EXPLANATORY MEMORANDUM TO

THE VISITING FORCES AND INTERNATIONAL HEADQUARTERS (APPLICATION OF LAW) (AMENDMENT) ORDER 2009

2009 No.705

THE INTERNATIONAL HEADQUARTERS AND DEFENCE ORGANISATIONS (DESIGNATION AND PRIVILEGES) (AMENDMENT) ORDER 2009

2009 No.704

THE EUROPEAN UNION MILITARY STAFF (IMMUNITIES AND PRIVILEGES) ORDER 2009

2009 No.887

1. This explanatory memorandum has been prepared jointly by the Ministry of Defence and the Foreign and Commonwealth Office and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Visiting Forces and International Headquarters (Application of Law) (Amendment) Order 2009 provides for the amendment of the Visiting Forces and International Headquarters (Application of Law) Order 1999 (the "1999 Order"). It expands the 1999 Order to cover Bosnia-Herzegovina, Croatia, Ireland, Montenegro, Serbia, and Tajikistan and updates the list of NATO headquarters to which the 1999 Order applies.

2.2 The International Headquarters and Defence Organisations (Designation and Privileges) (Amendment) Order 2009 provides for the amendment of the International Headquarters and Defence Organisations (Designation and Privileges) Order 1965 (the "1965 Order"). It updates the list of headquarters to which the 1965 Order applies.

2.3 The European Union Military Staff (Immunities and Privileges) Order 2009 confers privileges and immunities on the European Union and its military staff and provides that the official archives of the EU Military Staff and the EU are inviolable.

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

3.1 None.

4. Legislative Background

4.1 It is proposed that these three Orders should be made under section 8 of the Visiting Forces Act 1952, section 1 and paragraph 7 of the Schedule to the International Headquarters and Defence Act 1964 and section 1 of the International Organisations Act 1968.

4.2 Section 8(6) of the Visiting Forces Act 1952, section 1(4) of the International Headquarters and Defence Organisations Act 1964 and section 10 of the International Organisations Act 1968 provide that drafts of these three orders must be laid before Parliament and approved by a resolution of each House.

4.3 These three Orders collectively give 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 military and civilian personnel by the draft Orders are 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. Once these orders have been made, Her Majesty's Government will notify the Secretary-General of the Council of the European Union under Article 19(2) that it has completed its constitutional procedures for the approval of the EU SOFA.

The Visiting Forces and International Headquarters (Application of Law) (Amendment) Order 2009

4.6 The 1999 Order grants certain exemptions from UK legislation to visiting forces from listed countries, so that they enjoy the general immunities and privileges applying to the domestic armed forces. It also applies certain aspects of UK legislation in respect of those visiting forces. The Visiting Forces and International Headquarters (Application of Law)(Amendment) Order 2009 amends the 1999 Order to include Bosnia-Herzegovina, Croatia, Ireland, Montenegro, Serbia, and Tajikistan.

4.7 Changes in the NATO command structure mean that the NATO headquarters covered by 1999 Order must be updated in order that the immunities and privileges will correctly apply to those headquarters. Therefore the Visiting Forces and International Headquarters (Application of Law)(Amendment) Order 2009 brings the list of NATO headquarters in the 1999 Order up to date.

4.8 Some of the NATO headquarters have been renamed and some have been removed from the list as they no longer exist. The following headquarters are newly established: Commander Submarines Allied Naval Forces North, the NATO Joint Electronic Warfare Core Staff, the European Air Group and the Intelligence Fusion Centre. The Headquarters Allied Rapid Reaction Corps is moving to the United Kingdom in 2010.

The International Headquarters and Defence Organisations (Designation and Privileges) (Amendment) Order 2009

4.9 The International Headquarters and Defence Organisations (Designation and Privileges)(Amendment) Order 2009 bring the lists of NATO headquarters 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.

The European Union Military Staff (Immunities and Privileges) Order 2009

4.10 The EU SOFA and Council Decision of 22 January 2001 on the establishment of the Military Staff of the EU oblige the United Kingdom to confer privileges and immunities on military and civilian staff seconded to EU institutions. The European Union Military Staff (Immunities and Privileges) Order 2009 gives effect to the EU SOFA by providing for immunity from legal process for civilian and military staff and inviolability for the archives and documents of headquarters.

4.11 Article 1 of the European Union Military Staff (Immunities and Privileges) Order 2009 provides that it will come into force on the date on which the EU SOFA enters into force in respect of the United Kingdom, which date shall be notified in the London, Edinburgh and Belfast Gazettes.

5. Extent

5.1 The provisions of these Orders extend to the United Kingdom. In their extent to Scotland they apply only so far as they relate to a reserved matter within the meaning of section 29(2)(b) of the Scotland Act 1998.

6. European Convention on Human Rights

The Minister of State for the Armed Forces has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Visiting Forces and International Headquarters (Application of Law) (Amendment) Order 2009 and the International Headquarters and Defence Organisations (Designation and Privileges) (Amendment) Order 2009 and the European Union Military Staff (Immunities and Privileges) Order 2009 are compatible with the Convention rights.

7. Policy Background

7.1 NATO is an alliance of 26 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.

7.2 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.

7.3 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.

7.4 Giving effect to the provisions of the three SOFAs is unlikely to be controversial. Little public or media interest is envisaged.

8. Impact

8.1 A Regulatory Assessment has not been prepared for these instruments as they have no impact on business, charities or voluntary bodies.

9. Contact

9.1 Nick Shaw at the Ministry of Defence (telephone: 020 7218 0564) and Sue Hewer at the Foreign and Commonwealth Office (telephone: 020 7008 0945) can answer any queries regarding these instruments.