EXPLANATORY MEMORANDUM TO

THE ARMED FORCES (TRI-SERVICE SERIOUS CRIME UNIT) (CONSEQUENTIAL AMENDMENTS) REGULATIONS 2022

2022 No. 1051

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 consequential amendments to subordinate legislation relating to policing 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 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

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 so 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, and powers to make these changes via regulations were conferred on the Secretary of State by section 12(6) of AFA 21.

6.2 This instrument uses the powers under section 12(6) to make consequential amendments to the following legislation:

- the Crime and Disorder Strategies (Prescribed Descriptions) (England) Order 2004;

- the Criminal Procedure and Investigations Act 1996 (Code of Practice) (Armed Forces) Order 2009;
- the Armed Forces Act 2006 (Transitional Provisions etc) Order 2009;
- the Armed Forces (Custody Without Charge) Regulations 2009
- the Police and Criminal Evidence Act 1984 (Armed Forces) Order 2009;
- the Armed Forces (Disposal of Property) Regulations 2009:
- the Armed Forces (Part 5 of the Armed Forces Act 2006) Regulations 2009;
- the Crime and Disorder Strategies (Prescribed Descriptions) (Wales) Order 2009;
- the Police Act 1997 (Criminal Records) (Scotland) Regulations 2010;
- the Regulation of Investigatory Powers (Prescription of Offices, etc. and Specification of Public Authorities) (Scotland) Order 2010;
- the Police Act 1997 (Criminal Records) (Registration) (Scotland) Regulations 2010;
- the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010;
- the Protection of Vulnerable Groups (Scotland) Act 2007 (Consequential Provisions) Order 2010;
- the Protection of Freedoms Act 2012 (Relevant Official Records) Order 2012;
- the Armed Forces (Retrial for Serious Offences) Order 2013
- the Regulation of Investigatory Powers (Covert Human Intelligence Sources: Relevant Sources) Order 2013;
- the Regulation of Investigatory Powers (Authorisation of Covert Human Intelligence Sources) (Scotland) Order 2014;
- the Criminal Justice (Armed Forces Code of Practice for Victims of Crime) Regulations 2015;
- the Charities (Disclosure of Information to Designated Bodies) (Scotland) Order 2020;
- the Age of Criminal Responsibility (Scotland) Act 2019 (Consequential Provisions and Modifications) Order 2021.

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, the consequential amendments in this instrument are 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 The legislation being amended by this instrument referred to the existing service police forces, i.e. the Royal Navy Police, Royal Military Police and Royal Air Force Police and their respective Provost Marshals.

Why is it being changed?

7.4 So that legislation applies to the tri-service serious crime unit and its Provost Marshal in the same way it does to the existing service police forces and their Provost Marshals.

What will it now do?

7.5 The legislation will apply to the tri-service serious crime unit and its Provost Marshal as it does to the existing service police forces and their Provost Marshals.

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