

2009 No. 831

DEFENCE

**The Armed Forces (Terms of Service) (Amendment)
Regulations 2009**

<i>Made</i>	- - - -	<i>31st March 2009</i>
<i>Laid before Parliament</i>		<i>2nd April 2009</i>
<i>Coming into force</i>	- -	<i>31st October 2009</i>

The Defence Council, in exercise of the powers conferred by sections 328(5) and 329 of the Armed Forces Act 2006(a), make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Armed Forces (Terms of Service) (Amendment) Regulations 2009, and shall come into force on 31st October 2009.

Interpretation

2. In these Regulations—

- “the Army Regulations” means the Army Terms of Service Regulations 2007(b);
- “the RAF Regulations” means the Royal Air Force Terms of Service Regulations 2007(c);
- “the RM Regulations” means the Royal Marines Terms of Service Regulations 2006(d);
- “the RN Regulations” means the Royal Navy Terms of Service (Ratings) Regulations 2006(e).

The RN Regulations

3.—(1) Regulation 2 of the RN Regulations (application and interpretation) is amended as follows.

(2) In paragraph (1)—

- (a) for “entry” substitute “enlistment”; and
- (b) for “have so entered” substitute “have so enlisted”.

(3) In paragraph (2)—

- (a) omit the definition of “commanding officer”; and
- (b) for the definition of “competent naval authority” substitute—

(a) 2006 c. 52.
(b) S.I. 2007/3382. These regulations are amended by the Army Terms of Service (Amendment etc.) Regulations 2008, S.I. 2008/1849.
(c) S.I. 2007/650.
(d) S.I. 2006/2917.
(e) S.I. 2006/2918.

““the competent naval authority” means the Defence Council, the Admiralty Board, the Naval Secretary or any person authorised by him;”.

4.—(1) Regulation 3 of the RN Regulations (duration of terms of service) is amended as follows.

- (2) In each of paragraphs (1) and (2), for “entered” substitute “enlisted”.
- (3) In paragraph (1), for “entry to service” substitute “enlistment for service”.
- (4) In paragraph (2), for “entry to” substitute “enlistment in”.
- (5) Omit paragraph (3).

5. For regulation 6 of the RN Regulations substitute—

“6. Service in the reserve

A person transferred to the reserve in consequence of the exercise of a right conferred by regulation 4 shall serve in the reserve for a period beginning on the date of his transfer and ending—

- (a) 6 years later, or
- (b) on the date on which his service in the Royal Navy would have ended if he had not exercised the right to transfer to the reserve,

whichever is the sooner, or for such shorter period as the competent naval authority may approve.”

6.—(1) Regulation 7 of the RN Regulations (right of recruit to claim discharge) is amended as follows.

(2) In paragraph (1), for “a person who enters the Royal Navy who has not previously so entered” substitute “a person who enlists in the Royal Navy and has not previously so enlisted, or whose only previous such enlistment was determined to be invalid by an approving officer under regulations made under section 328 of the Armed Forces Act 2006 (c. 52),”.

(3) In paragraph (2), for “entered service with” substitute “enlisted in”.

(4) In paragraph (3), for “paragraph (4)” substitute “regulations made under section 331 of the Armed Forces Act 2006”.

(5) Omit paragraph (4).

(6) In paragraph (5), for “either on leave or for an unauthorised purpose” substitute “on leave”.

7.—(1) Regulation 8 of the RN Regulations (continuance in service) is amended as follows.

(2) In paragraph (1)—

- (a) for “entered in the Royal Navy” substitute “enlisted in the Royal Navy”;
- (b) for “the term for which he is entered” substitute “the term for which he is enlisted or entered (as the case may be)”.

(3) In paragraph (4), for “entered” substitute “enlisted”.

8. After regulation 8 of the RN Regulations insert—

“8A Re-entry

A person serving in the reserve by virtue of these Regulations or any previous enactment may apply to the competent naval authority to re-enter service in the Royal Navy and—

- (a) be treated as if he had been serving in the Royal Navy while he was serving in the reserve,
- (b) serve in the Royal Navy for the remainder of the period for which he would have been liable to serve in the reserve if he had not re-entered service in the Royal Navy, or

(c) serve in the Royal Navy for a specified part of that remainder, and in the reserve for the rest of that remainder,
and if the application is granted he shall re-enter service in the Royal Navy on the terms specified in the application.”

9. Omit Schedule 1 to the RN Regulations (competent naval authorities).

The RM Regulations

10. In regulation 2(2) of the RM Regulations (interpretation)—

(a) omit the definition of “commanding officer”; and

(b) for the definition of “competent authority” substitute—

““the competent authority” means the Defence Council, the Admiralty Board, the Naval Secretary or any person authorised by him;”.

11.—(1) Regulation 3 of the RM Regulations (duration of terms of enlistment) is amended as follows.

(2) In each of paragraphs (1) and (2), for “attestation” substitute “enlistment”.

(3) Omit paragraph (3).

12. For regulation 6 of the RM Regulations substitute—

“6. Service in the reserve

A person transferred to the reserve in consequence of the exercise of a right conferred by regulation 4 shall serve in the reserve for a period beginning on the date of his transfer and ending—

(a) 6 years later, or

(b) on the date on which his service in the Royal Marines would have ended if he had not exercised the right to transfer to the reserve,

whichever is the sooner, or for such shorter period as the competent authority may approve.”

13.—(1) Regulation 7 of the RM Regulations (right of recruit to claim discharge) is amended as follows.

(2) In paragraph (1), after “has not previously so enlisted” insert “, or whose only previous such enlistment was determined to be invalid by an approving officer under regulations made under section 328 of the Armed Forces Act 2006 (c. 52),”.

(3) In paragraph (2), for “attestation” substitute “enlistment”.

(4) In paragraph (3), for “paragraph (4)” substitute “regulations made under section 331 of the Armed Forces Act 2006”.

(5) Omit paragraph (4).

(6) In paragraph (5), for “either on leave or for an unauthorised purpose” substitute “on leave”.

14. After regulation 8 of the RM Regulations insert—

“8A Re-entry

A person serving in the reserve by virtue of these Regulations or any previous enactment may apply to the competent authority to re-enter service in the Royal Marines and—

(a) be treated as if he had been serving in the Royal Marines while he was serving in the reserve,

- (b) serve in the Royal Marines for the remainder of the period for which he would have been liable to serve in the reserve if he had not re-entered service in the Royal Marines, or
- (c) serve in the Royal Marines for a specified part of that remainder, and in the reserve for the rest of that remainder,

and if the application is granted he shall re-enter service in the Royal Marines on the terms specified in the application.”

15. Omit Schedule 1 to the RM Regulations (competent authorities).

The Army Regulations

16. In regulation 2(3) of the Army Regulations (interpretation)—

- (a) omit the definition of “the 1955 Act”;
- (b) for the definition of “competent military authority” substitute—
““the competent military authority” means the Defence Council, the Army Board, the Director of Manning (Army) or any person authorised by him;”; and
- (c) for the definition of “recruit” substitute—
““recruit” means a person enlisted in the regular army who has not previously been so enlisted, or whose only previous such enlistment was determined to be invalid by an approving officer under regulations made under section 328 of the Armed Forces Act 2006 (c. 52);”.

17. In regulation 7(9) of the Army Regulations (local service engagement), in the definition of “recruiting officer” for “section 1 of the 1955 Act” substitute “regulations made under section 328 of the Armed Forces Act 2006”.

18.—(1) Regulation 9 of the Army Regulations (right of recruit to determine service) is amended as follows.

(2) In paragraph (1), after “this regulation” insert “and to regulations made under section 331 of the Armed Forces Act 2006”.

(3) Omit paragraph (4).

19.—(1) Regulation 14 of the Army Regulations (re-entry into army service) is amended as follows.

(2) Omit “or by virtue of having enlisted for a term partly of army service and partly of service in the reserve.”.

(3) In paragraph (a), for “Part 1 of the 1955 Act” substitute “regulations made under Part 14 of the Armed Forces Act 2006”.

20. After regulation 16 of the Army Regulations insert—

“16A Transfer between corps

(1) This regulation applies to a person if he is—

- (a) a member of the regular army of or below the rank of warrant officer; or
- (b) a member of the Army Reserve of or below the rank of warrant officer who is in permanent service on call-out under any provision of the Reserve Forces Act 1980 (c. 9) or the Reserve Forces Act 1996 (c. 14).

(2) A person to whom this regulation applies may be transferred without his consent from the corps to which he was enlisted, assigned or transferred to another corps if the competent military authority so decides—

- (a) having regard to a reorganisation of the whole or of a part of the regular army or of the Army Reserve; or

(b) when a call-out order under section 52 or 54 of the Reserve Forces Act 1996 is in force authorising the call out for permanent service of members of the reserve forces.

(3) Where a person is transferred between corps under paragraph (2), the competent military authority may vary his terms and conditions of service so as to correspond, or more closely to correspond, with those of persons enlisted in the corps to which he is transferred.

21. Omit regulation 17 of the Army Regulations (competent military authorities).

22. In regulation 19(1) of the Army Regulations (savings), for “terms” substitute “term”.

The RAF Regulations

23.—(1) Regulation 2 of the RAF Regulations (interpretation) is amended as follows.

(2) In paragraph (1)—

(a) omit the definition of “the Act”;

(b) in the definition of “air force service”, for “regular air force” substitute “Royal Air Force”;

(c) after that definition, insert—

““the competent air force authority” means the Defence Council, the Air Force Board, the Air Secretary or any person authorised by him;”;

(d) for the definition of “recruit” substitute—

““recruit” means a person enlisted in the Royal Air Force who has not previously been so enlisted, or whose only previous such enlistment was determined to be invalid by an approving officer under regulations made under section 328 of the Armed Forces Act 2006 (c. 52);”;

(e) in the definition of “the relevant date”, for “attestation” substitute “enlistment”.

(3) Omit paragraph (2).

24.—(1) Regulation 3 of the RAF Regulations (duration of terms of enlistment) is amended as follows.

(2) In paragraph (1), for “attestation” substitute “enlistment”.

(3) Omit paragraph (3).

25.—(1) Regulation 8 of the RAF Regulations (right of recruits to determine service) is amended as follows.

(2) In paragraph (1), after “this regulation” insert “and to regulations made under section 331 of the Armed Forces Act 2006”.

(3) In paragraph (2)—

(a) omit “excluding leave”; and

(b) for “attestation” substitute “enlistment”.

(4) After paragraph (2) insert—

“(2A) In calculating any period of time referred to in this regulation, no account shall be taken of any day during which the recruit was absent on leave either for the whole or part of the day.”

(5) Omit paragraph (3).

26. In regulation 12(3) of the RAF Regulations (restrictions on the exercise of certain rights), for “Part I of the Act” substitute “Part 1 of the Air Force Act 1955 (c. 19)”.

27. Omit regulation 17 of, and Schedule 1 to, the RAF Regulations (competent air force authorities).

28. In paragraph 1(c) of Schedule 2 to the RAF Regulations (transitional provisions in respect of women enlisted before 1st April 1986), for the paragraph added by that sub-paragraph to regulation 4 of those Regulations substitute—

“(4) Where a woman in exercise of a right conferred by this regulation serves a notice under regulation 10 and such notice expires at a time when a call-out order under section 52 of the Reserve Forces Act 1996 (c. 14) is in force authorising the call out for permanent service of members of the reserve forces, the woman’s service shall not be determined so long as such a call-out order is in force.”

Transitional provisions

29. The Schedule shall have effect.

31st March 2009

Kevan Jones
Bill Jeffrey
Members of the Defence Council
Ministry of Defence

SCHEDULE

Regulation 29

TRANSITIONAL PROVISIONS

Interpretation

1. In this Schedule, “commencement” means the date on which these Regulations come into force.

The RN Regulations

2. The RN Regulations (other than regulation 3) shall apply, as amended by these Regulations, to the term of service of a person entered in the Royal Navy as a rating before commencement; but this is subject to regulation 10 of the RN Regulations and paragraphs 3 to 5 below.

3. In relation to a person transferred to the reserve before commencement in consequence of the exercise of a right conferred by regulation 4 of the RN Regulations, regulation 6 of those Regulations shall apply without the substitution made by these Regulations.

4.—(1) For the purposes of regulation 7 of the RN Regulations, a person who entered the Royal Navy before commencement and had not previously so entered shall be treated as if he had enlisted in the Royal Navy and had not previously so enlisted; and, in relation to such a person, the reference in paragraph (2) of that regulation to the date he enlisted in the Royal Navy is to be read as a reference to the date he entered the Royal Navy.

(2) For the purposes of that regulation, a person who enlists in the Royal Navy, and had entered the Royal Navy before commencement, shall be treated as having previously enlisted in the Royal Navy.

(3) In calculating any period of time referred to in that regulation in relation to a person, no account shall be taken of any day before commencement during the whole or part of which the person was absent, whether on leave or for an unauthorised purpose.

5. For the purposes of regulation 8 of the RN Regulations, a person entered in the Royal Navy under regulation 3 of those Regulations before commencement shall be treated as having been enlisted in the Royal Navy for the term of service for which he was entered.

The RM Regulations

6. In relation to a person transferred to the reserve before commencement in consequence of the exercise of a right conferred by regulation 4 of the RM Regulations, regulation 6 of those Regulations shall apply without the substitution made by these Regulations.

7.—(1) For the purposes of regulation 7(1) of the RM Regulations, a person's previous enlistment in the Royal Marines shall be treated as having been determined to be invalid by an approving officer under regulations made under section 328 of the Armed Forces Act 2006 if he was discharged by the competent authority, in accordance with regulations made under Part 1 of the Army Act 1955 (c. 18), as not finally approved for service.

(2) In relation to a person enlisted in the Royal Marines before commencement, regulation 7(3) of the RM Regulations shall apply as if the words "Subject to regulations made under section 331 of the Armed Forces Act 2006" were omitted; but, if a notice given by such a person under that regulation expires at a time when a call-out order under section 52 of the Reserve Forces Act 1996 (c. 14) is in force authorising the call out for permanent service of members of the reserve forces, he shall not be entitled to be discharged so long as the order is in force.

(3) In calculating any period of time referred to in regulation 7 of the RM Regulations in relation to a person, no account shall be taken of any day before commencement during the whole or part of which the person was absent, whether on leave or for an unauthorised purpose.

The Army Regulations

8. For the purposes of the definition of "recruit" in regulation 2(3) of the Army Regulations, a person's previous enlistment in the regular army shall be treated as having been determined to be invalid by an approving officer under regulations made under section 328 of the Armed Forces Act 2006 if he was discharged by the competent military authority, in accordance with regulations made under Part 1 of the Army Act 1955, as not finally approved for service.

9. In relation to a person enlisted in the regular army before commencement, regulation 9(1) of the Army Regulations shall apply without the amendment made by these Regulations; but, if a notice given by such a person under that regulation expires at a time when a call-out order under section 52 of the Reserve Forces Act 1996 is in force authorising the call out for permanent service of members of the reserve forces, he shall not be entitled to be discharged so long as the order is in force.

The RAF Regulations

10. For the purposes of the definition of "recruit" in regulation 2(1) of the RAF Regulations, a person's previous enlistment in the Royal Air Force shall be treated as having been determined to be invalid by an approving officer under regulations made under section 328 of the Armed Forces Act 2006 if he was discharged by the competent air force authority, in accordance with regulations made under Part 1 of the Air Force Act 1955 (c. 19), as not finally approved for service.

11. In relation to a person enlisted in the Royal Air Force before commencement, regulation 8(1) of the RAF Regulations shall apply without the amendment made by these Regulations; but, if a notice given by such a person under that regulation expires at a time when a call-out order under section 52 of the Reserve Forces Act 1996 is in force authorising the call out for permanent service of members of the reserve forces, he shall not be entitled to be discharged so long as the order is in force.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Terms of Service Regulations for the Royal Navy, the Royal Marines, the regular army and the Royal Air Force. Some of the amendments are consequential on changes made by the Armed Forces Act 2006, such as the fact that in future persons will be “enlisted” in the Royal Navy rather than “entered”. Others remove provisions which are obsolete, or correct drafting errors. The remainder make substantive changes, and these are noted below.

Regulations 3(3)(b), 10(b), 16(b) and 23(2)(c) simplify the definition of the competent authority for each Service.

Regulations 5 and 12 amend the regulations for the Royal Navy and the Royal Marines so as to impose a maximum of 6 years on the period that a person must serve in the reserve after exercising his right to be transferred.

Regulations 6(6) and 13(6) amend the regulations for the Royal Navy and the Royal Marines so that, for the purpose of calculating the “window” during which a recruit is entitled to claim discharge as of right, a period of absence on leave is disregarded but a period of unauthorised absence is not. Regulation 25 amends the RAF regulations on the same point, so that a period of absence on leave is disregarded for the purpose of calculating the date on which the window closes as well as the date on which it opens.

Regulations 6, 13, 18 and 25 also amend the regulations for each Service so that, where a recruit has claimed discharge as of right, his discharge may be postponed in the same circumstances as those in which a person’s discharge (or transfer to the reserve) on any other ground may be postponed in accordance with regulations made under section 331 of the 2006 Act.

Regulations 8 and 14 amend the regulations for the Royal Navy and the Royal Marines so as to provide for a person serving in the reserve to re-enter the Royal Navy or the Royal Marines, on application to the competent authority.

Regulation 20 inserts a new provision into the regulations for the regular army, enabling a person to be transferred to a different corps without his consent.

The Schedule makes transitional provision.

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