EXPLANATORY MEMORANDUM TO

THE ARMED FORCES (REVIEW OF COURT MARTIAL SENTENCE)

ORDER 2009 No. 1168

AND

THE ARMED FORCES (REVIEW OF COURT MARTIAL SENTENCE)

(SUPPLEMENTARY PROVISION) REGULATIONS 2009 No. 1169

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 Order makes provision regarding the types of case that the Attorney General may refer to the Court Martial Appeal Court for it to review the sentencing of a person by the Court Martial.

2.2 The Regulations make supplementary provision with respect to the review of unduly lenient sentences by the Court Martial Appeal Court and with respect to references to the Supreme Court on a point of law where the Court Martial Appeal Court has concluded such a review.

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

3.1 An order under section 380 of the Act has been made which modifies the enabling powers for the Order to enable transitional provisions to be made.

4. Legislative context

4.1 The Armed Forces Act 2006 section 273 empowers the Attorney General to refer cases to the Court Martial Appeal Court, with the leave of that court, if she considers that the sentence imposed by the Court Martial was unduly lenient and if the corresponding offence under the Law of England and Wales would be indictable only or if the case is of a description specified for the purposes of section 273. The Order specifies cases, by description, for the purposes of section 273.

4.2 The Act also sets out the circumstances where, after the Court Martial Appeal Court has concluded its review, either the Attorney General or the offender may refer to the Supreme Court a point of law involved in any sentence passed on the offender in the proceedings.

4.3 The Regulations make supplementary provision with respect to such references to the Court Martial Appeal Court or the Supreme Court.

5. Extent

5.1 These instruments extend to the United Kingdom, the Isle of Man and British overseas territories and apply to persons subject to Service law wherever they are in the world.

6. European Convention on Human Rights

6.1 As the instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy Background

7.1 The Armed Forces Act 2006 will bring together the three separate discipline systems that existed under previous legislation for the Royal Navy, Army and Royal Air Force. It creates common offences and a common structure to hear charges, including the establishment of the Court Martial.

7.2 The Act also makes provision for the circumstances in which the Attorney General may refer a case to the Court Martial Appeal Court to review what she considers is an unduly lenient sentence. The provisions in the Order are equivalent to those applied in the civilian courts.

7.3 The supplementary provision in the Regulations is concerned with such matters as: time limits for making an application for leave to refer a case to the Court Martial Appeal Court and the Supreme Court; the duties of the registrar of the Court Martial Appeal Court; the counting of time spent in custody pending review; the presence of an offender at hearings; the effect of any sentence passed by the Court martial Appeal Court or the Supreme Court; and the costs incurred by the offender of being represented.

8. Consultation outcome

8.1 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. The individual instruments under the 2006 Act have been the subject of rigorous consultation with relevant stakeholders (such as the Services, the Office of the Attorney General, the Military Court Service and the registrar of the Court Martial Appeal Court) over a period of many months, to ensure that the policy goals have been achieved and that the provisions of each instrument will work in practice.

9. Guidance

9.1 A new Manual of Service Law will provide guidance and supplementary information to Armed Forces personnel (including the Service Police) 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 those involved in the administration of Service courts, includes a chapter on Court Martial review and appeal. 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 it will subsequently be available to the general public on the internet.

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 these instruments.

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 a requirement for renewal each year by Order in Council (approved in draft by both Houses of Parliament) and renewal by Act of Parliament every five years. In response to these requirements the Act and the provisions made under it will be subject to continuing monitoring and a general review will conducted in order to provide for the Act of Parliament which will be required 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 these instruments.