

**EXPLANATORY MEMORANDUM TO THE  
ARMED FORCES (SERVICE OF PROCESS IN MAINTENANCE  
PROCEEDINGS) REGULATIONS 2009 No. 1093**

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 This instrument makes provision with respect to the service of process in maintenance proceedings in the civil courts on the commanding officers of members of the regular forces and certain members of the reserve forces on full time service or permanent service or call-out.

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

3.1 An order under section 380 of the Armed Forces Act 2006 has been made which modifies the enabling powers for this instrument to enable transitional provisions to be made.

**4. Legislative context**

4.1 Section 355 of the Armed Forces Act 2006 provides that the Defence Council may by regulations make provision with respect to the service of process on a relevant person in connection with prescribed proceedings, in this case, maintenance proceedings. The regulations update existing provisions currently contained in the Service Discipline Acts (Army Act 1955, Air Force Act 1955 and the Naval Discipline Act 1957).

**5. Territorial extent and application**

5.1 This instrument extends to the United Kingdom, the Isle of Man and British Overseas Territories. It 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 These regulations set out the various circumstances where service is deemed to be effective and the occasions upon which such service shall be of no effect.

7.2 The policy objective is to make provision for any service of process in maintenance proceedings on a person's commanding officer to be treated as service on that person. The regulations make provision as to limited circumstances when the commanding officer may certify to the court that such service is of no effect; namely

that the person is on active service, or under orders for active service, and that it would not be reasonably practicable for them to comply with the requirements of the process, or that they are absent without leave.

## **8. Consultation outcome**

8.1 In constructing these regulations, the MoD has consulted with the relevant stakeholders within the single Service legal and policy branches; and the Ministry of Justice. This consultation has been conducted over a period of ten months during which agreement was reached on all the issues. 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 Guidance will be set out in the new Manual of Service Law which will provide guidance and supplementary information to Armed Forces personnel on the single system of Service law established under the 2006 Act. A training version of 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 the Manual will subsequently be made available to the general public on the internet.

## **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 of the Act and all the delegated legislation made under it 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](mailto:nick.shaw460@mod.uk), is the point of contact regarding this instrument.