

EXPLANATORY MEMORANDUM TO
THE CRIMINAL PROCEDURE AND INVESTIGATIONS ACT 1996
(CODE OF PRACTICE) (ARMED FORCES) ORDER 2008

2008 No. 648

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 This Order comprises guidance and instructions in the form of a code of practice for Service police investigating offences under the Service Discipline Acts (the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957). The provisions are equivalent, with modifications, to those in the code of practice introduced under Part II of the Criminal Procedure and Investigations Act 1996.

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

3.1 The code of practice for the Service police is in the form of a Schedule to the Order. Necessary amendments have been made to the code of practice in order to meet the requirements of statutory instrument drafting. It nevertheless mirrors the civilian code as closely as possible, subject to minimum modifications to meet Service requirements. The format of the Schedule accordingly differs to some extent from usual Statutory Instrument practice.

3.2 In practice, as with their civilian counterparts, the Service police will refer to the text of the code of practice for guidance. Accordingly, a definition section has been included within the Schedule defining those terms which are used in the code. The definitions provided in the citation, commencement and interpretation section of the Order are limited to those terms used in the Order itself excluding the Schedule.

4. Legislative Background

4.1 Section 23 of the Criminal Procedure and Investigations Act 1996 (the 1996 Act) provides for a code of practice governing the recording, retention and revealing to the prosecution of material brought to light in the course of civil police investigations. Section 78(2) of the 1996 Act provides an order-making power to allow for provisions equivalent, with modifications, to those made under Part II of the Act. Under this power this Order brings into force a code of practice for investigations by the Service police.

5. Extent

5.1 This instrument applies to all Service police investigations, wherever in the world they are conducted.

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State for Defence has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Criminal Procedure and Investigations Act 1996 (Code of Practice) (Armed Forces) Order 2008 is compatible with the Convention rights.

7. Policy background

7.1 The application of the provisions of the Criminal Procedure and Investigations Act 1996 to the Service justice system is intended to improve the efficiency of the Service justice system.

7.2 The code of practice which this Order brings into effect has been the subject of extensive internal consultation, including with the three Service Provost Marshals and the Office of the Judge Advocate General. A briefing on its provisions has also been provided to a wide range of civilian solicitors and barristers.

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.

8.2 The impact on the public sector is expected to be nil.

9. Contact

9.1 **Mrs S J McIntosh** at the Ministry of Defence (telephone: 020 7218 0564) can answer any queries regarding the instrument.