

**EXPLANATORY MEMORANDUM TO
THE ARMED FORCES (TERMS OF SERVICE) (AMENDMENT) (No. 2)
REGULATIONS 2009**

SI 2009 No. 1089

THE ARMED FORCES (FORFEITURE OF SERVICE) (No. 2) REGULATIONS 2009

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**THE ARMED FORCES (DISCHARGE AND TRANSFER TO THE RESERVE
FORCES) (No. 2) REGULATIONS 2009**

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

2. Purpose of the instruments

2.1 The Armed Forces Terms of Service (Amendment) Regulations amend the Terms of Service Regulations for the Royal Navy, the Royal Marines, the regular army and the Royal Air Force. Some of the amendments are consequential on changes made by the Armed Forces Act 2006 (the 2006 Act) while others remove obsolete provisions and correct drafting errors.

2.2 The Armed Forces (Forfeiture of Service) Regulations make provision with respect to forfeiture of service of persons in the regular forces. They deal with a number of matters broadly relating to forfeiture of service following a confession of desertion by a person who is or was enlisted in the regular armed forces and provide for matters such as determination by a commanding officer that a trial may be dispensed with; determining the length service to be forfeited; and the restoration by the Defence Council of a period of forfeited service.

2.3 The Armed Forces (Discharge and Transfer to the Reserve Forces) Regulations make provision with respect to the discharge and transfer to the reserve forces of persons in the regular forces. They deal with a number of matters broadly relating to discharge and transfer to the reserve forces and make specific provision for the discharge of warrant officers. These regulations provide in particular for matters such as the competent authority to discharge a person; entitlement to discharge and conveyance to place of residence on discharge or transfer to the reserve forces; certificate of discharge; and postponement of discharge or transfer to the reserve forces.

2.4 Additionally, the three instruments each revoke earlier statutory instruments (S.I. numbers 2009/831, 2009/832 and 2009/833) that were made and laid in Parliament before the order under section 380 of the 2006 Act was made. This was an error that the Ministry of Defence has rectified by making these three new instruments.

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

3.1 An order under section 380 of the Act has been made which modifies sections 329(1), 330(1) and 331(4) (which are the enabling powers for these instruments) providing that transitional provisions in the instruments may be made.

4. Legislative Background

4.1 Each of the Services currently has secondary legislation that governs the terms and conditions of service for that Service. Those Regulations are: The Royal Navy Terms of Service (Ratings) Regulations 2006 (Statutory Instrument 2006 No. 2918); The Royal Marines Terms of Service Regulations 2006 (Statutory Instrument 2006 No. 2917); The Army Terms of Service Regulations 2007 (Statutory Instrument 2007 No. 3382); The Royal Air Force Terms of Service Regulations 2007 (Statutory Instrument 2007 No. 650).

4.2 The existing single Service terms of service Regulations mentioned above will be deemed to have been made under the 2006 Act as the provisions of section 329 of that Act are identical in terms to the existing provisions under which those statutory instruments are made. Aspects of the existing secondary legislation require updating in light of 2006 Act provisions and policy and these Regulations make some minor amendments to those existing statutory instruments to reflect changes made by and under the 2006 Act.

4.3 The Armed Forces Act 2006 creates enabling powers under which regulations may be made that replace existing provisions on forfeiture of service and discharge and transfer to the reserves contained in the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957. Although Defence Council regulations are usually made administratively and are not subject to scrutiny, these regulations are made by statutory instrument because the Services have no employment contracts and it is recognised that provisions regarding forfeiture of service and conditions of discharge are of sufficient importance to warrant Parliamentary scrutiny of what is involved. Making the regulations by statutory instrument ensures not only that they are properly scrutinised, but also that they are published and that Servicemen may easily ascertain their rights and obligations.

5. Territorial Extent and Application

5.1 These instruments extend to the United Kingdom, the Isle of Man and British overseas territories.

6. European Convention on Human Rights

6.1 As the instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

7.1 The existing statutory instruments detailed in paragraph 4.1 above will remain in force. There is no policy intent to harmonise the terms and conditions of service across the Services. These Regulations make minor changes to ensure that the single Service statutory instruments follow the 2006 Act in terminology.

7.2 The provisions under which the regulations on forfeiture of service and on discharge and transfer to the reserve forces are made, and the regulations themselves, largely replicate existing single Service law in this area. The new regulations harmonise practice and procedure across the Services.

8. Consultation outcome

8.1 A memorandum about consultation on the Armed Forces Act 2006 primary legislation was submitted in written evidence to the Select Committee on the Armed Forces Bill and published on 9 May 2006 in its Special Report of Session 2005-06 (HC 828-II, page Ev 136). This memorandum explained how stakeholder consultation had been carried out and listed the individuals and organisations consulted. The individual instruments under the 2006 Act have been the subject of rigorous consultation with relevant stakeholders (such as the Services, the Service police, the Judge Advocate General and the Military Court Service) over a period of many months, to ensure that the policy goals have been achieved and that the provisions of each instrument will work in practice.

9. Guidance

9.1 A new Manual of Service Law will provide guidance and supplementary information to Armed Forces personnel on the single system of Service law established under the Armed Forces Act 2006. The first volume of three within the Manual, which is intended for commanding officers and those who administer the Service justice system, includes a chapter on terms and conditions of enlistment and service. The Manual of Service Law will be available in time to allow Service personnel to be trained ahead of full implementation of the 2006 Act and will subsequently be available to the general public on the internet. Guidance will be promulgated to judge advocates through the Judge Advocate General's practice memoranda.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Armed Forces Act 2006 is subject to a requirement for renewal each year by Order in Council (approved in draft by both Houses of Parliament) and renewal by Act of Parliament every five years. In response to these requirements the Act will be subject to continuing monitoring and a general review will be conducted in order to provide for the Act of Parliament which will be required in 2011.

13. Contact

13.1 Mr N Shaw of the Ministry of Defence, 0207 218 0564, email nick.shaw460@mod.uk (0207 218 8291) is the point of contact regarding these instruments.