

**EXPLANATORY MEMORANDUM TO
THE ARMED FORCES AND RESERVE FORCES
(COMPENSATION SCHEME)
(CONSEQUENTIAL PROVISIONS: PRIMARY LEGISLATION) ORDER
2013**

2013 No. 796

1. 1.1 This explanatory memorandum has been prepared by the Ministry of Defence (MOD) and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the Instrument

The Instrument provides access to additional benefits made under primary legislation for recipients of a new benefit to be known as armed forces independence payment (AFIP) from 8 April 2013.

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

Appended to this memorandum is the draft of an Order (the Armed Forces and Reserve Forces (Compensation Scheme) (Amendment) Order 2013 (“Draft Amendment Order”). The Draft Amendment Order will be made and laid before Parliament to be subject to the negative procedure provided that the Social Security Personal Independence Payment (Supplementary Provisions and Consequential Amendments) Regulations 2013 (‘PIP Regulations’), are made by the Secretary of State for Work and Pensions. Those Regulations will only be made if other legislation relating to personal independence payment is approved by Parliament. A draft of the PIP Regulations is also appended to this memorandum.. The Draft Amendment Order will amend the Armed Forces Compensation Scheme provided for under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011(S.I.2011/517) to provide for a new benefit to be known as armed forces independence payment (‘AFIP’) which is to be made available to seriously injured members of the armed forces and ex-Service personnel who meet the eligibility criteria. Recipients of AFIP will not also be able to claim personal independence payment, disability living allowance or attendance allowance. It is proposed that the Draft Amendment Order and this Instrument should come into force at the same time as the PIP Regulations on 8 April 2013. This Instrument will not be made in the event that the PIP Regulations and the Draft Amendment Order are not made. It is the intention of the Department to make other Orders relating to consequential provision in subordinate legislation and in legislation relating to Northern Ireland which will be laid before Parliament in due course. Other Government Departments’ legislation is dependent on the Draft Amendment Order being made as soon as possible. It is the intention that the Draft Amendment Order will be made and laid before Parliament on or about

26 February 2013 once the PIP Regulations have been made and laid before Parliament.

4. Legislative Context

This Instrument contains provisions to give full effect to section 1(2) of the Armed Forces and Reserve Forces (Compensation Scheme) Act 2004 (c.32) consequential on the provision of AFIP in order to give seriously injured Service and ex-Service personnel who qualify for AFIP the same access as those who qualify for PIP to additional benefits. In this case payments for medical examination of applicants for an exemption from the wearing of seatbelts under s70 of the Transport Act 1982 (c.49) and allowances for carers and entitlement to Christmas bonus for pensioners under respectively s70 and s148 of the Social Security Contributions and Benefits Act 1992 (c.4) (“1992 Act”). It is proposed that s70 of the 1992 Act will be amended by the PIP Regulations (on or about 25 February 2013) and before this Instrument is made It is proposed that the amendment made to s70 of the 1992 Act by the PIP Regulations will also come into force at the same time as this Instrument on 8 April 2013.

5. Territorial Extent and Application

This Instrument extends to the United Kingdom.

6. European Convention on Human Rights

The Minister of State for Defence has made the following statement regarding Human Rights: In my view the provisions of The Armed Forces and Reserve Forces (Compensation Scheme)(Consequential Provisions: Primary Legislation) Order 2013 are compatible with the Convention rights.

7. Policy background

7.1 In 2010, the DWP announced, as part of a package of Welfare Reform, that Disability Living Allowance (DLA) would be reformed and a new benefit, PIP, introduced from April 2013. The PIP eligibility criteria are different from DLA.

7.2 During the PIP public consultations, concerns were raised by Service and veterans’ organisations about how PIP would impact financially upon injured Service and ex-Service personnel, and in particular those that have been seriously injured as a result of service.

7.3 In order to provide ongoing support to the most severely injured Service and ex-Service personnel a new benefit, AFIP, will be established as an alternative to PIP. This upholds Armed Forces Covenant commitments. AFIP was announced by the Prime Minister in July 2012.

7.4 MOD will legislate under the Armed Forces (Pensions and Compensation) Act 2004 (c.32) to create AFIP as part of the Armed Forces Compensation

Scheme and to make the consequential legislative amendments that will provide passports to other benefits in a similar way to PIP. DWP will administer and pay AFIP on an ongoing basis.

8. Consultation Outcome

8.1 The Central Advisory Committee (CAC) on Pensions and Compensation were consulted on the design of AFIP. The consultation exercise began on 8 October 2012 and closed 30 November 2012. This external advisory body advises the Minister of State for Deployed Personnel, Welfare and Veterans on matters of pensions and compensation relevant to the Armed Forces. Membership consists of representatives of key ex-Service organisations, including The Royal British Legion, the War Widows Association, the British Limbless Ex-Service Men's Association (BLESMA) and Combat Stress as well as Service members and MOD officials. All groups welcomed the proposals in principle. Four responses were received.

8.2 The organisations that responded to the consultation recommended change to only the eligibility criteria. Furthermore, the organisations disagreed with each other, some considering the eligibility criteria too narrow, others too broad. Setting criteria for injured Service and ex-Service personnel was not straightforward and it was recognised there would always be 'cliff-edges', close to which occur individual cases that call the criteria into question. However, the agreed eligibility criteria were deemed to be the most appropriate in order to ensure that support was targeted on the most severely injured Service and ex-Service personnel. The Minister agreed the design of AFIP should remain unchanged following consultation.

9. Guidance

Information about the new provisions will be made available by means of placing a copy of the Instrument on the Gov.UK website. In addition information will be available externally via Armed Forces magazines and other publications and internally through the Armed Forces Chain of Command and intranet sites. Those eligible for AFIP will be sent a letter setting out the changes explaining next steps. CAC members consulted will also receive a copy of the Instrument with an explanatory paper.

10. Impact

10.1 The impact on business, charities and voluntary bodies is not significant.

10.2 The impact on the public sector is not significant.

10.3 An Impact Assessment has not been prepared for this instrument.

10.4 An Equality Assessment has been prepared for AFIP.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring and Review

The MOD will continue to review the Armed Forces Compensation Scheme as part of its day-to-day management and to liaise with members of the CAC. This will include monitoring the impact of the changes made in this Instrument.

13. Contact

Tracy Sexton at the Ministry of Defence Tel: 0207 218 0564 can answer any queries regarding this Instrument.