EXPLANATORY MEMORANDUM (SUPPLEMENTARY) TO

THE CRIMINAL JUSTICE (ARMED FORCES CODE OF PRACTICE FOR VICTIMS OF CRIME) REGULATIONS 2015

2015 No. 1811

1. Introduction

1.1 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 Criminal Justice (Armed Forces Code of Practice for Victims of Crime) Regulations 2015 brings the Armed Forces Code of Practice for Victims of Crime ("the Code") into operation on 16 November 2015. The Code sets out the services to be provided to victims of crime by relevant service providers. The Code has been made to meet the relevant requirements of Directive 2012/29/EU of the European Parliament and of the Council of 23 October 2012 establishing minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA ("the Directive"). It is one of a number of statutory instruments giving effect to the Directive (details of the other instruments are set out at paragraph 4.2 below).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 In these regulations the Secretary of State for Defence has issued and brought into operation a code of practice as to the services to be provided to victims of criminal conduct in the armed forces' criminal justice system by service providers. The Code, which is contained in the schedule to the regulations, provides a system of obligations and mechanisms to enable and ensure that the Directive is properly transposed. In doing so it is closely modelled on provisions to be provided for the civilian criminal justice system in England and Wales, but with modifications to fit the armed forces' criminal justice system.

4.2 The Code, in addition to other legislative provision, completes implementation of the Directive in the armed forces' criminal justice system. The transposition note for this Memorandum contains entries relating to how these regulations and the Code transpose the relevant articles of the Directive. Other changes are being made to both the armed forces' criminal justice system and the criminal justice system in England

and Wales to meet the requirements of the Directive. Other statutory instruments made in respect of the transposition of the Directive are:

The Armed Forces (Service Courts Rules) (Amendment) Rules 2015

The Court Martial Appeal Court (Amendment) Rules 2015

The Domestic Violence, Crime and Victims Act 2004 (Victims' Code of Practice) Order 2015

The Summary Appeal Court (Youth Justice and Criminal Evidence Act 1999) Rules 2015

The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) (Amendment) (No.2) Order 2015.

4.3 These regulations come into force on 16 November 2015.

4.4 The scrutiny history for the Directive is set out in the transposition note.

5. Extent and Territorial Application

5.1 This instrument applies to all of the United Kingdom.

5.2 The Code also applies to armed forces' criminal justice system proceedings that take place in the European Union.

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

What is being done and why

7.1 These regulations bring into operation the Code which sets out the services victims of crime are entitled to and the obligations on specified persons and organisations to provide them. Prior to this Code, the armed forces had a non-statutory code for victims.

7.2 Implementation of the Directive is mandatory. However, certain aspects of the provisions permit Member States some flexibility in deciding how to implement them. Following the approach taken in the civilian criminal justice system in England and Wales, the Code set out in these regulations is the primary mechanism for the transposition of the Directive for the armed forces' criminal justice system. Article 1 of the Directive sets out its purpose: "to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings". The Code provides a system of obligations, mechanisms and powers intended to enable and ensure that this purpose is achieved. The application of a number of articles of the Directive is dependant on the victim's status in the Member State's criminal justice system. In the armed forces' criminal justice system, the victim does not have the status of a party to the proceedings.

7.3 Eligible victims under the Code are entitled to receive information, support and protection from investigative and prosecutorial personnel and organisations including the service police, commanding officers exercising powers of investigation and charge, and the Service Prosecuting Authority. Part of the information requirement includes ensuring that a victim who reports a crime receives a written acknowledgement which states the basic elements of the criminal offence.

7.4 While the Code is more detailed than the previous non-statutory code, many of its provisions either codify (for transposition purposes) what is already happening in practice or require small adjustments to existing policy or practice.

8. Consultation outcome

8.1 The amendments made by these rules were proposed by the government as part of the transposition of the Directive. No public consultation has been undertaken in connection with these rules. The agents of delivery are public authorities and those have been engaged in the development of the policy and legislation. Consultation has taken place with the Ministry of Justice, and the approach taken by that department in transposing the Directive for the criminal justice system in England and Wales, following detailed consultation, has been largely followed, with modifications for the armed forces' criminal justice system..

9. Guidance

9.1 The Manual of Service Law provides guidance and supplementary information to Armed Forces personnel and others involved in the administration of the single system of Service law established under the 2006 Act and is available on the internet at https://www.gov.uk/government/publications/joint-services-publication-jsp-830-manual-of-service-law-msl. Joint Service Publication 839 also provides guidance on victims in the armed forces' criminal justice system. These publications will be amended to give further guidance related to these regulations and the Code. Guidance is issued to judge advocates through the Judge Advocate General's practice memoranda. The Service Prosecuting Authority and service police will issue their own guidance as necessary.

10. Impact

10.1 The government believes the changes will have no impact on business, charities or voluntary bodies.

10.2 There is expected to be a negligible impact on the public sector with minor additional costs within the armed forces' criminal justice system.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The main legislation governing the armed forces (currently the Armed Forces Act 2006) requires renewal annually by Order in Council (with the consent of both Houses of Parliament) and renewal by Act of Parliament every five years. Its provisions were subjected to a review as part of work to prepare for the 2011 Act and

will be reviewed again in the Armed Forces Bill 2015/2016, which was introduced on 16 September 2015.

13. Contact

13.1 Tracy Sexton at the Ministry of Defence Telephone: 020 7218 0564 or email: tracy.sexton743@mod.uk can answer any queries regarding the instrument.