

**EXPLANATORY MEMORANDUM TO**  
**THE ARMED FORCES (CIVILIANS SUBJECT TO SERVICE DISCIPLINE)**  
**ORDER 2009 No. 836**

1. This explanatory memorandum has been prepared by the Ministry of Defence and is laid before Parliament by Command of Her Majesty.
2. **Purpose**
  - 2.1 The Order specifies organisations and designates areas for the purposes of the application of service discipline to certain categories of civilians. It replaces regulations made under the Service Discipline Acts (for example, Schedule 5 to the Army Act 1955).
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None.
4. **Legislative Context**
  - 4.1 The Armed Forces Act 2006 “the 2006 Act” received Royal Assent on 8 November 2006. Schedule 15 of the Act provides for which civilians are subject to service discipline for the purposes of the Act. The effect is that certain civilians can be prosecuted for some service offences (principally those which reflect criminal offences under the law of England and Wales) and are subject to some other provisions in the Act.
  - 4.2 This Order rationalises, updates and clarifies the application of service discipline to certain categories of civilians. It removes the uncertainties surrounding the existing regulations made under the Service Discipline Acts. It is thought that a statutory instrument subject to the negative resolution procedure is more appropriate than the present procedure both for identifying the designated areas in which such civilians will be subject to service discipline and prescribing categories of civilians and civilian organisations for the purpose of applying service discipline.
  - 4.3 The Order only applies to the relevant categories of civilians subject to service discipline. Such civilians will only be subject to service discipline when, in addition to being outside the United Kingdom, they are either working for a specified military organisation or fall into one of the other specified categories and are in a designated area. (This would not however prevent such a civilian who committed a service offence abroad being tried by the Court Martial in the United Kingdom).
  - 4.4 There is a separate power under paragraph 7 of Schedule 15 of the 2006 Act, to designate a person as being subject to service discipline - for

example a contractor working in Iraq. This power however stands outwith this Order.

## **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 civilians subject to service discipline wherever they are in the world.

## **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 Armed Forces (Civilians subject to Service Discipline) Order 2009 are compatible with the Convention rights.

## **7. Policy background**

7.1 The policy objectives are threefold. First, that for the first time one single system of applying service discipline to civilians is created to reflect the tri-service nature of the 2006 Act.

7.2 Second, that the existing uncertainties and imperfections in the three different sets of single service Acts are removed by creating a similar but updated regime of applying service discipline to civilians.

7.3 Third, that the system of application be made more flexible, more easily allowing for the application of service discipline to the categories of civilians who accompany or work in support of the British armed forces outside the United Kingdom in permanent operating bases.

## **8. Consultation outcome**

8.1 A memorandum about consultation on the 2006 Act 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. The individual instruments under the 2006 Act have been the subject of rigorous consultation with relevant stakeholders (such as the Services, the Service police, the Judge Advocate General and the Military Court Service) over a period of many months, to ensure that the policy goals have been achieved and that the provisions of each instrument will work in practice.

## **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 2006 Act. The second volume of three within the Manual, which is intended for lawyers and those who administer the Service justice system, includes a chapter on Service Civilian Courts. 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. 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 2006 Act is subject to quinquennial review. Following full implementation of the 2006 Act in October 2009 the provisions will be monitored and reviewed leading up to the first quinquennial review in 2011.

**13. Contact**

Mr Nick Shaw at the Ministry of Defence, telephone 020 7218 0564 or email [nick.shaw460@mod.uk](mailto:nick.shaw460@mod.uk), is the point of contact regarding this instrument.