

**EXPLANATORY MEMORANDUM TO THE
RESERVE FORCES (CALL-OUT AND RECALL) (FINANCIAL
ASSISTANCE) REGULATIONS**

2005 No. 859

1. This explanatory memorandum has been prepared by the Ministry of Defence and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Regulations provide a mechanism for mitigating the financial losses of reservists and employers of reservists who are called out (or recalled) for active service and who suffer financial loss as a result of this.

2.2 More precisely, under the Regulations a reservist may claim the difference between his service pay and his civilian earnings plus the cost to him of providing certain benefits which his employer had provided before his mobilisation. The amount that may be awarded to a reservist is subject to a cap less his service pay. The cap is stated as a daily rate of £548 per day (equivalent to £200,000 p.a), save for accredited medical consultants serving with the Defence Medical Services as medical consultants for whom the cap is £822 per day (equivalent to £300,000 p.a). The figure is stated as a daily rate because the period of the reservist's absence might not amount to an exact number of weeks, months or years. A reservist may also claim uncapped amounts for certain allowable expenses that he has incurred as a result of his relevant service, and occupational pension scheme contributions formerly made by his employer.

2.3 Employers may claim for the cost of replacing a reservist who is performing relevant service, up to a cap. The cap is stated as a daily figure of £110 (equivalent to £40,000 p.a). In addition an employer may claim certain uncapped non-recurring costs incurred when replacing a reservist, namely advertising and agency costs. An employer may also claim an uncapped amount for the training of the reservist upon his return to civilian employment where that training is necessary as a result of his relevant service.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 These Regulations replace the existing Reserve Forces (Call-out and Recall) (Financial Assistance) Regulations 1997 (SI 1997 No.309) and are made under sections 83 and 84 of the Reserve Forces Act 1996.

4.2 These new Regulations are being made in order to simplify the awards and the claims procedure for both reservists and employers and better to compensate them for financial loss. The existing Regulations provide for awards which are limited by reference to the rank or rate of the reservist, rather than by reference to the earnings he has lost and are widely considered to be too complicated, intrusive, difficult to administer and inadequate in terms of mitigating loss.

4.3 In October 2003 changes to the existing system of mitigating financial losses were proposed to the House of Commons Defence Committee.

4.4 In March and May 2004 Ivor Caplin MP, the Under Secretary of State, undertook to Parliament to introduce a new scheme that would ensure financial security for the families of reservists whilst they were on active service, together with lessening the financial burden on the civilian employer of the reservist. A record of Mr Caplin's undertakings may be found in Commons Hansard: 24 March 2004, Column 269WH; 6 May 2004, Column 1514; 13 May 2004, Column 560. In addition, Lord Bach gave a similar undertaking to the House of Lords (Lords Hansard: 4 May 2004, Column WA97).

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 Not Applicable.

7. Policy background

7.1 The 1997 Strategic Defence Review set out the policy of making the Reserve Forces more relevant, integrated and useful. Experience has shown that the existing legislation, SI 1997 No 309, does not meet the expectations of reservists and employers in all circumstances, and improvements are needed if the Ministry of Defence is to sustain an environment where Reserve Forces can be recruited and retained.

7.2 Interest among the public is largely confined to reservists, their employers and families, and only 205 people responded to the consultation paper. The following discussion papers are available on this topic from the Ministry of Defence:

“Financial Assistance for Reservists and their Employers: A discussion document on amendments to the schemes for financial assistance to Reservists and their employers.”

“Changes to the Reserve Forces (Call-out and Recall) (Financial Assistance) Regulations 1997 - Statutory Instrument 1997 No 309 (SI1997/309): Regulatory Impact Assessment (RIA)”

7.3 The following bodies were contacted by letter directly:

- i. The Institute of Directors
- ii. The Confederation of British Industry
- iii. Trades Union Congress
- iv. The Association of British Chambers of Commerce
- v. The National Association of Pension Funds
- vi. The Federation of Small Businesses
- vii. The British Medical Association
- viii. The British Dental Association
- ix. The Council of Reserve Forces and Cadets Associations.

7.4 78% of those who responded to the online survey welcomed the suggestion that reservists' earnings should be made up to a maximum cap, while 14% strongly disagreed (opposing any cap). 73% thought the cap should be £150,000 or lower. Setting the cap at £200,000 for non-medical reservists exceeds most reservists' expectations. Few medical and dental reservists took part in the survey, but their professional bodies (BMA and BDA) did, welcoming the idea of a separate cap.

7.5 The 97% of the 35 employers who responded approved MOD's proposal to match the additional costs of replacing a reservist up to a cap of £40,000. The Regulations do differ from the proposals set out in the RIA in one significant respect: the Employers' Hardship Award has not been retained. This is because the employers who responded to the consultation favoured abolition of the Employers' Hardship Award, and this has therefore been dispensed with.

8. Impact

8.1 A Regulatory Impact Assessment is available in the libraries of each House or from the MOD.

8.2 Only the Ministry of Defence will incur costs as a result of these Regulations. Whilst hard to quantify exactly, experience during Operation TELIC 1 suggests that for a typical mobilisation of around 750 reservists for 6 months the increase in cost will be around £2.7m.

9. Contact

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