EXPLANATORY MEMORANDUM TO

THE ARMED FORCES AND RESERVE FORCES (COMPENSATION SCHEME) (AMENDMENT) ORDER 2009

2009 No. 3236

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) Order 2009 ("this Instrument") amends the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005 ("the 2005 Order"). It makes a single amendment to the revised injury Tariff which was inserted by the Armed Forces and Reserve Forces Compensation Scheme (Amendment No. 2) Order 2008 (S.I 2008/2160). This Instrument inserts an additional descriptor to one of the Tables in the injury Tariff allowing for brain injury to be compensated at the second level of the tariff scale. The amendment does not fundamentally alter the compensation scheme.

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

3.1 None.

4. Legislative background

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 his 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. Awards are based on an Injury Tariff which 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.

4.2 The Armed Forces Compensation Scheme contains a provision (Article 20) for a temporary award to be made where the injury is sufficiently serious to warrant an award of injury but there is no existing tariff descriptor to apply. The provisions stipulate that for the temporary award to be made permanent, the Tariff must be amended within one year of the date of the award to include the injury for which the temporary award was made. An amendment to the Tariff is now required in order to make the corresponding temporary award permanent.

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 The amendment inserts an additional descriptor in Table 6 (Neurological Disorders) at level 2 to provide for brain injury which is more severe than the current level 3 descriptor but does not meet the criteria for a level 1 award. There is currently no descriptor at level 2 for brain injury.

7.2 A temporary award has already been made at level 2 using the powers provided under Article 20 of the Scheme rules to compensate for brain injury which was not provided for in the existing injury Tariff. This amendment will now make the award permanent.

8. Consultation outcome.

8.1 The proposed amendment was notified to members of the Central Advisory Committee on War Pensions in a four week consultation exercise which began on 27 October 2009 and closed on 23 November 2009. This external advisory body was established in 1921 to advise the Minister on matters of compensation and members consist 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. A formal 12 week consultation was not undertaken as the proposal was a single, beneficial change to a specialised rule in the Scheme affecting Service personnel only. Consultation was with an external body that has experience of the Scheme rules. No response was received.

9. Guidance

9.1 Information about the new provisions will be made available by means of placing a copy of the revised tariff on the MOD website: www.mod.uk/aboutdefence/whatwedo/personnel/pensions/armedforcespensions/afcs and the Service Personnel and Veterans Agency website: http://veterans-uk.info/pensions/afcs as well as the internal Intranet sites. In addition, the Central Advisory Committee members consulted will receive a copy of the amending Order 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, aside from the Armed Forces, is not significant.

10.3 An 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 and Review

12.1 A review of the Armed Forces Compensation Scheme is currently underway. 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 the current Review of the Scheme concludes.

13. Contact

James Longworth at the Ministry of Defence Tel: 0207 218 0377 can answer any queries regarding this Instrument.