EXPLANATORY MEMORANDUM TO

THE ARMED FORCES (ENHANCED LEARNING CREDIT SCHEME AND THE FURTHER AND HIGHER EDUCATION COMMITMENT SCHEME) ORDER 2012

2012 No. 1796

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 instrument

This instrument puts the Armed Forces' Enhanced Learning Credit Scheme ("the ELC Scheme") and the Further and Higher Education Commitment Scheme ("the FHEC Scheme) into secondary legislation to enable payments made under the scheme for service leavers to benefit from an existing statutory exemption from a tax charge which would otherwise arise.

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

None.

4. Legislative Context

4.1 Payments made under the ELC Scheme and the FHEC Scheme provide financial help with tuition fees for service leavers provided that certain conditions are met and that the course of study concerned commences before the tenth anniversary of the service leaver's ceasing to be a member of the armed forces. Where a service leaver has not retired from working life, such payments are subject to the tax charge which arises by virtue of the application of Chapter 3 of Part 6 of the Income Tax (Earnings and Pensions) Act 2003 ("ITEPA") on payments and benefits in connection with the termination of a person's employment.

4.2 An exception from that tax charge exists in section 411(2) of ITEPA for payments or other benefits provided under a scheme established by an order under section 1(1) of the Armed Forces (Pensions and Compensation) Act 2004 ("the 2004 Act"). This instrument is therefore made to put the ELC Scheme and FHEC Scheme into an order made under section 1(1) of the 2004 Act so that payments made under the schemes after the coming into force of this instrument will be exempt from the tax charge which would otherwise arise under ITEPA.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

- **What is being done and why**

7.1 The government is committed to promoting lifelong learning among members of the Armed Services and to providing incentives for Service Leavers to raise their skills levels in preparation for and on returning to civilian life by achieving nationally recognised qualifications in economically viable skills which benefit the nation. The ELC Scheme provides payments towards the cost of tuition fees for full or part time study leading to a nationally recognised qualification at Level 3 and above as defined on the Qualifications and Credit Framework (QCF) (England and Wales) or the Scottish Credit and Qualifications Framework (SCQF).

7.2 To qualify for payments under the ELC Scheme, Service Leavers must satisfy certain conditions (including being a member of the ELC Scheme and completing requisite periods of "eligible service" as defined). Where all the relevant conditions are met, Service Leavers who have at least 4 years' eligible service may qualify for a payment of up to £1000 per financial year. Service Leavers who have at least 8 years' eligible service may qualify for a payment of up to £2000 per financial year. Payments under the ELC Scheme may not exceed 80% of the total cost of the tuition fees and are made direct to the learning provider with whom the Service Leaver is studying.

7.3 Under the FHEC Scheme, where Service Leavers meet the relevant conditions (including meeting the eligibility conditions for public assistance with tuition fees in the part of Great Britain where they are ordinarily resident) they may qualify for the total cost of tuition fees for a first full Level 3 qualification or a first higher education qualification (Levels 4-6 as defined by the QCF, a Higher National Certificate or Higher National Diploma or equivalent vocational qualification (or the equivalent qualifications in Scotland). Eligibility for tuition fee payments under the FHEC Scheme is limited to those Service Leavers who left the armed forces on or after 17th July 2008 and whose course of study commences before the tenth anniversary of their ceasing to be a member of the armed forces. Payments under the FHEC Scheme are made direct to the learning provider with whom the Service Leaver is studying.

7.4 Funding under both the ELC Scheme and FHEC Scheme may be transferred for the benefit of the spouse, civil partner or eligible partner of a member of the armed forces where that member has died and such death is wholly or predominantly due to service; or, where that member has been discharged on medical grounds attributable to service and because of the service related injury or illness they are unable to study. In such cases the eligible adult dependant must meet certain conditions (including meeting the eligibility conditions for public assistance with tuition fees in the part of Great Britain where they are ordinarily resident).

7.5 In placing the ELC Scheme and the FHEC Scheme into an Order made under section 1(1) and 1(3) of the Armed Forces (Pensions and Compensation) Act 2004, payments under the Schemes will, by virtue of section 411(2) of ITEPA, be excepted from the tax charge which would otherwise arise by virtue of the application of Chapter 3, Part 6 of ITEPA. Accordingly, the Service Leaver (or their eligible adult dependant where appropriate) will not be required to pay income tax on payments made for their benefit under the Schemes. This is consistent with the Government's commitment to providing cross-government support to the armed forces, their families and veterans (made in the Command Paper "The

Nation's Commitment: Cross-Government Support to our Armed Forces, their Families and Veterans" published in July 2008), that all Service Leavers with a certain amount of service (now 4 years) will have the opportunity to achieve their first full Level 3 qualification or first higher education qualification free from tuition fees.

8. Consultation outcome

No consultation was required as this scheme places an existing policy scheme into an instrument.

9. Guidance

Service Leavers will be advised of the change to the tax position concerning payments made under the ELC and FHEC Schemes by way of the single Service chains of command, the ELCAS website and via the various partnerships for Service Leavers operating under the Confederation of British Service and ex-Service Organisations (COBSEO) umbrella.

10. Impact

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

10.2 There is no impact on the public sector.

10.3 An impact assessment has not been prepared for this instrument as no impact on the private or voluntary sectors is foreseen.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

The application and effect of the Order will be reviewed as part of the continual review of the operation of the policy for the ELC Scheme and the FHEC Scheme.

13. Contact

Tracy Sexton at the Ministry of Defence tel: 020 7218 0564 or email: CLS-Sec1@mod.uk can answer any queries regarding the instrument.