

EXPLANATORY MEMORANDUM TO
THE CRIMINAL JUSTICE AND PUBLIC ORDER ACT 1994
(APPLICATION TO THE ARMED FORCES) ORDER 2006

2006 No.2326

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 Criminal Justice and Public Order Act 1994¹ (sections 34, 36, 37 and 38) has been amended by the Youth Justice and Criminal Evidence Act 1999². This Order applies, with some modifications, amendments made to the 1994 Act to those proceedings which govern the Armed Forces.

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

3.1 None

4. **Legislative Background**

4.1 The Criminal Justice and Public Order Act 1994 (sections 34 to 37, with interpretative provisions at section 38), introduced measures which allow a court to draw such inferences as appear proper from the failure or refusal of an accused person to provide information in specified circumstances. The Criminal Justice and Public Order Act 1994 (Application to the Armed Forces Order) Order 1997³, applied those provisions, with modifications, to proceedings which apply to the Armed Forces (the proceedings are listed in article 2(2) of the 1997 Order). *The relevant provisions of the 1994 Act have the following effect:* section 34 applies when an accused fails to mention facts when questioned under caution or when he is charged; section 35 makes provision for the effect of an accused's silence at trial; section 36 applies when an accused is arrested and fails or refuses to account for objects, substances or marks (either on his person or clothing or footwear, or in the place where he is arrested, or otherwise in his possession); section 37 applies when an accused is arrested and fails or refuses to account for his presence at a particular place; and section 38 is an interpretation and savings provision which relates to sections 34 to 37. The 1994 Act has been amended by the Youth Justice and Criminal Evidence Act 1999, so as to prohibit the drawing of adverse inferences from an accused's silence if he has not been allowed an opportunity to consult a solicitor in circumstances where sections 34, 36 and 37 would otherwise apply. The purpose of this instrument is to apply the amendments made by the 1999 Act, to the proceedings listed in article 3(2).

¹ 1994 c. 33

² 1999 c. 23

³ S.I. 1997 No. 16

5. Extent

5.1 This instrument applies to those proceedings listed at article 3(2) *wherever* they are held (both within the United Kingdom and elsewhere). As this instrument applies only to members of the Armed Forces and civilians who are subject to service law, it has not been considered necessary or appropriate to consult legislatures overseas.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The policy objective behind the making of this instrument is to ensure that members of the Armed Forces, and civilians who are subject to service law, have the same protection and safeguards in place which already apply to civilians in England, Wales and Northern Ireland. The aim is to amend existing legislation which applies to the Armed Forces and civilians who are subject to service law, so that it reflects provisions which currently apply to civilians.

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

Mrs S J McIntosh at the Ministry of Defence, whose contact details are given below, is able to answer any queries regarding the instrument.

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