

EXPLANATORY MEMORANDUM TO
THE ARMED FORCES (SERVICE SUPERVISION AND PUNISHMENT ORDERS)
REGULATIONS 2023

2023 No. 870

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Defence and is laid before Parliament by Command of His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument prescribes requirements that a service supervision and punishment order may impose on an offender who is awarded that sentence under the Armed Forces Act 2006. It also provides for the management and review of such orders.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 These Regulations revoke and, in effect, remake the Armed Forces (Service Supervision and Punishment Orders) Regulations 2009 (the “2009 Regulations”). The 2009 Regulations purported to have been made by the Defence Council, but were not signed by two members of the Defence Council as required by the Letters Patent establishing the Defence Council. These Regulations remake the 2009 Regulation without substantive amendment. The 2009 Regulations have been revoked for the avoidance of any doubt as to their continuing effect.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom, the Isle of Man and the British overseas territories (except Gibraltar).
- 4.2 The territorial application of this instrument is worldwide. It applies to members of the armed forces wherever they are in the world and applies to civilians subject to service discipline in certain areas outside the United Kingdom or on service ships or aircraft. Civilians subject to service discipline are defined groups (the groups are defined in Schedule 15 to the Armed Forces Act 2006), principally of persons who work or reside with the armed forces in certain areas outside the United Kingdom or are travelling on service ships or aircraft.

5. European Convention on Human Rights

- 5.1 The Baroness Goldie DL, Minister of State at the Ministry of Defence, has made the following statement regarding Human Rights:

“In my view the provisions of the Armed Forces (Service Supervision and Punishment Orders) Regulations 2023 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 A Service Supervision and Punishment Order (“SSPO”) may be awarded to an offender under the Armed Forces Act 2006 (“the Act”). Section 132 of the Act permits commanding officers to impose SSPOs, while Section 164 allows the Court Martial to impose SSPOs.
- 6.2 Section 173 of the Act provides that an SSPO is an order that imposes on the offender, for a specified period, such requirements as regulations may prescribe. The period specified must be either 90, 60 or 30 days. During the period, one-sixth of gross pay is forfeit. These Regulations set out the requirements that a commanding officer or court may impose under an SSPO.

7. Policy background

What is being done and why?

- 7.1 The Armed Forces Act 2006 created a common disciplinary system for the Armed Forces, with common offences and common punishments. Among the punishments available to commanding officers and the service courts, after finding a service person guilty of an offence, is an SSPO. While some of the elements of SSPOs are prescribed by sections 173 and 174 of the Act, the Act leaves to regulations the prescription of requirements that can be imposed on an offender under an SSPO. These requirements are in relation to performance of activities and prohibitions on the use of leave. The regulations also require that commanding officers review an SSPO regularly after an initial period, and at least every 14 days thereafter, to consider whether the order should continue in force.
- 7.2 The Armed Forces (Service Supervision and Punishment Orders) Regulations 2009 made provision in respect of SSPOs. The 2009 Regulations purported to have been made by the Defence Council, but were not signed by two members of the Defence Council – or by the Secretary of the Defence Council - as required by the Letters Patent establishing the Defence Council. These Regulations remake the 2009 Regulations without substantive amendment.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 There are no plans to consolidate this legislation.

10. Consultation outcome

- 10.1 There has been no formal consultation on this instrument. Relevant stakeholders were consulted prior to the making of the 2009 Regulations. These Regulations are intended to remake the 2009 Regulations without substantive amendment.

11. Guidance

- 11.1 Guidance on service law is contained in the Manual of Service Law (Joint Services Publication 830 (JSP 830)). This provides guidance and supplementary information to Armed Forces personnel on the single system of service law established under the Armed Forces Act 2006 (“AFA 2006”). The Manual of Service Law will be updated

to refer to these Regulations. The Manual of Service Law is available to the public at: <https://www.gov.uk/government/publications/joint-services-publication-jsp-830-manual-of-service-law-msl>.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument because there is no, or no significant, impact on business.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is the quinquennial review of the Armed Forces Act 2006, which provides the vast majority of the primary legislation relating to the Service Justice System, including the service courts. The Armed Forces Act 2006 must be kept in force by an annual continuation order and requires a further Act of Parliament at least every 5 years to keep it in force. The last such Act was the Armed Forces Act 2021. The Service Justice System as a whole is subject to review as part of work to prepare for each 5-yearly Act and the next such Act must be passed before the end of 2026. The rules of court for the service courts are also kept under regular review to ensure the provisions remain relevant to the Armed Forces.

15. Contact

- 15.1 Lindsey Pratt at the Ministry of Defence, email: Lindsey.Pratt386@mod.gov.uk, can be contacted with any queries regarding the instrument.
- 15.2 Caron Tassel, Deputy Director - Discipline, Conduct and Legislation - at the Ministry of Defence, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Baroness Goldie DL, Minister of State at the Ministry of Defence, can confirm that this Explanatory Memorandum meets the required standard.