EXPLANATORY MEMORANDUM TO

THE UNFITNESS TO STAND TRIAL AND INSANITY (ARMY) REGULATIONS 2005 No. 1390

THE UNFITNESS TO STAND TRIAL AND INSANITY (ROYAL AIR FORCE) REGULATIONS 2005 No. 1388

THE UNFITNESS TO STAND TRIAL AND INSANITY (ROYAL NAVY) REGULATIONS 2005 No. 1389

1. This Explanatory Memorandum has been prepared by the Ministry of Defence and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The above three Regulations are made respectively under section 116C(3)(b) and (4) of the Army Act 1955, section 116C(3)(b) and (4) of the Air Force Act 1955 and section 63C(3)(b) and (4) of the Naval Discipline Act 1957. They each make provision for supervision orders which may be made respectively by an Army, an Air Force and a Navy court-martial in respect of offenders who are found by such a court-martial to be unfit to stand trial or not guilty by reason of insanity. The Regulations each provide for the appointment of a supervising officer and the requirements which may be imposed by the court-martial on the supervised person in the supervision order (such as a requirement to undergo medical treatment), as well as the procedure for amending and revoking the supervision order once made.

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

3.1 None

4. Legislative Background

4.1 Schedule 3 to the Domestic Violence, Crime and Victims Act 2004 ("the 2004 Act") amends the Army Act 1955 and the Air Force Act 1955 by inserting new sections 115A to 116D and amends the Naval Discipline Act 1957 by inserting new sections 62A to 63D These sections deal with findings of unfitness to stand trial and insanity by Army, Air Force and Navy courts-martial. Section 116A(2) of the Army Act 1955, section 116A(2) of the Air Force Act 1955 and section 63A of the Naval Discipline Act 1957 each provides that a court-martial of the relevant Service may, in such cases, make a hospital order, a supervision order or an order for absolute discharge. These Regulations make further provision in relation to supervision orders. The provision is the same for each of the Services, subject to the making of appropriate references to the Service in question and its legislation. The provisions are based on those for supervision orders applicable to civilian

criminal courts in England and Wales which are contained in Schedule 1A to the Criminal Procedure (Insanity) Act 1964 ("the 1964 Act"). That Schedule was inserted by the 2004 Act.

4.2 It should be noted that the 2004 Act repeals section 8 of, and Schedule 2 to, the Armed Forces Act 1996 which contained provisions on findings of unfitness to stand trial and insanity that were never commenced.

5. Extent

5.1 This instrument applies to proceedings before courts-martial whether in the United Kingdom or elsewhere.

6. European Convention on Human Rights

6.1 Not applicable.

7. Policy background

7.1 The policy objective of the Regulations is to make provision equivalent, as far as practicable, to the provisions for supervision orders made by the criminal courts in England and Wales, whilst at the same time ensuring that supervision orders made by courts-martial can operate anywhere in the world. Where a court-martial makes a supervision order in respect of a person who will reside in England or Wales, the Regulations effectively follow the provisions of the 1964 Act and provide that a social worker or probation officer will act as supervising officer. They further provide that a magistrates' court may amend or revoke an order. Where the supervised person will reside outside England and Wales, the Regulations provide that the court-martial may appoint an employee of the Soldiers, Sailors, Airmen and Families Association, or of such other person as the judge advocate is satisfied can conduct the supervision. In such cases, a judicial officer may amend or revoke the order.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

9.1 Sue McIntosh at the Ministry of Defence can answer any queries regarding the instrument. Her contact details are: Mrs S J McIntosh, DGLS Sec2, Floor7, Zone C, Ministry of Defence, Main Building, Whitehall, London, SW1A 2HB Tel: 0207 218 0564 Email: sue.mcintosh641@mod.uk