

ARMED FORCES ACT 2006

EXPLANATORY NOTES

THIRD GROUP OF PARTS – GENERAL

Part 19 – Supplementary

Chapter 2 – Other Supplementary Provisions

Section 372: Evidence in proceedings before civilian courts

749. This section gives the Secretary of State power to make provision in regulations made by statutory instrument with respect to evidence in proceedings for an offence created by or under this Act before a civilian court in the UK, the Isle of Man or a British overseas territory. It replaces provisions contained in the SDAs dealing with the admissibility of certain service documents as evidence. The purpose of such provisions is to establish what may be accepted as evidence without further proof. For example, if a question arose as to whether a person had given false answers on enlistment, the regulations could provide that an enlistment document purporting to be signed by the person in question shall be evidence of the answers to questions that he gave on enlistment.

Section 373: Orders, regulations and rules

750. This section provides that where the Act creates any power for the Secretary of State to make orders, regulations or rules, these are to be made by statutory instrument and in most cases will be subject to Parliamentary scrutiny. In certain specified cases those statutory instruments are to be laid in draft and have to be approved by both Houses of Parliament before coming into effect (the “affirmative resolution” procedure); whereas all others will come into effect on a prescribed date but may be annulled by a subsequent decision of either House (the “negative resolution” procedure). Two types of statutory instrument are not subject to Parliamentary scrutiny, namely a commencement order and an Order in Council extending the Act to the Channel Islands or modifying it in relation to the Isle of Man or the British overseas territories. In addition, an Order in Council renewing the Act or the SDAs under section 382 is not itself subject to Parliamentary approval, but cannot be made unless each House has approved it in draft.
751. The section also provides that where the Defence Council is empowered to make regulations by statutory instrument, the provisions of the Statutory Instruments Act 1946 (which provides only for the Sovereign and Ministers of the Crown to make statutory instruments) are extended to the Defence Council for these purposes, thereby treating the Defence Council as if it were a Minister of the Crown.