EXPLANATORY MEMORANDUM TO

THE ARMED FORCES (PRESCRIBED AIR NAVIGATION ORDER

OFFENCES) ORDER 2009 No. 1094

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 instrument ensures that certain conduct which amounts to an Air Navigation Order offence, will also be an offence under section 49 of the Armed Forces Act ("the Act") if it occurs on a military aircraft.

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

3.1 None.

4. Legislative Context

4.1 This instrument is made under section 49 of the Armed Forces Act 2006.

4.2 The Air Navigation Order, made under the Civil Aviation Act 1982, creates offences of misconduct in a civil aircraft. These offences regulate the conduct of persons on aircraft, including crew members. The offences vary in seriousness, ranging from smoking on an aircraft to recklessly endangering the aircraft. The Civil Aviation Act 1982 does not generally apply to military aircraft and therefore a person on a military aircraft cannot be prosecuted if they behave in a manner which would be an offence if the behaviour had taken place on a civil aircraft.

4.3 Section 49 of the Armed Forces Act 2006 enables the Secretary of State to prescribe, by order, specific Air Navigation Order offences. Once so prescribed, it will be an offence under section 49 of the Act to do (or omit to do) an act on a military aircraft which would contravene the prescribed offence. Air Navigation Order offences may be committed by a person who is subject to service law or service discipline. Any civilian who is on board an aircraft which is used for the purposes of any of Her Majesty's Forces will be subject to service discipline when that aircraft is in flight.

4.4 Eight Air Navigation Order offences are prescribed in this Order. These have been selected because it is considered that the misconduct captured by these offences is sufficiently grave and that such misconduct has the potential to affect flight safety. Moreover, although in some cases it might be possible to deal with this type of misconduct by charging persons with other types of service offences (for example drunkenness under section 20 of the Act), it is more appropriate to charge an accused with an offence which most accurately reflects the conduct (or omission) involved.

5. **Territorial extent and application**

5.1 This instrument extends to the United Kingdom, the Isle of Man and the British overseas Territories. It applies to persons who are subject to service law wherever they are in the world and to civilians who are subject to service discipline. One of the circumstances in which a civilian will be subject to service discipline under the Armed Forces Act 2006 is when they are in one of Her Majesty's aircraft when it is in flight. Therefore as long as a civilian is on such an aircraft which is in flight, the instrument will apply wherever that aircraft is in the world.

6. **European Convention on Human Rights**

6.1 As this instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. **Policy Background**

7.1 It is essential that all persons on board one of Her Majesty's aircraft behave in an appropriate manner. It should therefore be possible to deal with and punish all persons who demonstrate misconduct, regardless of whether they are a service person, civilian, crew member or passenger.

8. **Consultation Outcome**

8.1 This instrument has been the subject of consultation with the Services. A memorandum about consultation on the 2006 Act primary legislation was submitted in written evidence to the Select Committee on the Armed Forces Bill and published on 9 May 2006 in its Special Report of Session 2005-06 (HC 828-II, page Ev 136). This memorandum explained how stakeholder consultation had been carried out and listed the individuals and organisations consulted.

9. **Guidance**

9.1 A new Manual of Service Law will provide guidance and supplementary information to Armed Forces personnel on the single system of Service law established under the Armed Forces Act 2006. The first volume of three within the Manual, which is intended for commanding officers and those who administer the Service justice system, includes a chapter on non-criminal conduct (disciplinary) offences. The guidance amongst other things clarifies and explains the meaning of section 49 and this instrument. A training version of the Manual of Service Law will be available in time to allow Service personnel to be trained ahead of full implementation of the 2006 Act, and the Manual will subsequently be available to the general public on the internet. Guidance will be promulgated to judge advocates through the Judge Advocate General's practice memoranda.

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 This legislation does not apply to small business.

12. **Monitoring and Review**

12.1 The Act is subject to quinquennial review. Following full implementation of the Act in October 2009, the provisions of the Act and all the delegated legislation made under it, will be monitored and reviewed leading up to the first quinquennial review in 2011.

13. **Contact**

13.1 Mr Nick Shaw at the Ministry of Defence, telephone 0207218 0564 or email nick.shaw460@mod.uk , is the point of contact regarding this information.