

**EXPLANATORY MEMORANDUM TO THE
ARMED FORCES PENSION SCHEME ORDER 2005**

2005 No.438

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

2. Description

- 2.1. The Armed Forces (Pensions and Compensation) Act 2004 (“the 2004 Act”) gives the Secretary of State the power to make a new occupational pension scheme for members of the Armed Forces. The new scheme is set out in Schedule 1 to the Armed Forces Pension Scheme Order and will take effect from 6 April 2005. New entrants to the Armed Forces from that date will automatically join the new pension scheme (unless they choose to opt out). Existing personnel, serving on 6 April 2006, will be given the option to join the new scheme from that date.

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

- 3.1. The JCSI will note that the Scheme set out in Schedule 1 to the Order is numbered by lettered parts. This is unusual for a statutory instrument but is the common form of numbering for pension schemes. Previous examples of pension scheme statutory instruments which have adopted this format are the Parliamentary Pension Scheme (S.I. 1993/3253), the NHS Pension Scheme (S.I. 1995/300) and the Teachers’ Pension Scheme (S.I. 1997/3001). The style was also used for the Principal Civil Service Pension Scheme 2000 on which the Armed Forces Pension Scheme 2005 is closely based.

4. Legislative background

- 4.1. The earlier arrangements, with scheme rules set out in three separate instruments with different legal underpinnings, are out of line with accepted practice for new public service pension schemes and are administratively cumbersome. The 2004 Act establishes a new statutory framework for Armed Forces pensions, with the scheme rules set out in statutory instruments, as for most other public service schemes. This allows routine changes, including those implementing wider Government policies that have been subject to Parliamentary scrutiny and debate, to be implemented quickly and economically; it also allows substantial Parliamentary debate, where either House judges there to be policy issues of significant concern.
- 4.2. The SI to which this explanatory memorandum is attached is being made alongside related instruments: the Armed Forces Early Departure Payments Scheme Order 2005 (S.I. 2005/437) and the Armed Forces and Reserve Forces Compensation Scheme Order 2005 (S.I. 2005/439). Two commencement orders have already been made under the 2004 Act.

5. Extent

5.1. This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1. Not applicable.

7. Policy background

7.1. The new Armed Forces Pension Scheme is consistent with the Government's wider policy agenda for pensions and with the new tax framework, as set out in various green and white papers from the Inland Revenue¹ and Department for Work and Pensions².

7.2. The Ministry of Defence undertook a public consultation exercise as part of the review of current arrangements. It put the consultation document on the MOD internet and intranet sites, together with a report summarising the outcome of the consultation exercise (www.mod.uk/issues/pensions). There were 153 respondents, including the key veterans organisations, commenting on a wide range of issues. There was a strong positive response to the main aspects of the new scheme (pensions based on final salary, major improvements to dependants' benefits, inclusion of unmarried partners). There has been negligible wider public interest in the new scheme.

7.3. The Defence Select Committee has published two reports and taken oral and written evidence from MOD ministers³. The Government responded to the second report in Command Paper 6109. The MOD responded directly to one of the Committee's concerns - the lack of independent oversight, provided in other public service pension schemes by representative trades unions - by announcing during the passage of the Bill that the Armed Forces Pay Review Body (AFPRB) had agreed to provide regular, independent oversight of the new scheme. The AFPRB will consider how the scheme compares with pension schemes elsewhere, taking account of trends outside. It is currently planned that the first report will be published in 2011.

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.

¹ Simplifying the taxation of pensions: increasing choice for all (Dec. 2002) and Simplifying the taxation of pensions: the Government's proposals (Dec. 2003)

² Simplicity, Security and Choice: working and saving for retirement – action on occupational pensions (June 2003)

³ HCDC Third Report 2001-02: the MOD reviews of Armed Forces Pensions and Compensation arrangements (HC 666) – 9 May 2002

HCDC First Report 2003-04: Armed Forces Pension and Compensation - 10 December 2003

9. Contact

- 9.1. Contact Sue McIntosh, Ministry of Defence, 0207 218 0564, email sue.mcintosh641@mod.uk if you have any queries on the memorandum.