences and common punishments. The minor punishments are needed to ensure that proportionate punishments can be awarded.

7.2 The Armed Forces (Minor Punishments and Limitation on Power to Reduce in Rank) Regulations 2009 purported to have been made by the Defence Council, were not signed by two members of the Defence Council – or by the Secretary of the Defence Council - as required by the Letters Patent establishing the Defence Council. These Regulations remake the 2009 Regulations without substantive amendment.

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 There are no plans to consolidate this legislation.

10. Consultation outcome

10.1 There has been no formal consultation on this instrument. Relevant stakeholders were consulted prior to making the 2009 Regulations. These Regulations are intended to remake the 2009 Regulations without substantive amendment.

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. The Manual of Service Law will be updated to refer to these remade Regulations. 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 Armed Forces Act 2006, which provides the vast majority of the primary legislation relating to the Service Justice System ("SJS"). This Act 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 The Baroness Goldie DL, Minister of State at the Ministry of Defence, can confirm that this Explanatory Memorandum meets the required standard.