EXPLANATORY MEMORANDUM TO

THE JOBSEEKER'S ALLOWANCE (MEMBERS OF THE RESERVE FORCES) REGULATIONS 2012

2012 No. 1616

AND

THE SOCIAL SECURITY (BENEFIT) (MEMBERS OF THE FORCES) (AMENDMENT) REGULATIONS 2012

2012 No. 1656

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and Her Majesty's Treasury, and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

These instruments make provision to enable jobseeker's allowance (JSA) claimants who are members of the reserve forces to attend the 15 day annual continuous training period required of them without the need to terminate their claim to JSA. The instruments are designed to:

- reduce the administrative burden of requiring reservists to make a repeat claim for JSA after their annual training has been completed;
- ensure their JSA claim will be kept open by treating them as available for, and actively seeking, employment for the duration of their training; and
- remove payment delays associated with the claimant otherwise needing to make a new claim for JSA.

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

3.1 The preamble to the Social Security (Benefit) (Members of the Forces) (Amendment) Regulations 2012 includes a reference to section 40 of the Jobseekers Act 1995 ("the 1995 Act") as a power relied on to make the Regulations. That section empowers the Secretary of State to make such transitional provision, consequential provision or savings as he considers necessary or expedient for the purposes of or in connection with the coming into force of the 1995 Act. That was the power cited in the preamble to the Social Security and Child Support (Jobseeker's Allowance) (Consequential Amendments) Regulations 1996 (S.I. 1996/1345) which inserted the reference to JSA into regulation 2 of the Social Security (Benefit) (Members of the Forces) Regulations 1975 (S.I. 1975/493) ("the 1975 Regulations") (replacing a reference to unemployment benefit which was abolished by the 1995 Act.), so that members of the

forces could not receive JSA except in certain limited circumstances. Section 40 is therefore cited in the amending Regulations which remove that insertion.

3.2 Regulations under Section 40 of the 1995 Act must be made by the Secretary of State, and regulations under section 116(2) of both the Social Security Contributions and Benefits Act 1992 and of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 – which are the powers under which the 1975 Regulations are treated as having been made[1] – must be made by HM Treasury with the concurrence of the Secretary of State. The amending Regulations are therefore made by both the Secretary of State and HM Treasury.

4. Legislative Context

4.1 The Jobseeker's Allowance Regulations 1996 ("the JSA Regulations") state the circumstances in which a claimant is to be treated as available for and actively seeking employment, the circumstances in which a claimant is to be treated as having good cause for failing to attend at a Jobcentre (to provide a signed declaration), how earnings are calculated and the sums to be disregarded in the calculation of those earnings.

4.2 The JSA Regulations have an adverse impact on JSA claimants who are members of the reserve forces when they attend their mandatory 15 day annual training commitment. As they will be unable to fulfil the key conditions for claiming JSA, that they are available for and actively seeking employment, their claim must terminate.

4.3 The 1975 Regulations prohibit the payment of JSA to serving members of the armed forces. One exception to this rule is in the case of reserve forces members who are not training for more than 72 hours.

4.4 In a Written Ministerial Statement on 25th June 2012, the Government announced their intention to ensure that the rules for JSA do not create unnecessary bureaucracy for claimants who are members of the reserve forces and who currently do not receive similar exemptions for JSA purposes as, for example, part-time members of the Fire and Rescue Service and others involved in emergency duties for the benefit of others.

5. Territorial Extent and Application

The Jobseeker's Allowance (Members of the Reserve Forces) Regulations 2012 extend to Great Britain. The Social Security (Benefit) (Members of the Forces) (Amendment) Regulations 2012 extend to the United Kingdom, except that the amendment to regulation 2 of the 1975 Regulations which is made by regulation 2(3)(a) does not extend to Northern Ireland..

[1] The 1975 Regulations were originally made on the basis of section 128 of the Social Security Act 1975 and section 123 of the Social Security (Northern Ireland) Act 1975 which were repealed and replaced by the 1992 consolidation Acts.

6. European Convention on Human Rights

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

7. Policy background

- *What is being done and why*

7.1 The Government wish to ensure that the rules for JSA do not create unnecessary issues for claimants who are members of the reserve forces[2] and who currently do not receive similar exemptions for JSA purposes as, for example, part-time members of the Fire and Rescue Service and others involved in emergency duties for the benefit of others.

7.2 The JSA Regulations allow claimants to be treated as available for employment while they are:

- engaged in crewing or launching a lifeboat
- on duty as part-time members of the Fire and Rescue Service or
- engaged in emergency duties for the benefit of others

but there is currently no similar provision for members of the reserve forces who are also engaged in similar duties as this group.

7.3 JSA claimants engaged in the duties referred to in paragraph 7.2 are also treated as actively seeking employment in any benefit week in which they carry out these duties for at least three days within that week. If a claimant is engaged in these duties for less than three days in that week they cannot be treated as actively seeking employment for that week. In these circumstances the claimant would be expected to fulfil the normal JSA conditions of being available for and actively seeking employment. However, any time spent engaged in the duties referred to in paragraph 7.2 would be taken into account when deciding if the claimant had taken sufficient steps to meet the requirements to be available for, and actively seeking employment, during that week.

7.4 Members of the lifeboat service, Fire and Rescue Service and others engaged in emergency duties for the benefit of others are required to undertake training throughout the year – although this usually takes place at evenings or weekends to fit around volunteers' work and other commitments. As a result there is no adverse affect on their JSA claim. Only members of the reserve forces have a compulsory requirement to attend a period of annual continuous training lasting up to 15 days.

7.5 Under existing legislation reserve force members' entitlement to JSA comes into question when they attend their annual continuous training. This is because they will be unable, during this period of training, to meet the basic JSA jobseeking conditions of being available for and actively seeking employment. As a result the award must be

[2] The UK reserve forces are the Royal Fleet Reserve, the Royal Naval Reserve, the Royal Marine Reserve, the Army Reserve, the Territorial Army (which includes members of the Royal Irish Regiment), the Air Force Reserve and the Royal Auxiliary Air Force.

terminated. This will in turn affect entitlement to passported benefits such as Housing Benefit (HB) and Council Tax Benefit (CTB).

7.6 The regulation changes are designed to make it easier for JSA claimants who are required to attend their annual training commitment. The changes will mean that their JSA claim can be kept open whilst on annual training as they will be treated as available for, and actively seeking, employment and they can continue to receive JSA upon returning from annual training (assuming the conditions of entitlement continue to be met) without the need to make a new benefit claim. This will generate far less disruption for claimants than the termination of their claims followed by the requirement to make a repeat claim to JSA when they have completed their training.

7.7 Members of the reserve forces earn a minimum of £532 for their attendance at the annual continuous training commitment, which is well in excess of JSA limits. The amendments to the JSA Regulations provide for:

- these earnings to be disregarded to the extent that they exceed a claimant's personal rate (in relation to contribution-based JSA) or his or her applicable amount (in relation to income-based JSA) less 10 pence; and
- apportionment of the earnings over a maximum period of 14 days, beginning with the day on which the earnings are treated as paid to the claimant.

These changes mean that a claimant will:(i) receive a minimum entitlement to JSA of 10 pence in the benefit week in which payment is received and in the following week, and (ii) can continue to be entitled to passported benefits such as HB and CTB. These amendments also ensure that reserve force members do not have to close their JSA claims as a result of attendance at annual continuous training.

7.8 The amendment made by regulation 2(3)(a) of the Social Security (Benefit) (Members of the Forces) (Amendment) Regulations 2012 has the effect of removing the prohibition on the payment of JSA to serving members of the armed forces which is mentioned in paragraph 4.3 above. The other amendments being made by those Regulations are to bring the list of serving members of the forces up to date and to revoke the separate provision which was made for the circumstances in which members of the Ulster Defence Regiment could receive the benefits covered by regulation 2 of those Regulations. Separate provision is no longer needed for the Ulster Defence Regiment which was merged with the Royal Irish Rangers in 1992 to create the Royal Irish Regiment.

7.9 Serving members of the forces who are not reserve force members will not meet the conditions of entitlement to JSA, in particular the requirements that they be available for and actively seek employment, and not be engaged in remunerative work.

- Consolidation

7.10 Informal consolidation of this instrument will be provided in due course in the 'Law Relating to Social Security' (referred to as "The Blue Books") which are regularly

http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/

8. Consultation outcome

8.1 A formal consultation has not been carried out by the Department for Work and Pensions. Consultation was not considered necessary in this case as this is a small, entirely beneficial, change to enable easier access to benefits for members of the reserve forces when they are not on active duty.

8.2 However, the changes follow Ministerial discussions with the Duke of Westminster, Deputy Commander Army Reserves, who first raised the issue of what could be done to ensure JSA rules do not create unnecessary issues for JSA claimants when they attend their 15 day annual continuous training period. Officials have also worked closely with the Ministry of Defence (MoD) to ensure the changes will reduce the administrative burden of requiring reservists to make a repeat claim for JSA after their annual training has been completed, and to remove delays in the resumption of payment of benefit.

8.3 In addition, the Department for Work and Pensions has presented the proposals for the Regulations to the Social Security Advisory Committee which decided not to require a formal referral of the Regulations.

9. Guidance

9.1 Current guidance will be amended to explain the new requirements in relation to reserve forces. This will include guidance for staff in local offices who advise claimants, staff in benefit centres who determine JSA claims and administer awards – including decision makers – and guidance for Work Programme providers. Instructional memos will also be issued to ensure all staff involved in the process are aware of the guidance changes.

9.1.1 Claimants will be informed about the changes at their interviews with their advisers. The Department for Work and Pensions also has Armed Forces Champions in every district. Their role is to be the key link between Jobcentre Plus and the Armed Forces community in their district, helping to raise the profile of Jobcentre Plus support where necessary. Through these channels they will alert the reserve forces to the changes.

9.1.2 The MoD will inform members of the reserve forces by producing a Defence Instruction Notice that has world wide military distribution, sending a letter to the Reserves Single Service HQs who will then inform their reserves, updating the MoD Supporting Britain’s Reservists and Employers website and their helpline staff, and will also include information in their Reserve Unit briefing packs for the annual visit programme when the Armed Forces Pay Review Body discuss pay and allowances with reservists and regulars.

10. Impact

10.1 The change has no impact on business, or civil society organisations.

10.2 The impact on the public sector is negligible. The Department for Work and Pensions does not record the number of JSA claimants who are members of the reserve forces. However, the MoD confirms that there are currently about 29,250 members of the reserve forces in total. Of that total 1,743 are not recorded as either employed, self-employed, students or retired.[3] It is therefore assumed that no more than 1,743 will be unemployed. It is not known how many of these are on JSA but it is assumed some, although not all, will be unemployed.

10.3 As their JSA claim will remain open during their annual training those on income-based JSA continue to be entitled to passported benefits such as HB and CTB. It is estimated that a little over half receive HB/CTB (50% with HB, 60% with CTB) giving an average unit cost across all reservists of £115. Based on an assumption that 1,500 of the reserve forces may be JSA claimants these changes therefore result in a relatively small increase in HB and CTB totalling no more than £130,000 in 2012/13 and £170,000 per year thereafter. It is estimated that corresponding administrative savings for the Department of £40,000 in 2012/13 and £50,000 per year thereafter will arise from not having to hold return to work interviews or processing rapid reclaims.

10.4 A full impact assessment has not been published for this instrument.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

The Department for Work and Pensions will monitor the effect of these changes through its network of Armed Forces Champions to ensure they support claimants during their annual training commitment.

13. Contact

Janet Howden at the Department for Work and Pensions Tel: 0114 294 3049 or email: janet.howden1@dwp.gsi.gov.uk can answer any queries regarding this instrument.

[3] Figures drawn from the Service Personnel & Veterans Agency Joint Personnel Administration System