EXPLANATORY MEMORANDUM TO

THE ARMED FORCES (ENLISTMENT) REGULATIONS 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 These Regulations make provision with respect to the enlistment of persons in the regular forces and are made under section 328 of the Armed Forces Act 2006 (the 2006 Act). They deal with a number of matters broadly relating to enlistment and terms of service.

2.2 The 2006 Act provides that the Defence Council may make regulations by statutory instrument about the process of enlistment into the regular forces. These regulations therefore provide in particular for matters such as the appointment and duties of recruiting officers; prohibiting the enlistment of persons under the age of 18 without the consent of prescribed persons; the validity of enlistment; rights to discharge and the creation of offences of knowingly giving false answers during the enlistment procedure (which are subject to specified maximum punishments).

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

3.1 The Regulations make provision regarding the enlistment of persons under the age of 18 with parental consent (see section 328(2)(c) of the 2006 Act). By virtue of section 373(3)(e) these Regulations must therefore be subject to the affirmative resolution procedure.

3.2 An order under section 380 of the Act has been made which modifies the enabling powers for this instrument to enable transitional provisions to be made.

4. Legislative Background

4.1 Section 328 of the 2006 Act largely replicates provisions in existing armed forces legislation, both primary and secondary. Much of the existing secondary legislation is made by way of Defence Council regulations that are not subject to any Parliamentary procedure. Although it is usual for Defence Council regulations to be made administratively, it was decided when drafting the 2006 Act that regulations made under section 328 should be subject to Parliamentary scrutiny. This is because the Services have no employment contracts and it is recognised that enlistment is of sufficient importance to warrant Parliamentary scrutiny of what is involved.

4.2 Making the regulations on enlistment by statutory instrument ensures not only that they are properly scrutinised, but also that they are published and that servicemen may easily ascertain their rights and obligations.

5. Territorial Extent and Application

5.1 This instrument extends to the United Kingdom, the Isle of Man and British overseas territories and applies to persons subject to service law wherever they are in the world.

6. European Convention on Human Rights

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

In my view the provisions of the Armed Forces (Enlistment) Regulations 2009 are compatible with the Convention rights.

7. Policy background

7.1 The 2006 Act represents the first complete overhaul of Service law in over fifty years, it harmonises practice and procedures across the armed forces, providing a single system of law, regardless of their Service.

7.2 With regard to enlistment, this harmonisation process means that for the Royal Navy recruits will no longer enter service but will also be enlisted and all recruits to the armed forces will make a declaration of truth on their enlistment form and subsequently swear an oath of allegiance. Recruits into the Royal Navy have not previously been required to swear such an oath.

7.2 A considerable amount of detail that surrounds recruitment does not need provision in primary or even secondary legislation. It is, however, apparent that the important point in the recruitment process is that of enlistment, which alters the legal status of the recruit, making him subject to service law and therefore is a significant step in a person's life.

7.3 No person under the age of 16 may be enlisted into the armed forces. A person under the age of 18 years must have written consent from a person with parental responsibility before a recruiting officer may enlist him.

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 first volume of three within the

Manual, which is intended for commanding officers and those who administer the Service justice system, includes a chapter on terms and conditions of service. 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. 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 & review

12.1 The Armed Forces Act 2006 is subject to quinquenial review. Following full implementation of the Act in October 2009 the provisions will be monitored and reviewed leading up to the first quinquenial review in 2011.

13. Contact

13.1 Mr N Shaw at the Ministry of Defence, 0207 218 0564, email nick.shaw460@mod.uk (0207 218 8291) is the point of contact regarding this instrument.