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STATUTORY INSTRUMENTS

2009 No. 1091

DEFENCE

The Armed Forces (Discharge and Transfer to the Reserve Forces) (No. 2) Regulations 2009

<i>Made</i>	- - - -	<i>28th April 2009</i>
<i>Laid before Parliament</i>		<i>29th April 2009</i>
<i>Coming into force</i>	- -	<i>31st October 2009</i>

The Defence Council make the following Regulations in exercise of their powers under sections 328(5) and 331 of the Armed Forces Act 2006⁽¹⁾:

Citation and commencement

1. These Regulations may be cited as the Armed Forces (Discharge and Transfer to the Reserve Forces) (No. 2) Regulations 2009 and shall come into force on 31st October 2009.

Interpretation

2.—(1) In these Regulations—

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

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

“the 1966 Act” means the Armed Forces Act 1966⁽⁵⁾;

“the 1996 Act” means the Reserve Forces Act 1996⁽⁶⁾;

“the 2006 Act” means the Armed Forces Act 2006;

“commencement” means the date on which these Regulations come into force;

“enlisted person” means a member of the regular forces of or below the rank or rate of warrant officer;

(1) 2006 c. 52; section 331 has been modified by S.I. 2009/1059, article 193.

(2) 1955 c. 18.

(3) 1955 c. 19.

(4) 1957 c. 53.

(5) 1966 c. 45.

(6) 1996 c. 14.

“warrant officer” does not include an acting warrant officer, except in the definition of “enlisted person” above.

- (2) For the purposes of these Regulations—
- (a) in relation to a person enlisted in the Royal Navy or the Royal Marines, the competent authority is the Defence Council, the Admiralty Board, the Naval Secretary or any person authorised by him;
 - (b) in relation to a person enlisted in the regular army, the competent authority is the Defence Council, the Army Board, the Director of Manning (Army) or any person authorised by him; and
 - (c) in relation to a person enlisted in the Royal Air Force, the competent authority is the Defence Council, the Air Force Board, the Air Secretary or any person authorised by him.

Authority to discharge or transfer

3. An enlisted person may be discharged, or transferred to a reserve force, only by the competent authority or a person authorised by him.

Entitlement to be discharged or transferred

4.—(1) Where an enlisted person becomes entitled to be discharged or transferred to a reserve force—

- (a) subject to paragraphs (2) and (3), he shall be discharged or transferred as soon as is practicable; but
- (b) he shall remain a member of the regular forces until discharged or transferred.

(2) Where an enlisted person—

- (a) was enlisted in the United Kingdom,
- (b) becomes entitled to be discharged at a time when he is serving outside the United Kingdom, and
- (c) elects to be discharged in the United Kingdom,

he shall be conveyed to the United Kingdom as soon as is practicable and at no expense to him, and shall be discharged on his arrival there, or, if he consents to his discharge being delayed, within six months after his arrival.

(3) Where an enlisted person—

- (a) falls to be transferred to a reserve force at a time when he is serving outside the United Kingdom, and
- (b) elects to be transferred in the United Kingdom,

he shall be conveyed to the United Kingdom as soon as is practicable and at no expense to him, and shall be transferred on his arrival there, or, if he consents to his transfer being delayed, within six months after his arrival.

(4) References in this regulation to a person’s becoming entitled to be discharged include his becoming so entitled by virtue of these Regulations.

Conveyance to place of residence

5.—(1) Where an enlisted person is discharged or transferred to a reserve force in the United Kingdom, he shall be entitled to be conveyed at no expense to him from the place of his discharge or transfer to any place in the United Kingdom where he intends to reside.

(2) Subject to paragraph (1), an enlisted person who is discharged or transferred to a reserve force shall not be entitled to be conveyed from the place of his discharge or transfer to any other place.

Certificate of discharge

6.—(1) On being discharged, an enlisted person shall be given a certificate of discharge containing—

- (a) his full name, rank or rate and service number;
- (b) the date and place of his enlistment or of the commencement of his service;
- (c) if he is being discharged having performed duties as a member of the regular forces, a signed assessment by an officer as to his conduct and character;
- (d) the date of his discharge and the service or corps from which he is discharged;
- (e) a statement of his liability, if any, to service in the reserve forces; and
- (f) the signature of the competent authority or other person by whom he is discharged.

(2) In this regulation “corps” means any body of the regular army that may from time to time be declared by Royal Warrant to be a corps.

Right of warrant officer to discharge following reduction in rank or disrating

7.—(1) This regulation applies to a warrant officer of the regular forces if his rank or rate has been reduced—

- (a) by a sentence of the Court Martial to the greatest extent to which it could be so reduced; or
- (b) under section 293 of the 2006 Act (effect of custodial sentence or sentence of service detention) by virtue of a sentence passed on him by the Court Martial taking effect.

(2) This regulation also applies to a warrant officer of the regular forces if—

- (a) his rank or rate has been reduced—
 - (i) by a sentence of the Appeal Court to the greatest extent to which it could be so reduced; or
 - (ii) under section 293 of the 2006 Act by virtue of a sentence passed on him by the Appeal Court (other than a suspended sentence of imprisonment or a suspended sentence of service detention) taking effect; and
- (b) this regulation has not previously applied to him by virtue of any sentence passed by the Court Martial in the proceedings to which the appeal relates, or by virtue of any such sentence taking effect.

(3) This regulation also applies to a warrant officer of the regular forces if his rank or rate has been reduced under section 293 of the 2006 Act by virtue of a suspended sentence of imprisonment, or a suspended sentence of service detention, passed on him by the Appeal Court taking effect.

(4) A warrant officer to whom this regulation applies may give notice in writing to his commanding officer, within 28 days of the day on which this regulation began (or last began) to apply to him, that he wishes to be discharged from the regular forces.

(5) A warrant officer who has given notice under paragraph (4) shall be entitled to be discharged.

(6) In this regulation “the Appeal Court” means the Court Martial Appeal Court, but in paragraph (3) includes the Courts-Martial Appeal Court.

Postponement of discharge or transfer

8.—(1) This regulation applies to an enlisted person if—

- (a) apart from this regulation, he would have become entitled to be discharged or transferred to a reserve force;
 - (b) on the date on which he would have become so entitled (“the relevant date”), a call-out order under section 52, 54 or 56 of the 1996 Act is in force authorising the call out for permanent service of members of the reserve forces; and
 - (c) none of regulations 9 to 12 applies to him.
- (2) References in paragraph (1) to a person’s becoming entitled to be discharged include his becoming so entitled by virtue of these Regulations.
- (3) A person to whom this regulation applies may be retained in service in the regular forces for such period as the competent authority may order, not exceeding the maximum period, and if so retained shall not be entitled to be discharged or transferred to a reserve force until the expiry of the period so ordered.
- (4) Where the person would otherwise have been entitled to be discharged, and any call-out order by virtue of which this regulation applies to him was made under section 52 or 54 of the 1996 Act, the maximum period is 12 months from the relevant date.
- (5) Where the person would otherwise have been entitled to be discharged, and the only call-out order by virtue of which this regulation applies to him was made under section 56 of the 1996 Act, the maximum period is nine months from the relevant date.
- (6) Where the person would otherwise have been entitled to be transferred to a reserve force, the maximum period is the period for which he could have been required to serve on being called out under Part 6 of the 1996 Act if—
- (a) he had been transferred to the reserve force in time to be called out for permanent service starting on the relevant date; and
 - (b) he had been so called out on the authority of the call-out order by virtue of which this regulation applies to him.
- (7) Where—
- (a) a person is retained in service in the regular forces by virtue of this regulation,
 - (b) on the expiry of the period for which his retention was ordered, a call-out order under section 52 or 54 of the 1996 Act is in force, and
 - (c) he makes a declaration before his commanding officer in a form approved for the purposes of this regulation by or on behalf of the Defence Council,
- he may (with the approval of the competent authority) continue to serve in the regular forces for as long as such a call-out order is in force, and shall be entitled to be discharged or transferred to a reserve force on the expiry of three months’ notice given by him to his commanding officer.
- (8) Where a person who would otherwise have been entitled to be transferred to a reserve force is retained in service, or continues to serve, in the regular forces by virtue of this regulation—
- (a) any period for which he is liable to serve in a reserve force shall be reduced by the period for which he is so retained or continues so to serve; and
 - (b) the period for which he is so retained or continues so to serve shall be treated as a period of relevant service for the purposes of Parts 4 to 7 of the 1996 Act.
- 9.—**(1) This regulation applies to an enlisted person if immediately before commencement, by virtue of paragraph 2 of Schedule 7 to the 1996 Act, the Army Act 1955 continued to apply in relation to him without the amendments made by paragraph 1 of that Schedule.
- (2) Paragraph (1) is subject to regulation 14.

(3) Where this regulation applies to a person, section 9 of the Army Act 1955 shall continue to apply in relation to him—

- (a) without the amendments made by paragraph 1 of Schedule 7 to the 1996 Act; and
- (b) notwithstanding its repeal by the 2006 Act.

10.—(1) This regulation applies to an enlisted person if immediately before commencement, by virtue of paragraph 4 of Schedule 7 to the 1996 Act, the Army Act 1955 continued to apply in relation to him without the amendments made by paragraph 3 of that Schedule.

(2) Paragraph (1) is subject to regulation 14.

(3) Where this regulation applies to a person, paragraph 4A(7) of Schedule 7 to the Army Act 1955 shall continue to apply in relation to him—

- (a) without the amendments made by paragraph 3 of Schedule 7 to the 1996 Act; and
- (b) notwithstanding its repeal by the 2006 Act.

11.—(1) This regulation applies to an enlisted person if immediately before commencement, by virtue of paragraph 6 of Schedule 7 to the 1996 Act, the Air Force Act 1955 continued to apply in relation to him without the amendments made by paragraph 5 of that Schedule.

(2) Paragraph (1) is subject to regulation 14.

(3) Where this regulation applies to a person, section 9 of the Air Force Act 1955 shall continue to apply in relation to him—

- (a) without the amendments made by paragraph 5 of Schedule 7 to the 1996 Act; and
- (b) notwithstanding its repeal by the 2006 Act.

12.—(1) This regulation applies to an enlisted person if immediately before commencement, by virtue of paragraph 8 of Schedule 7 to the 1996 Act, the 1966 Act continued to apply in relation to him without the amendments made by paragraph 7 of that Schedule.

(2) Paragraph (1) is subject to regulation 14.

(3) Where this regulation applies to a person, section 4 of the 1966 Act shall continue to apply in relation to him—

- (a) without the amendments made by paragraph 7 of Schedule 7 to the 1996 Act; and
- (b) notwithstanding its repeal by the 2006 Act.

13.—(1) For the purposes of their continued application in relation to an enlisted person by virtue of any of regulations 9 to 12, section 9 of each of the 1955 Acts, paragraph 4A of Schedule 7 to the Army Act 1955 and section 4 of the 1966 Act are modified as follows.

(2) References to the competent military authority, the competent air-force authority or the competent authority are to be read as references to a person who for the purposes of these Regulations is the competent authority in relation to the enlisted person.

(3) References to the enlisted person's commanding officer are to be read as references to the officer who is his commanding officer for the purposes of the 2006 Act.

14. A person to whom any of regulations 9 to 12 applies may irrevocably elect to be a person to whom that regulation does not apply, by making a declaration before his commanding officer in a form approved for the purposes of this regulation by or on behalf of the Defence Council.

(7) Substituted by the Armed Forces Act 1966, section 13(1) and Schedule 3, paragraph 1.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Transitional provisions

15. The Schedule shall have effect.

Revocation of the Armed Forces (Discharge and Transfer to the Reserve Forces) Regulations 2009

16. The Armed Forces (Discharge and Transfer to the Reserve Forces) Regulations 2009(8) are revoked.

28th April 2009

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

SCHEDULE

Regulation 15

TRANSITIONAL PROVISIONS

Authority to discharge or transfer

1. In regulation 3 the reference to a person authorised by the competent authority includes a person authorised before commencement by a person who would at that time have been the competent authority if these Regulations had been in force.

Entitlement to be discharged or transferred

2.—(1) For the purposes of regulation 4 a person who was entitled to be discharged or transferred to a reserve force immediately before commencement is to be regarded as having become so entitled immediately after commencement.

(2) Where under section 11(2) of either of the 1955 Acts, paragraph 5(2A)(9) of Schedule 7 to the Army Act 1955 or section 6(2) of the 1966 Act a person has required to be discharged in the United Kingdom, he shall be regarded for the purposes of regulation 4(2) as having elected under that paragraph to be discharged in the United Kingdom.

(3) Where under section 11(2) of either of the 1955 Acts, paragraph 5(2A) of Schedule 7 to the Army Act 1955 or section 6(2) of the 1966 Act a person has been sent to the United Kingdom in pursuance of a requirement by him to be discharged there, he shall be regarded for the purposes of regulation 4(2) as having been conveyed there under that paragraph in pursuance of an election by him to be discharged there.

(4) Where under section 11(2) of either of the 1955 Acts, paragraph 5(2A) of Schedule 7 to the Army Act 1955 or section 6(2) of the 1966 Act a person has consented to his discharge being delayed, he shall be regarded for the purposes of regulation 4(2) as having so consented under that paragraph.

(5) Where section 12(2) of either of the 1955 Acts, paragraph 5(2C) of Schedule 7 to the Army Act 1955 or section 7(2) of the 1966 Act required a person to be sent to the United Kingdom for transfer to a reserve force and he has not been so sent, he shall be regarded for the purposes of regulation 4(3) as having elected under that paragraph to be transferred in the United Kingdom.

(6) Where a person has been sent to the United Kingdom for transfer to a reserve force under section 12(2) of either of the 1955 Acts, paragraph 5(2C) of Schedule 7 to the Army Act 1955 or section 7(2) of the 1966 Act, he shall be regarded for the purposes of regulation 4(3) as having been conveyed to the United Kingdom under that paragraph in pursuance of an election by him to be transferred there.

(7) Where under section 12(2) of either of the 1955 Acts, paragraph 5(2C) of Schedule 7 to the Army Act 1955 or section 7(2) of the 1966 Act a person has consented to his transfer to a reserve force being delayed, he shall be regarded for the purposes of regulation 4(3) as having so consented under that paragraph.

Conveyance to place of residence

3. In regulation 5, references to a person's discharge or transfer to a reserve force include his discharge or transfer before commencement.

(9) Paragraph 5(2A) to (2D) of Schedule 7 to the Army Act 1955 were inserted by the Armed Forces Act 1976 (c. 52), section 3(2) and Schedule 1, Part 2, paragraph 3.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Right of warrant officer to discharge following reduction to the ranks or disrating under sentence of a court-martial

4.—(1) This paragraph applies to a warrant officer of the regular army, the Royal Marines or the Royal Air Force if—

- (a) he was sentenced by a court-martial to detention or reduction to the ranks, or
- (b) he was so sentenced by the Appeal Court, and was not so sentenced by the court-martial in the proceedings to which the appeal relates,

and (in either case) the period that has elapsed since the sentence was passed is less than 28 days.

(2) This paragraph applies to a warrant officer of the Royal Navy if—

- (a) he was sentenced by a court-martial to detention, or to be reduced to such rate as was at that time prescribed, in relation to persons of the class to which he belongs, by regulations made by the Defence Council for the purposes of section 43(5) of the 1957 Act, or
- (b) he was so sentenced by the Appeal Court, and was not so sentenced by the court-martial in the proceedings to which the appeal relates,

and (in either case) the period that has elapsed since the sentence was passed is less than 28 days.

(3) A warrant officer to whom this paragraph applies may give notice in writing to his commanding officer, within 28 days of the day on which the sentence was passed, that he wishes to be discharged from the regular forces.

(4) A warrant officer who has given notice under sub-paragraph (3) shall be entitled to be discharged.

(5) For the purposes of regulation 7(2)(b), regulation 7 shall be regarded as having previously applied to a person by virtue of a sentence passed by the Court Martial in the proceedings to which an appeal relates if this paragraph has previously applied to him by virtue of a sentence passed by a court-martial in the proceedings to which the appeal relates.

(6) In this paragraph “the Appeal Court” means the Courts-Martial Appeal Court.

Postponement of discharge or transfer

5.—(1) Where—

- (a) immediately before commencement, an enlisted person was retained in service by virtue of section 9 of either of the 1955 Acts, paragraph 4A of Schedule 7 to the Army Act 1955 or section 4 of the 1966 Act, and
- (b) none of regulations 9 to 12 applies to him,

he shall be regarded as having been retained in service by virtue of regulation 8 for the period for which it was ordered by the competent military authority, the competent authority or the competent air-force authority (as the case may be) that he be retained in service.

(2) Where a person has made a declaration under section 9(6) of either of the 1955 Acts, paragraph 4A(6) of Schedule 7 to the Army Act 1955 or section 4(6) of the 1966 Act and continues to serve in the regular forces—

- (a) the declaration shall have effect as if it were a declaration under regulation 8(7); and
- (b) any notice given by the person in accordance with the declaration shall have effect as if it had been given in accordance with a declaration under regulation 8(7).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision as to the discharge of members of the regular forces, and their transfer to a reserve force.

Regulation 3 makes provision as to the persons by whom a member of the regular forces may be discharged or transferred to a reserve force. Regulations 4 to 6 provide for the procedure on such a discharge or transfer.

Regulation 7 gives a warrant officer a right to be discharged if a sentence of the Court Martial has reduced his rank or rate to the greatest extent permissible, or his rank or rate has been automatically reduced because a custodial sentence or a sentence of service detention passed by the Court Martial has taken effect. The regulation also applies where his rank or rate has been reduced in either of these ways by a sentence of the Court Martial Appeal Court (provided that it did not apply by virtue of the Court Martial's original sentence), and where a suspended sentence passed by the Appeal Court is activated. Where the regulation applies, the warrant officer may claim discharge within 28 days of the reduction in his rank or rate.

Where a call-out order under section 52, 54 or 56 of the Reserve Forces Act 1996 is in force at the time when a member of the regular forces would otherwise be entitled to be discharged or transferred to a reserve force, regulation 8 enables his discharge or transfer to be postponed for a limited period, and any reserve liability reduced accordingly. He may agree to serve beyond the period for which he can be retained without his consent. Regulation 8 corresponds to provisions of the Army Act 1955, the Air Force Act 1955 and the Armed Forces Act 1966 which were amended by the Reserve Forces Act 1996 with effect from 1st April 1997. Members of the regular forces who were already serving on that date are currently subject to those provisions in their unamended form, unless they have since elected to be subject to those provisions as amended. Regulations 9 to 13 similarly ensure that such persons, if they have not so elected, continue to be subject to those provisions as they stood before the 1997 amendments. Regulation 14 enables such a person to elect to be subject to the new provisions instead.

Regulation 16 revokes the Armed Forces (Discharge and Transfer to the Reserve Forces) Regulations 2009, which are replaced by these Regulations.

The Schedule makes transitional provision.