EXPLANATORY MEMORANDUM TO

THE ARMED FORCES (TRANSITIONAL PROVISIONS) PENSIONS REGULATIONS 2015

2015 No. 568

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

2.1 In March 2011 the Independent Public Service Pensions Commission's final report made recommendations for the reform of public service pension schemes, including for the Armed Forces, to ensure they remain affordable and sustainable in the future. The Government accepted the recommendations and accepted that pension benefits earned up to the implementation date of any new scheme would be protected.

2.2 The Public Service Pensions Act 2013 (PSP Act 2013), with permitted exceptions, prohibits the accrual of benefits in final salary public sector pension schemes from 1 April 2015. The Armed Forces Pension Regulations 2014 (S.I. 2014/2336) and The Armed Forces Early Departure Payments Scheme Regulations 2014 (S.I. 2014/ 2328) establish career average pension and employee retirement benefit schemes for members of the regular Armed Forces and Reserve Forces from 1 April 2015. This statutory instrument makes transitional provision for members of existing armed forces final salary pension and employee retirement benefit schemes, principally in order to protect their accrued rights in the existing schemes.

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

3.1 There are seven existing armed forces schemes for whose members transitional provision is made in Parts 2 to 8 of the S.I. The schemes are listed in the explanatory note to the S.I. Of these seven schemes, three are established by statutory instrument, three are established by Defence Council Regulations and one is established by Prerogative Instruments. Further details of the instruments establishing these schemes can be found at paragraph 7 of this Memorandum.

4. Legislative Context

4.1 The PSP Act 2013 establishes a statutory framework to enable provision for new career average public sector pension schemes applying to service from 1 April 2015, the closure of existing final salary public sector pension schemes to new members, and the transfer of members of existing public sector schemes to the new career average schemes on 1 April 2015, and for the protection of accrued rights.

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

7. Policy Background

7.1 The instrument protects accrued rights of members of existing armed forces pension and employee retirement benefit schemes in two ways. First, it fully exempts from the PSP Act's prohibition of accrual in final salary schemes after 31 March 2015 members who were within 10 years of their normal pension age under their existing scheme on 1 April 2012. These members remain in their existing schemes as active accruing members until they leave service. Second, for personnel who do not qualify for this exemption, the instrument protects pension benefits earned in the existing scheme. Personnel are not able to accrue further benefits in that scheme after 31 March 2015, but they are able to draw their benefits in that scheme at the age that existing scheme provides, at a level that is linked to their rank or pensionable pay at the point of leaving service, not at the point of transfer to the new scheme. The instrument also makes other transitional provision, including closing to new members those armed forces schemes that are not already closed to new members, and amending the abatement provisions in existing schemes where applicable so that they include in the calculations the pensions payable under the new pension scheme.

7.2 This instrument amends seven Armed Forces benefit schemes. These are:

- **The Armed Forces Pension Scheme 1975 (around 84,000 active members):** The pension scheme for Regulars who joined before 6 April 2005 and now closed to new joiners. Its rules are contained in three almost identical prerogative instruments; one for each service. The scheme pays an immediate pension after 16 years from age 21 for officers and after 22 years from age 18 for ranks and the amount of pension is based on representative rates of pay. The normal pension age (NPA) for the scheme is 55. The scheme provides enhanced ill-health benefits without distinguishing between different levels of seriousness and provides dependant benefits.

- **The Armed Forces Pension Scheme 2005 (around 94,000 active members):** The pension scheme for Regulars who joined on or after 6 April 2005 or took up a one-off "Offer to Transfer" from the AFPS 75 or from the Gurkha Pension Scheme. The NPA is 55 and the amount of pension is based on the member's final salary. The scheme provides enhanced ill-health benefits using a tier system for level of seriousness and provides dependant benefits.

- **The Armed Forces Early Departure Payment Scheme 2005:** A retirement benefit scheme which pays early departure payments to members of AFPS 05 or those who are eligible to be members, who leave service before age 55, having reached age 40 and completed at least 18 years' service. Payment ceases at age 65 when the pension becomes payable. It also provides a lump sum payment for the least serious of the ill-health tiers.

- **The Reserve Forces (Full-time Reserve Service Pension Scheme 1997) Regulations 2010 (around 270 active members):** The pension scheme for reservists who joined before 6 April 2005. Now closed to new joiners, the scheme has two NPAs – 55 or 60 – depending on the type of commitment. Standard pension benefits are based on a member's final salary but ill-health benefits are calculated using representative rates of pay. Pension is calculated separately for each commitment so a different final salary applies to each one. The scheme also pays dependant benefits.

- **The Reserve Forces Non Regular Permanent Staff Pension Scheme 2011 (around 900 active members):** This scheme is based on the Principal Civil Service Pension Scheme and has been closed since 2011. It has an NPA of 60 and pension benefits are based on a member's final salary. It provides ill-health and dependant benefits.

- **Resettlement Commutation Scheme:** The Armed Forces Resettlement Commutation Scheme (whose rules are contained in the Armed Forces (Redundancy, Resettlement and Gratuity Earnings Schemes) (No. 2) Order 2010) provides for members of the AFPS 75 to commute part of their pension in order to obtain an additional tax-free lump sum, with the restoration of the pension in full at age 55.

- **Reserve Forces Pension Scheme Regulations 2005 (around 3,800 active members):** The pension scheme for Reservists who joined on or after 6 April 2005. Its rules are similar to those of the AFPS 05. The main difference is that this scheme has a NPA of 60 and the pension is calculated separately for each commitment so a different final salary applies to each one.

8. Consultation outcome

8.1 A consultation is not required for this instrument as its main purpose is to protect existing pension rights accrued up to the introduction of the new scheme on 1 April 2015. However, there has been extensive communication on the subject via publication of internal and external notices and briefings to interested parties. Additionally there has been extensive consultation with key stakeholders.

9. Guidance

9.1 Guidance to the transitional 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.