EXPLANATORY MEMORANDUM TO

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

(CONTINUATION) ORDER 2008 No. [DRAFT]

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 ("the 2006 Act") to continue in force for a further twelve months beyond 8 November 2008.

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

3.1 None.

4. Legislative Background

4.1 The 2006 Act received Royal Assent on 8 November 2006. Section 382 provides for the 2006 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 2008, which is the date on which the legislation would otherwise expire.

5. Territorial Extent and Application

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 2008 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 2008.

7.2 The Service Discipline Acts establish a system of law for each of the Services and accompanying civilians overseas. They also make provision for a range of other matters such as: recruitment and enlistment; Service Inquiries, replacing currrent boards of inquiry; and complaints by individual Service personnel.

7.3 The Army Act 1955 and the Air Force Act 1955 are essentially identical. There are many equivalent provisions in the Naval Discipline Act 1957 but there are also some differences. For example, the powers of summary jurisdiction have for historical reasons been 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 during 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 9 May 2006.

7.5 The Armed Forces Act 2006 received Royal Assent on 8 November 2006. Once fully implemented, it will replace the provisions of the 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 individual Service personnel; and

a single statutory provision for Service Inquiries.

7.6 The Ministry of Defence aims to complete full implementation of the 2006 Act by 1 January 2009. Once this has been done, the 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 or email sue.mcintosh641@mod.uk) can answer any queries regarding the instrument.