
STATUTORY INSTRUMENTS

2005 No. 859

**The Reserve Forces (Call-out and Recall)
(Financial Assistance) Regulations 2005**

PART 1

PRELIMINARY

Citation and commencement

1. These Regulations may be cited as the Reserve Forces (Call-out and Recall) (Financial Assistance) Regulations 2005 and shall come into force on the 14th April 2005.

General interpretation

2.—(1) In these Regulations—

“the 1996 Act” means the Reserve Forces Act 1996;

“the 1997 Regulations” means the Reserve Forces (Call-out and Recall) (Financial Assistance) Regulations 1997(1);

“accredited medical consultant” means a person who is on the Specialist Register of the General Medical Council;

“adjudication officer” means a person appointed by or in accordance with directions of the Secretary of State or the Defence Council to determine claims under these Regulations;

“company car” means a car or van—

(a) that is made available (without any transfer of the property in it by an employer) to an employee, his spouse or partner or any dependants ; and

(b) is so made available by reason of the employment; and

(c) is available for the private use of the employee, his spouse or partner or any dependants;

“continuing earnings” means the average daily earnings which an adjudication officer is satisfied that the reservist is continuing to receive from his employer during his relevant service;

“earnings” includes—

(a) salary, wages, fees, drawings, gratuities and commission; and

(b) service pay payable to a reservist for service other than for relevant service;

but does not include—

(i) any allowance or grant payable to the reservist in connection with his service as a member of the armed forces;

- (ii) any sums paid or payable by way of bounty to the reservist in respect of his undertaking prescribed training as a reservist and attaining a prescribed standard of efficiency;
- (iii) any payments made for the benefit of the reservist, his spouse or partner, or any dependants for accommodation or educational fees, or premiums in relation to pension schemes, health or medical insurance or life insurance or such other benefits as may be the subject of an award under paragraph (3)(f) of regulation 3;
- (iv) the value of any payments in respect of any company car provided by the reservist's employer and available for private use by him, his spouse or partner, or any dependants;

“employer” means a person with whom the reservist has—

- (a) a contract of service;
 - (b) a contract of apprenticeship;
 - (c) a contract for employment in the service of the Crown; or
- a person who is self-employed;

“partner” means any cohabitating partner (including a partner of the same sex);

“relevant date” means either the day on which a reservist reports for service (when he is subsequently accepted into permanent service) or the date on which he is accepted for permanent service, whichever is the earlier;

“relevant earnings” means in relation to a reservist, the average daily earnings which in the opinion of an adjudication officer the reservist might reasonably have expected to earn, but for performing relevant service, in the service of the employer over the 365 days immediately following the relevant date;

“relevant period” is the period beginning on the “relevant date” and ending on the termination of the “relevant service” of the reservist;

“relevant service” means permanent service on or after the 14th April 2005—

- (a) under Part IV of the 1996 Act;
- (b) under a call-out or recall order;
- (c) by a person called out or recalled under the Reserve Forces Act 1980(2) or under any other call-out or recall obligations of an officer;

but shall not include any period in which the reservist is serving a term of imprisonment or detention under the sentence of a court-martial or a court of law in the British Islands or any colony;

“replacement costs” means the daily rate of—

- (a) pay to any replacement of the reservist;
- (b) any—
 - (i) overtime payments to existing employees;
 - (ii) increases in salary of existing employees;

where an adjudication officer is satisfied that they are attributable to the absence of the reservist;

“reservist” means a person called out or recalled for relevant service;

“service pay” means any pay payable to a reservist for service in the armed forces excluding any bounty, allowance or grant.

(2) Where a person is performing relevant service and the date on which he is entitled to be released or discharged has been postponed under sections 45(6), 53(3), (7) or (11), 57(3) or (7), 61 or 69(3) or (6) (as the case may be) of the 1996 Act, the termination of relevant service means the day on which the reservist actually ceases the relevant service after the period of extension, and not the date on which he would otherwise have been entitled to be released or discharged from that service.

PART 2

AWARDS TO RESERVISTS

Reservist's award

3.—(1) A reservist performing relevant service shall, subject to fulfilment to an adjudication officer's satisfaction of the requirement to furnish information or documentation under paragraph (1) of regulation 11, be entitled to claim a reservist's award in respect of the relevant period.

(2) For the purposes of these Regulations the amount of a reservist's award shall (subject to the cap) be—

- (a) the relevant earnings of the reservist plus the daily cost of providing any benefits within paragraphs (3) or (4);
- (b) less the daily rate of his current service pay and any continuing earnings from his employer.

(3) In paragraph (2) the daily cost of providing any benefits within this paragraph means the average daily cost that an adjudication officer is satisfied the reservist will incur in making—

- (a) payments for health or medical insurance available for the benefit of the reservist, his spouse or partner or any dependants where—
 - (i) that insurance was immediately before the relevant date paid for by the employer; and
 - (ii) the employer has ceased or will cease to pay for such a benefit as a result of the relevant service of the reservist;
- (b) payments for life insurance in respect of the reservist where—
 - (i) that insurance was immediately before the relevant date paid for by the employer; and
 - (ii) the employer has ceased or will cease to pay for such a benefit as a result of the relevant service of the reservist;
- (c) any additional payments for the accommodation of the reservist, his spouse or partner or any dependants where—
 - (i) such accommodation was immediately before the relevant date paid for in whole or in part by the employer; and
 - (ii) the employer has ceased or will cease to make such payments as a result of the relevant service of the reservist;
- (d) any additional payments for the educational fees for any dependent child where—
 - (i) such fees were immediately before the relevant date paid for in whole or in part by the employer; and
 - (ii) the employer has ceased or will cease to pay such fees as a result of the relevant service of the reservist;
- (e) payments made by the reservist in respect of such other benefits that the reservist received from the employer where—

- (i) such a benefit was immediately before the relevant date paid for by the employer; and
- (ii) the employer has ceased or will cease to pay for such a benefit as a result of the relevant service of the reservist.

(4) In paragraph (2) the daily cost of providing certain benefits within this paragraph shall mean, where immediately before the relevant date the reservist had a company car, and—

- (i) that company car will no longer be at the disposal of the reservist's spouse or partner or any dependants as a result of the relevant service of the reservist; and
- (ii) no other car is available to the reservist's spouse or partner or any dependants for their use, an amount of £10.70 per day;

(5) For the purposes of this regulation the cap is—

- (a) in the case of a reservist who is an accredited medical consultant and whose relevant service is with the Defence Medical Services as a medical consultant, £822 per day;
- (b) in the case of any other reservist, £548 per day;

less his current service pay.

(6) The reservist's award shall be calculated as a daily rate and shall be paid monthly in arrears to the reservist on the last working day of every calendar month. The amount payable each month shall be the daily rate awarded multiplied by the numbers of days in the calendar month on which the reservist performed relevant service.

Allowable expenses claim

4.—(1) A reservist performing relevant service shall, subject to fulfilment to an adjudication officer's satisfaction of the requirement to furnish information or documentation under paragraph (2) of regulation 11, be entitled to make a claim in respect of certain allowable expenses.

(2) For the purposes of this regulation allowable expenses means those expenses specified below which are incurred by the reservist as a result of his relevant service and which will cease at the end of the relevant period. Those allowable expenses are—

- (a) additional payments by the reservist in respect of the care of a dependent child;
- (b) additional payments made by the reservist in respect of the care of any dependent relative who is ordinarily resident with the reservist;
- (c) additional payments by the reservist in respect of the care of an animal for which the reservist is responsible, but does not include—
 - (i) any veterinary bills that would have been incurred in any event had the reservist not been performing relevant service;
 - (ii) the care of animals that are the subject of a commercial activity of the reservist which forms the basis of his livelihood;
- (d) additional payments made by the reservist in respect of insurance for leaving his main residence unoccupied for an extended period of time;
- (e) payments made by the reservist in respect of the essential maintenance of his main residence and garden.

(3) A claim under this regulation may be for allowable expenses which have been, or will be, paid. In the case of an allowable expense which will be paid, an adjudication officer may agree to make monthly payments under this regulation subject to evidence being provided subsequently that the amounts have been paid by the reservist.

Pensions payments

5.—(1) If the reservist is a member of an occupational pension scheme (“the pension scheme”) into which his employer made contributions for the benefit of the reservist, his spouse or partner or any dependants, and such contributions are suspended by his employer during the relevant period—

- (a) if the reservist elects to stay in that scheme during the relevant period; and
- (b) the reservist continues to pay any contributions required of him into that scheme,

he shall be entitled to apply to an adjudication officer for a continuation of those contributions which his employer would have made into his pension scheme.

(2) When making a claim under this regulation the reservist must provide the documentation and information specified in paragraph (3) of regulation 11.

(3) An adjudication officer may direct that—

- (a) the person to whom any pension contributions would have been made by the employer shall accept a payment made under this regulation as if it was a payment made into the pension scheme by the employer; and
- (b) the person to whom any pension contributions are to be made by the reservist shall accept such contributions.

(4) The Secretary of State may by written notice require any person to whom such payments have been made under this regulation to provide to him, or such other person as may be designated by him, information regarding the use made of that money.

(5) This regulation shall only apply where the relevant date of the reservist falls on or after the 14th April 2005.

PART 3

AWARDS TO EMPLOYERS

Employer’s awards

6.—(1) An employer shall, subject to fulfilment to an adjudication officer’s satisfaction of the requirement to furnish information or documentation under paragraph (4) of regulation 11, be entitled to claim an award under this regulation in respect of the relevant period.

(2) For the purposes of these Regulations the amount of an employer’s award shall (subject to the cap) be the amount by which the replacement costs incurred by the employer exceed the relevant earnings of the reservist.

(3) For the purposes of this regulation the cap is £110 per day.

(4) In addition an employer may claim the amount of certain non-recurring costs that he incurs in replacing the reservist. Those costs are—

- (i) agency fees;
- (ii) advertising costs.

(5) The employer’s award specified in paragraph (2) shall be calculated as a daily rate and shall be paid monthly in arrears to the employer on the last working day of every calendar month. The amount payable each month shall be the daily rate awarded multiplied by the numbers of days in the calendar month on which the reservist is absent by virtue of performing relevant service.

Training award

7.—(1) An employer shall be able to reclaim the cost of training for the reservist where an adjudication officer is satisfied that as a result of his relevant service a reservist needs to undertake such training for the performance of his employment.

(2) When claiming an award under this regulation the employer must provide the necessary documentation specified in paragraph (5) of regulation 11.

PART 4 MAKING A CLAIM

Time limits for making a claim

8.—(1) A claim under these Regulations may not be made before the relevant date.

(2) A claim for an award other than a training award shall not be made more than 4 weeks after the end of the relevant period unless an adjudication officer agrees to an extended period.

(3) A claim for a training award must be made within 8 weeks of the reservist completing the relevant training, and, subject to paragraph (4), the relevant training must be completed within 6 months of the reservist's return to employment following the relevant period ("the initial 6 months").

(4) If the relevant training is not available within the initial 6 months, such training—

- (a) must be completed within the first 12 months from the end of the relevant period; and
- (b) the employer must give, within the initial 6 months, written notice of the intention that the reservist undertake such training to an adjudication officer.

Person to whom claims should be made

9. A claim shall be made to a person specified in Schedule 3.

Claimant's personal representative

10.—(1) Any steps required to be taken by a claimant under this Part may, except for claims to which paragraph (2) applies, be taken by any person having written authority from the claimant to do so, if the claimant has supplied a copy of that authority to an adjudication officer.

(2) In the event of the death of the claimant or of a person who, if he had survived could have been a claimant, a claim may be continued or made as the case may be, by his personal representatives for the benefit of his estate.

Information and documentation to be furnished in relation to claims

11.—(1) When making a claim under regulation 3 a reservist must supply the information specified in Schedule 1 to an adjudication officer.

(2) When making a claim under regulation 4 a reservist must supply the information set out in Schedule 1 except those items specified in paragraphs (1)(e), (f), (g), (h), (i), (j) and (l).

(3) When making a claim under regulation 5 a reservist must supply the information set out in Schedule 1 except those items specified in paragraphs (1)(e), (f), (g), (h) and (j) to an adjudication officer together with—

- (a) the name and address of the pension administrator for the pension scheme which is the subject of regulation 5;

- (b) any details sufficient to enable identification of his pension records;
 - (c) a written notice of his intention to continue to meet his pension contributions.
- (4) When making a claim under regulation 6 an employer must supply the information specified in paragraph (1) of Schedule 2 to an adjudication officer.
- (5) When making a claim under regulation 7 an employer must supply the information specified in paragraphs (1)(a) to (c) of Schedule 2 to an adjudication officer together with—
- (a) a statement of the training that the reservist is required to undertake for the performance of his job;
 - (b) a statement that the claim makes the maximum use of opportunities to re-acquire the necessary standard at no additional cost to the employer through such free training as may be available or workplace experience;
 - (c) invoices for the relevant training.
- (6) An adjudication officer may require a claimant to furnish such other information or documents in connection with a claim as an adjudication officer may at any time reasonably require.
- (7) A person who has furnished information under this regulation shall notify an adjudication officer of any—
- (a) inaccuracy in, or change to, that information; or
 - (b) event

which might materially affect the claim, no later than 14 days after the inaccuracy, change or event comes to that person's attention. The provision of such information shall entitle an adjudication officer to review the original determination in accordance with paragraph 1(d) of regulation 14.

Determination and payment of claims

12.—(1) An adjudication officer shall consider a claim promptly and in accordance with the relevant provisions of these Regulations.

(2) Where that determination takes into account any estimated cost or expense or any future event, it shall be a preliminary determination subject to confirmation when evidence of the actual amount or the occurrence of the event is provided.

(3) As soon as reasonably practicable after making his determination an adjudication officer shall provide to the claimant a written notification of his determination containing a statement—

- (a) giving reasons for the determination;
- (b) showing how any award has been calculated and the factors that were taken in to account when awarding that amount;
- (c) that the claimant may, if he is dissatisfied with the determination of his claim, appeal against the determination to a reserve forces appeal tribunal, and giving the address to which such an appeal should be sent.

Rejection of claims for non-compliance with the Regulations

13. An adjudication officer may reject a claim if the claimant has failed without reasonable excuse to comply with—

- (a) any requirement under paragraphs (1), (2), (3), (4) or (5) of regulation 11 to furnish information or documentation;
- (b) any of the time limits prescribed in regulation 8 above.

Additional powers of adjudication officers

14.—(1) An adjudication officer may—

- (a) treat the requirement to furnish information or documentation under paragraphs (1), (2), (3), (4) or (5) of regulation 11 as having been satisfied if he already has that information or documentation when the claimant makes his claim;
- (b) proceed to process a claim despite the fact that the information or documentation required under paragraphs (1), (2), (3), (4) or (5) of regulation 11 has not been supplied with the claim because such information or documentation is not readily available, but where the claimant undertakes to supply such information or documentation as soon as it does become available;
- (c) make an interim award pending the final determination of a claim;
- (d) review a determination at any time until the beginning of the hearing by a reserve forces appeal tribunal of an appeal against that determination or the expiry of 6 years, whichever is the earlier;
- (e) following any review of a determination, set aside the determination and substitute a new determination.

(2) If an adjudication officer proposes to exercise his power under paragraph (1)(d), he shall provide written notice of his intention to do so to the claimant as soon as reasonably practicable.

Withdrawal of a claim

15. A claimant may withdraw a claim, or any part of a claim, at any time by providing written notice of such to an adjudication officer.

PART 5

REVOCATION AND TRANSITIONAL ARRANGEMENTS

Revocation and transitional arrangements

16.—(1) Save to the extent set down in this regulation, the 1997 Regulations are revoked.

(2) The 1997 Regulations shall remain in force in respect of any claim for an award made under those Regulations before the 14th April 2005.

(3) Where a person was entitled before the 14th April 2005 to make a claim under the 1997 Regulations, but on that date has not yet done so, he may make a claim under those Regulations if the relevant time limits under those Regulations have not expired.

(4) Subject to paragraph (5), reservists or employers of reservists who are in relevant service on and immediately before the 14th April 2005 are not precluded from claiming an award under these Regulations solely because they have claimed, or have been made, an award under the 1997 Regulations in respect of their current period of relevant service within the meaning of those Regulations.

(5) Any award claimed or made under the 1997 Regulations in respect of a period which includes relevant service under these Regulations shall be taken into account when calculating the amount of any award under these Regulations in so far as it appears to an adjudication officer that both awards relate essentially to the same period or amount.

21st March 2005

Ivor Caplin MP
Under Secretary of State Ministry of Defence