EXPLANATORY MEMORANDUM TO

THE DRAFT ARMED FORCES, ARMY, AIR FORCE AND NAVAL DISCIPLINE ACTS

(CONTINUATION) ORDER 2007 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. Description

2.1 This instrument enables the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957 (collectively known as "the Service Discipline Acts") and the Armed Forces Act 2006 to continue in force for a further twelve months beyond 8 November 2007.

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

3.1 None.

4. Legislative Background

4.1 The Armed Forces Act 2006 received Royal Assent on 8 November 2006. Section 382 provides for the Act and the Service Discipline Acts to continue in force for a maximum of five years, subject to an Order in Council being approved in each of the intervening years.

4.2 This year's renewal Order will allow the 2006 Act and the Service Discipline Acts to continue in force for a further twelve months beyond 8 November 2007, which is the date on which the legislation would otherwise expire.

5. Extent

5.1 This instrument applies to all of the United Kingdom. The primary legislation which it continues applies to those who are subject to the Service Discipline Acts, wherever they are throughout the world; and to Service courts whether or not they are held in the United Kingdom.

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State for Defence has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

> In my view the provisions of the Armed Forces, Army, Air Force and Naval Discipline Acts (Continuation) Order 2007 are compatible with the Convention rights.

7. Policy background

7.1 The policy objective is to continue the Armed Forces Act 2006 and the Service Discipline Acts for a further twelve months from 8 November 2007.

7.2 The Service Discipline Acts establish systems of law for each of the services and accompanying civilians overseas. They also make provision for a range of other matters, primarily recruitment and enlistment, boards of inquiry, redress of grievance, and billeting and requisitioning.

7.3 The Army Act and Air Force Act are essentially identical. There are many equivalent provisions in the Naval Discipline Act but there are also some differences. For example, the powers of summary jurisdiction are considerably wider in the Royal Navy and there is only one type of court martial as opposed to two. In addition, the provisions on recruitment and enlistment for the Royal Navy are in separate legislation (the Armed Forces Act 1966) and there are no statutory provisions for Royal Navy boards of inquiry, which are instead convened under prerogative powers.

7.4 The Government confirmed its intention to introduce a single system of service law in the debates on second reading of the Armed Forces Bill that took place in the House of Commons on 12 December 2005 and the House of Lords on 14 June 2006. The Select Committee on the Armed Forces Bill published its report on the legislation on 9 May 2006.

7.5 The Armed Forces Act 2006 received Royal Assent on 8 November 2006. Once fully implemented, the 2006 Act will replace the provisions of the separate Service Discipline Acts and will include the following key elements:

the establishment of a single system of service law;

a modernised list of service offences;

a modernised grievance procedure for members of the armed forces; and

a single statutory provision for service inquiries.

7.6 The Department aims to complete full implementation of the 2006 Act by 1 January 2009. As implementation takes place, the related provisions of the Service Discipline Acts will be repealed.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is expected to be nil.

9. Contact

9.1 **Mrs S J McIntosh** at the Ministry of Defence (telephone: 020 7218 0564) can answer any queries regarding the instrument.