EXPLANATORY MEMORANDUM TO

THE ARMED FORCES ACT (CONTINUATION) ORDER 2015

2015 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 provides so that the Armed Forces Act 2006 ("the 2006 Act") continues in force for a further year, until the end of 2 November 2016.

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

3.1 None

4. Legislative Context

4.1 Under section 382 of the Armed Forces Act 2006 (as most recently amended by section 1 of the Armed Forces Act 2011), the 2006 Act would have ceased to have effect one year from 3 November 2011 (the date of Royal Assent to the 2011 Act), but for the fact that Her Majesty has power under that section to make Orders in Council each extending the life of the 2006 Act for one year. The last such Order was the Armed Forces Act (Continuation) Order 2014 (S.I. 2014/1882), which extended the life of the 2006 Act from the end of 2 November 2014 to the end of 2 November 2015.

4.2 This instrument extends the life of the 2006 Act from the end of 2 November 2015 to the end of 2 November 2016.

5. Territorial Extent and Application

5.1 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. Civilians subject to service discipline are defined groups (the groups are defined in Schedule 15 to the 2006 Act) principally of persons who work or reside with the armed forces in certain areas outside the United Kingdom or are travelling on service ships or aircraft.

6. European Convention on Human Rights

6.1 The Minister of State for Defence has made the following statement regarding human rights:

> In my view, the provisions of the Armed Forces Act (Continuation) Order 2015 are compatible with the Convention rights.

7. Policy background

7.1 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 as to the armed forces, such as provision for enlistment, pay and redress of complaints.

7.2 Under section 382 of the 2006 Act (as most recently amended by section 1 of the Armed Forces Act 2011), the 2006 Act would have ceased to have effect one year from 3 November 2011 (the date of Royal Assent to the 2011 Act), but for the fact that Her Majesty has power to make Orders in Council, each extending the life of the 2006 Act for one year. This instrument extends the life of the 2006 Act from the end of 2 November 2015 to the end of 2 November 2016. If this instrument is not made by the end of 2 November 2015, the 2006 Act will automatically expire.

7.3 The central effect of expiry of the 2006 Act would be to end the powers and provisions to maintain the armed forces as disciplined bodies. Perhaps the most central example of this effect is that the duty of members of the armed forces to obey lawful commands (which is under section 12 of the 2006 Act) and the powers and procedures under which this duty is enforced, would no longer have effect. Commanding Officers and the Court Martial would have no powers of punishment for disciplinary or criminal misconduct. The obligation of members of the armed forces is essentially a duty to obey lawful orders. They have no contracts of employment, and so no duties as employees. If the 2006 Act were to expire, members of the Armed Forces would still owe a duty of allegiance to Her Majesty, but the power of enforcement would be removed.

7.4 The requirement for renewal (under section 382 of the 2006 Act) is based on the assertion in the Bill of Rights 1688 that the Army (and by extension now the RAF and the Royal Navy) may not be maintained within the Kingdom without the consent of Parliament.

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 (and the statutory instruments made under that Act) and the next Armed Forces Bill (which is to be enacted before the end of 2016).

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

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 & review

12.1 The Armed Forces Act 2006 is subject to quinquennial review. Its provisions were subjected to a review as part of work to prepare for the 2011 Act and have been reviewed again as part of work to prepare for the next Armed Forces Bill, which is to be enacted before the end of 2016.

13. Contact

13.1 In the event of any enquiries about this instrument, please contact Tracy Sexton of Central Legal Services at the Ministry of Defence by telephoning 0207 218 0564 or by e-mailing tracy.sexton743@mod.uk.