EXPLANATORY MEMORANDUM TO

THE ARMED FORCES PENSION REGULATIONS 2014

2014 No. 2336

AND

THE ARMED FORCES EARLY DEPARTURE PAYMENTS SCHEME REGULATIONS 2014

2014 No. 2328

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. Purpose of the Instruments

2.1 In 2010 the Government asked Lord Hutton of Furness to chair the Independent Public Service Pensions Commission (IPSPC). In March 2011 the IPSPC's final report made recommendations for the reform of public service pension schemes, including the Armed Forces, to ensure they remain affordable and sustainable in the future. The Government set out its preferred scheme design for public service pension schemes in the HM Treasury paper: 'Public service pensions: good pensions that last' in November 2011.

2.2 These statutory instruments set out the scheme rules for the new Armed Forces Pension Scheme (AFPS) 2014 and the new Armed Forces Early Departure Payments Scheme 2014 which take effect from 1 April 2015.

3. Matters of Special Interest to the Joint Committee on Statutory Instruments

3.1 A separate statutory instrument will be made at the beginning of 2015 which will amend all the existing Armed Forces pension schemes and the early departure payment scheme to protect the accrued rights of those who are due to transfer from these schemes to the new scheme on 1 April 2015.

3.2 Section 12(1) of the Public Service Pensions Act 2013 sets the requirement to have scheme regulations which 'set a rate, expressed as a percentage of pensionable earnings of members of the scheme'. This section is the subject of the Public Service Pensions Act 2013 (Commencement No 5) Order 2014. This Order gives a commencement date of 1 April 2015 for section 12(1). The AFPS 2014 regulations currently do not set a rate in the employer cost cap provisions in Part 9. An amending instrument will be made prior to 1 April 2015 which will insert a rate.

4. Legislative Context

4.1 The Public Service Pensions Act 2013 establishes a statutory framework to enable provision to be made to introduce new public service pension schemes from 1 April 2015. It also provides the authority to close down existing public service pension schemes to new

members ahead of the introduction of the new schemes and transfer existing members to the new schemes on 1 April 2015 unless they qualify for transitional protection. The Government has offered transitional protection to all members of public service schemes who were within 10 years of their respective scheme's normal pension age on 1 April 2012.

5. Territorial Extent and Application

5.1 These instruments apply to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy Background

7.1 There are currently five separate Armed Forces pension schemes for Regular and Reserve personnel, set up under a range of statutory and prerogative powers that are covered by the Public Service Pensions Act 2013. From 1 April 2015 all serving members of existing schemes will automatically transfer into the new Armed Forces Pension Scheme unless covered by transitional protection. In addition, all serving members of the Part-time Volunteer Reserve will be automatically enrolled in the new scheme and for the first time will be entitled to be pensioned for attendance based paid service as well as for mobilised service. The existing schemes are:

- The Armed Forces Pension Scheme 1975
- The Armed Forces Pension Scheme 2005
- The Full-Time Reserve Service Pension Scheme 1997
- The Reserve Forces Pension Scheme 2005
- The Non-Regular Permanent Staff Pension Scheme

7.2 There is also a scheme for Early Departure Payments (EDP), consisting of a tax free lump sum and taxable income, to retain regular Service personnel through to at least age 40 with a minimum of 18 years' service and to compensate for the fact that a full career to age 55 or beyond is not required for the majority. That scheme is constituted by The Armed Forces Early Departure Payments Scheme Order 2005 (S.I.2005/437).

7.3 Final agreement was reached with the Government in October 2012 on the overall design of the new Armed Forces Pension Scheme and EDP Scheme. The provisions in the new statutory instruments reflect some key policy changes to align with Government intent, the most significant being that, along with all other public service schemes, the new Armed Forces scheme will provide pensions based on Career Average Related Earnings (CARE) rather than final salary. The new EDP scheme will continue to provide a tax free lump sum and taxable income to retain regular Service personnel through to at least age 40 but now with a requirement for a minimum of 20 years' service.

The Armed Forces Pension Regulations 2014

7.4 The statutory instrument for AFPS 14 is divided into 10 parts with Part 1 establishing the scheme and providing the definitions for terms that appear throughout the regulations.

7.5 In Part 2, regulations 4 to 12 contain provisions for the establishment of a pension board and scheme advisory board which are mandatory requirements for all public service pension schemes from 1 April 2015. They outline the responsibilities of the two boards in assisting the scheme manager in relation to the governance and general administration of the scheme and advising the scheme manager in relation to the desirability of policy changes to the scheme. They provide guidelines for membership and terms of appointment.

7.6 In Part 3, regulations 13 to 24 define a person in scheme employment and describe how that person becomes eligible to be a member of the scheme, sometimes in more than one capacity. They provide options for someone to join or leave the scheme. They also define pensionable and qualifying service and introduce HM Treasury's definition of 'continuous service' which applies to all public service pension schemes.

7.7 In Part 4, regulations 25 and 26 describe the method by which the amount of accrued pension is calculated and the method by which the retirement index adjustment for an amount of accrued pension is calculated. Regulations 27 to 40 contain provisions for the establishment of pension accounts for members and the closure and adjustment of pension accounts for members who transfer benefits out of the scheme. They provide for an active, deferred, pensioner or pension credit member's account and specify what each account has to contain.

7.8 In Part 5, regulations 43 to 64 provide for a scheme member's entitlement to the payment of pension, either immediate or deferred, depending when they leave service. They provide an option to delay drawing the pension and for the early drawing of deferred pension from age 55 at reduced rates. Regulations 51 to 58 contain provisions for the payment of ill-health pensions to members who are medically discharged from the scheme and for a review of ill-health awards by the scheme manager. Regulations 59 to 64 provide options for the exchange of pension for a lump sum and for allocation of pension.

7.9. In Part 6, regulations 65 to 90 contain provisions for the payment of dependants' benefits on the death of a member and regulations 72 to 75 contain provisions for the payment of pension to any surviving eligible children. Regulations 76 to 84 provide for the payment of a lump sum death benefit to a nominated person. The method for calculating this differs depending on the member's circumstances. Regulations 85 to 90 provide provisions for the payment of the lump sum and for adjustments to or recovery of lump sums where appropriate.

7.10 In Part 7, regulations 91 to 96 contain provisions for making periodical contributions or a single lump sum contribution to increase either retirement and/or dependants' benefits. Regulation 97 provides for members seconded to other organisations to use their refund of contributions to make a single lump sum contribution so as to preserve their pension benefits to the same level as if they had not been seconded.

7.11 In Part 8, regulations 98 to 112 contain provisions for transferring pension benefits in and out of the scheme, whether by Club transfer, an arrangement that applies to transfers between public service schemes, or by non Club transfer.

7.12 In Part 9, regulations 113 and 114 set out provisions for conducting the actuarial valuation of the scheme and any connected schemes and defines the rate to be used for the purpose of measuring changes to the scheme – the 'employer cost cap'. It outlines the steps to be taken if the employer cost cap is breached.

7.13 In Part 10, regulations 115 to 133 set out supplementary provisions which cover payment of pension, payment and deduction of tax, forfeiture, false statements, non-assignability of pension and provision of benefit information statements to members.

The Armed Forces Early Departure Payments Scheme Regulations 2014

7.14 The statutory instrument for the Armed Forces Early Departure Payments Scheme 2014 establishes a scheme for the payment of a lump sum and periodical payments when membership of the Regular Forces ceases and certain conditions as to age and service as a member of the Regular Forces are met. It also allows for payment of a lump sum where the member of the Armed Forces becomes medically unfit for service and other conditions are met and contains provision for the payment of a Resettlement Grant to those who leave before the early departure payment point provided they have the necessary qualifying service and certain conditions are met. The first four regulations of the instrument establish the scheme and provide definitions for terms used throughout the regulations.

7.15 Regulations 5 and 6 define final pensionable earnings and explain how pensionable earnings can be adjusted when determining final pensionable earnings. Regulation 7 defines qualifying service in relation to eligibility for early departure payments.

7.16 Regulations 8 to 10 outline how a person becomes eligible for early departure payments, what those payments consist of and how they are calculated. The requirement to have reached age 40 is the same in the new scheme but the length of qualifying service has changed from 18 years to 20 years. Regulation 11 provides an option to convert the whole of the lump sum payment into additional monthly payments and regulation 12 explains when inflation increases are applied to the early departure payments.

7.17 Regulation 13 explains the effect on early departure payments when an individual re-joins the Regular Forces within 5 years. An option is given to either retain any payments on re-entering service and not have these recalculated on leaving for a second time or to end the periodical payments on re-joining and repay in full any lump sum so that on leaving for a second time the individual becomes entitled to EDP calculated on both the prior and current service. Regulation 14 explains that a person in receipt of EDP who re-joins as a Reserve will retain the payments and these will not be recalculated when they leave again.

7.18 Regulation 15 explains that where a person who is entitled to EDP is unable to leave service on the day they expected to due to an emergency situation they are to be treated as though they had left.

7.19 Regulations 16 to 18 outline the criteria for entitlement to a resettlement grant, payable within 3 months of the person leaving service, and explain that the payment can be retained if the individual re-joins service, provided they do not re-join as a Regular or Full-time Reservist within 30 days of leaving. The grant is paid to assist with resettling into civilian life.

7.20 Regulations 19 and 20 explain that a person is entitled to an immediate payment of a lump sum if they are considered to be unfit for Armed Forces service because of physical or mental impairment, provided they have the relevant qualifying service and are not entitled to alternative pension or early departure payments. They also outline how the lump sum is calculated. Regulations 21 and 22 explain the interaction of the lump sum award with early departure payments and what effect re-joining the Armed Forces has on the lump sum.

- **Consolidation**

These regulations establish new schemes and therefore no consolidation is required. A separate instrument will be laid dealing with transitional protection for those who are members of the existing Armed Forces pension and EDP schemes.

8. Consultation outcome

8.1 In 2012 MOD consulted extensively with over 25,000 Service personnel on the basic principles and structure of the new pension scheme and used this feedback to influence the design of the scheme. The key features of the scheme were published in a Final Scheme Agreement in October 2012.

8.2 A public consultation on MOD's draft AFPS 14 scheme regulations and draft EDP 2014 regulations was launched for six weeks in May 2014 on the Gov.uk Public Consultations Page. All Service personnel, their families, veterans and other interested groups, which included 15 expert organisations, were invited to comment on the draft legislation. Seventy four responses were received, none of which called for a review of any part of the draft legislation.

8.3 The consultation was re-opened to the same groups for two weeks in June 2014 for comment on the completed final drafts. Two responses were received, neither of which called for a review of any part of the draft legislation.

9. Guidance

9.1 Updated guidance to the scheme regulations will be issued in due course which will be made available both in hard copy and on the internal intranet site.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument as it has no significant impact on business, charities or voluntary bodies.

11. Regulating Small Business

11.1 The legislation does not apply to small business.

12. Monitoring and Review

12.1 These provisions are subject to continued monitoring and review as required.

13. Contact

Tracy Sexton at the Ministry of Defence, Central Legal Services Tel: 0207 218 0564 can answer any queries regarding the instrument.