Armed Forces Reserve Training & Mobilisation Policy

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AUTHOR | HR Business Partner
Head of Veteran’s Service
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PROCEDURE SUMMARY
This document sets out the Trust’s fair and equitable approach to the management of managing and acting on the mobilisation of armed force reservists who are employees of the Trust and the procedures in line with national guidance and partnership working.

The Trust monitors the implementation of and compliance with this procedure in the following ways:
This procedure is subject to review as per agreed review schedule of the Trust’s HR procedures and as agreed by the Trust’s Partnership Committee

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The Director responsible for monitoring and reviewing this policy is the Executive Director of People & Culture
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ESSEX PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST

Armed Forces Reserve Training & Mobilisation Policy

Assurance Statement

Essex University Partnership NHS Trust (the Trust) has made every effort to ensure this policy does not have the effect of unlawful discrimination on the grounds of the protected characteristics of: age, disability, gender reassignment, race, religion / belief, gender, sexual orientation, marriage / civil partnership, pregnancy/maternity.

The Trust will not tolerate unfair discrimination on the basis of spent criminal convictions, Trade Union membership or non-membership. In addition, the Trust will have due regard to advancing equality of opportunity between people from different groups and foster good relations between people from different groups. This policy applies to all individuals working at all levels and grades for the Trust, including senior managers, officers, directors, non-executive directors, employees (whether permanent, fixed-term or temporary), consultants, governors, contractors, trainees, seconded staff, homeworkers, casual workers and agency staff, volunteers, interns, agents, sponsors, or any other person associated with the Trust.

The management of this policy within the Trust will be applied and demonstrate the Trust’s corporate values and behaviours. These values being:

- Open
- Compassionate
- Empowering

In demonstrating these behaviours and values, supporting the achievement of its strategic priorities to:

- To continuously improve service user experience and outcomes through the delivery of high quality, safe and innovative services.
- To be a high performing health and care organisation and in the top 25% of community and mental health Foundation Trusts.
- To be a valued system leader focused on integrated solutions that are shaped by the communities we serve.

1.0 INTRODUCTION

1.1 The Trust employs staff who are members of the Reserve Forces and recognises the valuable contribution Reservists make to the UK Armed Forces, their communities and civilian workplace.

1.2 The Trust has pledged its support for members of the Reserve Forces, or those wishing to join the Reserve Forces. It acknowledges the training undertaken by reservists enabling the development of skills and abilities that are of benefit to the individual and the Trust. Reservists make up a significant
element of the nation’s total defence capacity and are called upon as individuals for their specialist skills or as ready formed units when required.

1.3 The Trust will not disadvantage reservists who provide notification of their reserve status or those reservists who are made known to the Trust directly by the Ministry of Defence (MoD).

2.0 DUTIES

2.1 The Executive Team is accountable to the Trust Board for ensuring Trust-wide compliance with policy.

2.2 Directorate managers and heads of service are responsible to the Executive Team for ensuring policy implementation.

2.3 Managers are responsible for ensuring policy implementation and compliance in their area(s).

2.4 Staff are responsible for complying with policy.

3.0 DEFINITIONS

3.1 There are two main types of Reservist:

- Volunteer Reservists - civilians recruited into the Royal Naval Reserves, Royal Marines Reserves, Army Reserve and Royal Auxiliary Air Force.

- Regular Reservists - ex-regular servicemen who may retain a liability to be mobilised depending on how long they have served in the Armed Forces.

3.2 The Reserve Forces Act 1996 also provides for other categories, such as:

- Full Time Reserve Service - Reservists who wish to serve full time with regulars for a predetermined period in a specific posting

- Additional Duties Commitment - part-time service for a specified period in a particular post

- **Volunteer Reserve** – these are staff that volunteer with cadet organisations affiliated to the Armed Forces (i.e. Army Cadets, Air Training Corps, Combined Cadet Force, etc.)

- Sponsored Reserves - These are personnel employed by a contractor to provide a service to the Ministry of Defence (MoD).

- High Readiness Reserves – These are Reserves, usually with a particular skill set, that are available at short notice (with written agreement from their employer)
4.0 **PRINCIPLES**

**Legal framework**

4.1. In most instances an employer’s relationship with a reservist member of staff should be like that of any other employee and is regulated by employment legislation for example; Employment Rights Act 1996 and Working Time Regulations 1998 (SI 1998/1833).

4.2. However, there are areas where a reservist’s status may affect the operations of the employing organisation. Legislation exists to define the rights and liabilities that apply to both parties.

4.3. There are two main pieces of legislation relating to employers and the Volunteer Reserve Forces:

4.4. The Reserve Forces Act 1996 (RFA 96) which provides the powers under which reservists can be mobilised for full-time service.

4.5. The Reserve Forces (Safeguard of Employment) Act 1985 (SOE 85) which provides protection of employment for those liable to be mobilised and reinstatement for those returning from mobilised service. Under this legislation an employer is guilty of an offence if it dismisses any employee who is a member of the reserve forces because they have been, or are liable to be, called up for military operations.

5.0 **APPLYING FOR EXEMPTION/DEFERRAL/REVOCATION**

5.1 In all cases of mobilisation, the Trust will release the Reservist to report for duty unless there are exceptional circumstances, whereby the decision and reasoning will be explained to the Reservist.

5.2 In such circumstances line managers have the right to seek exemption, deferral or revocation if the Reservist's absence is considered to cause serious harm to service delivery.

5.3 Definitions of 'harm' will vary from case to case, but may include;

- loss of reputation, goodwill or other financial harm
- impairment of the ability to provide services
- harm to the research and development of new services or processes (which could not be prevented by the granting of financial assistance under sections 83 and 84 of The Reserve Forces Act 1996).

5.4 Details of how to apply for exemption are included in the call-out pack. The application must reach the Adjudication Officer within 7 days of the Trust receiving a call-out notice. If this timescale is not met, permission to make a late application will need to be obtained from the Adjudication Officer. The Reservist also has the right to apply for exemption or deferral if the call-out papers arrive at a difficult time.
5.5 If an unsatisfactory decision is received following the application for a deferral, the Trust can appeal for a hearing by the Reserve Forces Appeals Tribunal. Appeals must reach the Tribunals Secretary within 5 days receipt of written notice of the decision. If the tribunal rejects the application for exemption or deferral, the Trust will be required to release the Reservist for mobilisation.

6.0 TREATMENT OF TERMS AND CONDITIONS DURING MOBILISATION

6.1 The Trust will continue to treat the contracts of employment of employees mobilised for Reserve Service as operable throughout the period of such service and there will be no loss of continuous service or service related benefits. [Under The Reserve Forces Act (Safeguarding of Employment) Act 1985, an employee’s service is terminated on mobilisation, but providing the employee follows the correct notification procedure under the Act, he or she can return to employment upon which their continuity of service will be restored]

7.0 PAY

7.1 The MoD will assume responsibility for the Reservist’s salary for the duration of their mobilisation. They will pay a basic salary according to the Reservist’s military rank. If this basic element is less than the Reservist receives from the Trust, it is the Reservist’s responsibility to apply to the MoD for the difference to ensure that they suffer no loss of earnings. This is known as a Reservist Award.

7.2 Where mobilisation occurs the employee will be given special unpaid leave of absence.

7.3 The Trust is not required to pay the Reservist’s salary during the period of mobilisation.

8.0 PENSION

8.1 If the Reservist is a member of the NHS Pension Scheme then during the period of mobilisation their NHS Pension Scheme will be frozen for the duration of the mobilisation unless they choose to continue the payments. Should this be the case the employee must advise how the payments will be made prior to going on mobilization directly with the HR department. Employees should seek guidance from the NHS Pensions Agency regarding the impact of the break on pension provisions. Further information for Scheme members in England and Wales can be obtained from the NHS Pensions website at www.nhsbsa.nhs.uk/pensions.

8.2 The mobilisation period will still count toward continuous employment for statutory purposes. Other provisions which depend on length of service, i.e. contractual redundancy payments, leave entitlements etc., will be suspended for the period of the break (see also separate provisions in the NHS Terms and Conditions of Service Handbook, Section 12).
9.0 ANNUAL LEAVE

9.1 Reservists should be encouraged to take any accrued annual leave before mobilisation. The Trust is not obliged to accrue annual leave for a Reservist employee during the period of mobilisation. Reservists accrue annual leave with the MoD whilst they are in full time service. When they demobilise, Reservists are entitled to a period of post-operational leave (POL). During this period they will continue to be paid by the MoD.

Please refer to the Trust’s Leave Policy and Annual Leave Procedure regarding carrying over annual leave (HPRG24a).

10.0 DISMISSAL/REDUNDANCY

10.1 A Reservist’s employment cannot be terminated on the grounds of their military duties or their liability to be mobilised. To do so would be a criminal offence under s.17 of The Reserve Forces (Safeguarding of Employment) Act 1985.

10.2 Reservists can be included in the redundancy pool if this is necessary due to an organisational change. However, all employees should be treated consistently, and redundancy criteria should not discriminate against Reservists on the grounds of their Reserve service or call-up liability.

11.0 SICK PAY

11.1 During the period of mobilisation the Reservist will continue to accrue any rights to contractual sick pay. Should a Reservist become sick or injured during mobilisation they will be covered by MoD Medical Services and any financial assistance will continue to be received (including pay) until demobilised. If the sickness or injury continues and this results in early demobilisation, the Reservist will remain covered by MoD until the last day of paid military leave.

11.2 After this time the Reservist will be covered by the Trust’s contractual sick pay arrangements (in line with the Management of Sickness Absence Policy and Procedure).

11.3 If the Reservist becomes unwell post mobilisation, and a notional return to work date has been agreed, they will be covered by the Trust’s contractual sick pay arrangements (in line with local policy).

12.0 RETURN TO WORK

12.1 Both the Reservist and the Trust have obligations under The Reserve Forces (Safeguarding of Employment Act) 1985 regarding the return to work process as detailed in the related procedure [HRPG60].
13.0 RESERVIST

13.1 The Reservist must write to the Trust by the third Monday after their last day of military service making their request to return to work and suggesting a date which should fall within 6 weeks of their last day of full-time service. This letter formally starts the return to work process.

13.2 They are also encouraged to informally contact the Trust to discuss their return to work at the earliest opportunity, whether via a letter, a meeting or a telephone call. The formal application must be made in writing for it to be valid under the Act.

13.3 If a Reservist is not happy with the offer of alternative employment they must write to the employer stating why there is reasonable cause for them not to accept it. If a Reservist believes that an employer’s response to their application denies their rights under the Safeguard of Employment Act 1985, an application can be made to a Reinstatement Committee for assessment. This committee will consider the Reservist’s application and can make an order for reinstatement and/or compensation.

14.0 THE TRUST

14.1 The Trust has an obligation under Reserve Forces (Safeguarding of Employment) Act 1985 to reinstate the Reservist, where possible to their former role, and if not, to a mutually acceptable role on the same terms and conditions prior to mobilisation.

14.2 The Reservist should be reinstated within 6 weeks of the last day of their full-time service. They must be reinstated for a minimum period of 13, 26 or 52 weeks, depending on their length of service prior to mobilisation.

14.3 Sometimes Reservists may need refresher training when they return to work, or be given time to familiarise themselves with processes and procedures in the workplace. Financial assistance may be available for retraining if it is required as a direct result of their mobilisation, although applications cannot be made for training courses that would have taken place anyway. Evidence of costs will be required in addition to evidence that the Reservist could not reach the required standard by any other means, such as workplace experience.

15.0 MONITORING OF IMPLEMENTATION AND COMPLIANCE

15.1 The Director of Corporate Governance and Strategy is responsible for ensuring there is a system in place to monitor, record and report on outcomes from job evaluation process within the Trust.

This should be shared with the Trust’s Partnership Committee on a bi-monthly basis and should include:

- Number of new roles submitted to panels and outcomes
- Number of revised roles submitted to panels and outcomes
• Number of appeals and outcomes

15.2 This policy is subject to review as per the trust HR policy review schedule and as agreed by the Trust’s Partnership Committee.

15.3 Compliance with this policy will be against the Trust’s agreed minimum requirements / standards as detailed within its Auditable Standards and Monitoring Agreements.

16.0 POLICY REFERENCES / ASSOCIATED DOCUMENTATION

16.1 Annual Leave Policy & Procedure HPRG24a
16.2 Special Leave Policy & Procedure HRPG24c

END