EXPLANATORY MEMORANDUM TO

THE PERSONAL INJURIES (CIVILIANS) (AMENDMENT) SCHEME

2009 No. 438

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 The Personal Injuries (Civilians) Scheme (PI(C)S) makes provision for the payment of pensions and allowances to or in respect of civilians who were killed or injured during World War Two as a result of actions by enemy, or in the performance of civil defence duties.

2.2 This instrument provides for the annual increase in rates of pensions and allowances payable under the scheme, in line with the Retail Prices Index (RPI). It also substitutes various articles and schedules within the scheme which are detailed at 7.1.

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

3.1 The committee has previously expressed concern as to when the PI(C)S will be consolidated. This is addressed at paragraph 7.7 of this memorandum.

4. Legislative Context

4.1 The PI(C)S is related to the Order for the main war pension scheme (The Naval, Military and Air Force etc. (Disablement and Death) Service Pension Order 2006, otherwise known as the SPO.

4.2 War pensions and allowances are traditionally uprated each year in line with the RPI and this has been approved by Treasury Commissioners

4.3 The uprating of the SPO is covered by a separate instrument. In addition, some of the provisions of the SPO are being amended and where appropriate, corresponding amendments have also been made to the PI(C)S.

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

- ***What is being done and why***

7.1 In addition to the annual uprating detailed at 4.2, a number of articles concerning some of the allowances payable with the pension are being substituted.

7.2 For those whose disablement is so severe it affects earning capacity or ability to work at all, or gives rise to other needs not covered by the basic pension, there are a number of supplementary allowances which are paid according to individual circumstances.

7.3 Comforts Allowance is an allowance which is paid in addition to the basic pension as a top up to two other allowances – Constant Attendance Allowance (CAA) and Unemployability Allowance (UnSupp). Comforts Allowance is currently paid at two rates, with the higher rate being available where a person is also in receipt of both CAA and UnSupp or on a discretionary basis where a person has a pension in respect of a 100% disablement resulting from multiple injuries. This latter discretion is being amended to allow the award of the higher rate whenever a person is in receipt of the intermediate or exceptional rate of CAA and they have a pension in respect of a 100% disablement (of any kind).

7.4 The PI(C)S contains provision to meet the costs of funeral expenses where a pensioner's death is due to an injury for which they are receiving a pension under the scheme. The basis upon which payment will be made has been simplified and now provides for the payment of a fixed sum where relevant conditions are met.

7.5 The Department for Work and Pensions have recently introduced compensation payments for people suffering from mesothelioma. These arrangements do not apply to service people because of the availability of compensation through the war pension schemes. We are however making changes to the SPO and the PI(C)S to ensure that claims for mesothelioma are answered quickly. The rate of the basic war pension payable under the PI(C)S is determined according to an assessment of the degree of disablement. Some injuries carry assessments prescribed by the scheme rules. Mesothelioma is added to the list of disorders attracting maximum (100 per cent) assessment. This will speed up the determination and payment of claims by avoiding the need for medical examination.

- ***Consolidation***

7.6 The PI(C)S, made under the Personal Injuries (Emergency Provisions) Act 1939, applies only to injuries arising from the Second World War. There are now only around 1,900 disablement pensioners receiving compensation under the PI(C)S and the number is dropping at the rate of between five and ten per cent a year. The scheme is exceptional amongst war pensions instruments in that, not only is it restricted to injuries during a specific time in history, there is a normal time limit of three months for making first claims under the scheme. The Department recognises the need to consolidate the PI(C)S, but in view of the small and reducing number of beneficiaries under the scheme and of other demands on limited resources, the Department regrets that it has not yet been able to undertake this extensive piece of work.

8. Consultation outcome

8.1 The amendments to the PI(C)S correspond, where appropriate, with the amendments being made to the main SPO. The Central Advisory Committee on Pensions and Compensation, which is the statutory mechanism for consulting on such matters, were consulted on the changes to the SPO and the changed were generally welcomed.

9. Guidance

9.1 The Central Advisory Committee will be formally notified of these amendments in writing. All pensioners will be notified of the annual increase in allowances by letter.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is nil.

10.3 An Impact Assessment has not been prepared for this instrument as no impact on the private or voluntary sectors is foreseen.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 These amendments should ease administration of the scheme and simplify certain aspects of it. The scheme is continually monitored and reviewed so assessment of the changes can be made in due course once the changes are embedded.

13. Contact

Nick Shaw at the Ministry of Defence Tel: 0207 21 80564 or email: DGLS-Sec2@mod.uk can answer any queries regarding the instrument.