EXPLANATORY MEMORANDUM TO THE ARMED FORCES AND RESERVE FORCES (COMPENSATION SCHEME) (AMENDMENT) ORDER 2006

2006 No. 1438

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

2. Description

2.1 The Armed Forces and Reserve Forces (Compensation Scheme) Amendment Order 2006 ("this Instrument") amends the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005 ("the 2005 Order"). It makes provision for a number of amendments to existing provisions of the 2005 Order as well as the insertion of two new provisions, one of which improves provisions for parentless children, and one of which allows suspension of benefit if a recipient enters the Royal Hospital Chelsea. The amendments do not fundamentally alter the compensation scheme.

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

3.1 Article 8 of this Instrument amends article 20 of the 2005 Order, which article sets out the arrangements concerning the making of Temporary and Permanent awards. Article 8 complements, and will come into force on the same date as, an affirmative instrument (the Pensions Appeal Tribunals (Armed Forces and Reserve Forces Compensation Scheme) Amendment Regulations 2006). The amendments contained in that affirmative instrument have the effect that Permanent awards under the 2005 Order will attract a right of appeal to the Pensions Appeal Tribunal, whereas Temporary awards will not.

4. Legislative Background

4.1 The Armed Forces (Pensions and Compensation) Act 2004 gave 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 2005 Order sets out the detailed rules of the scheme. It was introduced on 6 April 2005 and covers all injuries, illness and death occurring on or after that date. Since coming into force, a number of issues have been identified which make it desirable to amend the 2005 Order. The amendments made are detailed in paragraph 7.

5. Extent

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 Since the introduction of the 2005 Order, the MOD has continued to engage with key ex-Service organisations. This process has been productive and identified the need for the MOD to clarify certain issues in the Scheme. In particular, BLESMA (the British Limbless Ex-Service Men's Association) identified certain aspects of Schedule 4 of the 2005 Order ("the Tariff") that needed amendment to provide for injuries not previously included. Whilst amending the Tariff to include these injuries and rectify certain other omissions, the opportunity was taken to amend some of the existing tariff entries for the sake of clarity and to reflect experience gained from receipt of live claims.

7.2 The amendment to article 45 of the 2005 Order removes the right to seek reconsideration and review for Temporary awards and thereby brings those awards into line with Interim awards. Both awards have effect for a limited period after which they are superseded by a permanent or final award, at which time full rights of reconsideration and review are afforded. There is also a similar amendment to article 20. This amendment is related to the affirmative instrument already referred to, which instrument will remove appeal rights for Temporary awards (again putting Temporary awards on a par with Interim awards). The key ex Service organisations including the Royal British Legion, the War Widows Association, Combat Stress and BLESMA were first made aware of these changes in December 2005 with a recent detailed explanation sent out in May 2006.

7.3 The amendment to article 10 of the 2005 Order clarifies the types of travel during which if injury is sustained, worsened or death occurs benefit is payable.

7.4 The amendment to article 11 provides that, where illnesses are excluded from the operation of the scheme, any associated conditions caused by those illnesses will also be excluded.

7.5 Article 13 is amended to clarify how compensation is to be calculated where an individual sustains multiple injuries and one or more of those injuries is to the same part of the body or to a like part of the body as was injured in a previous incident.

7.6 The amendment to article 28(4) effects an improvement to the child's payment provisions and remedies an omission which occurred when the rules of the Scheme were drafted. Benefits payable to children vary depending on whether there is a surviving spouse, civil partner or surviving adult dependant and/or other children. Where there is no surviving spouse, civil partner or surviving adult dependant at the time of the member's death the amount of benefit payable to the surviving

children is increased to reflect this. Currently the legislation does not allow any recalculation of child's payment if the child is orphaned after the member's death and the amendment seeks to rectify this to recognise the change in circumstances.

7.7 There is also an amendment to insert a provision to withdraw the Guaranteed Income Payment (GIP) if the recipient is admitted to the Royal Hospital Chelsea. This was an omission when the current provisions were drafted and brings the Armed Forces Compensation Scheme in line with the rules in both the War Pensions Scheme and the Armed Forces Pensions Scheme.

7.8 Other amendments are intended to clarify the intended effect of existing provisions, but without fundamentally altering the nature of the provisions.

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: 0202 7218 0564 can answer any queries regarding the instrument.