EXPLANATORY MEMORANDUM TO

THE PENSIONS APPEAL TRIBUNALS ACT 1943 (ARMED FORCES AND RESERVE FORCES COMPENSATION SCHEME) (RIGHTS OF APPEAL) REGULATIONS 2011

2011 No. [XXXX]

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

The purpose of this instrument is to set out the types of decisions, made under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 (the 2011 Order), that are capable of appeal to an appropriate tribunal. An appropriate tribunal for these purposes means in England or Wales the First-tier tribunal and in Northern Ireland or Scotland, the relevant Pensions Appeal Tribunal.

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

None.

4. Legislative background

4.1 The Pensions Appeal Tribunals Act 1943 (the 1943 Act) allows a person to appeal to an appropriate tribunal in respect of a "specified" decision made under a scheme referred to in section 1(2) of the Armed Forces (Pension and Compensation) Act 2004. Appeals are heard by an appropriate tribunal.

4.2 A scheme for these purposes includes the Armed Forces Compensation Scheme provided for in the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005 (the 2005 Order) which is revoked and re-enacted by the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 (the 2011 Order) coming into force on 9 May 2011. Decisions made under the Armed Forces Compensation Scheme relate to claims made on the basis that, on or after 6 April 2005, a member or former member of the Armed Forces has died or been injured as a result of service.

4.3 A decision is "specified" for these purposes if it is of a type specified in regulations made under section 5A of the 1943 Act. This instrument is required in order to specify the types of decisions made under the 2011 Order which are capable of appeal. The instrument which currently specifies the kinds of decisions made under the 2005 Order which are capable of appeal (i.e. The Pensions Appeal Tribunals (Armed Forces and Reserve Forces Compensation Scheme) (Rights of Appeal) Regulations 2005 will be revoked by this instrument.

5. Territorial Extent and Application

This Instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State and Minister for Defence, Personnel, Welfare and Veterans has made the following statement regarding Human Rights:

6.2 In my view the provisions of The Pensions Appeal Tribunals Act 1943 (Armed Forces and Reserve Forces Compensation Scheme (Rights of Appeal) Regulations 2011 are compatible with the Convention rights.

7. Policy Background

7.1 Following a review of the Armed Forces Compensation Scheme (Cm 7798) which was chaired by Admiral the Lord Boyce and presented to Parliament on 10 February 2010, the 2005 Order is to be revoked and re-enacted with modifications by the 2011 Order.

7.2 Most decision made under the 2005 Order are capable of appeal to an appropriate tribunal which has the jurisdiction to make a determination on the basis of the facts, the law and over all merits of the case. It is considered that most decisions made under the 2011 Order should be similarly capable of appeal. Indeed it is considered the only types of decisions which should be incapable of appeal to an appropriate tribunal will be those where the decision will be usurped over time by a decision which is capable of appeal or the decision is of a type where challenge by way of judicial review is sufficient and appropriate.

7.3 As a result, the specified decisions which are listed in regulation 3(1) of this instrument are drafted in very wide terms and the types of decisions listed broadly corresponds to the types of decisions made under the 2005 Order that are capable of appeal. For the avoidance of doubt, regulation 3(2) also sets out more restrictively the types of decisions which are not specified. With the exception of decisions relating to the payment of medical expenses and fast payments (which are both new benefits that will be created under the 2011 Order) the decisions listed in regulation 3(2) broadly correspond to the types of decisions made under the 2005 Order which were incapable of appeal to an appropriate tribunal.

8. Consultation outcome

8.1 The Review of the Armed Forces Compensation Scheme was supported by an independent scrutiny group consisting of medical, academic and legal experts as well as representatives of Service and ex-Service organisations. The Review highlighted some arrangements that required adjustment.

8.2 The Review did not recommend that any changes should be made to the types of decisions made under the AFCS that are capable of appeal. It accepted that decisions regarding the payment of medical expenses need not attract appeal rights to an appropriate tribunal. It also recognised that the provision of a fast payment would be an interim measure, used to provide funds to the recipient until a final decision (capable of appeal) is made in respect of their claim.

8.3 The presidents of the appropriate tribunals have been informed about the nature and effect of this instrument and have raised no objection to these arrangements.

9. Guidance

Information about the types of decision that are capable of appeal and how an appeal can be made will be available through the MOD website:
www.mod.uk/aboutdefence/whatwedo/personnel/pensions/armedforcespensions/afcs

Information is also available on the Service Personnel and Veterans Agency website: http://veterans-uk.info/pensions/afcs as well as the internal Intranet sites.

10. Impact

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

10.2 As we are not altering the current arrangements, the impact on the public sector, aside from the Armed Forces, will be negligible.

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

11. Regulating small business

The legislation does not apply to small business

12. Monitoring & review

12.1 An update report on implementation of the recommendations made by Lord Boyce in his review of the Armed Forces and Reserve Forces (Compensation Scheme) was provided to members of the Central Advisory Committee on Pensions and Compensation in March 2011.

12.2 The AFCS as set out in the 2011 Order and the types of decisions made under it will continue to be monitored and reviewed.

13. Contact

James Longworth at the Ministry of Defence Tel: 020 7218 0377 or email CLS-LegC@mod.uk can answer any queries regarding this instrument.