EXPLANATORY MEMORANDUM TO

THE ARMED FORCES ACT (CONTINUATION) ORDER 2010

No. [XXXX]

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 instrument enables the Armed Forces Act 2006 ("the 2006 Act") to continue in force for a further year, until 8 November 2011.

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

3.1 None.

4. Legislative Context

4.1 The 2006 Act received Royal Assent on 8 November 2006. Section 382 provides that the 2006 Act will expire at the end of one year from when it was passed, unless it is extended by an Order in Council. Successive Orders in Council may each extend the Act for a period of one year, but may not provide for its continuation beyond the end of 2011.

4.2 This year's Order will allow the 2006 Act to continue in force for a further year, until 8 November 2011. Otherwise, the legislation would expire on 8 November 2010.

5. Territorial Extent and Application

5.1 The instrument extends to the United Kingdom, the Isle of Man and British overseas territories. The provisions of the primary legislation apply to those who are subject to it, wherever they are in the world.

6. European Convention on Human Rights

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

> In my view the provisions of the Armed Forces Act (Continuation) Order 2010 are compatible with the Convention rights.

7. Policy background

7.1 When it came into force on 31 October 2009, the 2006 Act established a single system of Service law with a modernised list of Service offences. This single system applies to the personnel of all three Services. As a result, the Service Discipline Acts (the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957) have all been repealed.

7.2 The policy objective is to continue the 2006 Act for a further year.

8. Consultation outcome

8.1 No consultation has been undertaken in connection with the continuation order itself, but consultation has been carried out on the legislation that it continues in force. A memorandum about consultation on the 2006 Act was submitted in written evidence to the Select Committee on the Armed Forces Bill and published on 9 May 2006 in the Committee's Special Report of Session 2005-06 (HC 828). The memorandum explained how stakeholder consultation had been carried out and listed the individuals and organisations consulted.

8.2 More recently, statutory instruments made under the 2006 Act have been the subject of consultation with a range of stakeholders (including the Ministry of Justice, the Judge Advocate General, the Military Court Service, the Service police forces and the Services themselves) to ensure that the policy goals have been achieved and that the provisions of each instrument will work in practice.

9. Guidance

9.1 A new Manual of Service Law has been produced to provide guidance and supplementary information to Armed Forces personnel on the single system of Service law established under the 2006 Act. The first volume of the Manual, which is intended for commanding officers and those who administer the Service justice system, mentions the need for the legislation to be renewed by primary legislation every five years. The Manual of Service Law is available to the public at the following address: http://www.mod.uk

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. Its provisions have been subjected to a review as part of work to prepare for the next Armed Forces Bill, which we plan to introduce towards the end of 2010.

13. Contact

13.1 James Longworth at the Ministry of Defence telephone 020 7218 0377 or email CLS-LegC@mod.uk can answer any queries regarding the instrument.