

**EXPLANATORY MEMORANDUM TO THE
ARMY, AIR FORCE AND NAVAL DISCIPLINE ACTS (CONTINUATION) ORDER
2005**

2005 No. 2021

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 instrument enables the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957 (collectively known as “the Service Discipline Acts”) to continue in force for a further 12 months beyond 31 August 2005.

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

3.1 None.

4. Legislative Background

4.1 An Armed Forces Bill is presented to Parliament every five years. When enacted this allows the Service Discipline Acts to continue in force for a maximum of five years subject in the intervening years to an annual Order in Council. The last such primary legislation was the Armed Forces Act 2001, Section 1 of which makes provision for the continuation of the Service Discipline Acts as described. The Army, Air Force and Naval Discipline Acts (Continuation) Order 2004 (SI 2004/1496) provides for the continuation of the Service Discipline Acts until 31 August 2005. This year's renewal Order will allow the Service Discipline Acts to continue in force for a further twelve months after that.

5. Extent

5.1 This instrument applies to all of the United Kingdom. The primary legislation which it continues applies to those who are subject to the Service Discipline Acts, wherever they are throughout the world, and to Service courts whether or not they are in the United Kingdom.

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 Army, Air Force and Naval Discipline Acts (Continuation) Order 2005 are compatible with the Convention rights.

7. Policy background

7.1 The policy objective is to continue the Service Discipline Acts for a further twelve months from 31 August 2005.

7.2 The main provisions of the Service Discipline Acts establish systems of Service law for each of the Services and accompanying civilians overseas. They also make provision for a range of other matters, primarily recruitment and enlistment, boards of inquiry, redress of grievance, and billeting and requisitioning.

7.3 The Army Act and Air Force Act are essentially identical. There are many equivalent provisions in the Naval Discipline Act but there are also some differences, for example the powers of summary jurisdiction are considerably wider in the Royal Navy and there is only one type of court martial as opposed to two. In addition, the provisions on recruitment and enlistment for the Royal Navy are in separate legislation (the Armed Forces Act 1976) and there are no statutory provisions for boards of inquiry, which are instead convened under prerogative powers.

7.4 It is the intention to introduce an Armed Forces Bill to Parliament towards the end of this year. This will replace the provisions of the three separate Service Discipline Acts and will include the following key elements:

the establishment of a single system of Service law;

a modernised list of Service offences;

a modernised grievance procedure for members of the armed forces; and

a single statutory provision for Service inquiries.

7.5 The Government confirmed its intention to introduce a single system of Service law in the debates on the Continuation Order in both Houses last year. The Defence Select Committee published a report on the proposed legislation on 14 March. The Bill is not expected to be politically controversial.

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.