

**EXPLANATORY MEMORANDUM TO THE
ARMED FORCES (FORFEITURES AND DEDUCTIONS)**

REGULATIONS 2009 No. 1109

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 These Regulations make provision for the forfeiture of pay and for deductions from pay of certain members of the armed forces.

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 this instrument to enable transitional provisions to be made.

4. Legislative context

4.1 Section 341 of the Act provides that no forfeiture of, or deduction from, pay of a person subject to service law may be imposed unless authorised by or under the Act or any other Act. A person subject to service law shall, notwithstanding any deduction from his pay but subject to any forfeiture; remain in receipt of a minimum rate of pay as prescribed by regulations made by the Defence Council.

4.2 Section 342 of the Act provides that the Secretary of State may, by regulations, make provision enabling the Defence Council, or officers authorised by them, to make orders in respect of certain permitted forfeitures and deductions.

4.3 The Regulations describe the circumstances in which forfeitures and deductions can be authorised. These Regulations replace provisions of the Service Discipline Acts.

5. Territorial extent and application

5.1 This instrument extends to the United Kingdom, the Isle of Man and British overseas territories and applies to persons subject to service law wherever they are in the world.

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 Armed Forces need an administrative mechanism to allow service pay to be forfeited or deductions to be made from service pay in certain circumstances. The capability to make forfeitures and deductions is necessary because the pay or

allowances of Her Majesty's forces, unlike civilian pay, are excluded from the definition of 'earnings' in the Attachment of Earnings Act 1971 and, therefore, from the scope of that Act.

8. Consultation outcome

8.1 The Forfeitures and Deductions Regulations 2009 replace provisions of the Service Discipline Acts. There has been extensive tri-service consultation on this specific instrument. A memorandum about consultation on the Armed Forces Act 2006 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.

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 Armed Forces Act 2006. The first volume of three within the Manual, which is intended for commanding officers and those who administer the Service justice system, includes a chapter on Forfeitures and Deductions. 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. Guidance will be promulgated to judge advocates through the Judge Advocate General's practice memoranda.

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 Armed Forces Act 2006 is subject to quinquennial review. Following full implementation of the Act in October 2009 the provisions 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.