EXPLANATORY MEMORANDUM TO

THE ARMED FORCES (REDUNDANCY, RESETTLEMENT AND GRATUITY EARNINGS SCHEMES) ORDER 2010

2010 No. 345

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 (Pensions and Compensation) Act 2004 ("the 2004 Act") gives the Secretary of State the power to establish schemes in respect of a person's service in the armed forces and to make provision for benefits payable on the termination of service, death or retirement. Such schemes are made by Order. This Order establishes the Armed Forces Redundancy Scheme 2010, the Armed Forces Gratuity Earnings Scheme 2010, the Armed Forces Resettlement Commutation Scheme 2010 and the Armed Forces Resettlement Grants Scheme 2010.

2.2 These Schemes harmonise rules formerly made under prerogative powers for the Royal Navy and Royal Marines, the Army and the Royal Air Force. Additionally, in the Armed Forces Redundancy Scheme 2010 some amendments are made to the applicable level of payments.

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

3.1 None.

4. Legislative context

4.1 The 2004 Act establishes a statutory framework to enable provision to be made to establish new pension and compensation schemes for the Armed Forces, with the scheme rules set out in statutory instruments.

4.2 Provisions corresponding to the Schemes set out in this Order were previously set out in the Armed Forces Pension Scheme 1975 (AFPS 1975), in three prerogative instruments: the Naval and Marine Pay and Pensions (Non-Effective Benefits and Family Pensions) Order 2009, the Army Pensions Warrant 1977 and the Queen's Regulations for the Royal Air Force. However, under provisions in the Finance Act 2004, payments in respect of such other benefits in a pension scheme are "unauthorised payments". From the 6th April 2010 they would result in an increased tax liability for recipients of pensions under the AFPS 1975.

4.2 The provisions of the Finance Act 2004 therefore necessitate the removal of all payments from the AFPS 1975 that are deemed to be unauthorised, by 6th April 2010.

4.3 Consequently three new prerogative instruments have been made in which the AFPS 1975 is re-stated without those provisions about other benefits: the Naval and Marine Pensions (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) Order 2010; the Army Pensions (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) Warrant 2010; and the Air Force (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) Order 2010. Former provisions in the AFPS 1975 that are deemed to be 'unauthorised payments' under the Finance Act 2004 have been removed and are contained in this statutory instrument.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the Order is subject to negative resolution procedures, and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The provisions in the new statutory instrument contain no fundamental policy changes to those corresponding provisions in the old AFPS 1975 prerogative instruments, other than requirements brought about by general changes to the law affecting occupational pensions. They do, however, harmonise existing rules for all three Services.

7.2 The statutory instrument is divided into Parts. Part 2 to 5 set out separate Schemes whilst Part 6 deals with transitional provisions.

7.3 In Part 2, articles 3 to 16 contain provisions that apply to members of the Armed Forces who cease to be in service as a result of redundancy and set out the conditions to be fulfilled in order to qualify for a redundancy lump sum payment under the Armed Forces Redundancy Scheme 2010. Articles 11 to 13 specifically provide for the amount of the payment under article 10 to be calculated. Articles 11 and 12 provide for cases where the leaver was on a long service commitment, depending on the period of redundancy reckonable service they have accrued whilst in service. Article 13 provides for leavers on short service commitments. The levels of payments are comparable with those more widely available in the public sector, but as a result of HM Treasury requirements, are in most cases, less valuable than existing arrangements. To ease the transition to the new payment levels, interim arrangements will apply to the value of the certain payments. These interim terms will apply to any redundancies falling on 6th April 2010 and ending on 31st March 2013.

7.4 In Part 3, articles 17 to 26 set out the Armed Forces Gratuity Earners Scheme 2010. This harmonises the existing rules on gratuity earnings for the three Services

to reflect changes in the Finance Act 2004 which would otherwise make these benefits taxable after April 2010.

7.5 In Part 4, articles 27 to 32 set out the Armed Forces Resettlement Commutation Scheme 2010 and in Part 5, articles 33 to 36 set out the Armed Forces Resettlement Grants Scheme 2010. This harmonises the existing rules on resettlement grants for the Services to reflect changes in the Finance Act 2004 which would otherwise make these benefits taxable.

7.6 Part 6 makes transitional provisions, bridging the move from schemes in place under the old prerogative instruments to these new Schemes.

8. Consultation outcome

8.1 The Central Advisory Committee on Pensions and Compensation has been briefed on these arrangements. The Committee comprises representatives of the main ex-Service organisations and serving personnel who represent each of the three Services. No objections have been raised.

9. Guidance

9.1 Updated guidance 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 A Regulatory Impact Assessment has not been prepared for this Order as it has no significant impact on business, charities or voluntary bodies.

11. Regulating small business

11.1 This 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

13.1 Contact James Longworth, Ministry of Defence, 0207 218 0377, email CLS-LegC@mod.uk if you have any queries on this memorandum.