EXPLANATORY MEMORANDUM TO
THE ARMED FORCES, ARMY, AIR FORCE AND NAVAL DISCIPLINE ACTS (CONTINUATION) ORDER 2009

2009 No.

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 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 period of twelve months, until 8 November 2010.

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 and the Service Discipline Acts will expire at the end of one year from when the 2006 Act was passed, unless they are extended by an Order in Council. Successive Orders may each extend those Acts for periods of one year, but may not provide for their continuation beyond 2011.

4.2 This year's Order will allow the 2006 Act and the Service Discipline Acts to continue in force for a further period of twelve months, until 8 November 2010. The legislation would otherwise expire on 8 November 2009.

5. Territorial Extent and Application

5.1 This instrument extends to the United Kingdom, the Isle of Man and British overseas territories. The provisions of the primary legislation, to the extent they are in force, 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, Army, Air Force and Naval Discipline Acts (Continuation) Order 2009 are compatible with the Convention rights.

7. Policy background

7.1 The policy objective is to continue the 2006 Act and the Service Discipline Acts for a further period of twelve months, until 8 November 2010.

7.2 The three Service Discipline Acts establish a system of law for each of the Services and accompanying civilians overseas. 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.

7.3 The Government confirmed its intention to introduce a single system of Service law during debates on second reading of the Armed Forces Bill held in the House of Commons on 12 December 2005 and the House of Lords on 14 June 2006.

7.4 When it is fully implemented, the 2006 Act will establish a single system of Service law with a modernised list of Service offences. The Ministry of Defence aims to complete full implementation of the 2006 Act by 31 October 2009. When the 2006 Act is brought into force the Service Discipline Acts will be repealed.

8. Consultation outcome

8.1 A memorandum about consultation on the Armed Forces Act 2006 primary legislation was submitted in written evidence to the Select Committee on the Armed Forces Bill and published on 9 May 2006 in its Special Report of Session 2005-06 (HC 828-II, page Ev 136). This memorandum explained how stakeholder consultation had been carried out and listed the individuals and organisations consulted. The individual instruments under the 2006 Act have been the subject of rigorous consultation with relevant stakeholders (such as the Services, the Service police, the Judge Advocate General and the Military Court Service) over a period of many months, 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 will provide guidance and supplementary information to Armed Forces personnel on the single system of Service law established under the Armed Forces Act 2006. The introduction to 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 will be available in time to allow Service personnel to be trained ahead of full implementation of the 2006 Act and it will subsequently be available to the general public on the internet. Guidance will be promulgated to judge advocates through the Judge Advocate General's practice memoranda.

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. Following full implementation of the Act in October 2009 the provisions will be monitored and reviewed leading up to the first quinquennial review in 2011.

13. Contact

13.1 Nick Shaw at the Ministry of Defence telephone 020 7218 0564 or email nick.shaw460@mod.uk can answer any queries regarding the instrument.