

**EXPLANATORY MEMORANDUM TO THE
PENSIONS APPEAL TRIBUNALS (ARMED FORCES AND RESERVE
FORCES COMPENSATION SCHEME) (RIGHTS OF APPEAL)
REGULATIONS 2005**

2005 No. 1029

1. This explanatory memorandum has been prepared by the Ministry of Defence and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 At present the Pensions Appeal Tribunals Act 1943 (“the 1943 Act”) allows an appeal to a Pensions Appeal Tribunal against certain decisions of the Secretary of State relating to the War Pensions Scheme (WPS). Following amendment of the 1943 Act by the Armed Forces (Pensions and Compensation) Act 2004 (“the 2004 Act”), these Regulations extend the right to appeal to a Pensions Appeal Tribunal (PAT) to include appeals against certain decisions under the new Armed Forces and Reserve Forces Compensation Scheme on or after 6th April 2005.

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

3.1 The 2004 Act received Royal Assent on 18 November 2004. The provisions of that Act which amend the 1943 Act to provide the power to make this Statutory Instrument will be commenced on or about 19 January 2005 before this Instrument is made.

3.2 The Armed Forces Compensation Scheme Order will be laid before Parliament under the negative procedure in early March 2005.

4. Legislative Background

4.1 The Armed Forces Compensation Scheme (AFCS) will come into force on 6th April 2005 and will require that a right of appeal exists by that date.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 Under-Secretary of State, Mr Ivor Caplin, has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Pensions Appeal Tribunals (Armed Forces and Reserve Forces Compensation Scheme) (Rights of Appeal) Regulations 2005 are compatible with the Convention rights.

7. Policy background

7.1 In summary, it is proposed that decisions which determine whether an award should be payable or the amount which is payable should be specified decisions and so carry a right of appeal. Exceptions to the above would be where such a decision makes an interim award or suspends payment of benefit.

7.2 Interim awards allow for a temporary payment of benefit for a maximum of 2 years where the prognosis for an injury is uncertain and the Department is unable to decide the appropriate level of benefit. The intent is to avoid an interim award being altered on appeal and potentially set at a higher level than the eventually decided final award. The individual will always be paid arrears of any higher assessment, with no amount recoverable if the final award is lower. The final award will always be appealable.

7.3 The suspension of a payment would occur if an appeal decision by a PAT, or the Social Security Commissioner, were challenged by the Department. Appeal rights do not currently exist under the WPS with regard to suspending payments and the proposal is to treat the AFCS in a similar manner.

7.4 The 2004 Act also amends the 1943 Act in a number of respects and in particular changes the appeal routes for decisions by a PAT. An appeal will now lie to a Social Security Commissioner, with a further right of appeal to the higher courts. Both the WPS and the new scheme will follow this revised route.

7.5 Ex-Service organisations and the Presidents of the PAT are being informed about the proposals in parallel with laying this instrument. It is not anticipated that there will be any adverse reaction from these groups.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no significant impact on business, charities or voluntary bodies.

9. Contact

Mrs S J McIntosh at the Ministry of Defence Tel: 020 7218 0564 can answer any queries regarding the instrument.