EXPLANATORY MEMORANDUM TO THE

ARMED FORCES (PENSIONS AND COMPENSATION) ACT 2004 (TRANSITIONAL PROVISION) ORDER 2005

2005 No.660

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

2. Description

2.1 Following amendment of the Pensions Appeal Tribunals Act 1943 ("the 1943 Act") by the Armed Forces (Pensions and Compensation) Act 2004 ("the 2004 Act"), there is a right of appeal to a Pensions Appeal Tribunal (PAT) against certain decisions under the new Armed Forces and Reserve Forces (Compensation Scheme) Order 2005 (S.I. 2005/439). The PAT already hears appeals against certain decisions made under other schemes (see sections 1 to 3 of the 1943 Act).

2.2 Under the 1943 Act, from 6 April 2005 the right of appeal against a decision of a PAT will be to the Social Security Commissioners (SSC) and then, if necessary, to the Court of Appeal or Court of Session. The Order to which this explanatory memorandum is attached provides that this new route of appeal does not apply to decisions of a PAT which have been made before 6 April 2005. The current right of appeal from a PAT to the High Court will therefore continue to apply to such decisions, and appeals which have already commenced in the High Court will be able to continue.

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

3.1 None.

4. Legislative Background

4.1 The 2004 Act establishes a new statutory framework for Armed Forces pensions and compensation, with the scheme rules set out in Statutory Instruments. The SI to which this explanatory memorandum is attached is being made alongside the related Armed Forces and Reserve Forces (Compensation Scheme) Order 2005 (S.I. 2005/439). Two commencement orders have already been made under the 2004 Act.

4.2 The Pensions Appeal Tribunals (Rights of Appeal) Regulations 2005 have been laid in draft under the affirmative procedure and, following approval by the House of Commons select committee on 10 February, are due for consideration by the House of Lords before the Easter recess.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 Not applicable.

7. Policy background

7.1 The Department for Constitutional Affairs is modernising the UK tribunals system. Modern policy on Tribunals holds that there should be a second tier tribunal to hear appeals on points of law, before a matter arrives in the Courts. The SSC will be introduced as this second tier appellate tribunal. Having two levels of tribunal provides a quicker, more user-friendly and more cost-effective service to the parties involved, in comparison to the Courts. This change has generally been welcomed by ex-Service groups.

7.2 The SI is a transitional arrangement to modify the effect of the amendments to the 1943 Act which Schedule 1 to the 2004 Act will make on 6 April 2005. The short time limit for making an appeal from a PAT to the High Court means that this is only a transitional arrangement and soon all appeals from a PAT will be to the SSC.

7.3 The ex-Service groups and the Presidents of the PAT have been notified that they will be informed about the proposals in parallel with laying this instrument. It is not anticipated that there will be an adverse reaction from them.

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: 020 7218 0564 can answer any queries regarding the instrument.