

**EXPLANATORY MEMORANDUM TO**  
**THE ARMED FORCES (TERMS OF SERVICE) (AMENDMENT) REGULATIONS**  
**2011**

**2011 No. 1523**

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

**2. Purpose of the instrument**

This instrument amends the Terms of Service Regulations for the Armed Forces. The amendments made under this instrument create a new right for Service personnel, under the age of 18 years, to leave the Armed Forces. In some cases the instrument also alters the arrangements governing transfer to the reserve.

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

None

**4. Legislative Context**

4.1 There are currently 4 separate statutory instruments pertaining to the terms and conditions of service in the Armed Forces. This is because the needs of each Service are different and thus, bespoke instruments are required for the Royal Navy (RN), Royal Marines (RM), Army and Royal Air Force (RAF).

4.1 All 4 statutory instruments were made under section 2 of the Armed Forces Act 1966 but following repeal of the section 2 of the 1966 Act, the instruments now have effect as if made under section 329 of the Armed Forces Act 2006 (AFA 06). Amendments to the 4 instruments must now be made through Regulations made under section 329 AFA 06. This instrument amends, to varying degrees, all 4 instruments.

**5. Territorial Extent and Application**

This instrument extends to the United Kingdom, the Isle of Man and British overseas territories and applies to persons subject to Service law wherever they are in the world.

**6. European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

**7. Policy background**

7.1 Amendments made by this instrument ensure that persons, under the age of 18, will have a right to leave the Service. Under the existing arrangements a recruit may leave the Service as of right within a set period of enlistment. For those recruits under 18, the right to leave only exists for the first 6 months after enlistment. It is considered

that personnel who are under the age of 18 should have a right to leave even if they have served for more than 6 months. In order to ensure, that a service person does not make a hasty decision, the under 18 will normally be required to serve for a period of 3 months after giving their notice to the commanding officer. This 3 month period, may be shortened if the under 18 and their commanding officer agree and this may occur for example, if there is clearly no benefit in requiring the under 18 to remain in the Armed Forces for the full 3 months. The relevant provisions in this amending instrument are regulations 5, 8, 9 and 11.

7.2 This instrument also ensures that certain personnel in the RN, RM and regular Army, who currently have a right to transfer to the reserve after serving a notice period of at least 12 months, may in certain circumstances be transferred sooner. It is considered that the current minimum 12 month notice period is unnecessary in circumstances where the Service does not require the person to continue to serve this long. Amendments made by this instrument will provide more flexibility because under the new arrangement, the period that must be served (after the individual notifies the commanding officer of their desire to leave) may be as short as 6 months. To ensure that the Service person will have sufficient time to prepare for their transfer, the transfer period will not be reduced to less than 12 months unless (within a month of notifying their commanding officer of their desire to leave) the person is informed of their transfer date. The relevant provisions in this amending instrument are regulations 3, 6 and 10. The RAF does not consider that a change to this effect is required to its Terms and Conditions of Service Regulations.

7.3 Finally through this instrument, in any circumstances and at any time, RN and RM personnel will be able to apply to their commanding officer to transfer to the reserve. If their application is approved by the relevant authority, the person will be transferred. Introducing a provision to this effect will assist in controlling manning levels and will also give personnel, who otherwise would not be entitled to transfer, an opportunity to do so. The relevant provisions in this amending instrument are regulations 4 and 7. Corresponding provisions already exist in the Regulations relating to Terms and Conditions of Service for the Army and the RAF.

7.4 The effect of the changes made by this instrument can only be achieved through legislation. This is the second instrument made under section 329 that amends the 4 Terms and Conditions of Service Regulations for each service. It is imperative that each Service retains their own bespoke Terms and Conditions. Accordingly, there would be no benefit in producing a single consolidated instrument for the Armed Forces. Moreover, because the amendments made by this instrument are not significant, it is considered that the changes are best made by amendment rather than consolidation.

## **8. Consultation outcome**

DCDS Pers and Training has lead on the development of the policies connected to this instrument. Each Service has been consulted, made contributions and has confirmed their agreement to their effect.

## **9. Guidance**

Guidance on these amendments to Terms of Service will be issued promptly to the Services in a Defence Information Notice. Each Service will then amend their own

Queen's Regulations, administrative instructions and references so that those administering the new arrangements and all Service personnel are properly informed.

**10. Impact**

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

**11. Regulating small business**

The legislation does not apply to small business.

**12. Monitoring and review**

In order to ensure that combat efficiency is not adversely affected by the effect of the amendments made through this instrument, the Services will monitor the new arrangements. Additionally, the Armed Forces Act 2006 is subject to quinquennial review.

**13. Contact**

Contact James Longworth, Ministry of Defence, 020 7218 0377, or email [CLS-LegC@mod.uk](mailto:CLS-LegC@mod.uk) if you have any queries regarding this instrument.