These notes refer to the Armed Forces Act 2006 (c.52)
which received Royal Assent on 8 November 2006

ARMED FORCES ACT 2006

EXPLANATORY NOTES

SCHEDULES

Schedule 1 – Criminal Conduct Offences That May Be Dealt With at a Summary Hearing

775. At present the Army and the RAF set out which criminal conduct offences a CO may deal with summarily, whilst the Royal Navy places very few restrictions on the offences that may be tried summarily (although the powers of punishment available to Royal Navy COs necessarily operate to restrict which criminal conduct matters may be tried summarily). Under the Act the criminal offences that may be heard summarily are set out in this Schedule and are divided into those that a CO may hear without extended powers (see the notes on Part 2 of the Schedule below) and those for which such powers are required. Section 53 provides that the Secretary of State may by order amend this Schedule.

Part 1 – Offences that may be dealt with without permission

776. This Part lists the twelve criminal conduct offences that a CO may deal with summarily without the grant of extended powers from higher authority.

Part 2 – Offences that may be dealt with only with permission

777. This Part lists the eight criminal conduct offences that a CO may hear summarily only if he has been granted permission to do so by higher authority, or he is a senior officer.

Schedule 2 – "Schedule 2 Offences"

778. Section 113 requires a CO to notify a service police force when he becomes aware that a serious offence has or may have been committed by a person under his command. Section 116 requires a service policeman who considers there is sufficient evidence to charge a person with a serious offence, or an offence prescribed by regulations made by the Secretary of State under section 128, to refer the case to the Director of Public Prosecutions. Schedule 2 lists those serious offences to which section 113 and section 116 apply. They include serious disciplinary offences, such as mutiny and desertion, and serious criminal offences, such as murder, manslaughter and certain sexual offences.

Schedule 3 – Civilians Etc: Modifications of Court Martial Sentencing Powers

779. This Schedule modifies section 164 (which provides for the punishments available to the Court Martial) for two categories of offender.

Part 1 – Civilian offenders

780. Part 1 of the Schedule applies to civilian offenders. "Civilian offender" is defined by paragraph 1(2) to (4). In the case of such an offender, paragraph 1(1) substitutes a more limited range of punishments in place of those available under section 164.

781. For this purpose paragraph 2 modifies section 42(3) (which provides for the punishments available under section 163 in the case of an offence of criminal conduct under section 42) so that a civilian offender convicted of a criminal conduct offence is liable to imprisonment only if the corresponding civilian offence is punishable with imprisonment. The other punishments listed in paragraph 1(1) are available in any event.

Part 2 – Ex-servicemen etc

782. Part 2 of the Schedule applies to offenders who satisfy the conditions listed in paragraph 3(2). These will normally be people who committed an offence while subject to service law but are no longer subject to service law when sentenced for the offence. In the case of such an offender, paragraph 3(1) substitutes a more limited range of punishments in place of those available under section 164.

783. For this purpose paragraph 4 modifies provisions restricting the punishments available under section 164, so that the restrictions apply similarly in relation to the punishments listed in paragraph 3.

Schedule 4 – Unfitness and Insanity: Modifications of Mental Health Act 1983

784. Schedule 4 modifies how sections 35 to 38, 40 and 41 of the Mental Health Act 1983 ("the 1983 Act") have effect where the Court Martial finds a defendant unfit to stand trial or not guilty by reason of insanity (see section 168).

785. Paragraph 1 modifies section 37 of the 1983 Act so as to provide that the Court Martial may make a hospital order (authorising the defendant's admission to and detention in hospital) in a case where a finding under section 168(1) has been made.

786. Paragraph 2 modifies section 41(1) of the 1983 Act so as to provide that, where such a finding has been made, the Court Martial may make a restriction order (restricting the defendant's discharge from hospital) in addition to a hospital order.

787. Paragraphs 3, 4 and 5 modify several sections of the 1983 Act to provide that options open to the court for dealing with the accused under those sections are open to the Court Martial in circumstances where it has made a finding under section 168(1), but has not yet made one of the orders listed at section 169(2).

788. Paragraph 3 modifies section 35 to provide that the Court Martial may remand the defendant to a hospital in order to obtain a report on his mental condition; paragraph 4 modifies section 36 to provide that the Court Martial may remand him to a hospital in order for him to be detained there and receive medical treatment; while paragraph 5 modifies section 38 to provide that the Court Martial may make an interim hospital order in respect of him.

Schedule 5 – Breach, Revocation and Amendment of Community Punishments

Part 1 – Service community orders

789. This part of the Schedule modifies Schedule 8 to the Criminal Justice Act 2003 ("the 2003 Act") so as to enable the Crown Court to deal with breaches of service community orders and to revoke or amend such orders. The effect is as follows:

790. If the responsible officer thinks that the offender has failed without reasonable excuse to comply with the order, he can (and, if the offender has been warned about such failure within the previous 12 months, must) lay an information before the Crown Court. That court can then issue a summons or warrant. If the court is satisfied that the offender has failed without reasonable excuse to comply with the order, it must either amend the order so as to make the requirements more onerous or re-sentence the offender for the original offence. If the offender is aged 18 or over and the failure to comply is wilful

and persistent, the court can impose a sentence of imprisonment even if the original offence was not punishable with imprisonment.

791. The offender or the responsible officer can apply to the Crown Court for the order to be revoked. The court can revoke the order if it thinks this is in the interests of justice, having regard to developments since the order was made (such as the offender's making good progress or responding satisfactorily to supervision or treatment). If the court does revoke the order it can also re-sentence the offender for the original offence.

792. The offender or the responsible officer can apply to the Crown Court for the order to be amended. The court can substitute for the local justice area specified in the order a different local justice area to which the offender has moved or is moving, cancel any of the requirements in the order, or substitute other requirements of the same kind. Certain kinds of requirement may not be amended unless the offender agrees to comply with the amended requirement, but if he does not agree the court can re-sentence him for the original offence.

793. If the offender is convicted of another offence by a magistrates' court while the order is in force, that court can refer the offender to the Crown Court. The Crown Court can then revoke the order, with or without re-sentencing the offender for the original offence. The same powers are available if the Crown Court itself convicts the offender of another offence while the order is in force.

794. In each case where the Crown Court has power to re-sentence the offender for the original offence, it can exercise its ordinary sentencing powers rather than those of the service court that made the order (except that, where it was the SCC that made the order, the Crown Court cannot impose a term of imprisonment, or a fine, greater than the SCC could have imposed). The offender can appeal against the new sentence as if he had been convicted by the Crown Court of the original offence.

Part 2 – Overseas community orders

795. This part of the Schedule modifies Schedule 8 to the 2003 Act so as to enable the Court Martial and the SCC to deal with breaches of overseas community orders and to revoke or amend such orders. The effect is as follows:

796. If the responsible officer thinks that the offender has failed without reasonable excuse to comply with the order, he can (and, if the offender has been warned about such failure within the previous 12 months, must) make an application to the court that made the order (or, if the order was made on appeal, to the Court Martial). That court can then issue a summons or warrant. If the court is satisfied that the offender has failed without reasonable excuse to comply with the order, it must either amend the order so as to make the requirements more onerous or re-sentence the offender for the original offence. If the offender is aged 18 or over and the failure to comply is wilful and persistent, the court can impose a custodial sentence even if the original offence was not punishable with such a sentence.

797. The offender or the responsible officer can apply to the court that made the order (or, if the order was made on appeal, the Court Martial) for the order to be revoked. The court can revoke the order if it thinks this is in the interests of justice, having regard to developments since the order was made. If the court does revoke the order it can also re-sentence the offender for the original offence.

798. The offender or the responsible officer can apply to the court that made the order (or, if the order was made on appeal, the Court Martial) for the order to be amended. The court can cancel any of the requirements in the order, or substitute other requirements of the same kind. Certain kinds of requirement may not be amended unless the offender agrees to comply with the amended requirement, but if he does not agree the court can re-sentence him for the original offence.

799. If the offender is convicted by the Court Martial of a further offence while the order is in force, the court can revoke the order, with or without re-sentencing the offender for the original offence. The SCC has a similar power, but only where it was the SCC that made the order.

800. Where the order was not made by the Court Martial, and that court re-sentences the offender for the original offence, he can appeal against the new sentence as if it had been the Court Martial that convicted him of the original offence.

801. Court Martial rules can enable the powers conferred on the Court Martial by Schedule 8 to the 2003 Act (as applied by this Schedule) to be exercised by a judge advocate sitting alone.

Schedule 6 – Overseas Community Orders: Young Offenders

802. This Schedule further modifies, for offenders aged under 18 on conviction, the provisions of the 2003 Act that are applied to overseas community orders (with modifications) by section 181. It also provides for a new requirement specifically for young offenders.

803. Paragraph 1 prevents an unpaid work requirement from being included in the order if the offender is aged under 16 on conviction.

804. Paragraph 2 reduces to three months the maximum period for which an exclusion requirement can be imposed. Paragraph 8 enables the Secretary of State to amend this maximum.

805. Paragraph 3 modifies the residence requirement so that, instead of specifying a place where the offender must reside, the order can require him to reside with a specified person, provided that that person has consented to the requirement. If the offender is under 16 on conviction he cannot be required to reside at a specified place but only with a specified person.

806. Paragraph 4 dispenses with the need for the offender's consent to the imposition of a mental health requirement, or to the making of arrangements for treatment under such a requirement, if the offender is aged under 14 when the requirement is imposed or the arrangements made.

807. Under the 2003 Act, a drug rehabilitation requirement must require the offender not only to undergo treatment but also to provide samples for testing to see whether he has any drugs in his body; but a court cannot impose a drug rehabilitation requirement unless the offender agrees to comply with it. In the case of an offender aged 14 or over but under 18, paragraph 5 prohibits a drug rehabilitation requirement from including a requirement to provide samples for testing unless the offender agrees to do so (as well as agreeing to undergo treatment). An offender aged under 14 can be required to undergo treatment without his agreement, but cannot be required to provide samples at all. The 6-month minimum period for a drug rehabilitation requirement does not apply where the offender is under 18 on conviction.

808. Under paragraph 6, an alcohol treatment requirement cannot be imposed on an offender aged under 18 on conviction.

809. Paragraph 7 provides for an education requirement, which is available only for offenders aged under 18 on conviction and requires the offender to comply with arrangements made for his education during a specified period.

Schedule 7 – Suspended Prison Sentence: Further Conviction Or Breach of Requirement

810. This Schedule modifies Part 2 of Schedule 12 to the 2003 Act, which makes provision for dealing with an offender who fails to comply with the community requirements

under a suspended sentence order, or is convicted of a further offence committed during the operational period. In the case of a suspended sentence order with community requirements made by a service court, paragraph 1 provides that certain provisions of Schedule 12 to the 2003 Act do not apply (chiefly so as to ensure that the court responsible for enforcing such an order in England and Wales is the Crown Court), and that certain other provisions of that Schedule are modified in accordance with paragraphs 4 to 9 of this Schedule. The effect is as follows:

811. Where, in the case of a suspended sentence order made by a civilian court, the responsible officer would lay an information before a justice of the peace alleging that the offender has failed without reasonable excuse to comply with the requirements of the order, he must instead lay the information before the Crown Court, and it is the Crown Court that can issue a summons or warrant.

812. If the Crown Court is satisfied that the offender has failed without reasonable excuse to comply with the requirements of the order, or convicts him of an offence committed during the operational period of the order, it must deal with him in one of the ways specified by paragraph 8(2) of Schedule 12 to the 2003 Act. It can order that the suspended sentence is to take effect, with or without an amendment to its original terms; or it can amend the suspended sentence order so as to impose more onerous requirements, extend the period for which the requirements apply, or extend the operational period. Where it orders that the suspended sentence is to take effect, the offender can appeal against that order as if it were a sentence.

813. The SCC must similarly deal with the offender in one of the ways specified by paragraph 8(2) of Schedule 12 to the 2003 Act if it convicts him of a further service offence committed during the operational period.

814. The Court Martial must deal with the offender in one of the ways specified by paragraph 8(2) of Schedule 12 to the 2003 Act if—

- it convicts him of a further service offence committed during the operational period, or
- he is convicted by a civilian court in the British Islands of an offence committed during the operational period, or is convicted of a service offence committed during that period, but is not dealt with in respect of the suspended sentence and subsequently appears or is brought before the Court Martial. The Court Martial can issue a summons or a warrant for this purpose. For this purpose a magistrates' court in England and Wales, and any court in Scotland or Northern Ireland, must notify the Court Martial if it convicts the offender of an offence committed during the operational period.

815. Where the Court Martial or the SCC orders that the suspended sentence is to take effect, that court can make a custody plus order, but is not required to do so. The offender can appeal against the order as if it were a sentence.

816. In the case of a suspended sentence order without community requirements, paragraph 2 disapplies those provisions of Part 2 of Schedule 12 to the 2003 Act that relate to breaches of community requirements. If the offender is convicted of a further offence, paragraphs 6 to 9 modify Schedule 12 to the 2003 Act in the same way as for a suspended sentence order with community requirements.

Schedule 8 – Amendment of the Courts-Martial (Appeals) Act 1968

817. This Schedule makes a number of amendments to the Courts-Martial (Appeals) Act 1968 ("the 1968 Act"), which it renames as the Court Martial Appeals Act 1968. Most of these amendments reflect other changes made by the Act, including (for example) the creation of a standing Court Martial, the requirement to pass a separate sentence for each offence, and the abolition of court-martial review, court-martial presidents and the post of Judge Advocate of Her Majesty's Fleet. These changes enable the law on

appeals from the Court Martial to be simplified and aligned more closely with that on appeals from the Crown Court.

818. For example, paragraph 10 inserts a new subsection (3) into section 12 of the 1968 Act which provides that an appellant whose conviction is quashed on appeal is to be treated as if he had been acquitted by the Court Martial, unless the appeal court orders a retrial under section 19. Section 18 currently prevents the retrial of an appellant whose conviction is quashed (unless the court orders a retrial); but the new section 12(3) makes section 18 redundant (because section 63 prevents the retrial of a person who has been acquitted by the Court Martial), and section 18 is therefore repealed by paragraph 19.

819. Paragraph 11 replaces section 13 of the 1968 Act, which enables the Courts-Martial Appeal Court—renamed by the Act as the Court Martial Appeal Court ("CMAC")—to substitute a different sentence where the appellant was convicted on two or more charges and some, but not all, of the convictions are quashed. In its present form, section 13 reflects the fact that the court-martial will have passed a single sentence in respect of all the convictions. Under the Act, by contrast, the Court Martial will have passed a separate sentence for each conviction. Where the CMAC quashes some convictions but not all, the new section 13 accordingly allows the CMAC to substitute, in respect of any conviction that still stands, any sentence which the court thinks appropriate and the Court Martial could have passed. But this must not be done in such a way that the sentences for the remaining convictions, taken together, are more severe than those passed by the Court Martial (including those passed in respect of convictions that are now quashed). The effect of the new section 13 is similar to that of section 4 of the Criminal Appeal Act 1968 in relation to appeals from the Crown Court.

820. Paragraph 16 replaces section 16A of the 1968 Act, which sets out the powers available to the court on an appeal against sentence. Again the new section reflects the fact that the Court Martial will have passed a separate sentence for each offence of which the appellant was convicted.

821. Paragraph 17 amends section 17 of the 1968 Act so that, unless the appeal court otherwise directs, a sentence passed on appeal takes effect from the day on which the Court Martial passed sentence (rather than, as at present, the time when the new sentence would have taken effect if it had been passed at the trial).

822. Paragraph 21 amends section 20 of the 1968 Act, which makes provision for retrials ordered under section 19, so that the effect is broadly similar to that of section 8 of the Criminal Appeal Act 1968.

823. Paragraph 29 repeals section 26 of the 1968 Act, which allows an appellant to present his case in writing, in the prescribed form, instead of orally. There is no equivalent provision in the civilian system, and no form has been prescribed.

824. Paragraph 30 replaces section 27 of the 1968 Act, which provides that an appellant is not entitled to be present at the hearing of the appeal unless the court gives him leave, with a new section 27 which provides that (subject to certain exceptions) he is entitled to be present.

825. Paragraph 40 amends section 38 of the 1968 Act so that it is the Director of Service Prosecutions, rather than the Defence Council, who has the duty of defending any appeal.

826. Section 56 of the 1968 Act gives effect to Schedule 3 to that Act, which modifies the provisions of the Act for appeals from courts-martial convened to try prisoners of war. Paragraph 55 repeals Schedule 3, and paragraph 50 substitutes a new section 56 under which the Act applies to such appeals with such modifications as may be contained in the Royal Warrant governing prisoner of war courts-martial.

827. Paragraph 54 replaces Schedule 1 to the 1968 Act, which makes separate provision for each Service in relation to the giving of evidence at a retrial ordered under section 19,

the sentence available on conviction at such a retrial, and the giving of credit for time spent in custody.

Schedule 9 – Assessors of Compensation for Miscarriages of Justice

828. If the Secretary of State determines a person has a right to a compensation payment under section 276 the amount of the payment is assessed by persons who are appointed as assessors. This Schedule sets out various matters concerning the qualifications and terms of appointment of assessors.

829. In paragraph 1 the qualifications for appointment as an assessor are set out. These are the same as for those appointed for the purposes of the scheme in relation to the civilian courts, including the requirement to hold suitable legal qualifications or be a member of the Criminal Injuries Compensation Board.

830. Paragraph 3 stipulates that a person shall cease to hold office as an assessor if he no longer has the necessary qualifications under paragraph 1 or attains the age of 72. However, even if one of these conditions exists the Secretary of State may nevertheless allow the individual to continue to hold office as an assessor if he thinks that it is in the interests of the efficient operation of section 276 to do so.

831. Paragraph 4 gives the assessor the right to resign by giving notice in writing to the Secretary of State; and paragraph 5 allows the Secretary of State to remove an assessor in certain circumstances, such as following a conviction of the assessor for a criminal offence.

832. Paragraph 6 provides that where the Secretary of State proposes to remove an assessor under paragraph 5, he may only do so with the consent of the Lord Chancellor or the Lord President of the Court of Session as the case may be, depending upon which qualification for the office the assessor holds. For example, an assessor who is an advocate or solicitor in Scotland may only be removed from office with the consent of the Lord President of the Court of Session.

833. Paragraph 7 provides for the remuneration and allowances of assessors to be determined by the Secretary of State.

Schedule 10 – Proceedings of the Service Civilian Court

834. This Schedule provides for certain matters concerning the procedure and practice of the Service Civilian Court. Paragraph 1 provides that the SCC must sit in open court, that is, in public, subject to any provision made by SCC rules (made under section 288).

835. Paragraph 2 deals with the procedure to be followed if a question arises at a trial as to whether a defendant is fit to stand trial or, where it appears the defendant did the act or made the omission charged, where a question arises as to whether he was insane at that time. In either case the court must refer the charge to the Court Martial for trial by that court.

836. Paragraph 3 provides that a witness or any other person who has a duty to attend the court is entitled to the same privileges and immunities as a witness before a magistrates' court in England and Wales.

Schedule 11 – Powers of the Criminal Cases Review Commission

837. This Schedule confers powers on the Criminal Cases Review Commission in relation to convictions by service courts and sentences passed in relation to such convictions. It also makes a number of amendments which are necessary as a result of the introduction of these powers.

838. Paragraph 1 amends the Court Martial Appeals Act 1968 so that the CMAC can direct the Commission to investigate a case and report to the court. This reflects the existing power of the Court of Appeal under section 23A of the Criminal Appeal Act 1968.

839. The remainder of the Schedule amends the Criminal Appeal Act 1995 ("the 1995 Act"), which governs the powers of the Commission. Paragraph 2 inserts new sections 12A and 12B. The new section 12A enables the Commission to refer to the CMAC a conviction by the Court Martial (including a conviction on appeal from the SCC), a sentence imposed by the Court Martial in relation to such a conviction, or a sentence imposed by the Court Martial on an appeal against a sentence imposed by the SCC. A reference counts as an appeal against the conviction or the sentence, as the case may be.

840. The new section 12B similarly enables the Commission to refer to the Court Martial a conviction or sentence of the SCC. Where there has already been an appeal to the Court Martial, however, any reference by the Commission will be to the CMAC under section 12A. In the absence of exceptional circumstances a reference under section 12B will be possible only where no appeal has yet been brought, and leave to appeal out of time has been refused.

841. Section 17 of the 1995 Act entitles the Commission to require the disclosure by a public body of documents relevant to an investigation. Section 18 replaces this with a more limited duty of disclosure where the documents in question are held by a government department in connection with consideration of the case by the Secretary of State (with a view to a possible reference to the Court of Appeal under section 17 of the Criminal Appeal Act 1968 - which was repealed by the 1995 Act), or, a recommendation for the exercise of the prerogative of mercy. Paragraph 7 of the Schedule amends section 18 of the 1995 Act so that section 17 is similarly excluded in the case of documents held in connection with consideration of a possible reference to the CMAC (under section 34 of the Court Martial Appeals Act 1968 - which is not repealed by the Act), or, a recommendation for the exercise of the prerogative of mercy in relation to a service conviction.

842. Section 19 of the 1995 Act gives the Commission power to require the appointment of an investigating officer to carry out inquiries. Where the original investigation was carried out by a police force, the Commission can require the chief constable to appoint either a person serving in that force or a person serving in another force. Paragraph 8 of the Schedule amends section 19 so that, where the investigation was carried out by service personnel, the Commission can impose a similar requirement on the Provost Marshal for the Service in question. He can be required to appoint either a person serving in his own service police force or a person serving in one of the other service police forces or a civilian force.

Schedule 12 – Detention Etc of Persons in Overseas Service Hospitals

843. This Schedule provides the framework for powers to detain, assess and treat a person overseas who is subject to service law or service discipline, where it is considered that he is suffering from a mental disorder. The powers, duties and obligations provided for in the Schedule are similar to those available to medical authorities within England and Wales and are loosely based upon the provisions of the 1983 Act. The Schedule is given effect by section 351.

844. Paragraph 2 contains the main powers in the Schedule to admit persons to, and detain them temporarily in, overseas service hospitals (i.e. service hospitals outside the British Islands: see paragraph 12) for assessment or treatment. The powers in paragraph 2 apply to persons subject to service law, or civilians subject to service discipline, who are outside the British Islands (paragraph 2(1)).

845. The person's CO can make an order under paragraph 2(3) for the person to be detained in (or admitted to and detained in) an overseas service hospital on the recommendation

of two registered medical practitioners. Such an order has effect for 28 days (paragraph 3(2)(a)).

846. If the case is urgent, the CO can make an order under paragraph 2(3) on the recommendation of one registered medical practitioner, but such an order has effect for only 5 days (paragraph 3(2)(b)).

847. If an order under paragraph 2(3) is made on the recommendation of one registered medical practitioner, the CO can, under paragraph 2(5), make a further order in relation to the person if another recommendation is produced to him while the paragraph 2(3) order is in force. The paragraph 2(5) order has effect for 28 days from the date of the paragraph 2(3) order (see paragraph 3(3)).

848. Paragraph 3(4) sets out the effects of an order under paragraph 2. Paragraph 3(4)(c) gives authority for the person to be taken back to the UK for further assessment or treatment. But in that case the order has effect for a maximum of 24 hours after the person's arrival back in the UK (paragraph 3(5)).

849. Recommendations under paragraph 2 must include a statement that the registered medical practitioner is satisfied that all the relevant conditions are met in the case of the person (paragraph 4(1)). Paragraph 1 sets out the relevant conditions.

850. Where an order is made under paragraph 2(3) on the recommendation of only one registered medical practitioner, the recommendation must include a further statement relating to the urgency of the situation (paragraph 4(2)).

851. Paragraph 5 enables any authorised officer to exercise the CO's powers under paragraph 2 if the CO is absent or otherwise not available. "Authorised" is defined in paragraph 5(3). But note that the power in paragraph 5 cannot be used in the case of a civilian subject to service discipline (paragraph 5(1)).

852. Paragraph 6 confers a regulation-making power on the Secretary of State to enable persons to apply to revoke an order under paragraph 2. Such an application may be made immediately after the paragraph 2 order is made (paragraph 6(1)). The persons hearing the application (and the regulations may make provision as to, inter alia, who should hear such applications) may either confirm or revoke the order, and direct the immediate release of the person subject to the order (paragraph 6(3)).

853. Paragraph 7 applies in the case of persons subject to service law, or civilians subject to service discipline, who are currently already patients in an overseas service hospital (paragraph 7(1)). The paragraph empowers the CO of the service hospital to detain the patient in the hospital for a short period while an order under paragraph 2(3) is sought in relation to the patient (paragraph 7(3)).

854. A person can be detained under this power for a maximum of 24 hours (paragraph 7(4) to (7)).

855. The power in paragraph 7 applies only if a registered medical practitioner decides that all the relevant conditions (see paragraph 1) are met, or a prescribed person decides that all the relevant conditions appear to be met, in the case of the patient (paragraph 7(1)). "Prescribed person" means a person of a description prescribed in regulations made by the Secretary of State (paragraph 7(9)). The regulations might, for example, prescribe nurses.

856. Paragraph 8 authorises, outside the British Islands and in defined circumstances, the removal from service living accommodation of a person subject to service law, or a civilian subject to service discipline; and his detention for a short period in an overseas service hospital while an order under paragraph 2(3) is sought in relation to him.

857. Paragraph 8 empowers a service policeman, in the circumstances specified in paragraph 8(1), to enter service living accommodation (see paragraph 12(3)) and remove a person to an overseas service hospital (paragraph 8(2)). The CO of the service hospital can

then detain the person for a maximum of 24 hours (paragraph 8(4) to (7)) while the paragraph 2(3) order is sought.

858. Paragraph 8(3) requires the service policeman, if reasonably practicable, to be accompanied by a registered medical practitioner or a person of a description prescribed in regulations made by the Secretary of State. The accompanying person can assist the service policeman to enter the accommodation and to remove the person to the service hospital.

859. Paragraph 9 contains a power similar to that in paragraph 8. It applies where a service policeman finds in a relevant place (see below) outside the British Islands a person appearing to him to be a person subject to service law or a civilian subject to service discipline and the remaining conditions in paragraph 9(1) are met.

860. "Relevant place" means either a public place or premises (other than service living accommodation) occupied or controlled by HM Forces (paragraph 9(8)).

861. Again, the service policeman may remove the person to an overseas service hospital (paragraph 9(2)) and the CO of the hospital can detain the person there for a maximum of 24 hours (paragraph 9(3) to (6)) while the paragraph 2(3) order is sought. Paragraph 9 contains no requirement akin to paragraph 8(3).

862. Paragraph 10 enables a person exercising a power under the Schedule to use reasonable force, if necessary, in exercise of the power.

863. Paragraph 11 deems a person who is being conveyed, removed or detained by virtue of a provision in the Schedule to be in service custody. This allows rules under section 300 (service custody etc rules) to be made which will apply to the conveyance, removal or detention of the person under the provisions in the Schedule.

Schedule 13 – Protection of Children of Service Families

864. This Schedule amends those sections of the Armed Forces Act 1991 ("the 1991 Act") that provide for the protection of children of Service families abroad. The effect of the amendments is two-fold. First, they make the 1991 Act more consistent with Part V of the Children Act 1989 ("the 1989 Act") by (a) creating a power to include an exclusion requirement in a protection order (paragraph 5 – analogous to section 44A of the 1989 Act) and (b) empowering the service police to remove children in cases of emergency (paragraph 8 – analogous to section 46 of the 1989 Act). Second, they make the 1991 Act more consistent with the Act, most importantly by requiring that a judge advocate, rather than an officer, will make child assessment orders (paragraph 1(3) et seq.) and protection orders (paragraph 3(3) et seq.).

865. Paragraph 4(4) substitutes a new section 20(9) in the 1991 Act which makes it an offence for a person subject to service law or a civilian subject to service discipline intentionally to fail to comply with an exclusion requirement included in a protection order.

866. Paragraph 5 inserts a new section 20A into the 1991 Act providing that a judge advocate, on being satisfied that certain conditions are satisfied, may include an exclusion requirement in a protection order. An exclusion requirement is defined in section 20A(2) and the relevant conditions are specified in section 20A(3) to (5). Condition C at section 20A(5) has no counterpart in the 1989 Act. It requires the judge advocate to be satisfied that appropriate alternative accommodation will be available to the affected person for the duration of the exclusion requirement, and where the affected person is subject to service law, that his CO also considers the alternative accommodation to be appropriate.

867. Paragraph 6 amends section 21(1) of the 1991 Act so as to provide that the duration of a protection order must not exceed 28 days. The effect of this amendment is to abolish

the distinction in the 1991 Act between the maximum duration of a protection order made by a "superior officer" and any other protection order.

868. Paragraph 7 inserts a new section 22(5A) into the 1991 Act empowering a judge advocate, on application, to vary the exclusion requirement in a protection order or discharge the protection order so far as it imposes the exclusion requirement.

869. Paragraph 8 inserts a new section 22A into the 1991 Act that empowers a service policeman to remove a child to suitable accommodation, or take reasonable steps to prevent his removal from any place, if he has reasonable cause to believe that the child would otherwise be likely to suffer significant harm (section 22A(1)). A child in respect of whom a service policeman has exercised the power under section 22A(1) is deemed to be in service police protection (section 22A(2)), and a child may be kept in service police protection for no more than 72 hours (section 22A(5)). The service police are required to take certain steps after taking a child into service police protection (see section 22A(3), (4), (6) and (7)).

870. Paragraph 9 amends section 23 (interpretation) of the 1991 Act. The amendments provide that "harm" and "significant harm" – terms that are presently used but not defined in the 1991 Act – have the same meanings as in the 1989 Act, and also define the meaning of other terms.

Schedule 14 – Amendments Relating to Reserve Forces

871. This Schedule is largely comprised of amendments to legislation governing reserve forces that are required as a result of changes made by the Act (either by policy or terminology) to what is currently in the SDAs. The overriding aim of modernisation and harmonisation, which has been applied to the production of the Armed Forces Act, is extended to harmonisation between regular and reserve forces legislation where possible. This is particularly important as reserve forces are frequently operating alongside regular forces.

872. This Schedule sets out those amendments to the Reserve Forces Act 1980 ("the 1980 Act") that are required as a result of changes in policy, terminology or modernisation under the Act, or in the armed forces more generally. For example, most of the provisions in the 1980 Act that relate to the Ulster Defence Regiment are being repealed as the UDR no longer exists.

873. The Reserve Forces Act 1996 ("the 1996 Act") drew heavily upon the current SDAs in order to ensure commonality of treatment between reserve and regular forces and to reduce potential inconsistency by using similar wording. Consequently, where provisions in this Act have changed what is currently in the SDAs, amendments to the 1996 Act are required. This Schedule sets out the required changes to the 1996 Act so as to align its policy and provisions with those in the Act wherever possible. For example, section 98 is amended to refer to the offences of desertion or absence without leave under the Act rather than under the SDAs.

874. Aside from the amendments to the 1980 and 1996 Acts that are consequential upon the harmonisation and modernisation brought about by the Armed Forces Act, this Schedule also contains important substantive amendments to the 1996 Act, namely the inclusion of three new sections (sections 53A, 55A and 57A). These new sections all provide reservists with the ability to enter into agreements to undertake further periods of permanent service than the current limitations in the 1996 Act permit. The current provisions set down the maximum periods of permanent service that a reservist can be required to undertake within a given period pursuant to the call out orders under the 1996 Act. However, experience in recent operations has shown that many reservists want to be able to volunteer for further periods of permanent service, but are prevented from doing so by the current provisions; consequently in some areas of expertise we have experienced manning difficulties that we would not otherwise

have encountered, as well as missing the opportunity to deploy reservists with valuable operational experience.

875. The new sections do not provide for the extension of a current term of permanent service. They are for use by those reservists who have completed a term of permanent service and have been released from it (and returned to the UK if they were deployed abroad). Should they volunteer to enter into a new period of permanent service under these provisions they will be served with a call-out notice and will be required to attend a mobilisation centre and go through the procedure that leads to acceptance into permanent service, such as a medical examination.

Schedule 15 – Civilians Subject to Service Discipline

876. This Schedule sets out the circumstances in which a person is a "civilian subject to service discipline" if he is not subject to service law. With that exception, by virtue of section 363 a person is a civilian subject to service discipline if he falls within any paragraph of Part 1 of this Schedule.

Part 1 – Civilians subject to service discipline

877. Paragraph 1 applies to persons in one of Her Majesty's aircraft in flight, anywhere in the world.

878. Paragraph 2 applies to persons in one of Her Majesty's ships afloat (including submarines under the sea), anywhere in the world.

879. Paragraph 3 applies to persons in service custody under the Act, and persons being arrested under service law, anywhere in the world.

880. Paragraph 4 applies to Crown servants whose sole or main role is to work in support of Her Majesty's forces, but only while they are in an area designated under paragraph 12 (a "designated area").

881. Paragraph 5 applies to UK representatives working in international naval, military and air-force organisations specified by the Secretary of State, while they are outside the British Islands.

882. Paragraph 6 applies to members and employees of other organisations specified by the Secretary of State, while they are in a designated area.

883. Paragraph 7 applies to persons designated (individually or by reference to a category of persons, such as the employees of a particular company) by or on behalf of the Defence Council, or by an officer authorised by the Defence Council, while they are outside the British Islands. Sub-paragraph (2) restricts the grounds on which a person can be designated, and sub-paragraph (3) lays down criteria that must be taken into account before deciding whether to designate a person.

884. Paragraph 8 applies to persons residing or staying with a person subject to service law in a designated area, while they are in that area.

885. Paragraph 9 applies to persons residing or staying with a civilian of the kind covered by paragraph 4 or 6 in a designated area, while they are in that area.

886. Paragraph 10 applies to persons residing or staying with a civilian of the kind covered by paragraph 5 outside the British Islands, while they are outside the British Islands.

Part 2 – Exclusion and definitions

887. Paragraph 11 creates an exception to each of paragraphs 4 to 10. A person who is not a UK national (as defined by sub-paragraph (2)) does not fall within any of those paragraphs, and therefore is not a civilian subject to service discipline (unless he falls within any of paragraphs 1 to 3), while he is in a country of which he is a national, or

in which (disregarding periods when, this paragraph aside, he has been or intends to be within any of paragraphs 4 to 10) he is ordinarily resident.

888. Paragraph 12 defines "designated area" as an area outside the British Islands which is designated by order of the Secretary of State. It may consist of two or more areas, which need not be contiguous.

889. Paragraph 13 provides that a person is "residing or staying with" another person for the purposes of paragraphs 8 to 10 if he is about to reside or stay with, or is departing after residing or staying with, that person.

Schedule 16 – Minor and Consequential Amendments

890. Not only is there a considerable amount of legislation that directly relates to the armed forces, but there is also a considerable amount of legislation in which reference is made to the armed forces or to armed forces legislation, in particular the SDAs. As a result of the changes being made by this Act there is a significant amount of legislation that requires amendment so as to ensure that references are made to the correct provisions, or courts or terminology etc or to remove redundant provisions. This Schedule sets out some of the amendments to other Acts that are required as a result of the provisions of this Act.

891. The amendments set out in this Schedule are often more substantial than simple changes of names or references to Acts (which will be covered in orders made under the power to make further amendments and repeals at section 379 if they have not been included in this Schedule). For example, the single-service Summary Appeal Courts were established in 2000 and many Acts that refer to service courts were not updated to include a reference to the Summary Appeal Courts. The Act now establishes a tri-service Summary Appeal Court and we are taking this opportunity to update other legislation that relates to courts, to include references to the SAC.

892. In addition Schedule 16 contains various amendments to the SDAs. These amendments – such as "preliminary hearings as to plea" – are being introduced to bring the current law more closely in line with the effect that will be created under this Act in order to aid transition. Whilst the Act does provide the Secretary of State with a power to align the SDAs by means of statutory instruments (at section 381), some of the necessary alignment measures cannot be achieved in this way. This is because the alignment power in section 381 cannot be used to replicate provisions that will be created under the Act in secondary legislation. As arraignment will be dealt with in Court Martial Rules made under section 163 it was therefore necessary to make the changes to the SDAs on the face of the Act.

Schedule 17 – Repeals and Revocations

893. As with Schedule 16 this Schedule lists those provisions in primary and secondary legislation that require repeal or revocation as a result of changes brought about by this Act. This Schedule will be supplemented by orders made under the power of section 379 (power to make further amendments and repeals). Examples of redundant provisions that are to be repealed are those that refer to the Judge Advocate of the Fleet, since this office is to be combined with that of the Judge Advocate General.