

DEFENCE REFORM ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Reserve Forces

145. **Part 3** contains provisions which make changes relating to the reserve forces. Section 44 renames the Army's volunteer reserve force and the Army's ex-regular reserve force. Section 45 extends the powers in the Reserve Forces Act 1996 which allow members of a reserve force to be called out for permanent service. Section 46 amends the Reserve Forces Act 1996 to give the Secretary of State a new power to make regulations which provide for the making of payments by him to employers whose reservist employees are called out, undertake certain training or perform certain other duties. Section 47 amends the Reserve Forces Act 1996 by creating requirements for reserve associations to report annually to the Secretary of State on the state of the volunteer reserve forces and for the Secretary of State, on receiving such a report, to lay a copy of it before Parliament. Section 48 amends the Employment Rights Act 1996 to disapply the statutory qualification period for the purposes of claiming unfair dismissal if the reason for the dismissal is connected with the employee's membership of a reserve force.

Section 44: Renaming of Army Reserve and Territorial Army

146. The armed forces include both regular forces (the Royal Navy, the Royal Marines, the regular army and the Royal Air Force) and reserve forces. The reserve forces include both ex-regular reserve forces (the Royal Fleet Reserve, the Army Reserve and the Royal Air Force Reserve) and volunteer reserve forces (the Royal Naval Reserve, the Royal Marines Reserve, the Territorial Army, and the Royal Auxiliary Air Force). Broadly speaking, the regular forces are full-time service personnel in permanent service; the volunteer reserve forces are civilians who accept an annual training commitment and a liability to be called out for permanent service; and the ex-regular reserve forces are ex-regular forces personnel who, on leaving the regular forces, retain a liability to be called out for permanent service.
147. **Section 44(1)** changes the name of the Army's ex-regular reserve force from the Army Reserve to the Regular Reserve. **Section 44(2)** changes the name of the Army's volunteer reserve force from the Territorial Army to the Army Reserve. **Section 44(3)** to **(5)** make consequential provision with respect to references to these forces in legislation and other documents.

Section 45: Call out of members of reserve forces

148. The obligations of members of a reserve force to attend for duty are covered mainly by the Reserve Forces Act 1996 ("the 1996 Act"). These obligations include a duty to serve if "called out" in accordance with an order made under the 1996 Act. When such an order is in force, the Secretary of State may call out individual reservists by serving a notice on them requiring them to present themselves for service at a specified time

and place. Failure to comply with such a notice is an offence under section 96 of the 1996 Act.

149. Sections 52, 54, 56(1) and 56(1A) of the 1996 Act each contain a separate power to make a call-out order in particular circumstances. Broadly speaking, an order may be made under section 52 if national danger is imminent; an order may be made under section 54 if warlike operations are in preparation or progress; an order may be made under section 56(1) if it is necessary to use armed forces on operations for the protection of life or property; and an order may be made under section 56(1A) where the Defence Council have authorised use of members of the armed forces for urgent work of national importance.
150. The intention is to extend the call-out powers in the 1996 Act so that members of the reserve forces may be called out for any purpose for which regular forces may be used. Accordingly, section 45(4) replaces subsections (1) and (1A) of section 56 of the 1996 Act with new subsection (1B). This allows the Secretary of State to make a call-out order under section 56 where it appears to the Secretary of State that it is necessary or desirable to use members of a reserve force for any purpose for which members of the regular forces may be used.
151. Reservists called out under an order made under section 56(1) or (1A) of the 1996 Act may be required to serve under that order for up to 9 months. Reservists called out under an order made under section 54 of the 1996 Act may be required to serve under that order for up to 12 months (or longer if an extension order is made under section 55(11)). To align the period for which a reservist may be required to serve under an order made under new section 56(1B) with the period for which a reservist may be required to serve under an order made under section 54 (in circumstances where an extension order under section 55(11) has not been made), section 45(6) amends section 57 of the 1996 Act.
152. A separate call-out power in section 32 of the 1996 Act applies only to members of the reserve forces who have entered into a “special agreement” under Part 4 of the 1996 Act (such reservists are also known as ‘High Readiness Reservists’). To align the period for which such reservists may be required to serve on call out under section 32 of the 1996 Act with the period for which reservists may be required to serve under an order under new section 56(1B), section 45(1) amends section 28(3) of the 1996 Act.
153. It is intended that the circumstances in which the powers in sections 52, 54 and new 56(1B) may be exercised may overlap. Section 45(8)(b) inserts a new subsection (2) into section 64 of the 1996 Act to make this clear.

Schedule 6: Call out of members of reserve forces: transitional classes

154. Provision is made in section 129 of, and Schedule 9 to, the 1996 Act so that persons serving in the reserve forces immediately before that Act came into force have the option to remain in a class of persons (“the transitional class”) in relation to whom certain provisions in the 1996 Act do not apply and in relation to whom provisions in the Reserve Forces Act 1980 continue to apply. Provision is also made in section 129 and Schedule 9 so that persons serving in the regular forces immediately before the 1996 Act came into force may become a member of the transitional class on transfer to the reserve.
155. The intention is to make similar provision for persons serving in the reserve forces and regular forces immediately before the changes made by section 45 come into force. Accordingly, Schedule 6 amends section 129 of, and Schedule 9 to, the 1996 Act so that such persons remain in a class of persons (“the second transitional class”) in relation to whom the changes made by section 45 do not apply, but can elect to cease to be members of that class. The transitional class in relation to whom provisions in the Reserve Forces Act 1980 continue to apply is renamed “the original transitional class”.

156. Paragraph 4(7) of Schedule 6 inserts new Parts 3 and 4 into Schedule 9 to the 1996 Act. New Part 3 of Schedule 9 makes provision with respect to membership of the second transitional class. New Part 4 of Schedule 9 makes provision so that, in effect, the amendments made by section 45 do not apply in relation to members of the second transitional class.

Section 46: Payments to employers etc of members of reserve forces

157. Section 84 of the 1996 Act gives the Secretary of State a power to make regulations which provide for the making of payments by him to employers in respect of financial loss suffered by them and attributable to any of their employees being called out or recalled for service. Regulations under section 84 may also provide for the making of payments to the partners of a person carrying on business in partnership in respect of financial loss suffered by them and attributable to that person being called out or recalled for service. Section 83 of the 1996 Act gives the Secretary of State a power to make regulations which provide for the making of payments by him to any persons in respect of financial loss suffered by them and attributable to their being called out or recalled for service. The [Reserve Forces \(Call-out and Recall\) \(Financial Assistance\) Regulations 2005 \(SI 2005/859\)](#) were made in exercise of the powers conferred by sections 83 and 84 of the 1996 Act.
158. The purpose of section 46 is to allow the Secretary of State, by regulations, to provide for the making of additional payments to employers whose reservist employees are called out, undertake certain training or perform certain other duties. Such regulations may also provide for the making of payments to persons carrying on business in partnership whose partners in that business are called out, undertake certain training or perform certain other duties. Accordingly, section 46(1) inserts new section 84A into the 1996 Act.
159. The effect of subsection (3) of the new section 84A is that regulations made under that section may only provide for the making of such payment to employers or partners as the Secretary of State considers would (or would, in combination with other measures) be likely to encourage people to employ members of reserve forces or to carry on business in partnership with them. The new section 84A does not enable payments to be made in respect of training undertaken, or any other voluntary duties performed, by special members of a reserve force (also known as “Sponsored Reserves” (see the references in subsection (2)(b) and (c) to an “ordinary member” of reserve force and the definition of that term in subsection (7)).
160. Subsection (5) of new section 84A ensures that regulations made under new section 84A may not provide for the same kind of actual financial loss recovery scheme as may be provided for in regulations under section 84. It also ensures that payments may be made to an employer (or person in partnership) under regulations under new section 84A in respect of relevant reserve force activities whether or not the employer (or person in partnership) has suffered financial loss as a result of those activities.
161. A person making a claim under regulations under section 83 or 84 of the 1996 Act who is dissatisfied with the determination of their claim may appeal to a reserve forces appeal tribunal (Part 9 of the 1996 Act makes provision with respect to these tribunals). Subsection (6) of new section 84A provides for the same route of appeal against any determination of a claim under regulations under new section 84A.

Schedule 7: Payments to employers etc of members of reserve forces: supplementary

162. Section 85 of the 1996 Act provides that regulations made under section 83 or 84 of that Act may make provision with respect to matters including the descriptions of persons who are entitled to claim payments and the sums, or the method of determining the sums, to be paid. Paragraph 4 amends section 85 so that regulations made under new section 84A may also make provision with respect to such matters.

163. Section 85(3) of the 1996 Act imposes an obligation on the Secretary of State to consult various bodies before making any regulations under section 83 or 84. Paragraph 4(4) amends section 85(3) so that this obligation to consult extends to the making of regulations under the power in new section 84A.
164. Paragraph 4(5) adds a new subsection (3A) to section 85 of the 1996 Act to ensure that the making of a payment to an employer (or person in partnership) under regulations under new section 84A may not be taken into account when calculating the financial loss suffered by that employer (or person in partnership) for the purposes of regulations under section 84.
165. Regulations under new section 84A may not make provision for claims in respect of recall for service. Accordingly, paragraph 4(6) amends section 85(5) of the 1996 Act so that it continues to apply only to regulations under section 83 or 84.
166. The Secretary of State has the power under section 86 of the 1996 Act to suspend the operation of regulations under section 83 or 84 where a call-out order under section 52 of the 1996 Act, or a recall order under section 68 of that Act, is in force. Paragraph 6 amends section 86 so that the Secretary of State may also suspend the operation of regulations under new section 84A where a call-out order under section 52 is in force.
167. Section 87 of the 1996 Act creates criminal offences in connection with claims for payments under regulations under section 83 or 84. Paragraph 7 extends these offences so that they also apply with respect to claims for payments under new section 84A.
168. Paragraphs 10 to 12 of Schedule 7 make transitional provision in connection with changes to penalties on conviction in the magistrates' court that have yet to be commenced. When commenced, these changes would affect the level of fines and period of imprisonment made available for offences under section 87 of the 1996 Act in connection with claims under regulations under sections 83 and 84. Paragraphs 10 to 12 make clear that the changes are also to have effect in relation to offences under section 87 in connection with claims under regulations under new section 84A of the 1996 Act.

Section 47: Report on volunteer reserve forces

169. Section 47 inserts new section 113A into Part 11 of the 1996 Act, containing requirements for reserve associations to report annually to the Secretary of State on the state of the volunteer reserve forces and for the Secretary of State, on receiving such a report, to lay a copy of it before Parliament. Reserve associations are regional civilian bodies which give advice and assistance to the Defence Council in relation to the reserve forces, generate support for the reserve forces from communities and support the reserve forces by managing and maintaining land and buildings used by those forces.
170. Subsection (1) of the new section 113A requires each reserve association to prepare an annual report on the state of the reserve forces so far as concerns the area for which the association is established. Such a report must include:
 - the association's assessment of the capabilities of the volunteer reserve forces (with particular reference to the matters listed in subsection (3)), and
 - its assessment of provision made regarding the mental welfare of members and former members of those forces (subsection (4)).
171. Reserve associations are required to send a report before the deadline set out in subsection (5) of new section 113A. The intention is that the reporting process will replace the existing non-statutory arrangement under which the External Scrutiny Group on the Future Reserves 2020 programme reports annually to the Secretary of State on that programme and the overall health of the reserve forces.

172. Section 116 of the 1996 Act makes provision so that two or more reserve associations may join in appointing from among their respective members a joint committee for any purpose in respect of which they are jointly interested. The effect of subsections (7) and (8) of new section 113A is to ensure that this joint committee mechanism may be used by reserve associations for the purpose of performing the duties under new section 113A. Accordingly, the duties under new section 113A may, for example, be performed by a joint committee appointed under section 116 by all of the reserve associations in relation to the whole of the United Kingdom.

Section 48: Unfair dismissal of reserve forces: no qualifying period of employment

173. **Section 48** amends section 108 of the Employment Rights Act 1996, by disapplying the statutory qualifying period for the purposes of claiming unfair dismissal from a reservist's civilian employment where the reason (or principal reason) for dismissal is connected with the employee's membership of the Reserve Forces.
174. This provision does not replace section 17 of the Reserve Forces (Safeguard of Employment) Act 1985 which makes it a criminal offence for an employer to dismiss a reservist because he or she is called out or likely to be called out. This provision does not mean that a member of a reserve force who is dismissed will automatically be treated as having been unfairly dismissed.