EXPLANATORY MEMORANDUM TO
THE ARMED FORCES AND RESERVE FORCES (COMPENSATION SCHEME) (AMENDMENT No. 3) ORDER 2008

2008 No. [2942]

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

2. Purpose of the instrument

2.1 The Armed Forces and Reserve Forces (Compensation Scheme) (Amendment No. 3) Order 2008 ("this Instrument") amends the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005 ("the 2005 Order"). It inserts a revised Table 10 of Schedule 4 which increases the value of all lump sum awards. It also provides for payment of a new form of benefit - the additional lump sum. The amendments do not fundamentally alter the compensation scheme.

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

3.1 None.

4. Legislative Context

4.1 The 2005 Order (No. 439) was introduced on 6 April 2005 and provides for benefits to be payable to or in respect of a person by reason of their illness, injury or death which is caused (wholly or partly) by service in the armed forces or reserve forces on or after that date. The benefits which are payable for injury caused by service are a lump sum and, for more severe injury, a guaranteed income payment payable for life.

4.2 The 2005 Order has been previously amended as follows: a number of minor amendments were made in 2006 by the Armed Forces and Reserve Forces (Compensation Scheme) (Amendment) Order 2006 (No.1438) which included the insertion of a revised injury Tariff; in 2007 by the Armed Forces (Gurkha Compensation) Order 2007 (No. 2609) in line with the changes to Gurkha pay and pension rights. It was further amended in February 2008 by the Armed Forces and Reserve Forces (Compensation Scheme) (Amendment) Order 2008 (No. 39) to amend the rules on multiple injuries sustained in one incident and in September 2008 the Armed Forces and Reserve Forces (Compensation Scheme) (Amendment No. 2) Order 2008 (No. 2160) amended the tariff descriptors in Tables 1 – 9 and made minor amendments to article 20 of the 2005 Order.

4.3 This instrument implements the commitment the Government made in the July 2008 Service Personnel Command Paper - "The Nation's Commitment: Cross-Government Support to our Armed Forces, their Families and Veterans" to increase the Armed Forces Compensation Scheme lump sum award levels and introduce the additional lump sum.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the Instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Tariff lists the various forms of injury or disease for which compensation is available under the Scheme; specifies a numerical level referable to each type of injury or disease and specifies for each numerical level the amount of compensation payable.

7.2 As part of the July 2008 Service Personnel Command Paper - "The Nation's Commitment: Cross-Government Support to our Armed Forces, their Families and Veterans" the Government took the opportunity to review whether the level of Armed Forces Compensation Scheme awards reflected the special nature of the Armed Forces, and in particular the sacrifices being made and the injuries some of our Armed Forces are suffering. The Government announced its intention to increase the level of awards as a result.

7.3 This Instrument therefore amends Table 10 of Schedule 4 of the Scheme (the tariff) to increase the amount specified in column (b) of that Table by 10-100% for all lump sum awards, with the larger increases being applied to the higher award levels (ie the most serious injuries). The new amounts will be applied to all claims determined or revised on or after 15th December 2008.

7.4 This instrument also introduces Articles 15C and 15D. These specify that an Additional Lump Sum will be paid to those claimants who have been awarded benefit before 15th December 2008. The Additional Lump Sum, when added to the amount the claimant has already received, ensures that in total they receive the same total amount as if their claim had been determined or revised following this Instrument coming into effect.

7.5 While amending the Scheme the opportunity has also been taken to amend the other existing articles to make clear that in no circumstances should a claimant receive more than the full value of all their injuries on the revised Table 10 as a result of the Additional Lump Sum.

7.6 As there have been a number of amendments to the 2005 Order it is recognised that consolidation is now appropriate and it is intended to undertake this, resources allowing, after a full review of the Scheme which is due in 2010.

8. Consultation outcome

8.1 The proposed amendments were notified to representatives of ex-service organisations in a four week consultation exercise which began on 26 August 2008 and closed on 23 September 2008. A formal 12 week consultation was not undertaken as the proposals are beneficial to the claimant, are not complex in nature, and consultation was with organisations with experience of the Scheme rules. Of the nine organisations consulted, six responses were received. Five of these responses welcomed the increase and the Additional Lump Sum. The sixth focussed on the level of award attached to a particular descriptor, an issue which lay outside the scope of this Instrument.

9. Guidance

9.1 Information about the new provisions will be made available by means of placing a copy of the revised Table 10 on the MOD and Service Personnel and Veterans Agency Internet sites as well as the internal Intranet sites. In addition, the ex-service organisations consulted will receive a copy of the amending legislation with an explanatory paper. The new Table 10 does not effect how a claim is made under the Scheme, and previous claimants will receive the Additional Lump Sum without having to make a further claim.

10. Impact

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

10.2 The impact on the public sector, aside from the Armed Forces, is not significant.

10.3 A Regulatory Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 A review of the Armed Forces Compensation Scheme in the round will take place in 2010 once five years data on the scheme's operation has been collected.

13. Contact

Nick Shaw at the Ministry of Defence Tel: 0202 7218 0564 can answer any queries regarding the instrument.