

JSP 523



**A RESERVIST'S
GUIDE TO
EMPLOYMENT
ISSUES**

**Issued by the Directorate of Reserve
Forces & Cadets**

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INTRODUCTION

This Ministry of Defence (MoD) Joint Service Publication (JSP) 523 has been updated for use by members of the UK's Reserve Forces since its initial publication in 2001. The ongoing development of the Reserve Forces to make them more relevant and usable continues, and it already means that many of you have operational roles that are as important during peacetime as in times of national emergency. This means that if you are an employee, the support of your employer is more important than ever. The information in this JSP is designed to assist you in maintaining and developing your relationship with your employer.



EMPLOYMENT PROTECTION MEASURES

This publication provides you with essential information about your responsibilities, information about your rights to employment protection and provides details of where to find more help.

SECTION 1: YOUR RESPONSIBILITIES

In the UK, employer support for the Reserve Forces is not a legal requirement; rather, employers are asked to support their Reservist employees voluntarily. Without employer support, many Reservists would be unable to attend important training opportunities - affecting their military capabilities - which may hinder their personal development through promotional courses. Most importantly, the support of employers is fundamental if a Reservist is to be mobilised for an operational tour. Without a supportive employer, the juggling act involved in balancing civilian and military careers, as well as personal commitments, can become too much for many Reservists. Conflict with civilian employment is one of the most common reasons given for leaving the Reserve Forces.

Do I have to tell my employer about my Reserve Forces activities?

Anyone who joins the Volunteer Reserve Forces (VRF) or seeks to renew their commitment (re-engage) must give permission for the MoD (in reality it is most likely to be the Commanding Officer of your unit) to contact your employer directly. This procedure, known as Employer Notification (EN), has been in place since 1 April 2004.

Employer Notification is designed to encourage an open, honest relationship between you and your employer by explaining the Reservist's commitments during the forthcoming year. This should help to minimise possible problems when seeking leave for training or in the event of mobilisation.

It may even be a condition of your civilian employment that your employer is told if you have a second or part-time job (which is how Reserve Forces membership may be viewed). In such cases, you must tell your employer or you may be breaking the terms of your contract of employment.

How should I tell my employer about my Reserve Forces activities?

'Plan' and 'prepare' are two words you should live by. Do your homework first. The first thing you should have done before you became a Reservist is to have checked whether your employer has a formal policy about part-time employment. If you have not done so, do it now to protect your own interests. Secondly, check the exact terms of the company's policy on leave of absence now.



Don't leave it until you need to ask for time off from your civilian job. You should be aware that the MoD sponsored SaBRE (Supporting Britain's Reservists and Employers) Campaign has been working hard to engage with employers to develop Reservist friendly Human Resource policies across all employment sectors.

Assuming you know that there is no restrictive policy on part-time work, or that you are within any such restrictions, you should still take precautions and make sure that your employer and line manager know about the benefits of having staff with Reserve Forces training.

- Stress the fact that Reservists are taught to be team players and will tackle any task effectively and efficiently. Reservists will often be given responsibility for people and equipment much earlier in their development than they perhaps would be in their civilian job.
- Sell to your employer the benefits that your training brings, particularly core skills such as teamwork, self-confidence, experience of other cultures, resourcefulness, perseverance, communications and the ability to improvise in unfamiliar or difficult circumstances.
- Let them know that the skills and values you are trained in are transferable to any work environment, especially when they are reinforced with the military's emphasis on values such as loyalty, reliability, integrity and professionalism.
- Explain to your boss (employer, personnel manager and/or line manager) that during your training with the Reserve Forces, you will be upgrading and improving work skills at minimal inconvenience to the company.
- Provide your bosses with a copy of SaBRE's publication *A Guide to Employing Reservists*. You may be able to source a copy from your Unit Employer Support Officer (UESO) or Regimental Operations Support Officer (ROSO), your local Reserve Forces and Cadets Association (RFCA) or download an electronic copy from the SaBRE website (www.sabre.mod.uk).
- Suggest that your boss may wish to take part in an activity or event such as 'Employers Abroad' or 'UK Briefing' visit. Details for these events can be provided by your unit staff, UESO/ROSO or your Regional SaBRE Campaign Director (RSCD).
- Approach your Trade Union representative in the same way you approached your employer. The TUC has endorsed membership of the Reserve Forces and you should ensure your own union is aware of the benefits to be gained from your Reservist training.

Your unit has an officer or senior rank tasked to assist with Employer Support matters – they will be known as the Unit Employer Support Officer (UESO) or Regimental Operations Support Officer (ROSO).



This individual may not be known to you or based in your Training Centre; however, your detachment commander or Permanent Staff Administrative Officer (PSAO) will know how to contact the UESO/ROSO.

If you need advice on employment issues, initially talk to one of these people at your Training Centre. They can seek advice from, or put you in touch with, the UESO/ROSO. The UESO/ROSO can provide advice, experience and leaflets, and has the JSP 766 publication *The Defence Directive on Employer Support* available for reference, which provides both advice and resource material; this document is also available on the SaBRE website (www.sabre.mod.uk).

If you are experiencing difficulty receiving employer support advice through the chain of command you can call the SaBRE Helpline for advice on 0800 389 5459.

Asking for time off

When making your request for time off to your employer, behave in a calm and reasonable way. Give all the advance notice you possibly can, so that your employer can make arrangements for work cover. Remember, through the process of EN your unit should have already communicated potential major training commitments throughout the year to your employer. If you are negotiating leave be positive, direct, friendly and professional. Make clear how long your course or required duty runs for, why you are undertaking it and what benefits it might well bring to your company. Avoid military jargon - employers may not understand it and your argument will lose force if you have to stop and explain.

Do not delay seeking guidance or assistance from your unit and the UESO/ROSO. A letter from your Commanding Officer may be all it takes to convince your line manager to grant you the required time off.

For military exercises and courses, you will probably need to request two weeks of leave to fulfil your continuous training commitment. Whilst under no obligation to provide additional leave, some companies have a supportive policy and do offer this flexibility (unpaid or possibly paid) for military training or duties. If additional leave is not granted you may choose to use part of your paid holiday entitlement.

If in difficulties...

Unit. Your first point of contact should always be your unit. The UESO/ROSO is the authority in the unit on employer issues. However, remember to go through the chain of command - your detachment commander or PSAO may well be able to help and they need to be informed if you are experiencing employment problems as a result of your Reserve Forces commitments. They can put you in touch with the UESO/ROSO or seek advice on your behalf. The UESO/ROSO will also be able to obtain advice from outside the unit.

SaBRE. Supporting Britain's Reservists & Employers is a campaign set-up by the Ministry of Defence (MoD) to enhance the relationship between employers and Reservists.



The campaign helps to improve awareness and develop a better understanding of the benefits and obligations associated with employing members of the Volunteer Reserve Forces (VRF). SaBRE operates a helpline (0800 389 5459) and website (www.sabre.mod.uk) which offers advice to Reservists and employers alike. All up to date employer support and SaBRE publications can be viewed and downloaded from the SaBRE website.

Regional Employer Support Groups. All the RFCAs sponsor a Regional Employer Support Group (RESG) either at regional or county level. RESGs are a voluntary body of business people and military advisers from your area. The aim is to promote the value of the Reserve Forces within the local business community and provide a source of advice for both Reservists and employers.

Trade Union. If you are a member of a Trade Union, and you suspect job or career discrimination, additional support may be available through your Union's Regional Office. You should contact that office, giving details of your case and request advice and information on your statutory rights. Further information may be available from the Office of the General Secretary which may then seek legal advice on the merits of your case. On the basis of advice received, the union may then provide assistance.

If you are not a member of a Trade Union you should contact the Advisory, Conciliation and Arbitration Service (ACAS), which has a Helpline (08457 474747) and website (www.acas.org.uk).

Please be aware that under Section 17 of The Safeguard of Employment Act 1985 (SOE 85) it is unlawful for an employer to terminate civilian employment solely or mainly because of an employee's liability for mobilisation.

Section 2 – Know Your Rights: the Legislation

As well as general employment rights legislation, such as the Employment Rights Act 1996, there are three Acts specific to the Reserve Forces that help to protect your civilian employment rights:

- The Reserve Forces Act 1996 (**RFA 96**);
- The Reserve Forces (Safeguard of Employment) Act 1985 (**SOE 85**); and
- The Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 (**POCI 51**).

The first Act (**RFA 96**) provides rights for both you and/or your employer to apply for deferral or exemption from your call-out for mobilisation and/or financial assistance, if you do subsequently enter mobilised service.

The second (**SOE 85**) provides two elements of employment protection.



Pre-mobilisation, the Act gives additional protection from unfair dismissal and also makes it a criminal offence for an employer to terminate civilian employment without a Reservist's consent solely or mainly because he or she has a liability to be mobilised. Post-mobilisation, the Act provides a legal right to reinstatement in civil employment, subject to certain conditions.

As its title suggests, the third Act (**POCI 51**) is designed to protect a Reservist with dependants from being evicted from his or her home.

More detailed information about these three Acts, and the Employment Rights Act 1996, is given in the Appendix to this publication. If you decide you need to seek further advice you can ask your unit, UESO/ROSO, RSCD, the SaBRE website or call the SaBRE Helpline.

SECTION 3 – IF ALL ELSE HAS FAILED

Reserve Forces Appeal Tribunals

If you have made an application for exemption or deferral of call-out and this has been refused on grounds which you believe are wrong, or you are unhappy with the outcome of your claim for financial assistance, you may ask for your application to be re-heard by a Reserve Forces Appeal Tribunal (RFAT). Contact the Assistant RFAT Secretary for details of how to appeal by telephoning 020 7218 6854 or 9624.

The Tribunal conducts the hearing in the way it considers most suitable to clarifying the issues before it, and generally to the just handling of the proceedings. It will seek to avoid formality, and at the beginning of the hearing the Chairman will explain the order of the proceedings that the Tribunal proposes to adopt. You may conduct your case yourself, or, subject to the Tribunal's agreement, you may appear and be represented by someone else (who need not be legally qualified). Any such representation will be at your own cost.

The Assistant RFAT Secretary will send you guidance about how to take matters forward when formally acknowledging your letter or 'Notice of Appeal', which you must send to the following address within five days of receiving the decision of the Service Adjudication Officer considering your application for exemption from mobilisation, etc., or claim for financial assistance:

Assistant Secretary of the Reserve Forces Appeal Tribunals
 Directorate of Reserve Forces & Cadets
 Ministry of Defence
 Level 8, Zone E, Desk 6
 Main Building
 Whitehall
 London
 SW1A 2HB

Fax: 020 7218 5612



Reinstatement Committees and Umpires

Full details on how to make an application, with copies of the essential forms, and where you can get help to prepare your case, are provided in JSP 532 *Guidance for Reservists returning to civilian employment following a period of mobilised service*, a copy of which will be available to you as part of the demobilisation process. Otherwise, a copy can be obtained from your UESO/ROSO or downloaded from the SaBRE website.



THE PROFITABLE PARTNERSHIP

SECTION 4 – THE IMPORTANCE OF EMPLOYER SUPPORT

Receiving the support of your employer helps both you and your unit. Therefore, it is important that you speak to your employer about your role as a Reservist and explain the benefits you bring to the workplace. Read this leaflet carefully and don't forget that you can ask any questions of your UESO/ROSO or call the SaBRE Helpline.

Why your employer should give support

SaBRE research indicates that many employers support Reservists as a matter of principle. Support for the Reserve Forces means more enthusiastic, better trained employees, who bring to their civilian jobs the qualities they have acquired in the Reserve Forces.

As a Reservist, you develop qualities that are of direct value to your employer. These qualities include:

- A sense of personal pride and discipline;
- The development of leadership potential and man-management capabilities;
- Training in extra skills and trades;
- Responsibility and decision making;
- Improved physical fitness;
- Training in verbal and written communications; and
- Proficiency in the maintenance and use of valuable technical equipment.

Reserve service also gives you a worthwhile weekend and evening interest which is a refreshing change from routine.

What you need to do to gain your employer's support

- It's important that you gain the support of all levels of management.
- How you approach your employer will vary with the size of the company or authority concerned.



- Make sure your employer knows the value of your involvement with the Reserve Forces.
- Tell your employer in good time of your continuous training commitment, i.e. annual camp or a promotion course.
- Thank your employer for their support.
- Initially seek to iron out any problems personally.

Be courteous to your employer remembering to give as much notice as possible of any Reserve Forces commitments that will affect your work. Make sure that your employer is thanked, at least annually, perhaps by an invitation to an 'Employers Open Evening' or some other employer support event run either by your unit or by the RSCD. This should not only be a social event, but also an opportunity to display your unit's skills and equipment. Any problems that occur with your employer should be ironed out 'face to face' if possible, or with the help of your UESO/ROSO.

A few do's and don'ts

Do:

- Remind your employer that the Reserve Forces are vital for National Defence.
- Demonstrate your pride in your unit by your bearing, turn out and sense of responsibility.
- Thank your employer for their support with an invitation to a social function, employer support event and/or open day.
- Sort out conflicts between your Reserve Forces and civilian obligations.
- Involve your employer by letting him or her know how you are getting on in the Reserves and of any achievements.

Don't:

- Leave it to the last minute to tell your employer about your continuous training commitment, annual camp or a course. Mention your dates before the holiday programme is planned.
- Let your service in the Reserve Forces be seen to interfere adversely with your civilian occupation.



APPENDIX - LEGISLATION PARTICULARLY AFFECTING RESERVISTS

The information below has no legal force and can only provide a general guide.

There is no statutory definition of 'employment' or 'self-employment'. To mitigate tax, national insurance or statutory employment liabilities, individuals might be designated or describe themselves as 'self-employed', even though an Employment Tribunal might subsequently find that the individual works under a contract of service (i.e. a contract of employment), rather than a contract for services (i.e. 'self-employment'). Where the distinction between being an employee and being self-employed might be disputed, you should be aware that if you seek the employment protection described below, you must be clear about your employment status.

THE RESERVE FORCES ACT 1996 (RFA 96)

Employment safeguards

Employment safeguards are provided by Schedule 1, paragraph 1 (Reservist), and paragraph 2 (employer), of The Reserve Forces (Call-out and Recall) (Exemptions Etc.) Regulations 1997 (Statutory Instrument No. 307 of 1997) made under Sections 78 and 79 of RFA 96. The important information is extracted below.

Remember, when you joined the Reserves you agreed to be mobilised if called out to do so. However, it is recognised that at certain times personal and/or employment circumstances might make it very difficult for you to mobilise. An application for exemption or deferral of call-out on any of the grounds detailed below must be made by you and/or your employer **within seven days** of you receiving your notice of call-out.

It is very important that you tell your employer the same day that you receive the call-out notice or, if that is not possible, first thing on the following day.

Reservist's application for deferral or exemption from mobilisation

You may apply for deferral or exemption from mobilisation:

- (a) On the grounds that you -
 - (i) have the primary responsibility for the care of a person with a severe physical or mental disability who requires frequent attention or supervision, and adequate arrangements for care by a person other than you during the expected period of your mobilised service cannot be made;
 - (ii) alone have parental responsibility (within the meaning of the Children Act 1989 or the Children (Northern Ireland) Order 1995) or sole parental responsibilities



(within the meaning of section 1(3) of the Children (Scotland) Act 1995) for a child and adequate arrangements for the care of that child during the expected period of your mobilised service cannot be made;

- (iii) are engaged in education or training which is intended to prepare or qualify you for a vocation or job and which would be seriously disrupted by your absence on mobilised service;
 - (iv) are working in a family-owned business which would suffer serious harm as a result of your absence;
 - (v) have entered into a contract of employment but have not yet started work under that contract and the other party does not agree to postpone until after the period of mobilised service the date on which you are to start work under that contract; or
- (b) On any other ground which the Service Adjudication Officer considering your case ought, for compassionate reasons, to consider.

Employer's application for deferral or exemption from mobilisation

Your employer may apply for your mobilisation to be deferred or for you to be exempted from mobilisation on the grounds that your absence from work for a period of mobilised service would cause serious harm to the business or other undertaking in which you are employed, or to a partner, proprietor or employee of that business or other undertaking.

This harm may include:

- (a) loss of sales, markets, reputation, goodwill or other financial harm;
- (b) impairment of ability to produce goods or provide services;
- (c) harm to research into and development of new products, services or processes,

which could not be prevented by the granting of financial assistance under The Reserve Forces (Call-out and Recall) (Financial Assistance) Regulations 2005 (Statutory Instrument No. 859 of 2005) made under Sections 83 and 84 of RFA 96.

Financial assistance

Financial assistance for Reservists

It is important that Reservists feel that they and their families are financially secure during any period of permanent service following call out.



Payments will be made to Reservists whose military salary when called out for operations is less than their earnings in civilian life. Reservists can also claim for replacing certain benefits in kind suspended or withdrawn by their employers while they are mobilised. The benefits covered include, but are not limited to: health or medical insurance; life insurance; accommodation; educational fees for dependent children; and loss of a company car used by the Reservist's dependants. **All of these payments are subject to an upper limit or cap (less service pay), which is different for certain medical officers.**

Without financial limit, Reservists can also claim for certain allowable expenses arising from their mobilisation. These expenses are limited to: additional payments for the care of a dependent child or relative; additional expenses for the care of a pet; additional home insurance premiums; and payments for the essential maintenance of the Reservist's main residence and garden.

When, in connection with mobilised service, a Reservist chooses to remain in his occupational pension scheme and continues to pay his employee contributions, any contributions withdrawn by his employer will be made up by the MoD.

Details of these financial assistance awards, and how to make a claim, are available on the SaBRE website.

Financial assistance for employers

An employer also has the right to claim for financial assistance when an employee is called out. These awards cover certain additional recurring and one-off costs arising from the call out of the Reservist, who can, in certain circumstances, be re-trained at public expense on his return to work. **Some of these types of award are subject to a cap.**

Details of the financial assistance available, and how to make a claim, are also available on the SaBRE website.

Financial assistance for self-employed Reservists

Depending on his or her personal circumstances, a self-employed Reservist may claim as a Reservist, an employer or both. **However, such a Reservist cannot recover twice for the same type of loss.**

THE RESERVE FORCES (SAFEGUARD OF EMPLOYMENT) ACT 1985 (SOE 85)

Broadly speaking, SOE 85 provides two elements of employment protection. Pre-mobilisation, Section 17 of the Act provides protection from unfair dismissal additional to that given by the Employment Rights Act 1996. SOE 85 makes it a criminal offence for an employer to terminate civilian employment solely or mainly because of an employee's liability for mobilisation. If an employer is convicted, under Section 18, the court could also order him or her to pay you compensation.



SOE 85 also provides for a legal right to reinstatement in civilian employment at the end of your mobilised service, but this is subject to certain conditions.

These are detailed in JSP 532 Guidance for Reservists returning to civilian employment following a period of mobilised service, which gives detailed advice on the procedures for applying for reinstatement, a copy of which will be available to you as part of the demobilisation process. It is absolutely essential that you read and understand JSP 532 as soon as you receive it. If you still need more information, ask the administration staff at your Mobilisation Centre or contact your UESO/ROSO or the SaBRE Helpline.

THE RESERVE AND AUXILIARY FORCES (PROTECTION OF CIVIL INTERESTS) ACT 1951 (POCI 51)

The main affects of this Act are to:

- (a) restrict the exercise of remedies for default in payment of money when the failure to pay is due to a Reservist's service;
- (b) protect a Reservist with dependants from being evicted from his or her home;
- (c) protect the Reservist who is a 'working proprietor' of a business or of a professional practice against eviction from his business premises;
- (d) safeguard the civilian pension rights of Reservists in respect of their period of service;
- (e) enable local and certain public authorities to make up the balance of civil pay of their employees who are serving as Reservists for more than 15 days of service or training;
- (f) protect the holders (whether or not Reservists) of Industrial Life Assurance or Friendly Society policies against forfeiture of the policy when the holder is unable to pay the premium as a result of a Reservist's service.

THE EMPLOYMENT RIGHTS ACT 1996

A contract of employment comes into existence as soon as an employee starts work. The contract terms can be written, oral, implied or a mixture of all three. Within the first two months at work, all employees are entitled by law to be given - on request - a written statement setting out its main particulars.

A contract of employment is binding on both parties. This means it is unlawful for one party - employer or employee - to vary the terms and conditions in the contract without the agreement of the other.



The employee can seek a variation of these terms, but if the employer does not agree and the employee chooses to go ahead regardless, without resigning, the employer may decide to terminate the employment by giving statutory notice of dismissal (or pay in lieu).

However, the employer would also have to fulfil any other contractual obligation relating to the termination of employment.

If the dismissed employee considers the employer's actions to have been unfair, providing he or she has been employed continuously for at least 12 months, he or she is entitled within 3 months to make a complaint of unfair dismissal to the Employment Tribunal. If the employer can demonstrate overriding business reasons for non-variation of the contract of employment, or that the firm has or will suffer measurable financial loss through this variation, the Employment Tribunal may well accept the employer's case.

Employment Tribunals expect that individuals who consider that they are entitled to make a complaint should, where practicable, have first sought to settle the dispute by mutual agreement with their employer, for example through the business's own grievance or appeals procedure, where one exists. Further information can be obtained from the ACAS Helpline (08457 474747) or website (www.acas.org.uk).

Most claims to Employment Tribunals must be made within very strict time limits. In the majority of cases, the Tribunal must receive your claim within 3 months, which begins with the date your employment ended or when the matter you are complaining about first happened.

The explanatory booklet Making a claim to an Employment Tribunal, which contains a claim form (ET1), is available from your Citizens' Advice Bureau or your nearest regional Employment Tribunals office, the contact details of which are available on-line at www.employmenttribunals.gov.uk, while your UESO/ROSO may also hold copies.

With the exception of POCI 51, which is available by contacting the SaBRE Helpline, copies of these Reserve Forces Acts and Statutory Instruments can be viewed at www.opsi.gov.uk.

