
STATUTORY INSTRUMENTS

2011 No. 1523

DEFENCE

**The Armed Forces (Terms of Service)
(Amendment) Regulations 2011**

<i>Made</i>	- - - -	<i>17th June 2011</i>
<i>Laid before Parliament</i>		<i>21st June 2011</i>
<i>Coming into force</i>	- -	<i>12th July 2011</i>

The Defence Council, in exercise of the powers conferred by sections 328(5) and 329 of the Armed Forces Act 2006⁽¹⁾, make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Armed Forces (Terms of Service) (Amendment) Regulations 2011, and will come into force on 12th July 2011.

Interpretation

2. In these Regulations—

“the Army Regulations” means the Army Terms of Service Regulations 2007⁽²⁾;

“the RAF Regulations” means the Royal Air Force Terms of Service Regulations 2007⁽³⁾;

“the RM Regulations” means the Royal Marines Terms of Service Regulations 2006⁽⁴⁾;

“the RN Regulations” means the Royal Navy Terms of Service (Ratings) Regulations 2006⁽⁵⁾.

The RN Regulations

3. For regulation 4 of the RN Regulations substitute—

(1) 2006 c. 52.

(2) S.I. 2007/3382. These Regulations are amended by the Army Terms of Service (Amendment etc.) Regulations 2008, S.I. 2008/1849 and by the Armed Forces (Terms of Service) (Amendment) (No. 2) Regulations 2009, S.I. 2009/1089.

(3) S.I. 2007/650. These Regulations are amended by the Armed Forces (Terms of Service) (Amendment) (No. 2) Regulations 2009, S.I. 2009/1089.

(4) S.I. 2006/2917. These Regulations are amended by the Armed Forces (Terms of Service) (Amendment) (No. 2) Regulations 2009, S.I. 2009/1089.

(5) S.I. 2006/2918. These Regulations are amended by the Armed Forces (Terms of Service) (Amendment) (No. 2) Regulations 2009, S.I. 2009/1089.

“4 Right to transfer to the reserve

(1) Subject to regulation 5, a person (“A”) who is serving in the Royal Navy will have a right to be transferred to the reserve if—

- (a) A is serving for a term of 4 years or more in the Royal Navy;
- (b) A notifies their commanding officer in writing of their desire to be transferred to the reserve; and
- (c) the written notification (referred to in sub-paragraph (b)) is given more than 2 years and 6 months after A completed initial training.

(2) Subject to paragraphs (3) and (4), where paragraph (1) applies, A will be transferred to the reserve at the expiry of a 12 month period beginning with the notification date.

(3) The 12 month period (referred to in paragraph (2)) may be reduced if, within 1 month of the notification date, the competent naval authority informs A in writing of the date on which the transfer will take place.

(4) The 12 month period (referred to in paragraph (2)) may not be reduced to a period of less than 6 months from the notification date.

(5) In this regulation “the notification date” means the date on which A notifies the commanding officer in writing of their desire to be transferred to the reserve.”

4. After regulation 4 of the RN Regulations insert—

“4A Transfer to the reserve with consent

In addition to the right conferred by regulation 4, a person serving in the Royal Navy whose application to their commanding officer for transfer to the reserve is approved by the competent naval authority, will be transferred to the reserve.”

5. After regulation 7 of the RN Regulations insert—

“7A Right of those under 18 years to determine service

(1) A person (“A”) who enlists in the Royal Navy will have the right to determine their service if—

- (a) before A’s 18th birthday, A gives notice in writing to their commanding officer of their desire to determine their service; and
- (b) A does not have a right to determine their service under regulation 7.

(2) Subject to paragraphs (3), (4) and (5), where A has the right conferred by paragraph (1), A will be entitled to be discharged at the expiry of a 3 month period, beginning with the date on which A gives their written notice to the commanding officer.

(3) The 3 month period referred to in paragraph (2) may be reduced to a period, the duration of which is agreed between A and the commanding officer.

(4) A’s entitlement to discharge will be postponed until A is released from service detention where A is serving a sentence of service detention—

- (a) where paragraph (2) applies, at the expiry of the 3 month period; or
- (b) where paragraph (3) applies, at the expiry of the reduced period.

(5) A’s entitlement to be discharged at the end of the period set out in paragraphs (2), (3) or (4) (whichever is appropriate) will be extinguished if, before A is discharged, A rescinds their written notice to the commanding officer.

(6) Nothing in paragraph (5) prevents A from giving a further notice for the purposes of paragraph (1) to the commanding officer.”

The RM Regulations

6. For regulation 4 of the RM Regulations substitute—

“4 Right to transfer to the reserve

(1) Subject to regulation 5, a person (“A”) who is serving in the Royal Marines will have a right to be transferred to the reserve if—

- (a) A is serving for a term of 4 years or more in the Royal Marines;
- (b) A notifies their commanding officer in writing of their desire to be transferred to the reserve; and
- (c) the written notification (referred to in sub-paragraph (b)) is given more than 2 years and 6 months after A completed initial training.

(2) Subject to paragraphs (3) and (4), where paragraph (1) applies, A will be transferred to the reserve at the expiry of a 12 month period, beginning with the notification date.

(3) The 12 month period (referred to in paragraph (2)) may be reduced, if within 1 month of the notification date, the competent authority informs A in writing of the date on which the transfer will take place.

(4) The 12 month period (referred to in paragraph (2)) may not be reduced to a period of less than 6 months from the notification date.

(5) In this regulation “the notification date” means the date on which A notifies the commanding officer in writing of their desire to be transferred to the reserve.”

7. After regulation 4 of the RM Regulations insert—

“4A Transfer to the reserve with consent

In addition to the right conferred by regulation 4, a person serving in the Royal Marines whose application to their commanding officer for transfer to the reserve is approved by the competent authority, will be transferred to the reserve”.

8. After regulation 7 of the RM Regulations insert—

“7A Right of those under 18 years to determine service

(1) A person (“A”) who enlists in the Royal Marines will have the right to determine their service if —

- (a) before A’s 18th birthday, A gives notice in writing to their commanding officer of their desire to determine their service; and
- (b) A does not have a right to determine their service under regulation 7.

(2) Subject to paragraphs (3), (4) and (5), where A has the right conferred by paragraph (1), A will be entitled to be discharged at the expiry of a 3 month period, beginning with the date on which A gives their written notice to the commanding officer.

(3) The 3 month period referred to in paragraph (2) may be reduced to a period, the duration of which is agreed between A and the commanding officer.

(4) A’s entitlement to discharge will be postponed until A is released from service detention where A is serving a sentence of service detention—

- (a) where paragraph (2) applies, at the expiry of the 3 month period; or
 - (b) where paragraph (3) applies, at the expiry of the reduced period.
- (5) A's entitlement to be discharged at the end of the period set out in paragraphs (2), (3) or (4) (whichever is appropriate) will be extinguished if, before A is discharged, A rescinds their written notice to the commanding officer.
- (6) Nothing in paragraph (5) prevents A from giving a further notice for the purposes of paragraph (1) to the commanding officer."

The Army Regulations

9. After regulation 9 of the Army Regulations insert—

"9A Right of those under 18 years to determine service

- (1) A person ("A") who enlists in the regular army will have the right to determine their service if —
- (a) before A's 18th birthday, A gives notice in writing to their commanding officer of their desire to determine their service; and
 - (b) A does not have a right to determine their service under regulation 9.
- (2) Subject to paragraphs (3), (4) and (5), where A has the right conferred by paragraph (1), A will be entitled to be discharged at the expiry of a 3 month period, beginning with the date on which A gives their written notice to the commanding officer.
- (3) The 3 month period referred to in paragraph (2) may be reduced to a period, the duration of which is agreed between A and the commanding officer.
- (4) A's entitlement to discharge will be postponed until A is released from service detention where A is serving a sentence of service detention—
- (a) where paragraph (2) applies, at the expiry of the 3 month period; or
 - (b) where paragraph (3) applies, at the expiry of the reduced period.
- (5) A's entitlement to be discharged at the end of the period set out in paragraphs (2), (3) or (4) (whichever is appropriate) will be extinguished if, before A is discharged, A rescinds their written notice to the commanding officer.
- (6) Nothing in paragraph (5) prevents A from giving a further notice for the purposes of paragraph (1) to the commanding officer."

10.—(1) Regulation 11 of the Army Regulations (right to transfer to the reserve) is amended as follows.

(2) In paragraph (3) omit the words "not less than 12 months before the date when he is to be transferred to the reserve".

(3) After paragraph (3) insert—

"(3A) Subject to paragraph (3B) where the person exercises the right conferred under this regulation, their transfer to the reserve will occur on or after the expiry of a 12 month period beginning with the notification date.

(3B) The 12 month period, referred to in paragraph (3B) may be reduced to a period of 6 months or more if within 1 month of the notification date, the competent military authority notifies the person in writing of the date on which they are to be transferred to the reserve.

(3C) In this regulation, the "notification date" means the date on which the person gives to their commanding officer the written notice referred to in paragraph (3)".

The RAF Regulations

11. After regulation 8 of the RAF Regulations insert—

“8A Right of those under 18 years to determine service

- (1) A person (“A”) in air force service, will have the right to determine their service if—
 - (a) before A’s 18th birthday, A gives notice in writing to their commanding officer of their desire to determine their service; and
 - (b) A does not have a right to determine their service under regulation 8.
- (2) Subject to paragraphs (3), (4) and (5), where A has the right conferred by paragraph (1), A will be entitled to be discharged at the expiry of a 3 month period, beginning with the date on which A gives their written notice to the commanding officer.
- (3) The 3 month period referred to in paragraph (2) may be reduced to a period, the duration of which is agreed between A and the commanding officer.
- (4) A’s entitlement to discharge will be postponed until A is released from service detention where A is serving a sentence service detention—
 - (a) where paragraph (2) applies, at the expiry of the 3 month period; or
 - (b) where paragraph (3) applies, at the expiry of the reduced period.
- (5) A’s entitlement to be discharged at the end of the period set out in paragraphs (2), (3) or (4) (whichever is appropriate) will be extinguished if, before A is discharged, A rescinds their written notice to the commanding officer.
- (6) Nothing in paragraph (5) prevents A from giving a further notice for the purposes of paragraph (1) to the commanding officer.”

Transitional provisions

12. For the purposes of regulations 13 to 15, “commencement” means the date on which these Regulations come into force.

The RN Regulations

13. Regulation 4 of the RN Regulations will apply without the amendment made by these Regulations where before commencement a person has given written notice (under regulation 4 of the RN Regulations) of their desire to be transferred to the reserve.

The RM Regulations

14. Regulation 4 of the RM Regulations will apply without the amendment made by these Regulations where before commencement a person has given written notice (under regulation 4 of the RM Regulations) of their desire to be transferred to the reserve.

The Army Regulations

15. Regulation 11 of the Army Regulations will apply without the amendment made by these Regulations where before commencement a person has exercised their right to be transferred to the reserve (under regulation 11 of the Army Regulations) by giving notice in writing to the commanding officer.

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

16th June 2011

Andrew Robathan
Member of the Defence Council
Ministry of Defence

17th June 2011

Ursula Brennan
Member of the Defence Council
Ministry of Defence

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Terms of Service Regulations for the Royal Navy, Royal Marines, the regular army and the Royal Air Force.

Regulations 3 and 6 replace the regulations governing the right of Royal Navy and Royal Marine personnel, who are serving for a period of 4 years or more, to transfer to the reserve. The amendments ensure that a person who possesses this right will be transferred to the reserve 12 months after they notify their commanding officer of their desire to transfer. In some circumstances this 12 month period may be reduced by as much as 6 months but the 12 month period may not be reduced unless, within 1 month of notifying the commanding officer, the person is informed by a relevant competent authority of the date of transfer.

Regulation 10 amends the regulation governing the right of army personnel, who have served for a period of at least 4 years, to transfer to the reserve. The amendment broadly achieves the same effect for the army as the amendments referred to in the paragraph above. Under the army arrangements, the person will transfer to the reserve 12 months or more after notifying their commanding officer of their desire to transfer. The circumstances in which the 12 month period may be reduced are the same as for the Royal Navy or the Royal Marines.

Regulations 4 and 7 enable Royal Navy and Royal Marine personnel to transfer to the reserve, at any time with agreement, if their application to transfer is approved by a relevant competent authority. This mirrors existing provisions in the Terms of Service Regulations for the Army and the Royal Air Force.

Regulations 5, 8, 9 and 11 insert new regulations into the Terms of Service Regulations for each Service. The new regulations enable a person, under the age of 18 years, to leave the Armed Forces as of right. The regulations ensure that a person (who cannot leave using the right conferred on recruits) will be discharged 3 months after giving notice to their commanding officer. This 3 month period may be reduced but only if the person and their commanding officer agree on the duration of a new (reduced) period. The date of discharge may be postponed if the person is serving a sentence of service detention on the date the discharge would otherwise occur. A person who gives notice to the commanding officer may rescind the notice at any time. There is no limit on the number of times a person may give notice to the commanding officer before reaching the age of 18. In limited circumstances, a person above the age of 18 may be discharged however, this will only occur if, (because of the notice period) the discharge date falls after the person's 18th birthday.

Regulations 12 to 15 sets out transitional provisions.