EXPLANATORY MEMORANDUM TO

THE ARMED FORCES (PROCEEDINGS) (COSTS) REGULATIONS 2009

2009 No. 993

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 enables service courts to make orders for the payment of costs which have been incurred by one of the parties to proceedings as a result of an unnecessary or improper act or omission by another party. It also makes provision in relation to the determination by those courts of the proportion of wasted costs to be disallowed, or met by legal or other representatives.

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

3.1 None.

4. Legislative context

4.1 The Armed Forces Act 2001 (as amended by the Armed Forces Act 2006) establishes the power of the Secretary of State to make regulations empowering any of the Court Martial, the Summary Appeal Court, the Service Civilian Court and the Court Martial Appeal Court to make orders for the payment of costs which have been incurred by one of the parties to proceedings as a result of an unnecessary or improper act or omission by another party. The 2001 Act also empowers these courts to disallow wasted costs, or order legal or other representatives to meet them, in such proportions as are determined in accordance with regulations made by the Secretary of State.

5. Territorial Extent and Application

5.1 This instrument extends to the United Kingdom and applies in relation to proceedings before service courts wherever located.

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 three Services are currently subject to separate discipline Acts (the Army Act 1955, the Air Force Act 1955 and the naval Discipline Act 1957). These Acts and the Courts-Martial (Appeals) Act 1968 make provision for the current system of Service courts. The provisions of the Armed Forces Act 2001 described in paragraph 4.1 apply in relation to proceedings before these courts, as do the Armed Forces Proceedings (Costs) Regulations 2005 (SI 2005/3478), which are made under the 2001 Act.

7.2 The Armed Forces Act 2006 replaces the three separate service discipline Acts and creates a common discipline system for all three Services. It establishes a single court system, replacing the separate structures under the previous legislation. The 2006 Act also amends the 2001 Act to replace references to the current Service courts with references to the new courts, namely the Court Martial, the Summary Appeal Court and the Service Civilian Court (it also replaces references to the Courts-Martial Appeal Court, which is renamed the Court Martial Appeal Court). The 2005 Regulations refer to the current courts and will, therefore, no longer align with the 2001 Act after it is amended. This will be remedied by revoking the 2005 Regulations and replacing them with the Armed Forces (Proceedings) (Costs) Regulations 2009**.**

8. Consultation outcome

8.1 There has been no consultation on this specific instrument as its policy content is broadly similar to that of the 2005 Regulations. A memorandum about consultation on the Armed Forces Act 2006 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 second volume of three within the Manual, which is intended for lawyers and legal advisers, will contain guidance about the proceedings costs order. A version of the Manual will be available in time to allow Service personnel to be trained ahead of full implementation of the 2006 Act and it 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 The legislation does not apply to small business.

12. Monitoring and review

12.1 The Armed Forces Act 2006 is subject to quinquennial review. Following full implementation of the Act in Oct 2009 the provisions 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 020 7218 0564 or email nick.shaw460@mod.uk, is the point of contact regarding this instrument.