EXPLANATORY MEMORANDUM TO

THE CRIMINAL PROCEDURE AND INVESTIGATIONS ACT 1996 (APPLICATION TO THE ARMED FORCES) ORDER 2009

2009 No. 988

AND

THE CRIMINAL PROCEDURE AND INVESTIGATIONS ACT 1996 (CODE OF PRACTICE) (ARMED FORCES) ORDER 2009

2009 No. 989

AND

THE CRIMINAL JUSTICE AND PUBLIC ORDER ACT 1994 (APPLICATION TO THE ARMED FORCES) ORDER 2009

2009 No. 990

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 instruments

2.1 The instruments make equivalent provision for the service justice system to that which exists in the civilian criminal justice system with regard to investigations, disclosure and certain evidential matters.

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

3.1 None.

4. Legislative context

4.1 The Criminal Procedure and Investigations Act 1996 (as amended by the Armed Forces Act 2006) permits the Secretary of State by order to make provisions which are equivalent to those in Part 1 of the 1996 Act. The specific provisions in Part 1 are concerned with the duties of disclosure on the prosecutor and the accused in criminal proceedings. Further, the Secretary of State may by order make provisions which are equivalent to those in Part 2 of the 1996 Act. The specific provisions in Part 2 are concerned with criminal investigations, and in particular impose a duty on the Secretary of State to prepare a code of practice.

4.2 Sections 34 to 38 of the Criminal Justice and Public Order Act 1994 allow a court to draw such inferences as appear proper from the failure or refusal of an accused person to provide information in defined circumstances. The 1994 Act is amended by the Armed Forces Act 2006 and provides that the Secretary of State may by order apply these provisions to service courts and proceedings with such modifications that are required for the service context.

4.3 All three instruments replace existing instruments that make similar provisions for investigations and proceedings under the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957 (the service discipline Acts), all of which are being repealed and replaced by the Armed Forces Act 2006.

5. Territorial Extent and Application

5.1 These instruments extend to all investigations of service offences or proceedings of service courts wherever they are in the world.

6. European Convention on Human Rights

6.1 As these 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 replaces the service discipline Acts and creates a common discipline system for all three armed forces. It establishes a single court system, replacing the three separate structures under the previous legislation.

7.2 All three Orders make provision equivalent to that in the civilian criminal justice system for investigations and proceedings in the service justice system established under the Armed Forces Act 2006. The policy intent is that the service justice system should mirror the civilian justice system unless there are good operational reasons that justify differences. Applying the civilian legislation furthers the policy aim of alignment.

8. Consultation outcome

8.1 In proposing these Orders the Department has consulted with relevant stakeholders within the single service and legal branches, and with the Director of Service Prosecutions and the Judge Advocate General.

9. Guidance

9.1 These Orders will be included in the Manual of Service Law. This Manual, to be published by the Ministry of Defence in October 2009, offers extensive guidance to all those involved in the service justice system on how the Armed Forces Act 2006 and related legislation will operate. The Manual will be available in time to allow Service personnel to be trained ahead of full implementation of the 2006 Act and subsequently will 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 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 2006 Act in Oct 2009 its provisions and linked secondary legislation 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, 020 7218 0564, email nick.shaw460@mod.uk is the point of contact regarding this instrument.