

EXPLANATORY MEMORANDUM TO
THE PENSIONS APPEAL TRIBUNALS (ADDITIONAL RIGHTS OF
APPEAL) (AMENDMENT) REGULATIONS 2006

2006 No. 2893

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 This Instrument amends the Pensions Appeal Tribunals (Additional Rights of Appeal) Regulations 2001 (“the 2001 Regulations”), which Regulations list the decisions under the Naval Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983 (“SPO 1983”) which attract a right of appeal to the Pensions Appeal Tribunal. The SPO 1983 has now been replaced by a consolidated instrument, the Naval Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006 (“SPO 2006”), which contains a new provision relating to cancellation of awards (article 66). The amendments effected by this Instrument provide that a decision to cancel an award shall attract a right of appeal and also, for the sake of clarity, list the decisions under the SPO 2006 which attract a right of appeal.

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

3.1 As a consolidating instrument, the SPO 2006 is subject to sections 17(2) and 23 of the Interpretation Act 1978, which sections have the effect that any reference in the 2001 Regulations to the SPO 1983 and its articles will be construed as a reference to the 2006 SPO and its equivalent articles.

3.2 Although, given the effect of the Interpretation Act 1978, such amendment may not be strictly necessary, the 2001 Regulations have nonetheless been amended by this Instrument to make explicit reference to the SPO 2006 and to list the decisions under the SPO 2006 that attract a right of appeal.

3.3 The Department considers that this amendment will make it clearer and easier for readers to identify which SPO 2006 decisions will attract a right of appeal as this will be apparent from the face of the 2001 Regulations (as amended). Failing such an amendment, a reader would have to identify the SPO 2006 article underlying a decision, obtain a copy of the SPO 1983, find the equivalent article in the SPO 1983 and then look at the 2001 Regulations to see if an appeal right obtained in relation to the equivalent article under the 1983 SPO.

4. Legislative Background

4.1 The 2001 Regulations are made pursuant to section 5A of the Pensions Appeal Tribunals Act 1943. Section 5A of that Act provides that the Minister may, by regulations, specify that certain types of decision (referred to as “specified decisions”) should attract a right of appeal to the Pensions Appeal Tribunal. Regulation 3(1) of the 2001 Regulations provides that any decision made under the SPO 1983, which is made in the exercise of one of the articles listed in Schedule 1, and which affects an award in certain ways, is a “specified decision” within the meaning of section 5A. Regulation 3(2) provides that decisions made pursuant to certain SPO 1983 articles as to deductions from awards are also “specified decisions”.

4.2 The SPO 1983 was consolidated in the SPO 2006 with effect from April 2006. The SPO 2006 re-enacted most of the provisions of the SPO 1983. However the Order was restructured and renumbered, so there is no direct read across from the article numbering under the SPO 1983 to the numbering of the SPO 2006. The SPO 2006 also contains some new provisions, one of which (article 66) relates to the cancellation of awards. This Instrument therefore amends the 2001 Regulations by:

- inserting a new definition at regulation 2, making explicit reference to the SPO 2006;
- inserting a new regulation 3A and a new Schedule 1A, which list the decisions under the SPO 2006 which are “specified decisions” and which therefore attract a right of appeal to the PAT; and
- including in Schedule 1A reference to the new SPO 2006 provision relating to cancellation of awards (article 66).

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 (Additional Rights of Appeal) (Amendment) Regulations 2006 are compatible with the Convention rights.

7. Policy background

7.1 This instrument is intended to make a decision to cancel an award (under article 66 of the SPO 2006) a “specified decision”, attracting a right of appeal to the Pensions Appeal Tribunal.

7.2 It is also intended, to identify explicitly which decisions under the SPO 2006 are “specified decisions” attracting a right of appeal to the Pensions Appeal Tribunal.

7.3 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.