EXPLANATORY MEMORANDUM TO

THE ARMED FORCES ACT (CONTINUATION) ORDER 2012

2012 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 3 November 2013.

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

3.1 None.

4. Legislative Context

4.1 Section 382 of the Armed Forces Act 2006 provides that the 2006 Act will expire at the end of one year beginning with the day on which the Armed Forces Act 2011 ("the 2011 Act") 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 2016.

4.2 This year's Order will allow the 2006 Act to continue in force for a further year, until 3 November 2013. Otherwise, the legislation would expire on 3 November 2012.

5. Territorial Extent and Application

5.1 The instrument continues in force the 2006 Act which 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 2012 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. It applies wherever in the world they are operating. The 2006 Act includes a comprehensive system of discipline, covering such matters as offences, the powers of the Service police, and the jurisdiction and

powers of commanding officers and of Service courts, in particular the Court Martial. The 2006 Act, as amended by the 2011 Act, also provides for the Secretary of State to make an annual report to Parliament on the effects of membership of the Armed Forces on, in particular, the welfare of members and former members of the forces.

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

8. Consultation outcome

8.1 No public 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 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. Consultation with these and new stakeholders, including some Service charities, continued as part of work to prepare for the 2011 Act. Stakeholders remain engaged in the work to prepare the statutory instruments to be made under the 2011 Act.

9. Guidance

9.1 The Manual of Service Law provides 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/DefenceInternet/AboutDefence/CorporatePublications/LegalPublications/ManualOfServiceLaw/.

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 2011 Act and will be reviewed again as part of work to prepare for the next Armed Forces Bill, which we plan to introduce towards the end of 2015.

13. Contact

13.1 Group Captain Philip Spinney RAF at the Ministry of Defence telephone 020 7218 8339 or email philip.spinney633@mod.uk can answer any queries regarding the instrument.