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STATUTORY INSTRUMENTS

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**1998 No. 3086**

**DEFENCE**

**The Reserve Forces Act 1996 (Consequential Provisions etc.) Regulations 1998**

<i>Made</i>	- - - -	<i>10th December 1998</i>
<i>Laid before Parliament</i>		<i>10th December 1998</i>
<i>Coming into force</i>	- -	<i>1st January 1999</i>

The Secretary of State, in exercise of the powers conferred on him by section 130 of the Reserve Forces Act 1996(1), hereby makes the following regulations:—

*Introductory*

**Citation and commencement**

1.—(1) These Regulations may be cited as the Reserve Forces Act 1996 (Consequential Provisions etc.) Regulations 1998.

(2) These Regulations shall come into force on 1st January 1999.

**Interpretation**

2. In these Regulations—

“the 1955 Acts” means the Army Act 1955(2) and the Air Force Act 1955(3); and

“the 1957 Act” means the Naval Discipline Act 1957(4).

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(1) 1996 c. 14.  
(2) 1955 c. 18.  
(3) 1955 c. 19.  
(4) 1957 c. 53.

*Amendments in connection with special members of reserve forces*

**Fines for service offences**

**3.—**(1) In subsection (5) of section 71 of the 1955 Acts and subsection (6) of section 43 of the 1957 Act (fines for service offences) the words from “and for the purposes of this subsection” to the end of the subsection shall be omitted.

(2) After subsection (5) of section 71 of the 1955 Acts there shall be inserted—

“(5A) For the purposes of subsection (5) above, a day’s pay shall be taken to be—

- (a) subject to paragraph (b) below, the gross pay which is, or would apart from any forfeiture be, issuable to the offender in respect of the day on which the punishment is awarded;
- (b) if the offender is a special member of a reserve force, the gross pay which would have been issuable to him in respect of that day if he had been an ordinary member of that reserve force of the same rank.

(5B) In subsection (5A)(b) above “special member” and “ordinary member” have the same meaning as in the Reserve Forces Act 1996.”.

(3) After subsection (6) of section 43 of the 1957 Act there shall be inserted—

“(6A) For the purposes of subsection (6) above, a day’s pay shall be taken to be—

- (a) subject to paragraph (b) below, the gross pay which is, or would apart from any forfeiture be, issuable to the offender in respect of the day on which the punishment is awarded;
- (b) if the offender is a special member of a reserve force, the gross pay which would have been issuable to him in respect of that day if he had been an ordinary member of that reserve force of the same rank.

(6B) In subsection (6A)(b) above “special member” and “ordinary member” have the same meaning as in the Reserve Forces Act 1996.”.

(4) In section 76C of the 1955 Acts (punishments available on summary dealings) for subsection (9) there shall be substituted—

“(9) For the purposes of subsections (6) to (8) above, a day’s pay shall be taken to be—

- (a) subject to paragraph (b) below, the gross pay which is, or would apart from any forfeiture be, issuable to the offender in respect of the day on which the punishment is awarded;
- (b) if the offender is a special member of a reserve force, the gross pay which would have been issuable to him in respect of that day if he had been an ordinary member of that reserve force of the same rank.

(9A) In subsection (9)(b) above “special member” and “ordinary member” have the same meaning as in the Reserve Forces Act 1996.”.

**Summary fines for contempt**

**4.—**(1) In—

- (a) section 57(2)(a) of the 1955 Acts, and
- (b) section 38(3)(a) of the 1957 Act,

(limit on amount of fine where contempt of court-martial dealt with summarily, etc.), the words “(a day’s pay being taken for this purpose as the gross amount which is, or would apart from any

forfeiture be, issuable to the offender in respect of the day on which the order is made)” shall be omitted.

(2) After subsection (2A) of section 57 of the 1955 Acts there shall be inserted—

“(2B) For the purposes of subsection (2) above, a day’s pay shall be taken to be—

- (a) subject to paragraph (b) below, the gross pay which is, or would apart from any forfeiture be, issuable to the offender in respect of the day on which the order is made;
- (b) if the offender is a special member of a reserve force, the gross pay which would have been issuable to him in respect of that day if he had been an ordinary member of that reserve force of the same rank.

(2C) In subsection (2B)(b) above “special member” and “ordinary member” have the same meaning as in the Reserve Forces Act 1996.”.

(3) After subsection (3A) of section 38 of the 1957 Act there shall be inserted—

“(3B) For the purposes of subsection (3) above, a day’s pay shall be taken to be—

- (a) subject to paragraph (b) below, the gross pay which is, or would apart from any forfeiture be, issuable to the offender in respect of the day on which the order is made;
- (b) if the offender is a special member of a reserve force, the gross pay which would have been issuable to him in respect of that day if he had been an ordinary member of that reserve force of the same rank.

(3C) In subsection (3B)(b) above “special member” and “ordinary member” have the same meaning as in the Reserve Forces Act 1996.”.

### **Enforcement of financial penalties**

5.—(1) In section 133A of the 1955 Acts and section 128F of the 1957 Act (financial penalty enforcement orders), in subsection (2), after “applies to a person who” there shall be inserted “(a)” and at the end of that subsection there shall be inserted—

“; or

- (b) is subject to service law because he is a special member of a reserve force within the meaning of the Reserve Forces Act 1996.”.

### **Attachment of earnings etc.**

6.—(1) In section 24(2) of the Attachment of Earnings Act 1971<sup>(5)</sup> (amounts not to be treated as “earnings”), at the end of paragraph (b) there shall be inserted “other than pay or allowances payable by his employer to him as a special member of a reserve force (within the meaning of the Reserve Forces Act 1996)”.

(2) In section 73(3) of the Debtors (Scotland) Act 1987<sup>(6)</sup> (amounts not to be treated as earnings), at the end of paragraph (b) there shall be inserted “unless it is a sum consisting of pay or allowances payable by his employer to him as a special member of a reserve force (within the meaning of the Reserve Forces Act 1996)”.

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<sup>(5)</sup> 1971 c. 32.

<sup>(6)</sup> 1987 c. 18.

*Other consequential amendments*

**Meaning of “service property” in the 1955 Acts**

7. In section 225(1) of the Army Act 1955 and section 223(1) of the Air Force Act 1955 (interpretation), for the definition of “service property” there shall be substituted—

““service property” includes property belonging to an association established, or having effect as if established, under section 110 of the Reserve Forces Act 1996 or to the Navy, Army and Air Force Institutes.”.

**Postponement of discharge—QARNNS**

8.—(1) For paragraph 12 of Schedule 3 to the Armed Forces Act 1981(7) (which applies section 4 of the Armed Forces Act 1966(8) with modifications in relation to ratings of Queen Alexandra’s Royal Naval Nursing Service) there shall be substituted—

“12. Section 4 (postponement of discharge or transfer to the reserve) shall have effect in relation to ratings of Queen Alexandra’s Royal Naval Nursing Service as if it provided—

**Postponement of discharge—QARNNS.**

4.—(1) This section applies to a rating if, on the relevant date, a call-out order under section 52, 54 or 56 of the Reserve Forces Act 1996 is in force authorising the call out for permanent service of members of the Royal Fleet Reserve.

For the purposes of this section, “the relevant date”, in relation to a rating, means the date on which he would, apart from this section, be entitled to be discharged.

(2) A rating to whom this section applies may be retained in service in Queen Alexandra’s Royal Naval Nursing Service after the relevant date in accordance with this section for such period as the competent authority may order, and his service may be prolonged accordingly.

(3) A rating may not be retained in Queen Alexandra’s Royal Naval Nursing Service after the relevant date for longer than twelve months.

(4) A rating who is so retained is (if not discharged sooner) entitled to be discharged at the end of those twelve months.

(5) If, while a person is being retained in service in Queen Alexandra’s Royal Naval Nursing Service by virtue of this section, it appears to the competent authority that his service can be dispensed with, he shall be entitled to be discharged.

(6) Where, at the time at which under subsections (1) to (5) above a person is entitled to be discharged, a state of war exists between Her Majesty and a foreign power—

(a) he may, by declaration made before his commanding officer in a form prescribed by regulations of the Defence Council, agree to continue in service in Queen Alexandra’s Royal Naval Nursing Service while such a state of war exists, and

(b) if the competent authority approve, he may continue accordingly as if the period for which his term of service could be prolonged under subsections (1) to (5) above were a period continuing so long as a state of war exists;

but this is subject to subsection (7) below.

(7) If it is so specified in the declaration, he shall be entitled to be discharged at the end of three months' notice given by him to his commanding officer.”.

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(7) 1981 c. 55.

(8) 1966 c. 45.

(2) Paragraph (1) does not apply in relation to a rating of Queen Alexandra's Royal Naval Nursing Service who is in service immediately before 1st January 1999 unless—

- (a) he re-enters, re-engages or extends his service in Queen Alexandra's Royal Naval Nursing Service after that day, or
- (b) he has elected irrevocably in such manner as may be prescribed by orders or regulations under section 4 of the Reserve Forces Act 1996 to be a person to whom paragraph (1) shall apply.

### **Construction of references to persons called out on permanent service**

**9.**—(1) In section 225 of the Army Act 1955 and section 223 of the Air Force Act 1955, subsection (2) (which requires references in the Acts to persons being called out on permanent service to be construed by reference to certain provisions of the Reserve Forces Act 1980<sup>(9)</sup> now of effect for transitional cases only) shall cease to have effect.

(2) In section 3(3) of the Army Act 1955 (circumstances in which order for transfer between corps may be made otherwise than by a member of the Army Board), for “men of the reserve are called out on permanent service” there shall be substituted “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”.

(3) In section 15 of the 1955 Acts (right of warrant officer to discharge on reduction to ranks) for “men of the reserve are called out on permanent service” there shall be substituted “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”.

(4) In section 21(3) of the 1955 Acts (circumstances in which number of aliens serving may be altered) for “men of the reserve are called out on permanent service” there shall be substituted “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”.

(5) In section 167(2) of the Army Act 1955 (circumstances in which a vehicle may be requisitioned for purchase on behalf of the Crown) for “men of the army reserve are called out on permanent service” there shall be substituted “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 army reserve”.

(6) In section 167(2) of the Air Force Act 1955 (circumstances in which a vehicle may be requisitioned for purchase on behalf of the Crown) for “men of the air force reserve are called out on permanent service” there shall be substituted “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 air force reserve”.

### **Repeal of references to persons being called into actual service**

**10.**—(1) In paragraph 1(i) of Schedule 1 to the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951<sup>(10)</sup> (service relevant for the purposes of the Act) the words “or the calling into actual service” shall be omitted.

(2) In section 7A(1) of the Marine, &c., Broadcasting (Offences) Act 1967<sup>(11)</sup> (powers of enforcement in relation to marine offences) the words “or called into actual service” shall be omitted.

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<sup>(9)</sup> 1980 c. 9. The 1980 Act is restricted in its application by section 129(2) of the Reserve Forces Act 1996 and has been amended by the Reserve Forces Act 1996 (Transitional, Consequential and Saving Provisions) Regulations 1997 (S.I. 1997/306).

<sup>(10)</sup> 1951 c. 65.

<sup>(11)</sup> 1967 c. 41.

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(3) In section 1(1) of the Customs and Excise Management Act 1979<sup>(12)</sup> (interpretation) in the definition of “armed forces” the words “or called into actual service” shall be omitted.

(4) In section 20(1) of the Reserve Forces (Safeguard of Employment) Act 1985<sup>(13)</sup> (interpretation) the definition of “permanent service” shall be omitted.

(5) In section 127(1) of the Reserve Forces Act 1996 (interpretation) the definition of “permanent service” shall be omitted.

#### *Transitional provisions*

#### **Postponement of discharge or transfer to reserve: transitional cases**

**11.** The Schedule (postponement of discharge or transfer to the reserve: transitional cases) shall have effect.

#### **Minor correction**

**12.** In section 36(3)(b) of the Reserve Forces Act 1980<sup>(14)</sup>, the words “of the Reserve Forces Act 1996” shall be omitted.

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<sup>(12)</sup> 1979 c. 2.

<sup>(13)</sup> 1985 c. 17.

<sup>(14)</sup> Section 36 was substituted by regulation 19 of the Reserve Forces Act 1996 (Transitional, Consequential and Saving Provisions) Regulations 1997 (S.I. 1997/306).

## SCHEDULE

Regulation 11

### POSTPONEMENT OF DISCHARGE OR TRANSFER TO RESERVE: TRANSITIONAL CASES

#### *The regular forces (apart from the Royal Marines)*

1.—(1) Section 9 of the Army Act 1955 (postponement of discharge or transfer to reserve), in so far as it continues to have effect under paragraph 2 of Schedule 7 to the Reserve Forces Act 1996 without the amendments made by paragraph 1 of that Schedule, shall have effect in accordance with sub-paragraph (2).

(2) After subsection (7) there shall be inserted—

“(8) Subject to subsection (9) below, in this section references to men of the reserve being called out on permanent service are references to their being called out under an order made under—

- (a) section 52 of the Reserve Forces Act 1996 (call out in the event of a national emergency, great danger or an actual or apprehended attack on the United Kingdom, the Channel Islands or the Isle of Man), or
- (b) section 54 of the 1996 Act (call out because warlike operations are in preparation or in progress).

(9) In relation to a soldier who enlisted in the regular air force before 1st April 1967, references to men of the reserve being called out on permanent service include references to their being called out under an order under section 54 of the 1996 Act only if—

- (a) he re-engaged in the regular army on or after that date, or
- (b) he has made an irrevocable election to that effect in the manner prescribed by orders or regulations under section 4 of the Reserve Forces Act 1996 (or regulations having effect as if made under that section).

(10) In subsection (9) above “the regular army” means the regular forces apart from the Royal Marines”.

#### *The regular air force*

2.—(1) Section 9 of the Air Force Act 1955 (postponement of discharge or transfer to reserve), in so far as it continues to have effect under paragraph 6 of Schedule 7 to the Reserve Forces Act 1996 without the amendments made by paragraph 5 of that Schedule, shall have effect in accordance with sub-paragraph (2).

(2) After subsection (7) there shall be inserted—

“(8) Subject to subsection (9) below, in this section references to men of the reserve being called out on permanent service are references to their being called out under an order made under—

- (a) section 52 of the Reserve Forces Act 1996 (call out in the event of a national emergency, great danger or an actual or apprehended attack on the United Kingdom, the Channel Islands or the Isle of Man), or
- (b) section 54 of the 1996 Act (call out because warlike operations are in preparation or in progress).

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(9) In relation to an airman who enlisted in the regular air force before 1st April 1967, references to men of the reserve being called out on permanent service include references to their being called out under an order under section 54 of the 1996 Act only if—

- (a) he re-engaged in the regular air force on or after that date, or
- (b) he has made an irrevocable election to that effect in the manner prescribed by orders or regulations under section 4 of the Reserve Forces Act 1996 (or regulations having effect as if made under that section).”.

#### *The Royal Navy*

**3.—**(1) Sections 4 and 5 of the Armed Forces Act 1966, in so far as they continue to have effect under paragraph 8 of Schedule 7 to the Reserve Forces Act 1996 without the amendments made by paragraph 7 of that Schedule, shall have effect in accordance with sub-paragraphs (2) and (3).

(2) In sections 4(1)(c) and (4) and 5(1), for “called into actual service” there shall be substituted “called out on permanent service”.

(3) In section 4, for subsection (9) there shall be substituted—

“(9) References in this section to men of the Royal Naval Reserve being called out on permanent service are references to their being called out under an order made under section 52 of the Reserve Forces Act 1996 (call out in the event of a national emergency, great danger or an actual or apprehended attack on the United Kingdom, the Channel Islands or the Isle of Man).”.

#### *The Royal Marines*

**4.—**(1) Paragraphs 4A and 4B of Schedule 7 to the Army Act 1955, in so far as they continue to have effect under paragraph 4 of Schedule 7 to the Reserve Forces Act 1996 without the amendments made by paragraph 3 of that Schedule, shall have effect in accordance with sub-paragraphs (2) and (3).

(2) In paragraphs 4A(1)(c) and (4) and 4B(1), for “called into actual service” there shall be substituted “called out on permanent service”.

(3) In paragraph 4A, for sub-paragraph (8) there shall be substituted—

“(8) References in this paragraph to men of the Royal Fleet Reserve being called out on permanent service are references to their being called out under an order made under section 52 of the Reserve Forces Act 1996 (call out in the event of a national emergency, great danger or an actual or apprehended attack on the United Kingdom, the Channel Islands or the Isle of Man).”.

#### *QARNNS*

**5.—**(1) Sub-paragraph (2) applies in relation to any rating of Queen Alexandra’s Royal Naval Nursing Service who is in service immediately before 1st January 1999 unless—

- (a) he re-enters, re-engages or extends his service in Queen Alexandra’s Royal Naval Nursing Service after that day, or
- (b) he elects irrevocably in such manner as may be prescribed by orders or regulations under section 4 of the Reserve Forces Act 1996 to be a person to whom regulation 8(1) shall apply.



(2) For paragraph 12 of Schedule 3 to the Armed Forces Act 1981 (which applies section 4 of the Armed Forces Act 1966 with modifications in relation to ratings of Queen Alexandra's Royal Naval Nursing Service) there shall be substituted—

“12. Section 4 of the Armed Forces Act 1966 (postponement of discharge or transfer to the reserve) shall have effect in relation to ratings of Queen Alexandra's Royal Naval Nursing Service as if it provided—

**Postponement of discharge—QARNNS.**

4.—(1) Where at the time at which apart from this section a rating would be entitled to be discharged—

- (a) a state of war exists between Her Majesty and any foreign power, or
- (b) warlike operations are in preparation or in progress, or
- (c) men of the reserve are called out on permanent service,

he may be retained in service in Queen Alexandra's Royal Naval Nursing Service for such period as is hereinafter mentioned, and his service may be prolonged accordingly.

An exercise, by virtue of paragraph (b) above, of the power conferred by this subsection shall be reported to Parliament forthwith.

(2) No person shall be retained in service in Queen Alexandra's Royal Naval Nursing Service by virtue of this section later than the end of twelve months after the date on which, apart from this section, he would be entitled to be discharged.

(3) Subject to subsection (2) above, any person who, apart from this section, would be entitled to be discharged may be retained in service in Queen Alexandra's Royal Naval Nursing Service for such period as the competent authority may order.

(4) If, while a person is being retained in service in Queen Alexandra's Royal Naval Nursing Service by virtue of this section it appears to the competent authority that his service can be dispensed with, he shall be entitled to be discharged.

(5) Where, at the time at which under subsections (1) to (4) above a person is entitled to be discharged, a state of war exists between Her Majesty and any foreign power—

- (a) he may, by declaration made before his commanding officer in a form prescribed by regulations of the Defence Council, agree to continue in service in Queen Alexandra's Royal Naval Nursing Service while such a state of war exists, and
- (b) if the competent authority approve, he may continue accordingly as if the period for which his term of service could be prolonged under subsections (1) to (4) above were a period continuing so long as a state of war exists;

but this is subject to subsection (6) below.

(6) If it is so specified in the declaration, he shall be entitled to be discharged at the end of three months' notice given by him to his commanding officer.

(7) The reference in subsection (1) above to men of the reserve being called out on permanent service is a reference to their being called out under an order made under section 52 of the Reserve Forces Act 1996 (call out in the event of a national emergency, great danger or an actual or apprehended attack on the United Kingdom, the Channel Islands or the Isle of Man).”.

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*Postponement of discharge of men of the Army Reserve*

6.—(1) In section 19 of the Reserve Forces Act 1980, for subsection (3) (application to reservists of sections 9 and 13 of the Army Act 1955, so far as relating to discharge) there shall be substituted—

“(3) Section 19A below shall apply to men of the Army Reserve called out for permanent service.

(4) Section 13 of the Army Act 1955 so far as it relates to discharge shall apply to men of the Army Reserve called out for permanent service as it applies to soldiers of the regular forces.

(5) Nothing in subsection (2) above shall prejudice the operation of subsections (3) and (4) above.”.

(2) After section 19 of the 1980 Act there shall be inserted—

**“Postponement of discharge of members of Army Reserve during call out.**

**19A.—**(1) Where a man of the Army Reserve is called out on permanent service at a time when he would apart from this section be entitled to be discharged he may be retained in service for such period as is mentioned below, and his service may be prolonged accordingly.

(2) No person shall be retained in service by virtue of this section later than the end of twelve months after the date on which apart from this section he would be entitled to be discharged.

(3) Subject to subsection (2) above, a person who apart from this section would be entitled to be discharged may be retained in service for such period as the competent military authority may order.

(4) If while a man of the Army Reserve is being retained in service by virtue of this section it appears to the competent military authority that his services can be dispensed with, he is entitled to be discharged.

(5) Where, at the time at which under subsections (1) to (4) above a man of the Army Reserve is entitled to be discharged, a state of war exists between Her Majesty and a foreign power—

- (a) he may, by declaration made in the prescribed form before his commanding officer, agree to continue in service while such a state of war exists, and
- (b) if the competent military authority approve, he may continue accordingly as if the period for which his term of service could be prolonged under subsections (1) to (4) above were a period continuing so long as a state of war exists;

but this is subject to subsection (6) below.

(6) If it is so specified in the declaration, he is entitled to be discharged at the end of three months' notice given by him to his commanding officer.

(7) In subsections (3) to (5) above “the competent military authority” and “prescribed” have the same meaning as in Part I of the Army Act 1955.

(8) Subject to subsection (9) below, in subsection (1) above the reference to a man of the Army Reserve being called out on permanent service is a reference to his being called out under an order made under—

- (a) section 52 of the Reserve Forces Act 1996 (call out in the event of a national emergency, great danger or an actual or apprehended attack on the United Kingdom, the Channel Islands or the Isle of Man), or
- (b) section 54 of the 1996 Act (call out because warlike operations are in preparation or in progress).

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(9) In relation to a man of the Army Reserve who enlisted in the Army Reserve before 1st April 1967, the reference to a man of the Army Reserve being called out on permanent service includes a reference to his being called out under an order under section 54 of the 1996 Act only if—

- (a) he re-engaged in the Army Reserve on or after that date, or
- (b) he has made an irrevocable election to that effect in the prescribed manner.”.

*Postponement of discharge of men of the Air Force Reserve*

7.—(1) In section 21 of the Reserve Forces Act 1980, for subsection (3) (application to reservists of sections 9 and 13 of the Air Force Act 1955, so far as relating to discharge) there shall be substituted—

“(3) Section 21A below shall apply to men of the Air Force Reserve called out for permanent service.

(4) Section 13 of the Air Force Act 1955 so far as it relates to discharge shall apply to men of the Air Force Reserve called out for permanent service as it applies to airmen of the regular air force.

(5) Nothing in subsection (2) above shall prejudice the operation of subsections (3) and (4) above.”.

(2) After section 21 of the 1980 Act there shall be inserted—

**“Postponement of discharge of members of Air Force Reserve during call out.**

**21A.—**(1) Where a man of the Air Force Reserve is called out on permanent service at a time when he would apart from this section be entitled to be discharged he may be retained in service for such period as is mentioned below, and his service may be prolonged accordingly.

(2) No person shall be retained in service by virtue of this section later than the end of twelve months after the date on which apart from this section he would be entitled to be discharged.

(3) Subject to subsection (2) above, a person who apart from this section would be entitled to be discharged may be retained in service for such period as the competent air force authority may order.

(4) If while a man of the Air Force Reserve is being retained in service by virtue of this section it appears to the competent air force authority that his services can be dispensed with, he is entitled to be discharged.

(5) Where, at the time at which under subsections (1) to (4) above a man of the Air Force Reserve is entitled to be discharged, a state of war exists between Her Majesty and a foreign power—

- (a) he may, by declaration made in the prescribed form before his commanding officer, agree to continue in service while such a state of war exists, and
- (b) if the competent air force authority approve, he may continue accordingly as if the period for which his term of service could be prolonged under subsections (1) to (4) above were a period continuing so long as a state of war exists;

but this is subject to subsection (6) below.

(6) If it is so specified in the declaration, he is entitled to be discharged at the end of three months' notice given by him to his commanding officer.

(7) In subsections (3) to (5) above “the competent air force authority” and “prescribed” have the same meaning as in Part I of the Air Force Act 1955.

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(8) Subject to subsection (9) below, in subsection (1) above the reference to a man of the Air Force Reserve being called out on permanent service is a reference to his being called out under an order made under—

- (a) section 52 of the Reserve Forces Act 1996 (call out in the event of a national emergency, great danger or an actual or apprehended attack on the United Kingdom, the Channel Islands or the Isle of Man), or
- (b) section 54 of the 1996 Act (call out because warlike operations are in preparation or in progress).

(9) In relation to a man of the Air Force Reserve who enlisted in the Air Force Reserve before 1st April 1967, the reference to a man of the Air Force Reserve being called out on permanent service includes a reference to his being called out under an order under section 54 of the 1996 Act only if—

- (a) he re-engaged in the Air Force Reserve on or after that date, or
- (b) he has made an irrevocable election to that effect in the prescribed manner.”.

#### *Repeals and revocations*

8.—(1) In the Reserve Forces Act 1980—

- (a) section 83 (postponement of discharge or transfer to reserve), and
- (b) in section 156(1), the definition of “permanent service”,

shall be omitted.

(2) In the Reserve Forces Act 1996 (Transitional, Consequential and Saving Provisions) Regulations 1997, regulations 6 and 8 shall be revoked.

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## **EXPLANATORY NOTE**

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

### *General*

These Regulations deal with several different topics arising in connection with the Reserve Forces Act 1996:

(1) Consequential amendments in connection with Part V of the 1996 Act (which introduced a new category of reservists, special members of reserve forces—otherwise known as “sponsored reservists”).

(2) A consequential amendment in connection with Part XI of the 1996 Act (which is about reserve associations).

(3) A consequential amendment to make provision in relation to members of Queen Alexandra’s Royal Naval Nursing Service (“QARNNS”) corresponding to that made for members of the Royal Navy by Schedule 7 to the 1996 Act (which is about postponement of discharge and transfer to the reserves).

(4) Consequential amendments in connection with provisions in the Army Act 1955 and the Air Force Act 1955 for the construction of references to persons called out on permanent service. These provisions are in terms of the Reserve Forces Act 1980, which has been superseded, except for transitional cases, by the 1996 Act.

(5) The repeal of references to persons being called into actual service.

(6) Transitional provisions relating to postponement of discharge or transfer to the reserve.

(7) A minor correction of the Reserve Forces Act 1980.

#### *In more detail*

(1) The need for the various amendments about sponsored reservists arises from the fact that although called out (and therefore subject to service discipline) they may continue to receive pay from a civilian employer. They may not receive any service pay, or if they do it is likely to be at a different rate from an equivalent ordinary member of the reserves.

The fines that may be imposed for service offences under the Army Act 1955, the Air Force Act 1955 (“the 1955 Acts”) and the Naval Discipline Act 1957 (“the 1957 Act”) are limited to the amount of the offender’s pay for 28 days (or 56 days if the offence is committed on active service and is not dealt with summarily under the 1955 Acts). *Regulation 3* amends the provisions dealing with this limit so as to ensure equal treatment of sponsored reservists and ordinary reservists. The same point in substance arises in relation to the fines that can be imposed on the spot by a court-martial for contempt, and it is dealt with in the same way by *Regulation 4*.

Financial penalties against offenders who are receiving service pay can be enforced by deductions from their pay. Financial penalty enforcement orders enable financial penalties to be enforced against certain types of person who are not receiving service pay—servicemen who have left the services and civilians. *Regulation 5* extends the categories of person against whom financial penalty enforcement orders can be used to include sponsored reservists. It thus provides a means of enforcing financial penalties for offences against service law committed by sponsored reservists who are in service but are not receiving service pay from which payment can be deducted.

The Attachment of Earnings Act 1971 and the Debtors (Scotland) Act 1987 enable enforcement of sums due (such as maintenance for spouses and dependants) by deduction from pay. Members of the services are exempted from these provisions because such deductions if needed can be made under legislation relating to the services. *Regulation 6* ensures that sponsored reservists come within the reach of these Acts.

(2) *Regulation 7* substitutes a new definition of “service property” in the interpretation sections of the 1955 Acts which refers to reserve associations under the 1996 Act. The definitions being replaced referred to associations established under an Act of 1953—joint associations, territorial army associations and auxiliary air force associations. The 1953 Act was consolidated in the Reserve Forces Act 1980, which (as mentioned above) was superseded, except for transitional purposes, by the 1996 Act.

(3) Schedule 7 to the 1996 Act amended various enactments dealing with the circumstances in which the discharge or transfer to the reserve of members of the armed forces can be postponed. The amendments provided for this to be possible when a call-out order is in force under section 52, 54 or 56 of the 1996 Act. These amendments do not apply to those who enlisted etc. before the amendments came into force, except in certain limited circumstances (for example that the person concerned agrees to be subject to the new law). The provisions amended by Schedule 7 are section 9 of the 1955 Acts (dealing with the army and air force), Schedule 7 to the Army Act 1955 (dealing with the Royal Marines) and section 4 of the Armed Forces Act 1966 (dealing with the Royal Navy).

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Section 4 of the Armed Forces Act 1966 is applied in relation to QARNNS with modifications by paragraph 12 of Schedule 3 to the Armed Forces Act 1981. The modifications no longer work because of the amendments made to section 4 by Schedule 7 to the 1996 Act.

*Regulation 8* amends Schedule 3 to the 1981 Act so that the effect of Schedule 7 to the 1996 Act is carried through for members of QARNNS. It contains the same sort of protection for transitional cases as is provided by the main provisions in Schedule 7 to the 1996 Act.

(4) *Regulation 9* amends various references in the 1955 Acts to persons being “called out on permanent service”.

These references to persons called out on permanent service have to be read in the light of section 225(2) of the Army Act 1955 and section 223(2) of the Air Force Act 1955. Section 225(2) and section 223(2) refer to provisions of the Reserve Forces Act 1980 which have effect for transitional purposes only.

*Regulation 9* repeals section 225(2) and section 223(2) and amends the remaining provisions in which references to persons being called out on permanent service occur so that they refer to a call-out order under the relevant provision of the 1996 Act (section 52) being in force. The approach of referring to an order being in force, instead of persons being called out, follows that taken in amendments of section 9 of the 1955 Acts made by the 1996 Act: section 9 after its amendment by the 1996 Act refers to a call-out order under section 52, 54 or 56 of the 1996 Act being in force.

(5) *Regulation 10* repeals references in various enactments to persons being called into actual service. The Reserve Forces Act 1996 does not contain any provisions enabling persons to be called into actual service and with the passage of the 1996 Act these references have become obsolete.

(6) *Regulation 11 and the Schedule* make transitional provision in connection with postponement of discharge or transfer to the reserve.

The most complicated points dealt with in this Schedule concern section 9 of the 1955 Acts.

The 1996 Act amended section 9 of the 1955 Acts, but also provided that section 9 was to continue to have effect without the amendments in certain transitional cases. Sections 225(2) and 223(2) of the 1955 Acts are not needed for the amended version of section 9 and are therefore repealed by regulation 9 (see above). But section 9 has effect without the amendments made by the 1996 Act for transitional cases. Sections 225(2) and 223(2) are therefore at present capable of having some effect in relation to this old version of section 9.

Clearly, the effect of sections 225(2) and 223(2) ought to be expressly preserved, despite their repeal by regulation 9, in relation to those to whom the old version of section 9 applies. But this is more complicated than it looks, for three main reasons.

First, sections 225(2) and 223(2) are subject to section 83 of the 1980 Act. One aspect of section 83 of the 1980 Act is that it changes the effect of sections 225(2) and 223(2) on section 9 of the 1955 Acts, for soldiers and airmen who enlisted on or after 1st April 1967. Before the passage of the 1996 Act it might have been easier to understand the rules about postponement of discharge or transfer to the reserve if section 9 had incorporated the combined effect of section 225(2) (or, as the case may be, section 223(2)) and section 83 of the 1980 Act. But once sections 225(2) and 223(2) are repealed, the need to incorporate the effect of those sections, read with section 83, becomes compelling.

Secondly, although sections 225(2) and 223(2) refer to call out under the 1980 Act, the provisions about call out in the 1980 Act have been amended by the Reserve Forces Act 1996 (Transitional, Consequential and Saving Provisions) Regulations 1997 (S.I.1997/306) so as to enable the transitional class to be called out in circumstances where a specified type of call-out order is in force under the 1996 Act. This approach needs to be followed through into section 9 as it applies in transitional cases.

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Thirdly, section 9 of the 1955 Acts, in so far as it relates to discharge, is applied in relation to members of the Army Reserve and the Air Force Reserve by sections 19(3) and 21(3) of the 1980 Act. Section 9 (as so applied) at present needs to be read with section 225(2) (or, as the case may be, section 223(2)) and with section 83 of the 1980 Act. Once sections 225(2) and 223(2) are repealed for future cases (as they need to be, as a result of the amendments made by the 1996 Act) it will be clearer if the old version of section 9 (as modified for members of the Army Reserve and the Air Force Reserve) is spelt out in the 1980 Act itself.

*Paragraphs 1, 2, 6 and 7 of the Schedule* are designed to deal with the very complicated points just mentioned in as simple a way as possible.

Paragraphs 1 and 2 incorporate into section 9 of the 1955 Acts (as it has effect for transitional purposes) the effect not only of section 225(2) of the Army Act 1955 or, as the case may be, section 223(2) of the Air Force Act 1955 but also of section 83 of the 1980 Act. Also, instead of referring the reader to provisions of the 1980 Act which would only take him indirectly to powers to order a call out under the 1996 Act, the amendments refer him directly to provisions of the 1996 Act.

Paragraphs 6 and 7 deal with section 9 as applied in relation to reservists. The amendments change the approach taken by the 1980 Act so that, instead of applying section 9 with modifications for members of the Army Reserve and the Air Force Reserve, the Act will now re-state section 9 in its modified form. In particular, the re-stated version of section 9 incorporates the effect of section 225(2) (or, as the case may be, section 223(2)) read with section 83 of the 1980 Act.

The transitional provisions in connection with the Royal Navy, the Royal Marines and QARNNS deal with somewhat simpler points, because they are not subject to anything corresponding to sections 225(2) and 223(2) of the 1955 Acts and sections 19(3), 21(3) and 83 of the 1980 Act.

*Paragraph 3 of the Schedule* amends section 4 of the Armed Forces Act 1966, in so far as it has effect for transitional purposes. The amendments translate the references to types of call out into references to call out under an order made under the 1996 Act, and also remove an unnecessary reference to persons called into actual service (a phrase which, as explained in connection with Regulation 10, has become obsolete).

*Paragraphs 4 and 5 of the Schedule* make amendments for the Royal Marines and for QARNNS which are essentially the same as the amendments made by paragraph 3 of the Schedule for the Royal Navy.

*Paragraph 8 of the Schedule* repeals and revokes the provisions which are made unnecessary by the preceding paragraphs of the Schedule.

(7) The amendment of section 36 of the 1980 Act by *Regulation 12* deletes a surplus reference to the 1996 Act in a provision which section 36 requires to be read as if contained in the 1996 Act.