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STATUTORY INSTRUMENTS

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**1997 No. 307**

**DEFENCE**

**The Reserve Forces (Call-out and Recall)  
(Exemptions Etc.) Regulations 1997**

<i>Made</i>	- - - -	<i>19th February 1997</i>
<i>Laid before Parliament</i>		<i>19th February 1997</i>
<i>Coming into force</i>	- -	<i>1st April 1997</i>

The Secretary of State, in exercise of the powers conferred on him by sections 78 and 79 of the Reserve Forces Act 1996(1) and after consultation by him in accordance with section 81(5) of that Act, hereby makes the following Regulations:—

**PART I**  
**PRELIMINARY**

**Citation and commencement**

1. These Regulations may be cited as the Reserve Forces (Call-out and Recall) (Exemption Etc.) Regulations 1997 and shall come into force on 1st April 1997.

**General interpretation**

2.—(1) In these Regulations—

“the 1996 Act” means the Reserve Forces Act 1996(1);

“adjudication officer” means a person appointed by or in accordance with the directions of the Secretary of State or the Defence Council to determine applications under these Regulations;

“application” means an application under regulation 3 or 4 below;

“call-out notice” means a notice calling out a reservist for relevant service;

“employer” means any person who is an employer of a reservist on the relevant date, including—

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(1) 1996 c. 14.  
(1) 1996 c. 14.

- (a) a reservist who is self-employed;
- (b) a partnership within the meaning of the Partnership Act 1890<sup>(2)</sup> of which the reservist is a partner;
- (c) a company of which the reservist is a director other than a non-executive director;
- (d) a Secretary of State or government department or any officer or body exercising on behalf of the Crown functions conferred by any statute, for whom a reservist works as a Crown servant;
- (e) a person who is a former employer of the reservist within the meaning of the Reserve Forces (Safeguard of Employment) Act 1985<sup>(3)</sup>;
- (f) a person who has entered into a contract of employment with the reservist but for whom the reservist has not yet started working;

“recall notice” means a notice recalling a reservist for relevant service;

“relevant date” means, subject to paragraph (2) below—

- (a) the date of service or deemed service of a notice under which a reservist is called out or recalled for relevant service;
- (b) the date on which a reservist is deemed to have been called out under section 59(5) or recalled under 71(5) respectively of the 1996 Act; or
- (c) where a deferral of a reservist’s obligation to present himself for service in pursuance of a call-out or recall notice has been granted under these Regulations, the date on which that deferral ceases to have effect;

“relevant service” means permanent service—

- (a) under Part IV, V, VI or VII of the 1996 Act; or
- (b) by a transitional member of a reserve force called out or recalled under the Reserve Forces Act 1980<sup>(4)</sup> or under any other call-out or recall obligations of an officer,

in respect of which an application is made;

“reservist” means a person called out or recalled for relevant service.

(2) Where a person is performing relevant service and the date on which he is entitled to be released or discharged has been postponed under section 45(6), 53(3), (7) or (11), 55(3), (7) or (11), 57(3) or (7), 61 or 69(3) or (6) (as the case may be) of the 1996 Act, the “relevant date” means the day on which he would otherwise have been entitled to be released or discharged from that service.

## PART II

### APPLICATIONS FOR EXEMPTIONS ETC.

#### Individual exemptions etc. from call-out

3.—(1) Where a reservist has been served with a call-out notice other than a notice under Part V of the 1996 Act, but has not been accepted into service, the reservist or an employer may apply for any of the following—

- (a) the deferral of the reservist’s obligation to present himself for service in pursuance of that notice;

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(2) 1890 c. 39.  
(3) 1985 c. 17.  
(4) 1980 c. 9.

- (b) the revocation of that notice;
  - (c) if the notice was served under Part IV of the 1996 Act, an exemption from liability to be called out under that Part or Part VI;
  - (d) if the original notice was served under Part VI or any other power to call out the reservist, an exemption from liability to be called out on the authority of—
    - (i) the call-out order or other power specified in that notice,
    - (ii) any other call-out order made under any provision of Part VI;
  - (e) if the original notice was served under Part VI and the reservist has entered into a special agreement, an exemption from liability to be called out under Part IV.
- (2) Where a reservist has been served with a call-out notice under Part V but has not been accepted into service, the reservist may apply for—
- (a) the deferral of his obligation to present himself for service in pursuance of that notice;
  - (b) the revocation of that notice;
  - (c) an exemption from liability to be called out under Part V.
- (3) Where a reservist has been accepted into service in pursuance of a call-out notice other than a notice under Part V of the 1996 Act, a call-out order or any other power, the reservist or an employer may apply for any of the following—
- (a) a determination that the reservist is entitled to be released from his current period of relevant service;
  - (b) if the reservist is serving under Part IV, an exemption from liability to be called out under that Part or Part VI;
  - (c) if he is serving under Part VI or any other power, an exemption from any liability to be called out on the authority of—
    - (i) the call-out order or other power under which he is currently serving,
    - (ii) any other call-out order made under Part VI;
  - (d) if a determination is given that he is entitled to be released from service under Part VI but he remains liable to be called out under Part IV, an exemption from that liability.
- (4) Where a reservist has been accepted into service under Part V, he may apply for—
- (a) a determination that he is entitled to be released from his current period of relevant service;
  - (b) an exemption from liability to be called out under Part V.

#### **Individual exemptions etc. from recall**

- 4.—(1) Where a reservist has been served with a recall notice but has not been accepted into service, the reservist or an employer may apply for any of the following—
- (a) the deferral of the reservist’s obligation to present himself for service in pursuance of that notice;
  - (b) the revocation of that notice;
  - (c) an exemption from liability to be recalled on the authority of the recall power specified in the recall notice or any other recall power.
- (2) Where a reservist has been accepted into service in pursuance of a recall notice, a recall order or any other power to recall him the reservist or an employer may apply for any of the following—
- (a) a determination that the reservist is entitled to be released from service or discharged;
  - (b) an exemption from his liability to be recalled on the authority of the recall power specified in the original notice or any other recall power.

### **Grounds for applications**

5. The adjudication officer may grant a deferral or exemption or an entitlement to revocation, release or discharge, as the case may be, under regulation 3 or 4 above on an application by—

- (a) a reservist if the adjudication officer is satisfied that any of the grounds specified in paragraph 1 of Schedule 1 is made out;
- (b) an employer if the adjudication officer is satisfied that any of the grounds specified in paragraph 2 of Schedule 1 is made out.

### **Matters to be taken into account by adjudication officers**

6. In determining an application an adjudication officer shall take into account, in addition to the grounds for the application, the matters specified in Schedule 2.

### **Effect of determinations**

7.—(1) A determination by an adjudication officer shall provide for the terms on which any deferral, revocation, determination of entitlement to release or discharge or any exemption shall be granted (including any limitations or conditions subject to which it shall be granted);

(2) A determination by an adjudication officer may provide for—

- (a) a determination of entitlement to release or discharge or an exemption to take effect immediately or at such other time as may be specified in the determination or exemption;
- (b) a deferral or exemption to lapse at such time, at the end of such period or on the occurrence of such event as may be specified in the deferral or exemption;
- (c) a determination of entitlement to release or discharge which does not take effect immediately to lapse as mentioned in sub-paragraph (b) above;
- (d) a person released from service under Part IV of the 1996 Act in pursuance of a determination of entitlement to release to be treated for the purposes of section 31(3) as if he had not been in that service and released;
- (e) a person released from service under Part VI of the 1996 Act in pursuance of a determination of entitlement to release to be treated for the purposes of section 31(1)(d) as if he had not been in that service.

(3) A deferral or exemption, or any determination under paragraph (2)(c) above, shall not remain in force for more than 12 months from the day on which it takes effect.

(4) Where on an application an adjudication officer grants an exemption from the reservist's liability to present himself for service or a deferral of such liability, the person who made the application may by written notice to the adjudication officer consent to such exemption or deferral ceasing to have effect.

## **PART III**

### **PROCEDURE FOR THE DETERMINATION OF APPLICATIONS**

#### **Time limits for applications**

8.—(1) An application may not be made—

- (a) before the relevant date;
- (b) more than 7 days after the relevant date, except with the leave of the adjudication officer.

(2) Leave to make an application after the time specified in paragraph (1)(b) above shall only be granted where—

- (a) the applicant did not know of any grounds for the application, and could not reasonably have discovered them, until after that time; or
- (b) in the case of an application by an employer, the fact of—
  - (i) service or deemed service on the reservist of a notice calling out or recalling him for service, or
  - (ii) acceptance into service under section 59(5) or 71(5) respectively of the 1996 Act, or
  - (iii) postponement under section 45(6), 53(3), (7) or (11), 55(3), (7) or (11), 57(3) or (7), 61 or 69(3) or (6) of the 1996 Act of the reservist's entitlement to be released or discharged,

did not come to the employer's attention until after that time,

and the application was made promptly after the applicant had become aware of those grounds or that fact.

#### **Person to whom applications made**

9.—(1) An application shall be made to the person specified in Schedule 3.

(2) The person to whom an application has been made shall, if he is not an adjudication officer, immediately pass that application to an adjudication officer.

#### **Procedure for applications and provision of information**

10.—(1) Any step required to be taken by an applicant under this Part may be taken by any person authorised for this purpose by the applicant.

(2) Subject to paragraph (5) below, an application shall be made in writing.

(3) A reservist shall—

- (a) on making an application provide the information specified in paragraph 1(1) of Schedule 4;
- (b) within 7 days of making an application provide such information as is required by paragraph 1(2) of Schedule 4 to support the grounds on which he is making his application.

(4) An employer shall on making an application provide the information specified in paragraph 2 of Schedule 4.

(5) A reservist may make an oral application but that application shall lapse unless the information required under paragraph (3)(a) above is provided in writing within the time limited in regulation 8(1)(b) or (2) above for the making of an application.

(6) An adjudication officer may require any person to provide such further information in connection with the application as the adjudication officer may at any time reasonably require.

(7) A person who has furnished information under this regulation shall notify the adjudication officer of—

- (a) any inaccuracy in, or change to, that information; or
- (b) any event,

which could materially affect the application, no later than 7 days after the inaccuracy, change or event came to that person's attention.

### **Determination of applications and notification of determinations**

**11.**—(1) The adjudication officer shall consider an application promptly and in accordance with the relevant provisions of these Regulations and shall within 2 days of making his determination give written notification of his determination to the person who made the application.

(2) Every such notification shall contain a statement—

- (a) giving reasons for the determination;
- (b) that the person who made the application may, if he is dissatisfied with the determination, appeal against it to a reserve forces appeal tribunal, and giving the address to which such an appeal should be sent.

### **Additional powers of adjudication officers**

**12.** An adjudication officer may—

- (a) treat the requirement to provide information under regulation 10(3) or (4) above as having been satisfied if he already has that information when the application is made;
- (b) reject an application if the person making it fails without reasonable excuse to provide information which he is required to provide under regulation 10 above;
- (c) treat a claim for financial assistance under regulations made pursuant to sections 83 and 84 of the 1996 Act as an application under these Regulations;
- (d) review his determination at any time until the beginning of the hearing by a reserve forces appeal tribunal of an appeal against that determination.

### **Effect of a person's ceasing to be an employer on a determination**

**13.**—(1) This regulation applies where on an application by an employer an adjudication officer has made a determination granting—

- (a) deferral of or exemption from a reservist's liability for relevant service; or
- (b) release or discharge of a reservist from relevant service.

(2) Where the person who made the application ceases to be an employer in relation to that reservist—

- (a) the determination shall cease to have effect on that day;
- (b) that person shall within 7 days of ceasing to be such an employer so inform the adjudication officer.

## **PART IV**

### **MISCELLANEOUS PROVISIONS**

#### **Method of sending or delivering documents, etc.**

**14.**—(1) Any document required by these Regulations to be sent or delivered to any person shall be duly sent or delivered if it is—

- (a) sent to him by post at his proper address;
- (b) sent to him at his proper address by facsimile machine or other means which produce a document containing a text of the communication, in which event the document shall be regarded as sent when it is received in a legible form; or
- (c) delivered to him or left at his proper address.

- (2) The proper address of—
- (a) an adjudication officer shall be as specified in accordance with Schedule 3;
  - (b) an applicant shall be that provided in accordance with regulation 10 above and Schedule 4, or such other address as the applicant may subsequently notify the adjudication officer in writing as being his address for correspondence;
  - (c) any other person to whom any document is required by these Regulations to be sent or delivered shall be his last known address.

### **Time**

**15.** Where the time prescribed by these Regulations for doing any act expires on a Saturday, Sunday or public holiday, the act shall be in time if done on the next following day which is not a Saturday, Sunday or public holiday.

19th February 1997

*Nicholas Soames*  
Minister of State for the Armed Forces

## SCHEDULE 1

Regulation 5

## GROUNDS FOR APPLICATIONS

1. The grounds on which a reservist may make an application are—
- (a) that the reservist—
    - (i) has the primary responsibility for the care of a person with a severe physical or mental disability who requires frequent attention or supervision, and adequate arrangements for care by a person other than the reservist during the expected period of the reservist's relevant service cannot be made;
    - (ii) alone has parental responsibility (within the meaning of the Children Act 1989<sup>(5)</sup> or the Children (Northern Ireland) Order 1995<sup>(6)</sup>) or sole parental responsibilities (within the meaning of section 1(3) of the Children (Scotland) Act 1995<sup>(7)</sup>) for a child, and adequate arrangements for the care of that child during the expected period of the reservist's relevant service cannot be made;
    - (iii) is engaged in education or training which is intended to prepare or qualify him for a vocation or job and which would be seriously disrupted by his absence on relevant service;
    - (iv) is working in a family-owned business which would suffer serious harm as a result of his absence;
    - (v) has entered into a contract of employment but has not yet started work under that contract and the other party does not agree to postpone until after the period of relevant service the date on which the reservist is to start work under that contract;
  - (b) any other ground which an adjudication officer ought, for compassionate reasons, to consider.

2.—(1) The grounds on which an employer may make an application are that the absence of the reservist for a period of relevant service would cause serious harm to the business or other undertaking in which the reservist is employed, or to a partner, proprietor or employee of that business or other undertaking.

(2) Such harm may include—

- (a) loss of sales, markets, reputation, goodwill or other financial harm;
- (b) impairment of ability to produce goods or provide services;
- (c) harm to research into and development of new products, services or processes,

which could not be prevented by the granting of financial assistance pursuant to regulations under sections 83 and 84 of the 1996 Act.

## SCHEDULE 2

Regulation 6

## FACTORS TO BE TAKEN INTO ACCOUNT IN DETERMINING APPLICATIONS

The factors to be taken into account by an adjudication officer on determining an application shall be—

- (a) the call-out or recall power used;

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<sup>(5)</sup> 1989 c. 41.

<sup>(6)</sup> S.I.1995/755 (N.I. 2).

<sup>(7)</sup> 1995 c. 36.



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- (b) the purpose for which the call-out or recall power is exercised;
- (c) the number of reservists required;
- (d) the number and availability of reservists with a particular skill or training possessed by the reservist in question;
- (e) the need to maintain unit cohesion;
- (f) any alteration of authority for call-out or recall;
- (g) any other factor related to the effectiveness of the armed forces for the operation for which the reservist has been called out or recalled.

### SCHEDULE 3

Regulations 9 and 14(2)

#### PERSON TO WHOM APPLICATIONS MADE

1. Any application by a reservist who has not been accepted into service or an employer shall be made to—

- (a) the person (if any) specified for the purpose of receiving applications in the call-out notice or recall notice served on the reservist; or
- (b) any adjudication officer at the place at which the reservist has presented himself for acceptance into service; or
- (c) the adjudication officer appointed for the service or reserve force in which the reservist is performing or will be performing relevant service, at his address specified below—

<i>Service or Reserve Force</i>	<i>Address</i>
Royal Navy, Royal Fleet Reserve (for naval officers or ratings) and Royal Naval Reserve	Adjudication Officer (RN) Main Mobilisation Office HMS Nelson HM Naval Base Portsmouth PO1 3LS
Royal Marines, Royal Fleet Reserve (for marine officers or other ranks) and Royal Marines Reserve	Adjudication Officer (RM) Reinforcement Holding Unit CTC RM Lympstone Near Exmouth Devon EX8 5AR
Army, Army Reserve and Territorial Army	Adjudication Officer (Army) RO1 TA/ Reserves Directorate of Manning HQ Army Personnel Centre Kentigern House 65 Brown Street Glasgow G2 8EK
Royal Air Force, Air Force Reserve and Royal Auxiliary Air Force	Adjudication Officer (RAF) DCRF(RAF) Personnel Management Centre HQ Personnel and Training Command RAF Innsworth Gloucester GL3 1EZ

2. An application by a reservist who has been accepted into service shall be made to the officer commanding the unit in which the reservist is serving at the time when he makes his application.

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SCHEDULE 4

Regulations 10 and 14(2)

INFORMATION TO BE PROVIDED ON MAKING AN APPLICATION

1.—(1) A reservist shall in all cases provide details of—

(a) his—

- surname;
- forenames;
- date of birth;
- place of birth;
- service number;
- rank or rate;
- service;
- unit;
- address for correspondence;
- telephone and fax number (if any);

(b) the grounds for his application.

(2) A reservist shall, in accordance with the relevant grounds for the application specified in paragraph 1(a) of Schedule 1, also provide the following information—

(i) the name and address of each person with a severe physical or mental disability for whose care the reservist has the primary responsibility;

the name and address of a social services officer, doctor or other party of similar standing able to verify details of the application;

(ii) the full name and date of birth of each dependant child;

the name and address of a school teacher, doctor or other party of similar standing able to verify details of the application;

(iii) each examination for which the reservist is studying;

the date of each examination;

the date on which the reservist started the course of study;

the name and address of the school, college or other body with which the reservist is studying or, where the reservist is undertaking private study, of any other person or body able to verify particulars of the application;

(iv) the nature of the family-owned business;

the name of the business and the address of the business and its registered office, if different;

the reservist's position in the business;

the length of time for which the reservist has held that position in the business;

the date on which the business started up if within last 12 months;

the number of family members engaged in the conduct of, or working for, the business—

(a) full time,

(b) part time;

the number of employees—

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- (a) full time,
- (b) part time;

the name and address of an accountant, bank, building society or other person or body of similar standing able to verify the grounds of the application.

2. An employer making an application shall provide so much of the following information as is in his possession custody or power—

- (a) personal details of the reservist, namely his—

- service;
- surname;
- forenames;
- service number;
- rank or rate;
- unit;
- date of birth;
- place of birth;

- (b) employment details of the reservist, namely—

- his employer's:
- address for correspondence;
- telephone number;
- fax number;
- the nature of the business;
- the reservist's:
- occupation;
- job title (if any);
- staff number or identifier;

- (c) the grounds for making the application, including any special qualifications (academic, professional or experiential) of the reservist for the present task in the employer's business;

- (d) a statement of how the business has been harmed or will be harmed as a direct consequence of the reservist's absence;

- (e) confirmation that staff similar to the reservist in qualifications, training, experience or the like are not available to cover the reservist's absence and have not, except for misconduct or inefficiency, been—

- (i) given notice of dismissal or redundancy, or
- (ii) allowed early retirement,

since the employer became aware that the reservist has been or is to be called out or recalled for relevant service;

- (f) a statement of reasons why the absence of the reservist cannot be accommodated or the harm avoided or mitigated by making new arrangements with customers, suppliers, bankers or other persons or bodies having dealings with the business;

- (g) details of any safeguards against accident to, illness or other absence of the reservist.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations entitle persons who have been called out or recalled for service in the armed forces, or their employers, to apply for deferral of or exemption from that liability or, in the case of persons already serving, release or discharge from service.

Reservists and employers may apply for deferral, exemption, release or discharge under regulation 3 in relation to call-out or under regulation 4 in relation to recall.

Applications are to be determined by an adjudication officer appointed by or in accordance with the directions of the Secretary of State or the Defence Council.

Regulation 5 with Schedule 1 specifies the grounds on which an application may be made.

Regulation 6 and Schedule 2 specify the matters which an adjudication officer must take into account on considering an application.

The range of determinations which an adjudication officer may make is set out in regulation 7.

Regulation 8 sets out the time limits for making applications. Adjudication officers have power to allow late applications, however, in appropriate circumstances.

Regulation 9 with Schedule 3 specifies the name and address of the person to whom applications must be made and requires that person, if he is not an adjudication officer, to pass on applications immediately to an adjudication officer.

Regulation 10 allows an application to be made by a representative of the applicant. It also provides for the manner in which applications are to be made and, with Schedule 3, the information to be provided on making an application. An adjudication officer may require further information from any person under this regulation, and there is a continuing obligation on a person who has provided information to an adjudication officer to notify him of any change to that information or event which would materially affect the claim.

Regulation 11 specifies that adjudication officers must make their determinations promptly and provides for the time and manner in which they must notify applicants of such determinations.

Adjudication officers have power under regulation 12 to reject applications, grant deferral, exemption release or discharge under these Regulations instead of financial assistance on a claim under regulations made in pursuance of sections 83 and 84 of the 1996 Act, or review their decision at any time up to the start of the hearing of an appeal to a reserve forces appeal tribunal against that determination.

Regulation 13 provides for a determination in favour of an employer to cease to have effect if the reservist's employment with that employer terminates.

Regulation 14 regulates the sending and delivery of documents while regulation 15 provides that the time for taking any steps under these Regulations shall not expire on Saturdays, Sundays or public holidays.

A compliance cost assessment of the effect that this instrument would have on the costs of business is available from Directorate of Reserve Forces & Cadets Secretariat, Room 6/27, Metropole Building, London WC2N 5BL.