EXPLANATORY MEMORANDUM TO

THE ARMED FORCES (TRI-SERVICE SERIOUS CRIME UNIT) (CONSEQUENTIAL AMENDMENTS) (NO. 2) REGULATIONS 2022

2022 No. 1262

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 makes a minor consequential amendment to regulation 8(1) of the Armed Forces (Part 5 of the Armed Forces Act 2006) Regulations 2009 ("the 2009 Regulations" to take account of the establishment of a tri-service serious crime unit headed by a new Provost Marshal for serious crime.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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 (that is, where the instrument produces a practical effect) is worldwide.

5. European Convention on Human Rights

5.1 Sarah Atherton MP, the Minister for Defence Personnel, Veterans and Service Families, has made the following statement regarding Human Rights:

"In my view the provisions of the Armed Forces (Tri-Service Serious Crime Unit) (Consequential Amendments) (No. 2) Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 The establishment of a new tri-service serious crime unit, headed by a Provost Marshal for serious crime, requires legislation relating to the service police (i.e. the Royal Navy Police, Royal Military Police and Royal Air Force Police) to be updated to ensure that legislation applies to the new unit and Provost Marshal. Some of these amendments have been made by section 12 of, and Schedule 5 to, the Armed Forces Act 2021 ("AFA 21"), which amended the Armed Forces Act 2006 ("AFA 06") and other Acts (or equivalent Northern Ireland legislation) relating to policing. Consequential changes are also required to secondary legislation, the majority of which will be made using powers in section 12(6) of AFA 21.

6.2 This instrument uses powers under section 128 of AFA 06 to make one consequential change that is needed to regulation 8(1) of the 2009 Regulations. These powers were used to make the 2009 Regulations and are being used to amend them in place of the powers under section 12(6) so the amendment will be subject the affirmative procedure as were the original regulations.

6.3 Regulation 8(1) prescribes documents that service police must provide to a person's commanding officer under section 118(2)(b) of AFA 06 when referring that person's case to the Director of Service Prosecutions ("the DSP"). These are all reports relating to the case prepared by a service police force or provided to a service police force by another police force. This instrument amends regulation 8(1) to include any such reports prepared by, or provided to, the tri-service serious crime unit.

7. Policy background

What is being done and why?

7.1 The Service Justice System Policing Review by Professor Sir Jon Murphy, which was part of the wider Service Justice System Review by HH Shaun Lyons, was published in 2020. The Policing Review contained recommendations for the creation of a tri-service Defence Serious Crime Unit, which would bring together the Special Investigations Branches of the Royal Navy Police, Royal Military Police and Royal Air Force Police, along with specialist investigative support. These recommendations were reinforced by Sir Richard Henriques in his review of investigations relating to overseas operations, which was published in 2021.

7.2 As detailed in section 6.1, an amendment to the 2009 Regulations is needed as part of a package of legislative amendments to enable the establishment of a tri-service serious crime unit headed by a new Provost Marshal for serious crime.

Explanations

What did any law do before the changes to be made by this instrument?

7.3 As detailed in section 6.3 when a member of a service police force refers a person's case to the DSP they must provide the person's commanding officer with all reports relating to the case prepared by, or provided to, a service police force.

Why is it being changed?

7.4 Reports on cases may now be prepared by, or provided to, the tri-service serious crime unit, so these should also be given to the commanding officer.

What will it now do?

7.5 Regulation 8(1) of the 2009 Regulations will require a member of a service police force to give the commanding officer all reports relating to the case prepared by, or provided to, a service police force or the tri-service serious crime unit.

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 No consolidation is planned, however legislation relating to the tri-service serious crime unit will be kept under review and if appropriate a consolidated version will be produced.

10. Consultation outcome

10.1 There has been no formal consultation on this instrument. However, a range of stakeholders have been consulted on the creation of the tri-service serious crime unit, including the Provost Marshals of the Royal Navy, Army and Royal Air Force, and the Armed Forces.

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 ("AFA 2006"). The Manual of Service Law will be updated to reflect this statutory instrument, and the creation of the tri-service serious crime unit as appropriate. 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 AFA 2006, which provides the bulk of the primary legislation relating to the SJS. The AFA 2006 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.

15. Contact

15.1 Lindsey Pratt at the Ministry of Defence, Telephone: 020 7807 8244 or email: Lindsey.Pratt386@mod.gov.uk, can be contacted with any queries regarding the instrument.

15.2 Julie Grugel, Deputy Director Defence Serious Crime Capability, at the Ministry of Defence, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Andrew Murrison MP, the Minister for Defence Personnel, Veterans and Service Families, can confirm that this Explanatory Memorandum meets the required standard.