EXPLANATORY MEMORANDUM TO

THE INTERNATIONAL HEADQUARTERS AND DEFENCE ORGANISATIONS (DESIGNATION AND PRIVILEGES) ORDER 2017

2017 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 The International Headquarters and Defence Organisations (Designation and Privileges) Order 2017 replaces the International Headquarters and Defence Organisations (Designation and Privileges) Order 1965 (the "1965 Order"). This order lists those headquarters which are to be designated for the purposes of the International Headquarters and Defence Organisations Act 1964.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and is not a financial instrument that relates exclusively to England, Wales and Northern Ireland.

4. Legislative Context

4.1 It is proposed that this Order should be made under section 1 of the Schedule to the International Headquarters and Defence Act 1964.

4.2 Section 1(4) of the International Headquarters and Defence Organisations Act 1964 provides that a draft of this Order must be laid before Parliament and approved by a resolution of each House.

4.3 This Order gives effect to certain provisions of three status of forces agreements (SOFAs) to which the United Kingdom is a party. They are the North Atlantic Treaty Organisation Status of Forces Agreement (NATO SOFA), the NATO Partnership for Peace Status of Forces Agreement (PfP SOFA) and the European Union Status of Forces Agreement (EU SOFA).

4.4 The SOFAs establish the status of military and civilian personnel originating from one country when they are located in the territory of another country. They also provide for the status of military headquarters established in other countries. The status, privileges and immunities conferred on International Headquarters and Defence Organisations by the draft Order is no greater in extent than those required by the relevant SOFA, or the established custom and practice, to enable either NATO or the EU and specified individuals connected with those organisations to function effectively.

4.5 The NATO SOFA effectively has primacy. The PfP SOFA extends the NATO SOFA to all the States which have accepted the invitation to participate in the Partnership for Peace. The EU SOFA only comes into force once it has been approved by all the EU Member States in accordance with their respective constitutional requirements and only applies in so far as the status of their forces are not regulated by the NATO or PfP SOFA.

4.6 The International Headquarters and Defence Organisations (Designation and Privileges) Order 2017 replaces the list of headquarters designated by the International Headquarters and Defence Organisations (Designations and Privileges) Order 1965 and revokes the 1965 Order. This Order, together with the International Headquarters and Defence Organisations Act 1964 under which it is made, substantially implements the UK's obligations under the 1952 Protocol to the NATO SOFA on the status of international military headquarters (the Paris Protocol).

4.7 The International Headquarters and Defence Organisations (Designation and Privileges) Order 2017 bring the NATO and EU headquarters previously listed in the 1965 Order up to date, in order that those headquarters may benefit from inviolability of archives, immunity from legal suit and in some cases, possess legal capacity as a body corporate.

4.8 Changes in the NATO Command Structure mean that the NATO Headquarters covered by the 2009 Order must be updated in order that the relevant immunities and privileges will correctly apply to those headquarters.

4.9 Some of the NATO Headquarters have been renamed and the following headquarters have been newly established in the UK: NATO Centralised Targeting Capacity and 1st NATO Signal Battalion.

5. Extent and Territorial Application

5.1 The extent of this instrument is the United Kingdom.

5.2 The territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

6.1 The MOD Minister of State in the House of Lords has made the following statement regarding Human Rights:

"In my view the provisions of the International Headquarters and Defence Organisations (Designation and Privileges) (Amendment) Order 2017 are compatible with the Convention rights."

7. Policy background

7.1 NATO is an alliance of 28 countries from North America and Europe committed to fulfilling the goals of the North Atlantic Treaty signed on 4 April 1949. In accordance with the Treaty, the fundamental role of NATO is to safeguard the freedom and security of its member countries by political and military means.

7.2 The NATO Partnership for Peace is a major initiative by NATO directed at increasing confidence and cooperative efforts to reinforce security. It engages NATO and participating partners in concrete cooperation activities designed to achieve these objectives. It offers participating states the possibility of strengthening their relations with NATO in accordance with their own individual interests and capabilities.

7.3 Entering into SOFAs with NATO and PfP countries enables the UK's armed forces, while engaged in exercises in the territories of those countries, to enjoy the general immunities and privileges applying to domestic armed forces, with reciprocal arrangements for armed forces from those countries engaged on exercises in the UK.

7.4 EU Member States, under the banner of the Common Foreign and Security Policy and the European Security and Defence Policy, and subject to the consent of partaking nations, can deploy their armed forces in the territory of other EU Member States in support of the command of EU Operations or training exercises. In order to facilitate this, on 17 November 2003, the EU Member States signed up to the EU SOFA to establish the status of military and civilian staff seconded to the Military Staff of the EU, of the headquarters and forces which may be made available to the EU in the context of the preparation and execution of the tasks referred to in Article 17(2) of the Treaty on European Union, including exercises, and of the military and civilian staff of the Member States put at the disposal of the EU to act in this context.

8. Consultation outcome

8.1 No consultation was undertaken or required.

9. Guidance

9.1 No applicable guidance is being published.

10. Impact

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

10.2 There is no significant 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 activities that are undertaken by small businesses.

12. Monitoring & review

12.1 International Headquarters designated under the Order will be kept under review and relevant designations updated as necessary.

13. Contact

13.1 Dr Al Robinson at the Ministry of Defence, Telephone: 0207 807 0488 or email: DESTRAT-IA-AH@mod.uk can answer any queries regarding the instrument.