

**EXPLANATORY MEMORANDUM TO**  
**THE PENSIONS APPEAL TRIBUNALS (ARMED FORCES AND RESERVE**  
**FORCES COMPENSATION SCHEME) (RIGHTS OF APPEAL) AMENDMENT**  
**REGULATIONS 2006**

**2006 No. 2892**

**1.** This explanatory memorandum has been prepared by the Ministry of Defence and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Description**

2.1 The Pensions Appeal Tribunals Act 1943 (“the 1943 Act”) allows an appeal to a Pensions Appeal Tribunal (PAT) against decisions relating to War Pensions and against certain types of decisions (referred to as “specified decisions”) made under the Armed Forces and Reserve Forces Compensation Scheme Order 2005 (“the 2005 Order”).

2.2 The Pensions Appeal Tribunals (Armed Forces and Reserve Forces Compensation Scheme) (Rights of Appeal) Regulations 2005 (“the 2005 Regulations”) define which types of decision made under the 2005 Order are “specified decisions” and can therefore be appealed to the PAT. This Instrument amends the 2005 Regulations, with the effect that a decision to make a permanent award (under article 20(4) of the 2005 Order) will attract a right of appeal and that a decision to make a temporary award (under article 20(1) of the 2005 Order) will not attract a right of appeal.

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

3.1 This Instrument is due to come in to force in accordance with regulation 1(1). It will coincide with amendments being made to article 20(4) of the 2005 Order by another instrument, the Armed Forces and Reserve Forces Compensation Scheme (Amendment) Order 2006.

3.2 This Instrument has the effect that a temporary award may not be appealed to the PAT. It is anticipated that a temporary award will be made in only a very small number of cases. A temporary award is a short-term decision which will be superseded by a decision as to whether a permanent award is made. This will occur not later than one year after a temporary award is made. An individual will not be required to repay any benefit that they have received under a temporary award, even if no permanent award is made. Given that an individual will have an appeal right in relation to the making of a permanent award and given the policy aims described at paragraph 7.2, the Department considers that the removal of appeal rights in relation to temporary awards is justified in all the circumstances. Accordingly, in the event that Convention rights are engaged by the removal of this right of appeal, the Department nonetheless considers that this Instrument is compatible with Convention Rights.

**4. Legislative Background**

4.1 Section 5A of the 1943 Act enables the Secretary of State to make regulations defining which types of decision shall be “specified decisions” attracting a right of

appeal to the PAT. The 2005 Regulations state which decisions under the 2005 Order are “specified decisions”. However, because the 2005 Regulations were subject to the affirmative resolution procedure, they had to be laid before the 2005 Order was finalised. The power to make a temporary award was included in the 2005 Order at a late stage and, although it was never intended that a decision to make a temporary award should attract a right of appeal to the PAT, it was by that stage too late to reflect this intention in the 2005 Regulations. It is therefore necessary to amend the 2005 Regulations to reflect the original intention.

## **5. Extent**

5.1 This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

6.1 Under-Secretary of State, Mr Derek Twigg, has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Pensions Appeal Tribunals (Armed Forces and Reserve Forces Compensation Scheme) (Rights of Appeal) Amendment Regulations 2006 are compatible with the Convention rights.

## **7. Policy background**

7.1 The 2005 Order contains a tariff listing the types of injury in respect of which compensation may be awarded and assigning to each injury a tariff level, which determines the amount of compensation that an individual receives. Where a claim is made for an injury which is not on the tariff, article 20(1) of the 2005 Order provides that a temporary award may be made at the tariff level that the Secretary of State thinks appropriate. If, within a year of making the temporary award, the Secretary of State amends the tariff to include the injury, then a permanent award will be made (article 20(4) of the 2005 Order). If he does not amend the tariff then no permanent award will be made.

7.2 This Instrument amends the 2005 Regulations to provide that a decision determining whether or not a permanent award is made is a “specified decision” (i.e. a decision attracting a right of appeal to the PAT). This Instrument also amends the 2005 Regulations to provide that a decision determining whether a temporary award is made is not a specified decision. The objects of this amendment are:

- to avoid proliferation of appeals on the same issue;
- to ensure that the policy decision as to whether an injury appears on the tariff, or as to the tariff level which applies to any particular injury, is reserved to the Secretary of State; and
- to avoid the possibility of a temporary award being altered on appeal and set at a higher level than the tariff level set for that injury when the tariff is amended and the permanent award is made.

7.3 This scheme mirrors similar arrangements applicable to interim awards under the 2005 Order. (Interim awards are made where the prognosis for an injury is uncertain and the Department is unable to take a final decision on the appropriate level of benefit).

7.4 Ex-Service organisations, the Presidents of the PAT and the Council on Tribunals are being informed about the proposals in parallel with laying this

instrument. It is not anticipated that there will be any adverse reaction from these bodies.

**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**

**Mrs S J McIntosh** at the Ministry of Defence Tel: 020 7218 0564 can answer any queries regarding the instrument.