EXPLANATORY MEMORANDUM TO

THE ARMED FORCES (ENHANCED LEARNING CREDIT SCHEME AND FURTHER AND HIGHER EDUCATION COMMITMENT SCHEME) (AMENDMENT) ORDER 2021

2021 No. 226

1. Introduction

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

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

2. Purpose of the instrument

2.1 The Instrument makes amendments to the Armed Forces (Enhanced Learning Credit Scheme and Further and Higher Education Commitment Scheme) Order 2012 ("the 2012 Order") and comes into force on 30 March 2021. It amends the eligibility conditions for payments under the Enhanced Learning Credit ("ELC") and Further and Higher Education Commitment ("FHEC") Schemes. It will extend the entitlement time limits for those who left the Armed Forces on or after 1 April 2011 and not later than 31 March 2016 so that, instead of the entitlement time limits expiring on 31 March 2021, the entitlement time limits for these members for the Schemes will now run until the tenth anniversary of their ceasing to be a member of the armed forces.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument reverses changes introduced by the Armed Forces (Enhanced Learning Credit Scheme and Further and Higher Education Commitment Scheme) (Amendment) Order 2016 ("the 2016 Order") for the cohort of service leavers who ceased to be members of the armed forces on or after 1 April 2011 and not later than 31 March 2016. Prior to the 2016 Order coming into force, that cohort had the period before the tenth anniversary of ceasing to be a member of the armed forces to begin their course. The amendments made by the 2016 Order meant that the cohort had to begin their course before 31 March 2021. The Department has since concluded that there is a risk that this reduction of the 10-year period for this cohort adversely affected accrued rights. The Department did not comply with the legislative requirements for making modifications which would or might adversely affect accrued rights; set out in section 3 of the Armed Forces (Pensions and Compensation) Act 2004. To avoid the argument that the Department has failed to follow these requirements, this instrument restores the 10-year period for that cohort.

3.2 This instrument also corrects a drafting error created by article 13(4) of the 2016 Order. Article 13(4) substituted text in the place of article 12(4) of the 2012 Order. That substituted text is incorrectly numbered and drafted in a manner that is incompatible with the remainder of article 12 of the 2012 Order. This issue was the subject of a report of the Joint Committee on Statutory Instruments (24th Report of Session 2015-16). In making this correction, the Department is fulfilling its

commitment to address the issue when the 2012 Order was next amended for other reasons.

3.3 In light of this, the Department has adopted the free issue procedure in relation to this instrument. In accordance with paragraph 4.7.6 of Statutory Instrument Practice, the Department has consulted with the S.I Registrar on the use of this procedure in relation to this instrument.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.4 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom and it applies to members of the Armed Forces wherever they are in the world.

4.2 The territorial application includes Scotland, Wales and Northern Ireland.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 This Instrument is made under section 1(1) of the Armed Forces (Pension and Compensation) Act 2004 and amends the 2012 Order; which established the ELC Scheme and the FHEC Scheme. The ELC and FHEC Schemes provide payments towards the cost of different defined levels of post-service learning qualifications for members and former members of the regular armed forces.

6.2 Article 2 of the Instrument amends eligibility conditions for ELC and FHEC Scheme payments in respect of the length of the period during which a person who is eligible under the Scheme must commence their course of higher learning. This change will apply to any member who ceased to be a member of the Armed Forces on or after 1 April 2011 and not later than 31 March 2016. Instead of expiring on 31 March 2021, the entitlement time limits for these members will now run until the tenth anniversary of their ceasing to be a member of the Armed Forces.

7. Policy background

What is being done and why?

7.1 The ELC Scheme provides financial support in the form of a single up-front payment in each of a maximum of three separate Financial Years at a rate of a £1,000 for a Lower Tier claim, £2,000 for a Higher Tier claim or a one off £3,000 claim for those personnel eligible to aggregate their three Lower Tier claims. The Eligibility Criteria depends on the length of service and date of enlistment. Currently individuals have access to any remaining ELC entitlements for up to five or ten years after leaving the services, depending on the date they left.

7.2 The FHEC Scheme provides Service leavers and Service personnel in their qualifying resettlement phase with access to a first full Level 3 (2 x GCSE A level or Vocational Equivalent), or a first Higher Education qualification (such as a Foundation Degree or First Undergraduate Degree), with the tuition fees capped at various levels, depending on the nation in which the learning provider is located. Service leavers currently have access to this scheme for up to five or ten years after leaving the services, depending on the date they left.

7.3 Under the New Employment Model, the post Service membership for the ELC and FHEC schemes, for those Service Leavers who left on or after 1 April 2011 and no later than 31 March 2016, was reduced from 10 years to a generic scheme membership with an end date of 31 March 2021. Scheme membership for those leaving from 1 April 2016 onwards would be 5 years. These changes came into effect on 1 April 2016.

7.4 This amendment re-instates the 10-year entitlement for the cohort who left the Armed Forces on or after 1 April 2011 and no later than 31 March 2016.

7.5 This amendment ensures that Service leavers who left on or after 1 April 2011 and not later than 31 March 2016 are not disadvantaged in their transition to civilian life. Whilst all Service leavers were affected by the change, for the cohort which left on or after 1 April 2011 and not later than 31 March 2016, their scheme membership was arguably reduced when they had already accrued a 10-year post Service entitlement. A decision has been made that the 10-year entitlement for this cohort should be reinstated.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This instrument makes an amendment to the 2012 Order. The Department has no plans to consolidate this legislation.

10. Consultation outcome

10.1 A public consultation has not been undertaken on this instrument, which is wholly beneficial to the affected cohort. The senior Military People Leadership Team ("MPLT") in the Department agreed that the previous policy should be reinstated for the affected cohort and that legislation should be amended.

11. Guidance

11.1 Information about the changes will be made available by means of a Joint Service Publication on GOV.UK and an announcement on the ELCAS website - https://www.enhancedlearningcredits.com.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because there is no significant impact on business. All resulting costs will be absorbed within existing budgets.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is part of its day to day management in order to monitor the impact of changes detailed in this instrument.

15. Contact

15.1 Melanie Court at the Ministry of Defence Telephone: 0207 218 3889 or email: mel.court251@mod.gov.uk can be contacted with any queries regarding the instrument.

15.2 Group Captain Daren Moss, Deputy Director for Through Life Development within Training, Education, Skills, Recruitment, Resettlement division at the Ministry of Defence can confirm that this Explanatory Memorandum meets the required standard.

15.3 Minister for Defence People and Veterans, the Rt Hon Johnny Mercer at the Ministry of Defence can confirm that this Explanatory Memorandum meets the required standard.