EXPLANATORY MEMORANDUM TO

THE RESERVE FORCES (PAYMENTS TO EMPLOYERS AND PARTNERS) REGULATIONS 2014

2014 No. 2410

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 instrument

2.1 The instrument gives effect to a scheme for making payments to employers of, and persons carrying on business in partnership with, members of the reserve forces who are called out for service in the armed forces.

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

3.1 This instrument is due to come into force on 1 October 2014. The scheme that it gives effect to is one of a series of changes relating to reserve forces that come into effect on 1 October 2014: the Defence Reform Act 2014 (Commencement No 2) Order 2014 (SI 2014/2370) provides for sections 44, 45, 47 and 48 of, and Schedule 6 to, the Defence Reform Act 2014 to come into force on that date. This instrument is particularly closely linked with section 45 (which extends the powers in the Reserve Forces Act 1996 under which members of the reserve forces may be called out for service in the armed forces). This instrument must come into force on 1 October 2014 so that employers and partners of any persons called out for service under the extended call-out powers on 1 October 2014 are not prevented from making a claim for payment under this instrument in respect of any part of that service. Regrettably, due to an administrative oversight, the instrument was not laid in time for it to be laid for at least 21 days before it is due to come into force (ie the 21 day rule has been breached). The Department is fully aware that the purpose of the rule is to enable the Committees to consider the instrument before it comes into force and apologises for the oversight.

4. Legislative background

4.1 Section 84 of the Reserve Forces Act 1996 ("the 1996 Act") gives the Secretary of State a power to make regulations which provide for the making of payments by him to employers in respect of financial loss suffered by them and attributable to any of their employees being called out or recalled for service. Regulations under section 84 may also provide for the making of payments to the partners of a person carrying on business in partnership in respect of financial loss suffered by them and attributable to that person being called out or recalled for service. Section 83 of the 1996 Act gives the Secretary of State a power to make regulations which provide for the making of payments by him to any persons in respect of financial loss suffered by them and attributable to their being called out or recalled for service. The Reserve Forces (Call-out and Recall) (Financial Assistance) Regulations 2005 (SI 2005/859) were made in exercise of the powers conferred by sections 83 and 84 of the 1996 Act.

4.2 Section 46 of the Defence Reform Act 2014 inserted section 84A into the 1996 Act to allow the Secretary of State, by regulations, to provide for the making of additional payments to employers whose reservist employees are called out, undertake certain training or perform certain other duties. Such regulations may also provide for the making of payments to persons carrying on business in partnership whose partners in that business are called out, undertake certain training or perform certain other duties.

4.3 This instrument is made under section 84A of the 1996 Act to allow the Secretary of State to make payments to employers of, and persons carrying on business in partnership with, members of the reserve forces who are called out for service in the armed forces. It is the first use of the power in section 84A.

4.4 The effect of subsection (3) of section 84A is that regulations made under that section may only provide for the making of such payment to employers or persons carrying on business in partnership as the Secretary of State considers would (or would, in combination with other measures) be likely to encourage people to employ members of reserve forces or to carry on business in partnership with them.

4.5 Section 85(3) of the 1996 Act, as amended by paragraph 4(4) of Schedule 7 to the Defence Reform Act 2014, imposes an obligation on the Secretary of State to consult the following before making any regulations under section 83, 84 or 84A of the 1996 Act:

- a body appearing to him to represent the interests of employers
- a body appearing to him to represent the interests of employees
- a body appearing to him to represent the interests of the self-employed, and
- the associations established under Part 11 of the 1996 Act (reserve associations) or a body appearing to him to represent those associations.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Part 3 of the Defence Reform Act 2014 contains provisions which make changes relating to the reserve forces to enable the best use to be made of those forces. Those changes include allowing for the provision of financial support to employers when their reservist employees are absent from work on reserve service. They also include allowing for the provision of such support to persons carrying on business in partnership whose partners in that business are absent from work on reserve service. These changes recognise that the support of employers and business partners is integral to enabling the reserve forces to function effectively.

7.2 This financial support is additional to that provided under the Reserve Forces (Call-out and Recall) (Financial Assistance) Regulations 2005 (SI 2005/859), which are made under section 84 of the 1996 Act. A Consultation Paper on the future of the reserve forces, “Future Reserves 2020: Delivering the Nation’s Security Together”, was published in November 2012. Responses to that Paper indicated that many employers feel that having reservist

employees absent from work on reserve service disadvantages them in ways which the ability to claim for actual financial loss under the Reserve Forces (Call-out and Recall) (Financial Assistance) Regulations 2005 does not address.

7.3 Recognising this, the purpose of this instrument is to provide for the making of payments to encourage people to employ, or to carry on business in partnership with, members of the reserve forces. The Secretary of State is satisfied, in accordance with section 84A(3) of the 1996 Act, that the payments provided for in this instrument are (or are, in combination with other measures) likely to encourage people to employ members of reserve forces or to carry on business in partnership with them.

7.4 The power in section 84A of the 1996 Act under which the instrument is made allows the Secretary of State flexibility as to which employers may receive a payment and which reserve forces activities trigger entitlement to a payment. This instrument provides so that payments may be made to employers and persons carrying on business in partnership in, broadly speaking, small and medium-sized private sector undertakings. Entitlement to payments is focussed in this way because the burden of reserve forces commitment can fall particularly hard on such undertakings: larger undertakings are likely to be more able to absorb the costs and disruptions associated with the call out of members of the reserve forces. Larger undertakings will continue to be able to claim, under the Reserve Forces (Call-out and Recall) (Financial Assistance) Regulations 2005 for quantifiable financial loss incurred in having to provide a replacement for a reservist who is called out.

7.5 The instrument provides for payments to be made for each calendar month for the whole or part of which a reservist who is employed, or is carrying on business in partnership, is called out for service in the armed forces.

8. Consultation outcome

8.1 As required by section 85(3) of the 1996 Act (as amended by paragraph 4(4) of Schedule 7 to the Defence Reform Act 2014), the Secretary of State has consulted the following bodies about the provision made in this instrument:

- the Confederation of British Industry
- the Institute of Directors
- the National Employer Advisory Board

- the Federation of Small Businesses, and
- the Council of the Reserve Forces and Cadets Associations.

These bodies were consulted over a period of 11 days.

8.2 Responses were received from the Federation of Small Businesses and the Council of the Reserve Forces and Cadets Associations. Both welcomed the new scheme and the recognition of the burden that mobilisation can place on employers with 250 or fewer members of staff. Both also supported extending the provision made in this instrument so that payments may be made to the self-employed in respect of their own reserve force activities, but this is prevented by express provision in the primary legislation under which this instrument is made (though the Ministry of Defence will keep this under review). The Federation of Small Businesses recommended putting in place a simple claims process and both they and the Council of the Reserve Forces and Cadets Associations stressed the importance of publicising the existence of the new scheme to reservists and employers.

8.3 The Secretary of State also consulted SaBRE (Supporting Britain's Reservists and Employers) (an organisation funded by the Ministry of Defence that aims to build support for members of the reserve forces from employers) and the armed forces about the provision made in this instrument. They generally supported the scheme and, in particular, its focus on supporting smaller businesses.

9. Guidance

9.1 When a member of the reserve forces is called out for service in the armed forces, their employer (or, in the case of a reservist who is carrying on business in partnership, that partnership) will receive guidance about the scheme introduced by this instrument and how to make a claim under it. The guidance will include contact details for the Adjudication Officers (who will determine claims under this instrument) who are available to provide further information.

10. Impact

10.1 A Regulatory Impact Assessment is attached to this memorandum and can also be found here:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/210533/Defence_Reform_Bill-_Impact_Assessment-_MOD0002.pdf
This assessment was prepared for the Defence Reform Bill. This instrument implements provision made in that Bill.

10.2 There is no impact on the public sector.

11. Regulating small business

11.1 The legislation applies to small business. Payments under the scheme introduced by this instrument are targeted at employers and persons carrying on business in partnership in, broadly speaking, small and medium-sized undertakings.

12. Monitoring and review

12.1 The scheme introduced by this instrument will be subject to internal review after 12 months and the legislation may be amended accordingly.

13. Contact

13.1 In the event of any inquiries about this instrument, please contact Tracy Sexton of Central Legal Services at the Ministry of Defence by telephoning 0207 218 0564 or by e-mailing tracy.sexton743@mod.uk.