EXPLANATORY MEMORANDUM TO

THE ARMED FORCES (REMISSION OF FINES) ORDER 2013

2013 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. Purpose of the instrument

2.1 The Armed Forces Act 2011 inserts a new section 269A into the Armed Forces Act 2006. New section 269A requires the Court Martial, when imposing a fine on a person aged 18 or over, to fix the term of imprisonment which may be imposed if the fine is not paid. Section 267 of the Armed Forces 2006 provides the court with a power to remit the whole or part of a fine in the light of a subsequent inquiry into the offender's financial circumstances. This order amends section 267 so that where a court exercises its power to remit the whole or part of a fine, a term of imprisonment fixed under section 269A must be proportionately reduced.

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

3.1 This draft Statutory Instrument supersedes the draft of the same title which was laid before Parliament on 17 July 2013 and published on 22 July 2013 (ISBN 9780111101636). The earlier draft Order was withdrawn as it was not possible for the necessary Parliamentary debates to take place prior to its stated coming into force date. The changes made in the current draft Order are to add an explanation in the headnote, to amend the date for the coming into force of the Order, and to alter the signature block to make reference to the Parliamentary Under Secretary of State.

4. Legislative Context

4.1 Section 16 of the Armed Forces Act 2011 inserts into the Armed Forces Act 2006 a new section 269A, which requires the Court Martial, when imposing a fine on a person aged 18 or over, to fix a term of imprisonment which the person is to undergo if the fine is not paid. This corresponds broadly to a requirement imposed on the Crown Court in England and Wales by section 139(2) of the Powers of Criminal Courts (Sentencing) Act 2000.

4.2 Section 165 of the Criminal Justice Act 2003 permits a court in England and Wales to remit the whole or part of a fine in the light of a subsequent inquiry into the offender's financial circumstances. Where a court exercises this power and a term of imprisonment has been fixed under section 139(2) of the Powers of Criminal Courts (Sentencing) Act 2000, the term must be proportionately reduced.

4.3 Section 267 of the Armed Forces Act 2006 similarly permits a court to remit the whole or part of a fine. This Order amends that section so that, where the power to remit is exercised, a term of imprisonment fixed under section 269A must be proportionately reduced.

5. Territorial Extent and Application

5.1 This instrument extends to the United Kingdom and applies in relation to persons subject to service law wherever they are in the world. It also applies to "civilians subject to service discipline", which means persons who are not subject to service law but who satisfy the requirements of any paragraph of Part 1 of Schedule 15 to the Armed Forces Act 2006.

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 (Remission of Fines) Order 2013 are compatible with the Convention rights.

7. Policy background

7.1 Section 16 of the Armed Forces Act 2011 makes changes to the Armed Forces Act 2006 to provide for the enforcement of financial penalties imposed by the Court Martial. Section 16(1) inserts new sections 269A to 269C. The new section 269A requires the Court Martial, when imposing a fine on a person aged 18 or over, to fix the term of imprisonment which may be imposed if the fine is not paid. This section is modelled on similar requirements when a fine is imposed by the Crown Court in England and Wales.

7.2 Civilian criminal courts in England and Wales have a power to remit the whole or part of a fine in the light of a subsequent inquiry into the offender's financial circumstances. Where a court exercises this power and a term of imprisonment has been fixed, the term must be proportionately reduced.

7.3 Service courts also have similar powers to remit a fine. This Order amends those provisions so that where a Service court remits a fine and a term of imprisonment has been fixed, the term must be proportionately reduced. These changes bring the Armed Forces Act 2006 into line with the equivalent civilian provisions.

8. Consultation outcome

8.1 As financial penalty enforcement orders will be enforced in prescribed civilian courts the Ministry of Justice has been consulted about the impact these regulations will have on the work of the civilian courts. No public consultation has been undertaken in connection with these regulations, but there has been rigorous consultation with the Services to ensure that the policy goals have been achieved and that the provisions of this instrument will work in practice.

9. Guidance

9.1 The Manual of Service Law provides guidance and supplementary information to Armed Forces personnel involved in the administration of the single system of Service law established under the 2006 Act and is available on the internet at

https://www.gov.uk/government/publications/joint-services-publication-jsp-830-manual-of-service-law-msl.

9.2 It is not proposed to issue guidance to civilian court staff as the arrangements for registering and enforcing a financial penalty enforcement order will be unaffected by this Order.

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 main legislation governing the armed forces (currently the Armed Forces Act 2006) requires renewal annually by Order in Council (with the consent of both Houses of Parliament) and renewal by Act of Parliament every five years. Its provisions were subjected to a review as part of work to prepare for the 2011 Act and will be reviewed again as part of work to prepare for the next Armed Forces Bill, which we plan to introduce towards the end of 2015.

13. Contact

13.1 Group Captain Daren Fitzhenry RAF at the Ministry of Defence telephone 020 7218 8339 or email daren.fitzhenry304@mod.uk can answer any queries regarding the instrument.