EXPLANATORY MEMORANDUM TO
THE ARMED FORCES ACT 2006 (CONSEQUENTIAL AMENDMENTS) ORDER 2009

2009 No.

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 purpose of the instrument is to amend, repeal or revoke certain parts of other legislation as a result of the commencement of the Armed Forces Act 2006 ("the Act").

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

3.1 None.

4. Legislative Context

4.1 This instrument is made under s379 of the Act. Section 379 empowers the Secretary of State to amend or repeal, by order, other Acts of Parliament which were passed in the same or an earlier session to this Act. Through this order, the Secretary of State may also amend or revoke any subordinate legislation made before the passing of the Act.

4.2 There are numerous Acts and pieces of subordinate legislation that contain special provisions relating to the Armed Forces. Some of those provisions will no longer have relevance or application when the Armed Forces Act is fully commenced. The amendments, repeals and revocations made by this instrument are therefore necessary to ensure that, where necessary, the provisions will continue to make sense and have application.

4.3 The changes made are often required because of changes in terminology and procedural arrangement. For example, under the Act courts-martial will not be convened and a defendant will instead be tried by a standing Court Martial. As a result when the Act is commenced, references in other pieces of legislation to a "court-martial" must be replaced with references to "the Court Martial".

4.4 As the Order under s379 will amend, repeal and revoke the wording of other Acts of Parliament and other pieces of subordinate legislation, the Order will be approved by resolution of each House of Parliament.

5. Territorial extent and application

5.1 This instrument extends to the United Kingdom, the Isle of Man and British overseas territories.

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State has made the following statement regarding Human Rights:

"In my view, the provisions of the Armed Forces (Consequential Amendments) Order 2009 are compatible with the Convention rights"

7. Policy Background

7.1 It is important to ensure that the changes brought about through the commencement of the Act do not render other pieces of legislation meaningless. It is therefore necessary to ensure that wherever legislation (other than the Act) makes reference to the Armed Forces or persons connected with the Armed Forces, it continues to have application and meaning when the Act has been brought fully into force.

8. Consultation Outcome

8.1 Some of the legislation that is to be amended by this instrument is not the responsibility of the Ministry of Defence. Consequently, other Government departments responsible for the legislation affected by this instrument have been consulted during the drafting of the Order. All Government departments that responded agreed the wording of the instrument and are content with its effect.

9. Guidance

9.1 As the changes made to the legislation though this instrument are self explanatory, legal practitioners and others referring to the legislation (as amended) will not require guidance as to its effect or meaning. Additionally, the changes made through this instrument will have little impact upon the day to day business of the Armed Forces. Commanding officers (and those advising commanding officers) will not require guidance on the changes made through this instrument.

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 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 0207218 0564 or email nick.shaw460@mod.uk , is the point of contact regarding this information.