



# Reserve Forces Act 1996

## 1996 CHAPTER 14

### PART V

#### EMPLOYEE AGREEMENTS

##### Modifications etc. (not altering text)

- C1** Ss. 28-77 (Pts. IV-VII) modified (1.4.1997) by Army Act 1955 c. 18, s. 9(6A) (as inserted (1.4.1997) by 1996 c. 14, s. 126, Sch. 7 paras. 1(3), 3(3)); S.I. 1997/305, art. 2(1)
- Ss. 28-77 (Pt. IV-VII) modified (1.4.1997) by Army Act 1955 c. 18, s. 210, Sch. 7 para. 4A(6) (as inserted (1.4.1997) by 1996 c. 14, s. 126, Sch. 7 para. 3(3) (with s. 72(5), Sch. 7 para. 4); S.I. 1997/305, art. 2(1))
- SS. 28-77 (Pts. IV-VII) modified (1.4.1997) by Armed Forces Act 1966 c. 45, s. 4(6A) (as inserted (1.4.1997) by 1996 c. 14, s. 126, Sch. 7 para. 7(3) (with s. 72(5), Sch. 7 para. 8); S.I. 1997/305, art. 2(1))

#### *Preliminary*

### **38 Purpose of Part V.**

- (1) This Part enables employees, in pursuance of arrangements between their employers and the Secretary of State, to enter into employee agreements and become special members of a reserve force.
- (2) In this Part, references to an employee agreement are references to a written agreement by which a person agrees to accept the liability mentioned in section 40(1) by becoming a special member of a reserve force specified in the agreement.
- (3) Orders or regulations under section 4 may make provision—
  - (a) enabling a person to enlist in, or become an officer of, a reserve force for the purpose only of becoming a special member;

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- (b) as to any terms and conditions applicable to such a person, and for applying or disapplying any provisions of this Act, while such a person is a member of the force for that purpose;
  - (c) enabling the making of requests by a special member (whether before or after ceasing to be subject to the liability mentioned in section 40(1)) for permission to continue as a member of his force on ceasing to be a special member;
  - (d) as to any terms and conditions applicable to a special member who has ceased to be subject to the liability mentioned in section 40(1);
  - (e) as to the terms and conditions on which persons resume or begin service as ordinary members of a reserve force by virtue of section 42.
- (4) Before orders or regulations under section 4 are made as to the terms and conditions of service of special members of a reserve force, the Secretary of State or, in the case of regulations, the Defence Council shall consult—
- (a) one or more bodies appearing to that authority to represent the interests of employers concerned with the supply of goods or services to the armed forces;
  - (b) one or more bodies or persons appearing to that authority to represent the interests of employees of such employers; and
  - (c) one or more bodies or persons appearing to that authority to represent the interests of self-employed persons concerned with the supply of goods or services to the armed forces.

### **39 Employee agreements.**

- (1) An employee agreement may be entered into by any employee in pursuance of arrangements made between his employer and the Secretary of State.
- (2) An employee of an employer who has made any such arrangements shall, before entering into an employee agreement, obtain the written consent of that employer in such form as may be prescribed.
- (3) Where an authorised person is satisfied at the time a person enters into an employee agreement that his employer has consented to his entering into the agreement, the validity of the agreement shall not be affected by any failure to comply with subsection (2); and a document purporting to be a certificate signed by the authorised person stating that he is so satisfied shall be evidence of that fact.
- (4) In subsection (3) “authorised person” means a person authorised by or in accordance with directions of the Defence Council for the purpose of exercising the functions mentioned in that subsection.
- (5) An employee agreement shall, if the person concerned is not a member of the force when he enters into the agreement, specify the date by which he must enlist in, or become an officer of, the reserve force specified in the agreement.
- (6) An employee agreement may specify—
  - (a) a maximum period for which the liability of the special member under section 40 is to subsist;
  - (b) events which will terminate his liability to be called out, and to fulfil training obligations, under the agreement; and
  - (c) other terms relating to the obligations undertaken by the person concerned or his service as a special member.

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- (7) On entering into an employee agreement a person who is already a member of the reserve force concerned shall become a special member of that force.
- (8) Where a person entering into an employee agreement is not already a member of the reserve force concerned—
  - (a) he shall become a special member of the force concerned on enlisting in or becoming an officer of that force; but
  - (b) the agreement shall lapse if he has not enlisted in or become an officer of that force on or before the date specified in the agreement.
- (9) An employee agreement entered into by any person shall terminate—
  - (a) on his entering into another employee agreement;
  - (b) on his ceasing to be a member of the reserve force concerned; or
  - (c) on his resuming service as, or becoming, an ordinary member of that force in accordance with section 42.

#### *Liabilities of special members*

### **40 Liability of special members to be called out or to train.**

- (1) A special member of a reserve force is liable (until the liability ceases by virtue of section 41)—
  - (a) to be called out for permanent service under this Part; and
  - (b) to fulfil any training obligations which are specified in the agreement concerned or are prescribed for special members of the force and applicable in his case.
- (2) A special member of a reserve force shall, subject to the terms of the agreement and the provisions of this Act, serve as a member of that force when he is not in permanent service, and when he is in permanent service, on any prescribed terms and conditions which are applicable in his case.
- (3) Subject to any limitation in the agreement and any prescribed terms and conditions applicable in his case, a special member is liable to serve on being accepted into permanent service, and to be required to train, anywhere in the world.
- (4) A period of service as a special member shall count towards any period for which a person may be required to serve on transfer to a reserve force from any of the regular services.
- (5) Sections 16 and 22 and Parts IV and VI shall not apply to members of a reserve force while they are special members.

### **41 Cessation of liabilities.**

- (1) The liability of a special member under section 40(1) to be called out, and to fulfil training obligations, shall cease when any of the following events occurs—
  - (a) the expiry of any period specified in his employee agreement as the maximum duration of that liability;
  - (b) the termination of his employment with the employer whose consent was required to his entry into the employee agreement;
  - (c) the expiry of a notice given by him—

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- (i) to the Secretary of State; or
  - (ii) to any other person specified by his agreement or prescribed for the purpose of receiving such notices;
  - (d) the expiry of a notice given by the Secretary of State to him; and
  - (e) any other event specified in his agreement or prescribed as an event leading to the cessation of that liability;
- but that liability shall not cease by virtue of paragraph (c) while the operation of that paragraph in relation to him is suspended by an order made under subsection (6).
- (2) A notice under paragraph (c) or (d) of subsection (1) shall expire at the end of such period not exceeding three months—
- (a) as is specified in the employee agreement for the purpose of that paragraph, or
  - (b) if no such period is specified, as is prescribed for that purpose.
- (3) Subsection (1) shall not apply to a special member who is in permanent service when an event mentioned in paragraph (a), (b), (d) or (e) of that subsection occurs until he is released from that service under section 45.
- (4) A notice under subsection (1)(c) may not be given by a person who is in permanent service; and any such notice which a person has<sup>F1</sup> . . . given shall cease to have effect if he is accepted into permanent service before it has expired.
- (5) The Secretary of State shall give a notice under subsection (1)(d) if it appears to him that his arrangements with the special member's employer have ceased to have effect.
- (6) Where a call-out order under section 52 or 54 is in force, the Secretary of State may by order suspend the operation of paragraph (c) of subsection (1) of this section in relation to persons of a description specified in the order; and while an order under this subsection is in force—
- (a) no notices under that paragraph may be given by the persons so specified; and
  - (b) any notice which was given by a person so specified before the order was made shall cease to have effect.
- (7) An order under subsection (6) shall expire at the end of such period not exceeding six months as is specified in the order, without prejudice to the power of the Secretary of State to make more than one such order in relation to persons of the same description.

#### Textual Amendments

- F1** Word in s. 41(4) repealed (1.10.2001 subject to art. 3 of the commencing S.I.) by 2001 c. 19, ss. 34, 38, Sch. 6 Pt. 3 para. 12, **Sch. 7 Pt. 7**; S.I. 2001/3234, **arts. 2, 3**

## 42 Discharge etc. of special members.

- (1) This section applies when a man of a reserve force who is a special member (the man) ceases by virtue of section 41 to be subject to the liability mentioned in section 40(1).
- (2) The man shall be discharged with all convenient speed in such manner as may be prescribed unless he enters into a new employee agreement or continues as an ordinary member in accordance with subsection (3) or (4).
- (3) If the man—

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- (a) was an ordinary member of the reserve force concerned immediately before becoming a special member; and
  - (b) was then serving for a term which has not expired,
- he shall resume his service as an ordinary member (and so cease to be a special member) in accordance with orders or regulations under section 4.
- (4) If the man has been given permission by an authorised officer to continue as a member on ceasing to be a special member he shall, unless he resumes service under subsection (3), become an ordinary member (and so cease to be a special member) in accordance with orders or regulations under section 4.
  - (5) Nothing in this section affects the exercise of any power apart from this section to discharge a man of a reserve force or the operation of section 13(4) in relation to a man who is discharged.

*Call out for permanent service under Part V*

**43 Call out of special members.**

- (1) The Secretary of State may call out for service any special member of a reserve force if he considers that it is appropriate, in the light of operational requirements and the arrangements he has made with the employer of that person, for that person to continue to undertake work of direct or indirect benefit to the armed forces.
- (2) The Secretary of State may call out a special member by serving a notice on that person requiring him—
  - (a) to present himself for service at a specified time and place; and
  - (b) to remain at that place until he is either accepted into service or informed that he is not to be accepted into service in pursuance of the notice.
- (3) A call-out notice shall also require the person concerned, if he fails to comply with the requirements mentioned in subsection (2)—
  - (a) to present himself for service to any person specified in the notice or to any authorised officer; and
  - (b) having so presented himself, to remain until either accepted into service or informed that he is not to be accepted into service in pursuance of the notice.
- (4) A call-out notice shall specify—
  - (a) the person to whom it applies and the agreement by virtue of which he is a special member; and
  - (b) the time and place at which he is to present himself for service;and it may also specify places and times at which and persons to whom the person may present himself for service if he fails to present himself at the time and place specified under paragraph (b) of this subsection.
- (5) A call-out notice shall (without affecting any liability arising from a failure to comply with the notice) cease to have effect, if not revoked sooner, when the special member concerned—
  - (a) ceases to be liable to be called out for service by virtue of section 41; or
  - (b) is either accepted into service or informed that he is not to be accepted into service in pursuance of the notice.

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- (6) A call-out notice served on a special member may—
  - (a) be varied by the Secretary of State by serving a variation notice on him;
  - (b) be revoked by the Secretary of State by serving a revocation notice or a subsequent call-out notice on him.
- (7) A notice under this section may be served on a person by delivering it to him or by leaving it at, or sending it by post to, his last known address; and any call-out or variation notice delivered to that address by registered post or recorded delivery shall be deemed to have been served on him.
- (8) No steps may be taken against a person in respect of failure to comply with a call-out notice under this section unless the notice or, as the case may be, any variation notice was received by him or is deemed to have been served on him by virtue of subsection (7).
- (9) In this section and section 44 “service” means permanent service.

#### **44 Acceptance into service of special members.**

- (1) A special member served with a call-out notice who—
  - (a) presents himself for service to an authorised officer at the time and place specified in the notice under section 43(4)(b);
  - (b) presents himself for service to an authorised officer at any other time or place; or
  - (c) is brought before an authorised officer after the time so specified,
 may be accepted into service by that officer.
- (2) Where such a person is accepted into service, he shall be informed by the authorised officer in the prescribed manner that he has been accepted into service by virtue of subsection (1).
- (3) If an authorised officer decides that such a person should not be accepted into service, he shall inform that person in the prescribed manner that he is not to be accepted into service in pursuance of the call-out notice concerned.
- (4) Any liability of such a person arising from a failure to comply with a call-out notice is not affected by his acceptance into service or by a decision not to accept him into service.
- (5) A special member liable to be called out under this Part who—
  - (a) is of a description for the time being specified in directions of the Secretary of State;
  - (b) has not been served with a call-out notice; and
  - (c) presents himself for service to an authorised officer,
 may be accepted into service by that officer.
- (6) Where a person is accepted into service by virtue of subsection (5)—
  - (a) the authorised officer shall inform him in the prescribed manner that he has been accepted into service by virtue of that subsection; and
  - (b) he shall be deemed to have been called out under this Part.

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#### **45 Release from service of special members.**

- (1) A special member who has been accepted into permanent service shall remain in that service until released under subsection (2).
- (2) A special member who is in permanent service shall be released from that service with all convenient speed in such manner as may be prescribed when he is no longer required by Her Majesty to be in that service or (if not released sooner) when he is entitled to be released under subsection (3).
- (3) A special member is entitled to be released from permanent service—
  - (a) subject to paragraph (b), at the expiry of the period of 9 months beginning with the day on which he was accepted into service or of such shorter period as may be specified in the agreement concerned;
  - (b) if he extends (or further extends) his service under subsection (6), at the expiry of the period for which his service is extended;
  - (c) when, on an application under section 78, it is determined that he is entitled to be released.
- (4) Orders or regulations under section 4 may make provision enabling or requiring a special member who has been accepted into permanent service to be treated—
  - (a) if the circumstances of his call out or acceptance into service are of a prescribed description, and
  - (b) for the purpose of calculating when he is entitled to be released by virtue of subsection (3)(a),as having been accepted into service on an earlier day than that on which he was actually accepted.
- (5) Provision made for the purposes of subsection (4) shall secure—
  - (a) that any earlier day applicable for the purpose of calculating when a person is entitled to be released from service is to be notified to him as soon as is practicable after the day on which he was actually accepted into service; and
  - (b) that the period beginning with the earlier day is reckoned as part of his relevant service for the purposes of sections 53(13), 55(13), 57(11) and 69(8).
- (6) A special member who is in permanent service may, with the written consent of the employer whose consent was required for his entering into the agreement in such form as may be prescribed, extend his period of service beyond the day on which he would (apart from that extension) be entitled to be released.

#### *Supplementary*

#### **46 Exercise of certain functions under section 43 or 44.**

- (1) The Secretary of State may authorise—
  - (a) the Defence Council;
  - (b) any particular officers; or
  - (c) any officers of a description specified in the authorisation,to exercise any function of his under section 43 or 44, subject to such limitations and conditions as may be so specified.

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- (2) An authorisation under subsection (1) relating to the exercise of any function of the Secretary of State by the Defence Council shall (unless the authorisation provides otherwise) be deemed to permit the Defence Council to authorise—
- (a) any particular officers; or
  - (b) any officers of a description determined by the Defence Council,
- to exercise the function, subject to such limitations and conditions as may be so specified.
- (3) Arrangements made under subsection (1) or (2) for the discharge of any function shall not prevent the exercise of the function by the Secretary of State or (in the case of arrangements under subsection (2)) the Defence Council.

#### **47 Parliamentary control of numbers and reports.**

- (1) The number of special members of a reserve force shall not exceed the number for that force for the time being authorised by Parliament.
- (2) Any special members of a reserve force who are in permanent service shall not be reckoned in any numbers for the time being authorised by Parliament for any of the regular services.
- (3) The Secretary of State shall from time to time lay before each House of Parliament a report with respect to the exercise of his powers to call out persons under this Part.
- (4) Any such report may be made either with respect to any use made, or with respect to any use proposed to be made, of those powers.

#### **48 Application of Part V to Crown servants, employees of sub-contractors and self-employed persons.**

- (1) This Part shall have effect in relation to any Crown servant as if he were employed under a contract of service with such person as may be specified in directions made by the Secretary of State as his employer for the purposes of this Part.
- (2) In this Part—
- (a) references to arrangements between an employer and the Secretary of State include references to arrangements between another person and the Secretary of State in pursuance of which the employer supplies, or is to supply, goods or services to or for the benefit of the armed forces; and
  - (b) references to an employer who has made arrangements with the Secretary of State include references to an employer who supplies, or is to supply, goods or services to or for the benefit of the armed forces in pursuance of arrangements made by another person and the Secretary of State.
- (3) This Part shall have effect in relation to any person who is self-employed as if—
- (a) references to an employee were references to a self-employed person;
  - (b) references to arrangements between an employer and the Secretary of State were references to arrangements—
    - (i) between the self-employed person and the Secretary of State; or
    - (ii) between another person and the Secretary of State in pursuance of which the self-employed person concerned supplies, or is to supply, goods or services to or for the benefit of the armed forces;



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- (c) any requirement for the written consent of an employer were omitted;
- (d) section 41(1)(b) were omitted.

#### **49 Interpretation of Part V.**

In this Part—

“authorised officer” means an officer authorised by or in accordance with directions of the Defence Council for the purposes of this Part;

“call-out notice” means a notice under section 43;

“employee agreement” has the meaning given in section 38;

“ordinary member” means a member of a reserve force who—

- (i) is not a special member of that force; and
- (ii) is not a member of that force for the purpose only of becoming a special member.

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