EXPLANATORY MEMORANDUM TO

THE ARMED FORCES (EVIDENCE IN PROCEEDINGS BEFORE CIVILIAN COURTS) REGULATIONS 2009

2009 No. 1112

And

THE RESERVE FORCES (EVIDENCE IN PROCEEDINGS BEFORE CIVIL COURTS) REGULATIONS 2009

2009 No. 1111

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 instruments

2.1 These Regulations provide for the admissibility of evidence of certain service matters in proceedings before courts of ordinary criminal jurisdiction for an offence created by or under the Armed Forces Act 2006 "the 2006 Act" or under the Reserve Forces Act 1996 "the 1996 Act". Both sets of Regulations are almost identical, the only exception being that the second instrument does not make provision with regard to enlistment papers as that is not required under the 1996 Act. Without these Regulations producing evidence of such matters would be cumbersome. However, this does not mean that such evidence may not be challenged.

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

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

4. Legislative Context

4.1 Section 372 of the 2006 Act provides for the making of these Regulations. These Regulations replace similar provisions in section 198 of the Army Act 1955 and section 198 of the Air Force Act 1955 which are repealed by the 2006 Act.

4.2 Paragraph 50 of Schedule 14 to the 2006 Act amends section 108 of the 1996 Act to provide the enabling powers under which the second instrument is made. These Regulations replace similar provisions in Schedule 3 to the 1996 Act which is repealed by the 2006 Act. The provisions of this instrument mirror those for the regular forces in the first instrument to ensure consistency of approach.

5. Territorial extent and application

5.1 The first instrument extends to the United Kingdom, the Isle of Man and British overseas territories.

5.2 The second instrument make provision with respect to proceedings before a civil court in the United Kingdom.

6. European Convention on Human Rights

6.1 As the instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

7.1. The policy objective is to make it easier for matters that are within the knowledge and understanding of the armed forces, and less well known about generally, to be admitted into evidence in proceedings before courts of ordinary criminal jurisdiction without the need for further proof. Therefore, if, for example, the Defence Council certifies that a decoration (medal) is not a naval, military or air force decoration, this can be accepted in evidence. However, the provisions of this instrument do not prevent a person challenging such evidence.

8. Consultation outcome

8.1 A memorandum about consultation on the 2006 Act 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 instrument under the 2006 Act has been the subject of consultation with the Services. In order to ensure consistency of approach it was agreed with the Directorate for Reserve Forces and Cadets that the second instrument would mirror the provisions agreed for the regular forces.

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 2006Act. A training version of 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 will subsequently be available to the general public on the internet. However, as the instruments do not change the current legislative position, no additional guidance has been produced for civilian courts.

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 2006 Act is subject to quinquennial review. Following full implementation of the Act in October 2009 its provisions and secondary legislation made under it will be monitored and reviewed leading up to the first quinquennial review in 2011.

13. Contact

13.1 Mr Nick Shaw at the Ministry of Defence, telephone 020 7218 0564 or email nick.shaw460@mod.uk, is the point of contact regarding this instrument.