

**EXPLANATORY MEMORANDUM TO  
THE ARMED FORCES AND RESERVE FORCES (COMPENSATION  
SCHEME) ORDER 2005**

**2005 NO. 439**

1. This explanatory memorandum has been prepared by the Ministry of Defence (MOD) and is laid before Parliament by Command to Her Majesty.

**2. Description**

2.1 The Armed Forces (Pensions and Compensation) Act (“the 2004 Act”) gives the Secretary of State the power to make a new compensation scheme for injuries, illness and death caused by service in the Armed Forces and Reserve Forces. The Armed Forces and Reserve Forces (Compensation Scheme) Order 2005 sets out the detailed scheme rules for the Armed Forces Compensation Scheme (AFCS). The AFCS will be introduced from 6 April 2005 and will cover all injuries, illnesses and deaths caused by service on or after this date.

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

3.1 None.

**4. Legislative Background**

4.1 There are currently two main sources of compensation for injuries, illnesses and deaths caused by service in the Armed Forces. The first is the War Pensions Scheme which is set out in the Naval, Military and Air Forces etc. (Disablement and Death) Service Pension Order 1983, as amended. The second is the occupational pension arrangements for the Armed Forces which provide pensions where death or invaliding is caused by service. Those arrangements are currently set out in the Army Pensions Warrant 1977, the Order in Council made from time to time under the Naval and Marine Pay and Pensions Act 1865, and the Queen’s Regulations for the Royal Air Force made under section 2 of the Air Force (Constitution) Act 1917.

4.2 Following a review of the current compensation arrangements, a new single scheme was proposed. The 2004 Act establishes a new statutory framework for Armed Forces compensation arrangements and with the scheme rules set out in a statutory instrument.

4.3 The SI to which this explanatory memorandum is attached is the first made under section 1 (2) of the 2004 Act (which provides Secretary of State with the power to establish compensation schemes for the Armed Forces).

4.4 Other related instruments are also being laid at the same time under section 1 (1) of the 2004 Act. These are the Armed Forces Pension Scheme Order 2005 (S.I. 2005/438) and the Armed Forces Early Departure Payments Scheme Order 2005 (S.I. 2005/437).

## 5. Extent

5.1 This instrument applies to all of the United Kingdom.

## 6. European Convention on Human Rights

6.1 Not applicable.

## 7. Policy Background

7.1 In 1998, the MOD and the then Department of Social Security (now the Department Work and Pensions (DWP)), which was then responsible for War Pensions matters, undertook a joint study into the provision of compensation benefits paid to former Service personnel (and their dependants) for injuries, illness and death caused by their service in the Armed Forces. The review considered whether it remained appropriate to have two separate schemes providing such benefits, one run as a quasi state benefit scheme known as the War Pension Scheme, and the other as part of the Armed Forces occupational pension scheme.

7.2 Proposals for a single new scheme to replace these existing schemes were issued for public consultation in March 2001. The MOD issued 1,500 copies of a consultation document to current members of the Armed Forces and to ex-Service organisations. The consultation document was also put on the MOD internet and intranet sites.<sup>1</sup> There was a low level of response to the consultation, with only 69 responses (covering 470 separate comments) of which few came from currently serving personnel. However, the responses received did support the move to a single scheme and welcomed the payment of income based on lost earnings capacity and the greater emphasis on the more severely disabled; more details are available in the report on consultation found on the MOD website<sup>2</sup>. Following the formal consultation period, the MOD has worked closely with key ex-Service organisations to discuss their views and concerns in more detail and where practicable has modified the original proposals.

7.3 The House of Commons Defence Committee has also examined the proposed pension and compensation arrangements for the Armed Forces and has published two reports and taken oral and written evidence from

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<sup>1</sup> The Joint Compensation Review consultation document can be found at <http://www.mod.uk/consultations/closed>.

<sup>2</sup> The report to the new Armed Forces Compensation Scheme consultation can be found at <http://www.mod.uk/consultations/responses>.

MOD Ministers<sup>3</sup>. The later report was responded to by a Government Command Paper 6109<sup>4</sup>.

- 7.4 Following consultation, the MOD concluded that it should proceed with the introduction of the new Armed Forces Compensation Scheme to replace the current arrangements. On 15 September 2003, the Veterans Minister, Ivor Caplin MP, announced that new pension and compensation arrangements would be introduced with effect from 6 April 2005.
- 7.5 In line with normal practice in other public sector schemes, the Government has introduced primary enabling legislation to provide the powers required to introduce new pension and compensation arrangements; the 2004 Act. This SI now sets out in detail the scheme rules for the new Armed Forces Compensation Scheme. This is not the first time that some of the details of the scheme have been exposed to Parliament, as framework documents for both the pension and compensation schemes were produced to explain the intent behind the enabling legislation<sup>5</sup> and these were placed in the libraries of both Houses.
- 7.6 During the passage of the Armed Forces (Pensions and Compensation) Bill, although only enabling legislation, the debate in the House of Lords focused on some detailed aspects of the compensation scheme rules and in particular on the burden and standard of proof. The Armed Forces Compensation Scheme will use balance of probabilities and the burden of proof will be on the claimant. The Royal British Legion wished to retain the approach used by the War Pension Scheme which requires the Secretary of State to prove beyond reasonable doubt that an injury, illness or death was not caused by service in the Armed Forces. The MOD has sought to reassure the Royal British Legion over its concerns, but was not prepared to change the standard and burden of proof which are a fundamental cornerstone of a modern compensation scheme and reflect practice elsewhere such as in the civil courts. However, it was agreed that the Veterans Minister would include a report on the new compensation scheme as part of his annual statement on veterans issues.
- 7.7 The MOD has continued to engage with key ex-Service organisations, including the Royal British Legion, the War Widows Association, Combat Stress and the British Limbless Ex-Service Men's Association in finalising the details within this SI. This has been productive and the MOD has been able to clarify issues and reassure these organisations on many of their concerns. In particular, the Royal British Legion has made clear that they are now keen to get on with the practical work of briefing

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<sup>3</sup> HCDC Third Report 2001-2002: the MOD reviews of Armed Forces Pensions and Compensation arrangements (HC 666) – 9 May 2002 and HCDC First Report 2003-2004: Armed Forces Pension and Compensation – 10 December 2003

<sup>4</sup> Cm 6109: Armed Forces' Pensions and Compensation: Ministry of Defence Response to the House of Commons Defence Committee's First Report of Session 2003-04

<sup>5</sup> A Framework Document for the Armed Forces Compensation Scheme

their staff on the new scheme, so that they can support claimants, and MOD has supported them.

## **8. Impact**

8.1 A Regulatory Impact Assessment has not been prepared for this instrument, as it has no significant impact on business, charities or voluntary bodies.

## **9. Contact**

9.1 Contact Sue McIntosh, Ministry of Defence, 0207 218 0564, email [Sue.McIntosh641@mod.uk](mailto:Sue.McIntosh641@mod.uk), if you have any queries on the memorandum.