EXPLANATORY MEMORANDUM TO
THE ARMED FORCES AND RESERVE FORCES
(COMPENSATION SCHEME)
(CONSEQUENTIAL PROVISIONS: PRIMARY LEGISLATION)
(NORTHERN IRELAND) ORDER 2013

2013 No. [XXXX]

1. 1.1 This explanatory memorandum has been prepared by the Ministry of Defence (MOD) and is laid before Parliament by Command of Her Majesty.

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

2. Purpose of the Instrument

The Instrument provides access to additional benefits made under Northern Ireland primary legislation for recipients of a benefit known as armed forces independence payment (AFIP) which was introduced on 8 April 2013.

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

3.1 A previous version of this Instrument was laid before Parliament on 27th June 2013 and was considered by the Joint Committee on Statutory Instruments. That Instrument was also debated in both Houses and resolutions were passed in both Houses. The resolution in the House of Commons was not made until 29th October 2013, despite the coming into force date on the face of the Instrument being 28th October 2013. As a consequence the previous version, bearing the title of this Order, has been withdrawn and this draft laid in its place. This draft is identical in all substantive respects, save for a change in the coming into force date and an amendment to the formal title of the Minister who will make the Order.

3.2 AFIP was introduced on 8 April 2013 by an amendment to the Armed Forces Compensation Scheme provided for under the Armed Forces and Reserve Forces (Compensation Scheme) (Amendment) Order 2013 (SI 2013/436). AFIP provides financial support for seriously injured Service and ex-Service personnel who meet the eligibility criteria to cover the extra costs they may have as a result of their injury. Two additional Orders[1] were also introduced on 8 April 2013 to enable AFIP recipients to access the additional schemes and benefits (known as passported benefits) to which they are entitled. The policy intention is that those in receipt of AFIP will have similar "passports" to other benefits, as those in receipt of Disability Living Allowance (DLA) or Personal Independence Payment (PIP). The importance of "passporting" (i.e. being used as a gateway) to other benefits and schemes is widely recognised.

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[1] The Armed Forces and Reserve Forces Compensation Scheme (Consequential Provisions: Subordinate Legislation) Order 2013 (SI 2013/591) and The Armed Forces and Reserve Forces (Compensation Scheme) (Consequential Provisions: Primary Legislation) Order 2013 (SI 2013/796)

3.3 AFIP was introduced at the same time as the Social Security Personal Independence Payment Regulations 2013 made by the Secretary of State for Work and Pensions in Great Britain. AFIP upholds the Armed Forces Covenant commitments and was announced by the Prime Minister in July 2012. Those in receipt of AFIP will not be eligible to receive DLA, PIP or Attendance Allowance concurrently.

3.4 The AFIP scheme was legislated for by MOD and is administered on a UK-wide basis by the Department for Work and Pensions. Whereas SI 2103/436 provides for the payment of AFIP to those eligible throughout the UK, SIs 2013/591 and 2013/796 did not include amendments to the related Northern Ireland passported benefits legislation.

3.5 During the process of drafting the AFIP Orders above MOD sought advice from Cabinet Office and the Northern Ireland Office in order to establish how to achieve parity in provision for the passported benefits in Northern Ireland as AFIP applies across the UK.

3.6 The passporting arrangements to concessionary schemes in Northern Ireland are generally devolved and there are a number of Departments with responsibility. The advice received confirmed that as the amendments required to Northern Ireland primary and secondary legislation are consequential on the introduction of AFIP then MOD can use powers under the Armed Forces (Pensions and Compensation) Act 2004 to amend Northern Ireland legislation, subject to receiving the consent of the relevant Northern Ireland Ministers. Northern Ireland Ministers have given consent for MOD to make the necessary amendments to Northern Ireland legislation contained within this Instrument. Northern Ireland officials provided MOD with the amendments to be included in the draft Order. It is the Department's intention to make another Order relating to consequential provision in subordinate legislation for Northern Ireland which will be laid in Parliament in due course.

3.7 Proposals to introduce PIP in Northern Ireland are contained in the Welfare Reform Bill which is still under consideration by the Northern Ireland Assembly. This Order is not dependent on the Northern Ireland PIP Regulations being implemented on the same day. The numbering of insertions within this Instrument are intended to be effective irrespective of the progress of the Welfare Reform Bill.

4. Legislative Context

4.1 This Instrument contains provisions to give full effect to section 1(2) of the Armed Forces and Reserve Forces (Compensation Scheme) Act 2004 (c.32) consequential on the provision of AFIP in order to give seriously injured Service and ex-Service personnel in Northern Ireland who qualify for AFIP similar access to passported benefits as those who qualify for DLA or PIP.

4.2 In this case this includes amendments to allowances for carers and entitlement to Christmas bonus for pensioners under respectively s70 and s144

of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c.7).

5. Territorial Extent and Application

This instrument extends to Northern Ireland.

6. European Convention on Human Rights

The Minister of State for Defence has made the following statement regarding Human Rights: In my view the provisions of The Armed Forces and Reserve Forces (Compensation Scheme) (Consequential Provisions: Primary Legislation) (Northern Ireland) Order 2013 are compatible with the Convention rights.

7. Policy background

7.1 In 2010, the DWP announced, as part of a package of Welfare Reform, that DLA would be reformed and a new benefit, PIP, introduced from April 2013. The PIP eligibility criteria are different from DLA.

7.2 During the PIP public consultations, concerns were raised by Service and veterans' organisations about how PIP would impact financially upon injured Service and ex-Service personnel, and in particular those who have been seriously injured as a result of service.

7.3 In order to provide ongoing support to the most severely injured Service and ex-Service personnel a benefit known as AFIP has been established as an alternative to PIP. This upholds Armed Forces Covenant commitments. AFIP was announced by the Prime Minister in July 2012.

7.4 MOD legislated under the Armed Forces (Pensions and Compensation) Act 2004 (c.32) to create AFIP as part of the Armed Forces Compensation Scheme and made the consequential legislative amendments providing passports to other benefits in a similar way to PIP. DWP will administer and pay AFIP on an ongoing basis.

8. Consultation Outcome

8.1 The Central Advisory Committee (CAC) on Pensions and Compensation were consulted on the design of AFIP. The consultation exercise began on 8 October 2012 and closed 30 November 2012. This external advisory body advises the Minister of State for Deployed Personnel, Welfare and Veterans on matters of pensions and compensation relevant to the Armed Forces. Membership consists of representatives of key ex-Service organisations, including The Royal British Legion, the War Widows Association, the British Limbless Ex-Service Men's Association (BLESMA) and Combat Stress as well as Service members and MOD officials. All groups welcomed the proposals in principle. Four responses were received.

8.2 The organisations that responded to the consultation recommended change to only the eligibility criteria. Furthermore, the organisations differed with each other, some considering the eligibility criteria too narrow, others too broad. Setting criteria for injured Service and ex-Service personnel is not always straightforward and it was recognised there would always be cases near the entitlement threshold that challenge the criteria. However, the agreed eligibility criteria were deemed to be the most appropriate in order to ensure that support was targeted on the most severely injured Service and ex-Service personnel. The Minister agreed the design of AFIP should remain unchanged following consultation.

9. Guidance

Information about the new provisions has been made available by means of placing a copy of the Instrument on the Gov.UK website. In addition information has been made available externally via Armed Forces magazines and other publications and internally through the Armed Forces Chain of Command and intranet sites.

10. Impact

10.1 The impact on business, charities and voluntary bodies is not significant.

10.2 The impact on the public sector is not significant.

10.3 An Impact Assessment has not been prepared for this instrument.

10.4 An Equality Assessment has been prepared for AFIP.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring and Review

The MOD will continue to review the Armed Forces Compensation Scheme as part of its day-to-day management and to liaise with members of the CAC. This will include monitoring the impact of the changes made in this Instrument.

13. Contact

Tracy Sexton at the Ministry of Defence Tel: 0207 218 0564 can answer any queries regarding this Instrument.