
STATUTORY INSTRUMENTS

2009 No. 832

The Armed Forces (Discharge and Transfer to the Reserve Forces) Regulations 2009

Citation and commencement

1. These Regulations may be cited as the Armed Forces (Discharge and Transfer to the Reserve Forces) Regulations 2009 and shall come into force on 31st October 2009.

Interpretation

2.—(1) In these Regulations—

“the 1955 Acts” means the Army Act 1955(1) and the Air Force Act 1955(2);

“the 1957 Act” means the Naval Discipline Act 1957(3);

“the 1966 Act” means the Armed Forces Act 1966(4);

“the 1996 Act” means the Reserve Forces Act 1996(5);

“the 2006 Act” means the Armed Forces Act 2006;

“commencement” means the date on which these Regulations come into force;

“enlisted person” means a member of the regular forces of or below the rank or rate of warrant officer;

“warrant officer” does not include an acting warrant officer, except in the definition of “enlisted person” above.

(2) For the purposes of these Regulations—

(a) in relation to a person enlisted in the Royal Navy or the Royal Marines, the competent authority is the Defence Council, the Admiralty Board, the Naval Secretary or any person authorised by him;

(b) in relation to a person enlisted in the regular army, the competent authority is the Defence Council, the Army Board, the Director of Manning (Army) or any person authorised by him; and

(c) in relation to a person enlisted in the Royal Air Force, the competent authority is the Defence Council, the Air Force Board, the Air Secretary or any person authorised by him.

Authority to discharge or transfer

3. An enlisted person may be discharged, or transferred to a reserve force, only by the competent authority or a person authorised by him.

(1) 1955 c. 18.
(2) 1955 c. 19.
(3) 1957 c. 53.
(4) 1966 c. 45.
(5) 1996 c. 14.

Entitlement to be discharged or transferred

4.—(1) Where an enlisted person becomes entitled to be discharged or transferred to a reserve force—

- (a) subject to paragraphs (2) and (3), he shall be discharged or transferred as soon as is practicable; but
- (b) he shall remain a member of the regular forces until discharged or transferred.

(2) Where an enlisted person—

- (a) was enlisted in the United Kingdom,
- (b) becomes entitled to be discharged at a time when he is serving outside the United Kingdom, and
- (c) elects to be discharged in the United Kingdom,

he shall be conveyed to the United Kingdom as soon as is practicable and at no expense to him, and shall be discharged on his arrival there, or, if he consents to his discharge being delayed, within six months after his arrival.

(3) Where an enlisted person—

- (a) falls to be transferred to a reserve force at a time when he is serving outside the United Kingdom, and
- (b) elects to be transferred in the United Kingdom,

he shall be conveyed to the United Kingdom as soon as is practicable and at no expense to him, and shall be transferred on his arrival there, or, if he consents to his transfer being delayed, within six months after his arrival.

(4) References in this regulation to a person's becoming entitled to be discharged include his becoming so entitled by virtue of these Regulations.

Conveyance to place of residence

5.—(1) Where an enlisted person is discharged or transferred to a reserve force in the United Kingdom, he shall be entitled to be conveyed at no expense to him from the place of his discharge or transfer to any place in the United Kingdom where he intends to reside.

(2) Subject to paragraph (1), an enlisted person who is discharged or transferred to a reserve force shall not be entitled to be conveyed from the place of his discharge or transfer to any other place.

Certificate of discharge

6.—(1) On being discharged, an enlisted person shall be given a certificate of discharge containing—

- (a) his full name, rank or rate and service number;
- (b) the date and place of his enlistment or of the commencement of his service;
- (c) if he is being discharged having performed duties as a member of the regular forces, a signed assessment by an officer as to his conduct and character;
- (d) the date of his discharge and the service or corps from which he is discharged;
- (e) a statement of his liability, if any, to service in the reserve forces; and
- (f) the signature of the competent authority or other person by whom he is discharged.

(2) In this regulation "corps" means any body of the regular army that may from time to time be declared by Royal Warrant to be a corps.

Right of warrant officer to discharge following reduction in rank or disrating

7.—(1) This regulation applies to a warrant officer of the regular forces if his rank or rate has been reduced—

- (a) by a sentence of the Court Martial to the greatest extent to which it could be so reduced; or
- (b) under section 293 of the 2006 Act (effect of custodial sentence or sentence of service detention) by virtue of a sentence passed on him by the Court Martial taking effect.

(2) This regulation also applies to a warrant officer of the regular forces if—

- (a) his rank or rate has been reduced—
 - (i) by a sentence of the Appeal Court to the greatest extent to which it could be so reduced; or
 - (ii) under section 293 of the 2006 Act by virtue of a sentence passed on him by the Appeal Court (other than a suspended sentence of imprisonment or a suspended sentence of service detention) taking effect; and
- (b) this regulation has not previously applied to him by virtue of any sentence passed by the Court Martial in the proceedings to which the appeal relates, or by virtue of any such sentence taking effect.

(3) This regulation also applies to a warrant officer of the regular forces if his rank or rate has been reduced under section 293 of the 2006 Act by virtue of a suspended sentence of imprisonment, or a suspended sentence of service detention, passed on him by the Appeal Court taking effect.

(4) A warrant officer to whom this regulation applies may give notice in writing to his commanding officer, within 28 days of the day on which this regulation began (or last began) to apply to him, that he wishes to be discharged from the regular forces.

(5) A warrant officer who has given notice under paragraph (4) shall be entitled to be discharged.

(6) In this regulation “the Appeal Court” means the Court Martial Appeal Court, but in paragraph (3) includes the Courts-Martial Appeal Court.

Postponement of discharge or transfer

8.—(1) This regulation applies to an enlisted person if—

- (a) apart from this regulation, he would have become entitled to be discharged or transferred to a reserve force;
- (b) on the date on which he would have become so entitled (“the relevant date”), a call-out order under section 52, 54 or 56 of the 1996 Act is in force authorising the call out for permanent service of members of the reserve forces; and
- (c) none of regulations 9 to 12 applies to him.

(2) References in paragraph (1) to a person’s becoming entitled to be discharged include his becoming so entitled by virtue of these Regulations.

(3) A person to whom this regulation applies may be retained in service in the regular forces for such period as the competent authority may order, not exceeding the maximum period, and if so retained shall not be entitled to be discharged or transferred to a reserve force until the expiry of the period so ordered.

(4) Where the person would otherwise have been entitled to be discharged, and any call-out order by virtue of which this regulation applies to him was made under section 52 or 54 of the 1996 Act, the maximum period is 12 months from the relevant date.

(5) Where the person would otherwise have been entitled to be discharged, and the only call-out order by virtue of which this regulation applies to him was made under section 56 of the 1996 Act, the maximum period is nine months from the relevant date.

(6) Where the person would otherwise have been entitled to be transferred to a reserve force, the maximum period is the period for which he could have been required to serve on being called out under Part 6 of the 1996 Act if—

- (a) he had been transferred to the reserve force in time to be called out for permanent service starting on the relevant date; and
- (b) he had been so called out on the authority of the call-out order by virtue of which this regulation applies to him.

(7) Where—

- (a) a person is retained in service in the regular forces by virtue of this regulation,
- (b) on the expiry of the period for which his retention was ordered, a call-out order under section 52 or 54 of the 1996 Act is in force, and
- (c) he makes a declaration before his commanding officer in a form approved for the purposes of this regulation by or on behalf of the Defence Council,

he may (with the approval of the competent authority) continue to serve in the regular forces for as long as such a call-out order is in force, and shall be entitled to be discharged or transferred to a reserve force on the expiry of three months' notice given by him to his commanding officer.

(8) Where a person who would otherwise have been entitled to be transferred to a reserve force is retained in service, or continues to serve, in the regular forces by virtue of this regulation—

- (a) any period for which he is liable to serve in a reserve force shall be reduced by the period for which he is so retained or continues so to serve; and
- (b) the period for which he is so retained or continues so to serve shall be treated as a period of relevant service for the purposes of Parts 4 to 7 of the 1996 Act.

9.—(1) This regulation applies to an enlisted person if immediately before commencement, by virtue of paragraph 2 of Schedule 7 to the 1996 Act, the Army Act 1955 continued to apply in relation to him without the amendments made by paragraph 1 of that Schedule.

(2) Paragraph (1) is subject to regulation 14.

(3) Where this regulation applies to a person, section 9 of the Army Act 1955 shall continue to apply in relation to him—

- (a) without the amendments made by paragraph 1 of Schedule 7 to the 1996 Act; and
- (b) notwithstanding its repeal by the 2006 Act.

10.—(1) This regulation applies to an enlisted person if immediately before commencement, by virtue of paragraph 4 of Schedule 7 to the 1996 Act, the Army Act 1955 continued to apply in relation to him without the amendments made by paragraph 3 of that Schedule.

(2) Paragraph (1) is subject to regulation 14.

(3) Where this regulation applies to a person, paragraph 4A(6) of Schedule 7 to the Army Act 1955 shall continue to apply in relation to him—

- (a) without the amendments made by paragraph 3 of Schedule 7 to the 1996 Act; and
- (b) notwithstanding its repeal by the 2006 Act.

(6) Substituted by the Armed Forces Act 1966, section 13(1) and Schedule 3, paragraph 1.

11.—(1) This regulation applies to an enlisted person if immediately before commencement, by virtue of paragraph 6 of Schedule 7 to the 1996 Act, the Air Force Act 1955 continued to apply in relation to him without the amendments made by paragraph 5 of that Schedule.

(2) Paragraph (1) is subject to regulation 14.

(3) Where this regulation applies to a person, section 9 of the Air Force Act 1955 shall continue to apply in relation to him—

- (a) without the amendments made by paragraph 5 of Schedule 7 to the 1996 Act; and
- (b) notwithstanding its repeal by the 2006 Act.

12.—(1) This regulation applies to an enlisted person if immediately before commencement, by virtue of paragraph 8 of Schedule 7 to the 1996 Act, the 1966 Act continued to apply in relation to him without the amendments made by paragraph 7 of that Schedule.

(2) Paragraph (1) is subject to regulation 14.

(3) Where this regulation applies to a person, section 4 of the 1966 Act shall continue to apply in relation to him—

- (a) without the amendments made by paragraph 7 of Schedule 7 to the 1996 Act; and
- (b) notwithstanding its repeal by the 2006 Act.

13.—(1) For the purposes of their continued application in relation to an enlisted person by virtue of any of regulations 9 to 12, section 9 of each of the 1955 Acts, paragraph 4A of Schedule 7 to the Army Act 1955 and section 4 of the 1966 Act are modified as follows.

(2) References to the competent military authority, the competent air-force authority or the competent authority are to be read as references to a person who for the purposes of these Regulations is the competent authority in relation to the enlisted person.

(3) References to the enlisted person's commanding officer are to be read as references to the officer who is his commanding officer for the purposes of the 2006 Act.

14. A person to whom any of regulations 9 to 12 applies may irrevocably elect to be a person to whom that regulation does not apply, by making a declaration before his commanding officer in a form approved for the purposes of this regulation by or on behalf of the Defence Council.

Transitional provisions

15. The Schedule shall have effect.

31st March 2009

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