EXPLANATORY MEMORANDUM TO

THE ARMED FORCES ACT 2006 (CONTINUATION) ORDER 2024

2024 No. [XXXX]

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.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 Luke Pollard MP, Minister for the Armed Forces at the Ministry of Defence confirms that this Explanatory Memorandum meets the required standard.

2.2 Caron Tassel, Deputy Director for Service Justice, Discipline and Conduct, at the Ministry of Defence, can confirm that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 David Harvey at the Ministry of Defence, email: David.Harvey118@mod.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The instrument provides for the continuation in force of the Armed Forces Act 2006 ("the 2006 Act"), which would otherwise expire at the end of 14 December 2024. The instrument provides for the 2006 Act to continue in force for a further year, until the end of 14 December 2025.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument is the United Kingdom, the Isle of Man, the Channel Islands, and the British overseas territories except Gibraltar.

4.3 The territorial application of this instrument is worldwide. This instrument continues in force the 2006 Act, which applies to members of the armed forces wherever they are in the world and applies to civilians subject to service discipline in certain areas outside the United Kingdom or on service ships or aircraft.

5. Policy Context

What is being done and why?

5.1 The 2006 Act (which came into force on 31 October 2009) established a single system of service law that applies to the personnel of all three Services wherever in the world they are operating. The Act provides nearly all the provisions for the existence of a system for the armed forces of command, discipline and justice. It covers matters such

as offences, the powers of the service police, and the jurisdiction and powers of commanding officers and of the service courts, in particular the Court Martial. It also contains a large number of other important provisions related to the armed forces, such as provision for enlistment, pay and redress of complaints.

5.2 The requirement for the annual renewal of the 2006 Act (under section 382 of that Act) is based on the provision in the Bill of Rights 1688 which states that [sic] *"raising or keeping a standing Army within the Kingdome in time of Peace unlesse it be with Consent of Parlyament is against law"*. As a result of that provision, since 1688 all legislation on discipline in the armed forces has been subject to annual renewal.

5.3 The key effect of expiry of the 2006 Act would be to end the provisions which are necessary to maintain the armed forces as disciplined bodies. Crucially, the 2006 Act confers powers and sets out procedures to enforce the duty of members of the armed forces to obey lawful commands. Without the 2006 Act, those powers and procedures would no longer have effect; Commanding Officers and the Court Martial would have no powers of punishment in respect of a failure to obey a lawful command or any other form of disciplinary or criminal misconduct. Members of the armed forces would still owe allegiance to His Majesty, but the power of enforcement would be removed.

What was the previous policy, how is this different?

5.4 The policy objective has remained unchanged - to continue the 2006 Act for a further year. Since 31 October 2009, it is the 2006 Act which provides the legal framework for the armed forces to be maintained as disciplined bodies and it is this Act to which the requirement for continuation applies.

6. Legislative and Legal Context

How has the law changed?

6.1 The originally enacted section 382 of the 2006 Act provided that the Act would expire one year after it received Royal Assent, unless renewed by Order in Council approved by each House of Parliament ("a continuation order"). It provided that the Act could be kept in force by a continuation order for up to a year at a time, but not beyond the end of 2011.

6.2 The Armed Forces Acts of 2011, 2016 and 2021 each substituted section 382 and provided that the 2006 Act would expire a year after the respective Acts received Royal Assent, unless renewed by a continuation order. They allowed for the 2006 Act's continuation through such orders for up to one year at a time, but with the restriction that the extensions could not go beyond the end of 2016, 2021 and 2026 respectively.

6.3 The 2021 Act received Royal Assent on 15 December 2021. The most recent renewal of the 2006 Act was by the Armed Forces Act (Continuation) Order 2023 (S.I. 2023/1086) which provided for the 2006 Act to continue in force from the end of 14 December 2023 to the end of 14 December 2024. This instrument provides for the 2006 Act to continue in force from the end of 14 December 2024 to the end of 14 December 2025.

Why was this approach taken to change the law?

6.4 An annual continuation order under s.382(2) of the 2006 Act is required to maintain the 2006 Act in force.

7. Consultation

Summary of consultation outcome and methodology

7.1 There has been no formal consultation on this statutory instrument, as it is technical in nature and does not change government policy or existing legislation.

8. Applicable Guidance

8.1 There is no guidance on this particular instrument as it is technical in nature and does not change government policy or existing legislation. The Manual of Service Law provides general guidance and supplementary information to service personnel on the single system of service law established by the 2006 Act. The Manual of Service Law is available to the public at the following address:

https://www.gov.uk/government/collections/manual-of-service-law-msl

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument as there is no, or no significant impact on charities, voluntary bodies or the public sector.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies.

9.3 The legislation does not apply to activities that are undertaken by small or micro businesses.

9.4 There is no, or no significant, impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 This instrument will not be subject to review as it only has effect until the end of 14 December 2025. The 2006 Act which this instrument keeps in force for a further 12 months is subject to quinquennial review. Its provisions were subjected to a review as part of work to prepare for the Armed Forces Acts of 2011, 2016 and 2021.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 Luke Pollard MP, Minister for the Armed Forces, has made the following statement regarding Human Rights:

"In my view the provisions of the Armed Forces Act 2006 (Continuation) Order 2024 are compatible with the Convention rights.".

13. The Relevant European Union Acts

This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").