EXPLANATORY MEMORANDUM TO

THE ARMY AND ROYAL AIR FORCE (TERMS OF SERVICE) (AMENDMENT) REGULATIONS 2024

2024 No. 1059

1. Introduction

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

2. Declaration

2.1 Alistair Carns, Minister for Veterans and People at the Ministry of Defence confirms that this Explanatory Memorandum meets the required standard.

2.2 Brigadier Jim Taylor, Head of Personnel Policy at the Army Personnel Directorate, and Victoria Titchen, Deputy Director at the People Directorate HQ Air, confirm that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Lt Col Donald Watt at the Army Personnel Directorate, telephone: 03001689 090 or email: donald.watt524@mod.gov.uk and Wg Cdr David Lewis at the People Directorate HQ Air, telephone: 0300 161 2009 or email: david.lewis298@mod.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument amends the Army Terms of Service Regulations 2007 (SI 2007/3382) ("the Army Regulations") and the Royal Air Force Terms of Service Regulations 2007 (SI 2007/650) ("the Royal Air Force Regulations"). The amendments relate to regulations that enable a Training Return of Service (TRoS) commitment to be imposed requiring a person to return to Service for a specified period after completion of a training course that is funded by the Armed Forces. The amendments will ensure that a TRoS commitment can be imposed regardless of the length of the training course to be undertaken. The period for which the person undertaking the training course will need to return to Service after completion of the course will be specified in the TRoS commitment.

4.2 This instrument also makes amendments to ensure gender-neutral language is used throughout the Army Regulations and Royal Air Force Regulations, and updates the definition of competent military authority by replacing the title of Director of Manning (Army) with Head of Personnel Policy (Army).

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom, the Isle of Man and British overseas territories except Gibraltar.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is to members of the regular Army and Royal Air Force wherever they are in the world.

5. Policy Context

What is being done and why?

5.1 Under the Army Regulations and the Royal Air Force Regulations, a TRoS commitment can be imposed upon a person who undertakes training that is funded by the Armed Forces. That means that the person undertaking the training will consent in writing to not terminate their service or be transferred to the reserves for a specified period following completion of the course.

5.2 The instrument removes the requirement that a course needs to be of a specified minimum duration before a TRoS commitment can be sought. This change reflects that the training environment has evolved as courses are increasingly hybrid or modular and even short courses can be very expensive. Without these amendments, there would be a risk that the Services would not derive any benefit from the training they funded if the individual leaves the Service shortly after undertaking the training course. The Royal Navy and Royal Marines also do not prescribe a minimum course length. This instrument therefore ensures consistency across the Services and reduces potential unfairness to personnel.

5.3 The instrument also provides that as part of the TRoS commitment the person undertaking the training will consent in writing to the period for which they need to return to Service after completion of the course.

5.4 Amendments are also made to update the definition of competent military authority by replacing the title of Director of Manning (Army) with Head of Personnel Policy (Army) and to ensure gender-neutral language is used throughout both the Army Regulations and Royal Air Force Regulations.

What was the previous policy, how is this different?

5.5 Previously, a TRoS commitment could not be imposed for a course of a duration of less than 2 weeks under the Army Regulations and 3 weeks under the Royal Air Force Regulations. The instrument ensures that a TRoS commitment can be required regardless of the length of the training course to be undertaken, to align with the approach in the Royal Navy's and Royal Marines' rules that do not require a minimum course duration. This change therefore ensures consistency in tri-service policy on TRoS commitments.

5.6 The maximum period for which a Service person could be required to return to Service was previously determined by reference to the duration of the course. The instrument amends this so that the person undertaking the training will consent to return to service for a period specified in the TRoS commitment.

6. Legislative and Legal Context

How has the law changed?

6.1 The terms of service for enlisted members of the Army and the Royal Air Force are set out in the Army Regulations and the Royal Air Force Regulations respectively. These regulations specify the circumstances in which a TRoS commitment may be imposed and for what duration.

6.2 The instrument amends the Army Regulations and Royal Air Force Regulations by removing the requirement that a course needs to be of a minimum length to attract a TRoS commitment. In addition, the instrument provides that the period for which a person will return to service after completion of their course will be determined by written consent as part of the TRoS commitment.

Why was this approach taken to change the law?

6.3 As the previous rules relating to TRoS commitments are contained in regulations made under section 329(1) of the Armed Forces Act 2006, which provides a power to make regulations relating to the terms of service for members of regular forces, they need to be amended by way of legislation. Given that the regulation-making power in section 329(1) of that Act contains an implied power to amend regulations, by virtue of section 14 of the Interpretation Act 1978, making these amendments by way of statutory instrument was considered to be a more expedient way of changing the law than primary legislation. The regulation-making power is exercisable by the Defence Council, which is the highest level of military command and administration under His Majesty. For the purpose of making these regulations, the Defence Council is treated as a Minister of the Crown.

6.4 Given that the amendments in this instrument relate to both the Army Regulations and Royal Air Force Regulations, it was also considered to be expedient to deal with them within one instrument, rather than two separate instruments.

7. Consultation

Summary of consultation outcome and methodology

7.1 There has been no formal consultation on this instrument. The tri-Service (Royal Navy, Army, Royal Air Force) Working Group on TRoS policy has agreed and set the policy on the alignment of TRoS commitment. The imposition of a TRoS in relation to a particular training course is subject to tight regulation by the tri-Service TRoS Working Group and only put in place when that training course meets certain parameters (e.g., cost of the training, the need to retain personnel, and the commercial and marketable value of the training). These amendments are required to allow the Army and Royal Air Force to implement the agreed Working Group policy.

8. Applicable Guidance

8.1 Policy guidance and supplementary information will be published as part of Joint Services Publication 750 on Centrally Determined Terms of Service (JSP 750), which will be available to all Armed Forces personnel.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because there is no, or no significant impact on businesses, charities, or the public sector.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the impact of the instrument concerns the terms of service of Armed Forces personnel with respect to training courses that are funded by the Armed Forces.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because the impact of the regulations only concerns the terms of service of Armed Forces personnel with respect to training courses that are funded by the Armed Forces.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is provided by means of continued review by the TRoS Working Group and the Services. In order to ensure that combat effectiveness is not adversely affected by the amendments made through this instrument, the Services will monitor the new arrangements. Additionally, the Armed Forces Act 2006 is subject to quinquennial review.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Minister for Veterans and People has made the following statement regarding Human Rights:

"In my view the provisions of The Army and Royal Air Force (Terms of Service) (Amendment) Regulations 2024 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").