EXPLANATORY MEMORANDUM TO THE

THE ARMED FORCES (POWERS OF STOP AND SEARCH, SEARCH, SEIZURE AND RETENTION) (AMENDMENT) ORDER 2014

2014 No. 934

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 Order allows certain powers of entry and search conferred on the service police in respect of indictable offences to remain available for investigations of low-value shoplifting, notwithstanding that it is reclassified by the Anti-social Behaviour, Crime and Police Act 2014 as a summary offence. This reflects provisions for the civilian police which are contained in the Anti-social Behaviour, Crime and Policing Act 2014.

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

3.1 These new provisions do not create new powers of entry but preserve the Service police powers in the light of changes brought about by the by the Anti-social Behaviour, Crime and Police Act 2014.

4. Legislative Context

4.1 The Order is made under the powers in sections 74 and 92 of the Armed Forces Act 2006. These enable the making of provision, subject to modifications, which is equivalent to that made by the provisions of sections 32 and 18 of the Police and Criminal Evidence Act 1984 respectively.

4.2. Section 176(3) of the Anti-social Behaviour, Crime and Policing Act 2014 inserts in the Magistrates' Courts Act 1980 a new section 22A, which provides that low-value shoplifting is a summary offence. Section 176(6) of the 2014 Act provides so that certain powers conferred by the Police and Criminal Evidence Act 1984 on the civilian police in respect of indictable offences remain available in respect of low-value shoplifting, notwithstanding that it is reclassified as summary. The powers concerned include the powers contained in sections 18 and 32 of the Police and Criminal Evidence Act 1984 to enter and search any premises occupied or controlled by a person who is under arrest for an indictable offence, and any premises in which a person was when arrested or immediately before he was arrested for an indictable offence.

4.3. The Order makes equivalent provision, subject to modifications, by amending the Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 (the "2009 Order"). Articles 12 and 13 of the 2009 Order contain the service law provisions which correspond to sections 18 and 32 of PACE. Those powers of entry and search are only permitted in the case of a person who has been arrested under section 67 of the Armed Forces Act 2006 for a "serious service offence". Article 2 of the 2009 Order defines a serious service offence as including an offence under section

42 of the Armed Forces Act 2006 for which the corresponding offence under the law of England and Wales is an indictable offence. Article 2 of this instrument amends the 2009 Order, so that "indictable offence" has the same meaning as in the Police and Criminal Evidence Act 1984 and accordingly has effect as if it included a reference to low-value shoplifting.

5. Territorial Extent and Application

5.1 This instrument extends to the United Kingdom, the Isle of Man and British Overseas Territories 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 The 2009 Order deals primarily with the powers of entry, search and seizure granted to the service police under Part 3 of the Armed Forces Act 2006. The main provisions of the 2009 Order are, subject to modifications, equivalent to certain provisions of the Police and Criminal Evidence Act 1984 (PACE).

7.2. While providing that low-value shoplifting is a summary offence, section 176 of the Anti-social Behaviour, Crime and Policing Act 2014 also provides that certain powers of entry and search conferred by the Police and Criminal Evidence Act 1984 on the civilian police in respect of indictable offences remain available for the investigation of offences of low-value shoplifting. The powers concerned include powers to enter and search premises occupied or controlled by a person who is under arrest for an indictable offence, and premises where a person was when arrested or immediately before he was arrested for an indictable offence.

7.3. The Order makes equivalent provision so that the service police powers continue to reflect those of the civilian police. It does so by amending the 2009 Order.

7.4. The Order amends the 2009 Order so that the reference to "indictable offence" has effect as if it included a reference to low-value shoplifting. This preserves the Service police powers in the light of changes brought in by the Anti-social Behaviour, Crime and Policing Act 2014.

8. Consultation outcome

8.1 No public consultation has been undertaken in connection with the amendment order itself however the 2009 Order was subject to consultation with the Services and Service Police. This instrument does not introduce any change to current powers of the Service Police.

9. Guidance

9.1 This instrument maintains powers covered by the Service Police Codes of Practice, issued by the Secretary of State under section 113 (3) of PACE, and the Manual of Service Law, which provide guidance and supplementary information to Armed Forces personnel on the single system of service law established under the 2006 Act.

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 2006 Act) requires renewal annually by Order in Council (with the consent of both Houses of Parliament) and renewal by Act of Parliament every five years. As a result the Armed Forces Act 2006 is subject to a full review every five years most recently during development of the Armed Forces Act 2011. It will be reviewed again as part of work to prepare for the next Armed Forces Bill, which will be required for an Act in 2016.

13. Contact

13.1 In the event of any inquiries about this instrument, please contact Tracy Sexton of Central Legal Services of the Ministry of Defence, telephone number 0207 218 0564; e-mail: CLS-Sec1@mod.uk.