**EXPLANATORY MEMORANDUM TO**

**THE SOCIAL SECURITY COMMISSIONERS (PROCEDURE) (AMENDMENT) REGULATIONS 2005**

**2005 No.**

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 Social Security Commissioners (Procedure) Regulations 1999 (S.I. 1999/1495) to reflect changes made in the Armed Forces (Pensions and Compensation) Act 2004 to the route of onward appeal from the Pensions Appeal Tribunal.

2.2. Appeals on a point of law from the Pensions Appeal Tribunal ('PAT') currently go to the High Court. From 6 April 2005 these appeals will go to the Social Security Commissioners.

2.3. Implementation of the new path of appeal requires changes to the Commissioners' Procedure Regulations. The policy intent of these Regulations is for the Social Security Commissioners to deal with applications for leave to appeal and appeals from the Pensions Appeal Tribunal in the same way as they deal with current applications and appeals from other appeal tribunals.

2.4. These Regulations make technical amendment to existing regulations to allow this new path of appeal. For example, the definition of 'appeal tribunal' is extended to include a Pensions Appeal Tribunal.

2.5. Commissioners hearing appeals on decisions of the PAT will be known as 'Pensions Appeal Commissioners' to recognise the special status of armed service appellants and distinguish the appeals from general matters of social security.

2.6. This instrument is subject to affirmative Parliamentary procedure as specified in section 80(1) of the Social Security Act 1998 and section 11A(5) of the Pensions Appeal Tribunals Act 1943. These sections apply to regulations on the striking out or reinstatement of proceedings (made under paragraph 2 to Schedule 5 to the Social Security Act 1998).

2.7. Appeals from the PAT will be subject to strike-out / reinstatement as with all other appeals to the Commissioners. While this instrument does not change strike-out / reinstatement procedure the extension of these regulations to new appeals triggers the requirement for the affirmative Parliamentary procedure.

## 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 from decisions of the PAT.

4.2. Amendments to the Pensions Appeal Tribunal Rules 1980 and Pensions Appeal Tribunal (Posthumous Appeals) Order 1980 are also required to implement the new path of appeal. An amendment to the latter order has been laid with the Privy Council. Amendments to the PAT procedural Rules, subject to negative Parliamentary procedure, are scheduled to be laid in March 2005.

## 5. Extent

5.1. This instrument applies to England, Wales and Scotland.

## 6. European Convention on Human Rights

6.1. Baroness Ashton of Upholland has made the following statement regarding Human Rights:

In my view the provisions of the Social Security Commissioners (Procedure) (Amendment) Regulations 2005 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 the 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.