EXPLANATORY MEMORANDUM TO

THE PENSIONS APPEAL TRIBUNALS ACT 1943 (TIME LIMIT FOR APPEALS) (AMENDMENT) 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 increase the period a person has for giving notice of appeal to the Pensions Appeal Tribunal for Scotland and the Pensions Appeal Tribunal for Northern Ireland. The new time limit will be 12 months starting with the date on which the person is notified of a decision which is capable of appeal. This instrument will increase the period by 6 or 9 months depending on the nature of the appeal.

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

None

4. Legislative Context

4.1 This instrument amends section 8 of the Pensions Appeal Tribunals Act 1943 ("the 1943 Act") which sets out the period within which notice of appeal must be given by prospective appellants. Appeals in the main relate to rejected claims, or decisions made affecting awards made in respect of such claims, that are made where a member, or former member, of the Armed Forces has died or been injured and where the claimant considers the death or injury was caused by service.

4.2 Where the death or injury occurred before the 6 April 2005, a claim is made under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006 (the SPO). Where the death or injury occurs on or after 6 April 2005, a claim is made under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005 (the AFCS).

4.3 This instrument is necessary to implement one of the recommendations made following the Review of the Armed Forces Compensation Scheme (Cm 7798) chaired by Admiral the Lord Boyce which was presented to Parliament on 10 February 2010.

4.4 The amendments made by this instrument will not apply to those who bring their appeal in England and Wales. The time limits for giving notice of appeal in these jurisdictions is set out in rule 21 of the Tribunal Procedure (First-tier Tribunal) (War Pensions and Armed Forces Compensation Chamber) Rules 2008. This rule will also be amended so that prospective appellants in England and Wales will also have 12 months to give notice of their appeal.

5. Territorial Extent and Application

This instrument extends to the United Kingdom but only applies in Scotland and Northern Ireland.

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 (Time Limits for Appeals) (Amendment) Regulations 2011 are compatible with the Convention rights.

7. Policy Background

7.1 A policy objective, at the outset of the AFCS, was to conduct a review of the AFCS 5 years after its introduction to ensure it continues to (a) fulfil the objectives of fairness and equity and (b) focus resources on the most seriously injured. In July 2009, the Review referred to in paragraph 4.3 above was undertaken.

7.2 The Review found the AFCS to be fundamentally sound, but recommended that some adjustments be made. One of the recommendations made, was that the current time limits for giving notice of appeal should be extended in recognition of the fact that the exigencies of Service life might sometimes prevent prospective appellants from complying with the current time limits. The recommendation only related to the time limits for challenging decisions made under the AFCS. However, with a view to ensuring consistency and fairness, it is considered that the time limit for giving notice of appeal in respect of all decisions which are capable of appeal under the 1943 Act should be increased.

7.3 The policy intent is therefore that all persons who have a right of appeal under the 1943 Act, should have the benefit of the 12 month time limit and no distinction will be drawn between those who die or are injured before 6th April 2005 and those whose death or injury occurs after this date.

7.4 The policy intent extends to transitional cases. Therefore any person who has an extant right to give notice of appeal when these new arrangements are brought into force will have 12 months to give notice of appeal and the 12 months will run from the date on which the person was notified of the decision.

8. Consultation Outcome

8.1 The Review of the AFCS referred to above was supported by an independent scrutiny group consisting of medical, academic and legal experts as well as representatives of Service and ex-Service organisations. A public 4 week engagement exercise was conducted to seek wider stakeholder (including ex-service organisations/charities) and public views to inform the Review, receiving over 200 responses.

8.2 The proposed changes to the appeal time limits formed part of a package that were notified to members of the Central Advisory Committee on Pensions and Compensation in a 7 week consultation exercise which began on 17 November 2010. This external advisory Committee was established in 1921 to advise the Minister on matters of compensation. Members include representatives of key ex-Service organisations, such as the Royal British Legion, the War Widows Association, the British Limbless Ex-Service Men’s Association (BLESMA) and Combat Stress.

8.3 Those who were consulted were generally supportive of the intention to increase the time limits for giving notice of appeal.

9. Guidance

9.1 Information on the new appeal time limits will be made available through the MOD website:www.mod.uk/aboutdefence/whatwedo/personnel/pensions/armedforcespensions/afcs
Information will also be available on the Service Personnel and Veterans Agency website: http://veterans-uk.info/pensions/afcs as well as the internal Intranet sites. The Service Personnel and Veterans Agency (which has responsibility for dealing with claims that give rise to appeal rights) will be provided with guidance on the new appeal time limits.

9.2 All prospective appellants will be notified of their right to appeal and of the 12 month time limit. Furthermore, all persons who fall into the transitional cases referred to in paragraph 7.4 above will be notified that their time limit has been extended. Additionally, all public communication will be updated to reflect the new time limits.

10. Impact

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

10.2 The impact on the public sector, aside from the Armed Forces, is not significant.

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 and Review

12.1 An update report on implementation of the recommendations made by Lord Boyce in the 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 Scheme will remain under internal review on an ongoing basis to ensure that it effectively meets the objectives following the Review in addition to monitoring the impact of the changes made in this Order.

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.