

**EXPLANATORY MEMORANDUM TO**  
**THE ARMED FORCES (SERVICE INQUIRIES) REGULATIONS 2008**  
**2008 No. 1651**

**1.**

1.1 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 statutory instrument provides for the setting up and operation of internal inquiries by the Armed Forces (called Service Inquiries). These will replace the current different types of formal inquiry held by the Armed Forces such as boards of inquiry, unit inquiries and ships' investigations. The main purposes of Service Inquiries will be, broadly speaking, to establish the facts of a matter and to make recommendations to prevent recurrence of anything that has gone wrong.

**3. Matters of Special Interest to the Joint Committee on Statutory Instruments**

3.1 None.

**4. Legislative Background**

4.1 Under the current law the Royal Navy holds internal inquiries under the Prerogative. The Army and the Royal Air Force hold inquiries under their separate Acts, the Army Act 1955 and the Air Force Act 1955. Section 343 of the Armed Forces Act 2006 provides for this statutory instrument to be made to establish a single form of statutory inquiry for all of the Armed Forces. This statutory instrument will enable the introduction with effect from 1 October 2008 of the new system of Service Inquiries.

**5. Territorial Extent and Application**

5.1 The instrument applies to Service Inquiries wherever in the world they are held.

**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 Act 2006 represents the first complete overhaul of the Service justice system in over fifty years, it harmonises practices and procedures across the Armed Forces to provide a single system of Service law.

7.2 The main purpose of the instrument is to provide a single system of formal internal inquiries for all the Services. It makes regulations for the role and conduct of Service Inquiries with respect to such matters as their purpose, the matters which must be referred to a Service Inquiry, persons who may convene them, their constitution and procedures, evidence and the attendance of witnesses, and the attendance and representation of other individuals at

Service Inquiries. It also makes provision for oaths and affirmations, the recording of the proceedings and the creation of provisional and final reports.

7.3 To reflect the nature of the circumstances in which Service Inquiries will need to be undertaken, the regulations provide generally for the president of a Service Inquiry to decide its procedure.

7.4 It is of great importance to establish confidently the causes of the matter being looked into (for example an accident) and therefore to ensure complete frankness on the part of witnesses. Regulation 12 therefore provides that evidence given to a Service Inquiry will not be admissible against any person at a summary hearing (before a commanding officer) or in proceedings before a civilian court of ordinary criminal jurisdiction or a Service court, except as evidence of perjury.

7.5 Regulation 16 includes provision for offences equivalent, subject to modifications, to those under section 35 of the Inquiries Act 2005. The offences relate to non-compliance with requirements relating to the provision of evidence to a Service Inquiry, for example, failure without reasonable excuse to comply with a formal notice under the regulations requiring attendance at the inquiry as a witness or requiring the production of evidence.

7.6 The regulations have been developed in full consultation with the Armed Forces.

## **8. Impact**

8.1 No impact on the private or voluntary sector is foreseen.

8.2 The only public sector impact is on the Ministry of Defence.

## **9. Contact**

9.1 Mrs S J McIntosh at the Ministry of Defence (telephone 020 7218 0564 or email [sue.mcintosh641@mod.uk](mailto:sue.mcintosh641@mod.uk)) can answer any queries regarding the instrument.