EXPLANATORY MEMORANDUM TO

THE ARMED FORCES (COVENANT) REGULATIONS 2022

2022 No. [XXXX]

1. Introduction

1.1 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 These Regulations make provision under Part 16A of the Armed Forces Act 2006, as amended by section 8 of the Armed Forces Act 2021, in relation to the armed forces covenant. They bring into effect statutory guidance about the performance of the duty to have due regard to the principles of the armed forces covenant ("the duty"). These principles are aimed at removing disadvantages for service people arising from service life and/or making special provision where justified, and the duty applies to the specified bodies listed in Part 16A when they are exercising specified functions in the fields of healthcare, education and housing. These Regulations also prescribe those persons who are relevant family members of service members (or former service members), who are included in the definition of 'service people' for the purposes of the duty.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales, Scotland, Northern Ireland, the Isle of Man and the British overseas territories, except Gibraltar.

4.2 The territorial application of this instrument is England and Wales, Scotland and Northern Ireland, the Isle of Man and the British overseas territories, except Gibraltar.

5. European Convention on Human Rights

5.1 The Secretary of State for Defence has made the following statement regarding Human Rights:

"In our view the provisions of the Armed Forces (Covenant) Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 These Regulations are made under sections 343AE(4) and 343B(4A) of the Armed Forces Act 2006 ("the 2006 Act"), which were inserted by section 8 of the Armed Forces Act 2021 ("the 2021 Act"). Section 8 of the 2021 Act was commenced on 1st May 2022 for the purposes of making subordinate legislation and issuing guidance and will be brought into force for remaining purposes on the day that these Regulations come into force.

6.2 Section 8 of the 2021 Act amended Part 16A of the 2006 Act, relating to the armed forces covenant, by inserting sections 343AA to 343AF. These new sections place a legal duty on specified public persons and bodies to have due regard to the principles of the armed forces covenant when exercising certain statutory functions in the fields of healthcare, education and housing. The specified bodies and relevant functions are listed in sections 343AA, 343AB, 343AC and 343AD of the 2006 Act in respect of England, Wales, Scotland and Northern Ireland respectively.

6.3 Section 343AE of the 2006 Act enables the Secretary of State to issue guidance relating to the duty and requires the specified bodies to have regard to any guidance in force when exercising a relevant function. Guidance may not be issued under section 343AE unless a draft has been laid before Parliament and comes into force on a day appointed by Regulations. These Regulations bring into effect guidance entitled "Statutory guidance on the Armed Forces Covenant Duty" which was laid before Parliament on 20 July 2022.

6.4 The people who benefit from the duty are classed as 'service people'. This term is defined in section 343B(1) of the 2006 Act, and comprises: currently serving members of the UK regular and reserve forces; currently serving members of British Overseas Territories' Armed Forces who are subject to UK Service law; former members of the UK regular and reserve forces and British Overseas Territory Forces, who are ordinarily resident in the UK; and the 'relevant family members' of people in these groups. These Regulations prescribe those persons who are relevant family members for these purposes.

7. Policy background

What is being done and why?

7.1 The armed forces covenant is a promise by the nation that those who serve or who have served in the armed forces, and their families, should be treated fairly and face no disadvantage when accessing public and commercial services, with special provision made in appropriate cases for those who have sacrificed the most. The covenant was launched in its current form in 2011 and is a voluntary commitment which can be made by organisations in the private and public sectors. As a result of this, there have been many examples around the UK of good practice to remove, mitigate, or prevent incidents of disadvantage from occurring.

7.2 There was concern however that members of the armed forces community were still experiencing disadvantage when accessing public services, particularly as they moved around the country, due in large part to a disparity in levels of awareness of the Covenant among local service providers

7.3 The Armed Forces Act 2021 strengthens the armed forces covenant by introducing a duty to have due regard to the covenant principles on certain public bodies, when they are exercising relevant public functions in the fields of education, healthcare, and housing. The Covenant principles are:

a. to recognise the unique obligations of, and sacrifices made by, the armed forces;

b. the principle that it is desirable to remove disadvantages arising for service people from membership, or former membership, of the armed forces; and

c. the principle that special provision for service people may be justified by the effects on such people of membership, or former membership, of the armed forces.

7.4 The duty focusses on health, housing and education as they comprise the foundation of successful lives and are among the most commonly cited areas of concern when it comes to disadvantage experienced by the armed forces community. It covers services delivered at the local level in order to address the disparity of awareness of the Covenant that can impact the armed forces community as they move around the UK. Bodies in scope will be required to consider the needs of the Armed Forces community when developing policy and making decisions in those fields. In this way the duty will raise the levels of awareness of the Covenant and its principles which in turn will help to ensure members of the armed forces community are given a fair hearing.

7.5 The Covenant principles relate to 'service people' which includes relevant family members of service members and former service members. This instrument implements key provisions of the new duty by defining relevant family members and bringing into force the guidance supporting the duty. A broad approach was taken in defining 'relevant family members', as a 'family group' may look very different depending on circumstances and those outside the 'traditional' family may well be impacted by Service life. Where family members do face such an impact, it is usually due to their cohabitation with, or dependency on, a Service member. This has been used as the basis for the definition, which extends beyond immediate family members where there is cohabitation with the service member or a level of dependency.

7.6 The statutory guidance will help those public bodies in scope to discharge the duty. By describing who is a relevant family member, these Regulations will enable bodies to more easily identify those persons to whom they must have due regard.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This instrument does not amend any other instrument.

10. Consultation outcome

10.1 The Secretary of State is required to consult the Devolved Administrations, and other appropriate stakeholders, before making regulations to define 'relevant family members' and before laying draft guidance before Parliament. In accordance with sections 343AE(5) and 343B(4B) of the 2006 Act, the Ministry of Defence conducted a statutory consultation between 19 May and 30 June 2022. This was following extensive engagement with key stakeholders that had taken place throughout policy development and during the progress through Parliament of the Armed Forces Act 2021. Given the nature of the duty, the Department conducted a targeted approach with key stakeholders, representing the public bodies subject to the duty and the Armed Forces community, as an effective way of ensuring the definition of relevant family members and the guidance met their needs.

10.2 The following were consulted:

- Ministers in the Department for Health & Social Care, Department for Education, Department for Levelling Up, Housing & Communities, the Scottish Government, the Welsh Government, the Scotland Office, the Wales Office, the Northern Ireland Office; and the Permanent Secretaries of the Executive Office in Northern Ireland, Department for Communities, Department for Health and Department for Education.
- Chief executives of the three Families Federations, the Royal British Legion, the Confederation of Service Charities, and the Soldiers', Sailors', and Airmen's Families Association, Help 4 Heroes, Combat Stress; and the three Local Government Associations (The Local Government Association (England), the Welsh Local Government Association and the Confederation of Scottish Local Authorities); and the Armed Forces Pay Review Body.
- MPs who previously sat on the Armed Forces Bill Select committee, and Peers, including those who tabled amendments to the Covenant section of the Armed Forces Act at Report Stage.

10.3 Of the 14 consultation responses received, the majority (which included all those from bodies subject to the duty) were supportive of the proposed definition of relevant family members and the guidance or suggested only minor amendments to the text.

10.4 Of the substantive comments received, the issue that was mentioned most (three responses) focussed on the guidance not including prescriptive actions that bodies in scope should follow to demonstrate they are meeting the duty of 'due regard'. Suggestions included mandating that bodies in scope keep a public record of all their considerations and decision-making under the Covenant duty. This has been reflected in the guidance by noting the value of good recording keeping as a means of demonstrating that a body has had due regard to the principles of the armed forces covenant although it would be inappropriate to go further as there is no legal requirement to keep records.

10.5 It was also proposed that action be taken to ensure that members of the Armed Forces community be made aware of the scope of the Covenant duty and supporting guidance. This need is recognised, and the Ministry of Defence is already sharing information about the Covenant duty among the Armed Forces community and their representatives as part of their wider Covenant communications. This work will continue as the duty is implemented. It was also suggested that an additional section be added to the guidance on how the duty is to be reviewed in the future. It was felt that it was not necessary to include such information as the intended audience of the guidance is bodies in scope and is focussed on assisting them in understanding and discharging their obligations under the duty. Additional information aimed at the Armed Forces community would risk diluting or confusing this overall message.

10.6 In drafting the guidance and ahead of the formal consultation, the Government engaged widely at the local and national level around the UK as the Armed Forces Act 2021 was progressing through Parliament. Through two separate series of focus groups, and on-going engagement, discussions were held with representatives from local service providers, other Government departments, Devolved Administrations, Service charities, Families Federations, and relevant ombudsmen. In doing so the Government engaged with over 200 individuals representing their organisation.

11. Guidance

11.1 In addition to the statutory guidance covered by this Instrument, the Ministry of Defence will continue to share existing and new information about the Armed Forces Covenant and the new duty with key stakeholders through its website, Gov.uk and communication networks. It is also working with stakeholders on the development of useful communication tools, such as presentations and e-learning modules that bodies in scope and those representing the Armed Forces community can use to raise awareness of the Covenant duty.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has been completed covering the provisions in the Armed Forces Act 2021 relating to the armed forces covenant and is available at Armed Forces Act 2021-Impact Assessment for Covenant Duty-gov.uk

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The Government committed to report on the operation of the Covenant duty, as part of the covenant annual report in 2023 (Government consideration of Lords message, 13 December 21, column 817 - Armed Forces Bill - Hansard - UK Parliament), including consideration of whether central government and any of its functions could usefully be added. The Armed Forces Act 2021 will also be subject to post-legislative scrutiny within five years of receiving Royal Assent.

15. Contact

15.1 John Shivas, Assistant Head Armed Forces Covenant Team, email: COVENANT-MAILBOX@mod.gov.uk Tel: 44300 1588633

15.2 James Greenrod, Deputy Director for Armed Forces People Support at the Ministry of Defence can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Minister for Defence People and Veterans can confirm that this Explanatory Memorandum meets the required standard.