EXPLANATORY MEMORANDUM TO
THE PENSIONS APPEAL TRIBUNALS (POSTHUMOUS APPEALS) (AMENDMENT) ORDER 2005

2005 No. 245

1. This Explanatory Memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This Order amends the Pensions Appeal Tribunals (Posthumous Appeals) Order 1980 (S.I. 1980/1082) to reflect changes made to the route of onward appeal from the Pensions Appeal Tribunal.

2.2 The Pensions Appeal Tribunals (Posthumous Appeals) Order 1980 applies in situations where:

- a person has died before being notified of the Secretary of State's decision in relation to their pensions/compensation claim; or

- a person has died before resolution of their claim.

The Order allows a designated person (their spouse for example) to lodge an appeal against the decision on behalf of the deceased, or to continue an existing claim in the event of their death.

2.3. A posthumous appeal attracts the same onward rights of appeal as other claims. Decisions of the Pensions Appeal Tribunal are currently appealed to the High Court (or the Court of Session in Scotland). The Armed Forces (Pensions and Compensation) Act replaces the High Court with the Social Security Commissioners as the onward point of appeal.

2.4. This Order makes amendments to reflect this new path of appeal. For example, references to the High Court are replaced by references to the Social Security Commissioners.

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

3.1 None.

4. Legislative Background

4.1 The Armed Forces (Pensions and Compensation) Act received Royal Assent in November 2004. The Act introduces a new pensions and compensation scheme for the armed forces, and replaces the High Court with the Social Security Commissioners as the onward point of appeal.

4.2 Amendments to the Pensions Appeal Tribunal Rules and Social Security Procedure Regulations are also required to implement the new path of appeal.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 This Order implements provisions of the Armed Forces (Pensions and Compensation) Act 2004. On 27 November 2003, the Rt Hon Geoff Hoon, Secretary of State for Defence, made the following statement:

"*In my view the provisions of the Armed Forces (Pensions and Compensation) Bill are compatible with the Convention rights*."

7. Policy Background

7.1. The Government is undertaking a wide-ranging reform of the UK's Tribunal system. The recent White Paper: *Transforming Public Services: Complaints, Redress and Tribunals* sets out an agenda for change.

7.2 One recommendation of the White Paper is appeals from first instance Tribunals (such as the Pensions Appeal Tribunal) should go to an appellate Tribunal (such as the Social Security Commissioners) before recourse to the Courts. This promotes fast and efficient justice in the user-friendly environment of a Tribunal.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies. The Cabinet Office did not consider a Regulatory Impact Assessment necessary for introduction of Armed Forces (Pensions and Compensation) Bill.

9. Contact

9.1 Daniel Brown at the Department for Constitutional Affairs (telephone: 020 7210 8259; email: dan.brown@dca.gsi.gov.uk) can answer any queries about this instrument.