
STATES OF JERSEY



EMPLOYMENT PROTECTION FOR ARMED FORCES RESERVISTS: EMPLOYMENT FORUM'S RECOMMENDATION AND MINISTER'S RESPONSE

**Presented to the States on 18th February 2014
by the Minister for Social Security**

STATES GREFFE

REPORT

Employment Forum's Recommendation: Employment protection for Armed Forces Reservists

Minister's response

In August 2013, I asked the Employment Forum to consult on whether Armed Forces Reservists in Jersey should be given employment protection when they are mobilised on active service.

This was prompted by a decision of the Minister for Home Affairs on 8th August 2013 which asked me to bring forward draft legislation that would give Jersey Reservists equivalent protection to their UK counterparts. I agree with the Minister's intentions as I believe that we have a responsibility to support the efforts of Reservists, particularly with a potentially greater need for Reservists in the future.

I asked the Forum to make a recommendation to me by the end of February 2014 as to what, if any, protection could appropriately be introduced via the Employment (Jersey) Law 2003. I am grateful to the members of the Employment Forum for preparing this recommendation and I thank those who responded to the consultation.

The Forum has recommended that the Employment Law should be amended to afford Reservists some employment protection, including the right to return to the same or an equivalent job on return from active service, and protection from dismissal from Day 1 of employment where the reason for dismissal is related to an employee's membership of a Reserve Force.

The Forum's recommendation suggests that, whilst currently the numbers of affected employees and employers is small and few difficulties arise, the strategy of the Ministry of Defence to double the number of Reservists in Jersey is likely to increase the importance of employment protection in terms of the recruitment of Reservists with the necessary range of skills.

There is clearly general support for the introduction of employment protection for Reservists and, having considered the information that has been presented, I accept the Forum's recommendation.

The Forum was correct in its assessment that my priority for 2014 is to obtain States' approval of family-friendly rights. The law drafting and resource requirements to develop the recommended employment protections for Reservists are likely to be greater than had been anticipated prior to the Forum's consultation. Employment protection for Reservists cannot be a priority for 2014, and I will therefore request that the Social Security Department includes in its business plan for 2015 the preparation of an appropriate amendment to the Employment Law.

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Employment Protection for Armed Forces Reservists

Issued by the Employment Forum on 14 February 2014

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SECTION 1 – SUMMARY OF RECOMMENDATION

The Minister for Social Security (the 'Minister') directed the Employment Forum (the 'Forum') to consult on whether Armed Forces Reservists ('Reservists') in Jersey should be given employment protection when they are mobilised on active service given the potentially greater call on the services of Reservists in the future.

The Minister asked the Forum to make a recommendation to him by the end of February 2014 as to what, if any, protection could appropriately be introduced via the Employment (Jersey) Law 2003 (the 'Employment Law').

Having considered the consultation responses, in summary, the Forum recommends that the following employment protections could be introduced via the Employment Law in relation to Reserve service;

- A right to return to the same or an equivalent job
- Protection from unfair dismissal from day one of employment
- Provision for the fair dismissal of an employee who has been employed to temporarily replace a Reservist.

The recommendations are made on the understanding that the Minister has committed to introducing a first stage of family friendly rights prior to, or at the same time as, any employment protection for Reservists.

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SECTION 2 – BACKGROUND

In November 2012, the MOD published a Green Paper on the “Future Reserves 2020: Delivering the Nation’s Security Together”¹ with a mandate to increase the percentage of Reservists compared with regular Armed Forces. That paper set out the increased role that the Reserve Forces will have in the future and acknowledged the impact that this will have on employers.

A decision of the Minister for Home Affairs in August 2013² asked the Minister to consider introducing legislation in Jersey equivalent to the UK’s Reserve Forces (Safeguard of Employment) Act 1985 (the ‘Reserve Forces (Safeguard of Employment) Act’). The Minister for Home Affairs considers that Reservists should be afforded protection of employment and should have the right to return to work after a period of active service as a Reservist.

The term Reservist is used in this recommendation to mean an employee who has made a commitment to the British Armed Forces to be a member of the Volunteer Reserve Forces. An explanation of some of the different categories of Reservist was provided in Appendix 1 to the Forum’s consultation paper on employment protection for Reservists³. The Volunteer Reserve Forces consist of civilians, some of whom are employed within large and small businesses from a wide range of industries. Their collective skills are used to reinforce the Regular Armed Forces through the Royal Naval Reserve, the Royal Marines Reserve, the Territorial Army and the Reserve Air Forces. Appendix 1 of this recommendation, which was originally set out in the Forum’s consultation paper, includes the details of the current position in the UK and explains some of the terminology used in this recommendation.

Reservists in Jersey

The States of Jersey provides and maintains a Territorial Army centre as Jersey’s contribution to defence and as part of an inter-governmental agreement. More than 40 members of the Jersey Field Squadron (the ‘Squadron’) have been mobilised in support of the regular army. The majority of Reservists in Jersey are members of the Jersey Field Squadron, although there are estimated to be around 70 Reservists in Jersey in total.

With 45 members currently, the Squadron is manned at around half of its capacity. Recruitment is underway in line with the “Future Reserves 2020” strategy with a view to meeting a direction of the MOD to be fully manned – to 84 Squadron members –

¹ www.gov.uk/government/consultations/future-reserves-2020-consultation

² Ministerial Decision MD-HA-2013-0047

www.gov.je/Government/Consultations/Pages/EmploymentProtectionForArmedForcesReservists.aspx

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by 2018. With the Armed Forces deployed in several conflict zones at the current time, the likelihood of a Squadron member being requested to mobilise is high.

The Forum understands that members of the Squadron generally have supportive employers and employment related issues rarely arise. However, questions about employment protection have been raised, particularly by new recruits. The lack of specific employment protection is seen as a potential barrier to the recruitment of Reservists which can impact, not only on the number of Reservists, but also on the breadth, professions and skill types of those who commit to Reserve service.

Reservists are expected to commit to up to 6 months' active service, plus pre-mobilisation training and demobilisation in any 5 year period. The period of active service depends on operational need and the powers used for call-out under the Reserve Forces Act. The period is limited to a maximum duration of 12 months in a 3 year period by the 1996 Reserve Forces Act.

Members of the Squadron must currently commit to 27 days' training each year and this is expected to increase to 40 days per year. Most of the training is undertaken in the evenings and at weekends, however Squadron members must attend a 13 day annual camp. Some Squadron members are entitled to paid time off work for training (for example, it is understood that States employees may claim 13 days' special leave), but others meet the requirements through a combination of paid leave, unpaid leave and annual leave.

Local Reservists whose employment is not protected may be reluctant to mobilise for fear of losing their job whilst on active service, particularly in the current financial climate. However, the loss of a staff member for up to 12 months may be disruptive, particularly in a small business, and some employers may be reluctant to hold jobs open. This is potentially less onerous for larger employers.

The States of Jersey has a policy on special leave for Reservists which applies to all States of Jersey employees, other than teachers, which includes the right to return to the same job after completion of active service.

Private sector employees who are mobilised do not have the right to return to work. If a Reservist returns to find that their job is no longer open for them, they may bring an unfair dismissal complaint to the Jersey Employment Tribunal (the 'Tribunal'). If the complaint is well-founded, the Tribunal may direct that the complainant be re-employed, rather than awarding financial compensation. However, this is unlikely to be conducive to a good working relationship between the employer and the Reservist in the future.

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Amending the Employment Law

The Minister asked the Forum to consider what employment protection for Reservists who are resident in Jersey could appropriately be introduced via the Employment Law. The Forum consulted on 3 areas of employment protection, each of which is discussed in more detail, along with the views of respondents, in Section 5:

1. The right of a Reservist to return to work upon return from active service
2. Protection from unfair dismissal, from day one of employment, where dismissal is on the grounds of Reserve service or call-up liability
3. Provision for the fair dismissal of employees who have been employed to replace Reservists during a period of active service.

SECTION 3 – CONSULTATION METHOD

The Forum consulted during the period 28 October to 6 December 2013 by issuing a consultation paper and survey to its database of around 300 individuals, organisations and interested parties. The Forum also asked the Jersey Field Squadron to encourage its members and their employers to respond. Details of the consultation, including an online survey were available on the www.gov.je website and via the Jersey Field Squadron Facebook page.

Responses were received from the following categories of respondents;

Employer	10
Employee	8
Employer association	1
Trade union/staff association	1
Armed Forces Reservist	8
Other	11
Unspecified	20
TOTAL	59

The 'other' respondent category included the Jersey Advisory and Conciliation Service, 3 former Reservists, 2 students, a consultant and a law firm.

The Forum noted that 20 respondents did not specify a respondent category. Of these –

- 9 respondents completed only the first question in the survey which asked if specific employment protection should be introduced for armed forces Reservists. Of these, 8 responded 'yes' and 1 responded 'no'. These

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responses **have not** been included in the overview of consultation responses provided in Section 4.

- 11 respondents answered more than one survey question. Responses from these respondents **have** been included in the overview of consultation responses provided in Section 4.

A selection of the comments received in response to the key consultation questions is set out in Appendix 2. The Forum believes that this overview provides a fair and balanced representation of the comments that were received.

SECTION 4 – CONSULTATION RESPONSES

Reservist respondents

The employment sectors of the Reservists who responded to the survey were:

Construction	1
Financial services	1
Hotel, restaurants and bars	1
Public sector	3
Other	1
Unspecified	1
TOTAL	8

Reservists were asked if they have been mobilised in the past 5 years and, if so, for what period of time. Four Reservists said that they had been mobilised. The employment sector of these Reservists was 1 construction, 1 financial services, 1 public sector, and 1 unspecified.

Periods of mobilisation were:

1 month (and a 9 month period more than 5 years ago)
9 months including pre-deployment training and post-deployment leave
One 2 month period and one 4.5 month period
15 months total including 3 months' injury recovery time

Reservists were asked if their employer provides any specific employment protection for Reservists, whether on a contractual or discretionary basis. Five Reservists said that their employer provides some protection, 2 on a contractual basis and 3 on a discretionary basis. Three Reservists said that their employers do not provide specific employment protection.

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A Reservist employed in the financial services sector said that his employer *"Followed "best practice" when I was mobilised allowed to continue to pay into pension etc."* (Lt. Cdr. Stephen Gavey, Reservist)

Reservists were asked if they have experienced any difficulties in relation to their employment and their status as a Reservist. Two of the 8 Reservists said that they had experienced difficulties. One Reservist commented that he had left the employment in which he had previously experienced difficulties. A public sector Reservist said *"As a Civil Servant my immediate employers are not supportive of giving special leave."*

Employer respondents

The business sector of the employers who responded to the survey was as follows;

Electricity, gas and water	1
Hotel, restaurants and bars	2
Public sector	2
Transport, storage and communications	1
Other	4
TOTAL	10

Four of the 10 employers indicated that they currently employ, or have previously employed, Reservists. The business sectors of those employers were; 1 public sector, 1 electricity, gas and water, 1 transport, storage and communications and 1 media.

Employers were asked if they offer any specific employment protection for Reservist employees, whether on a contractual or discretionary basis. One public sector employer said that employment protection is provided on a contractual basis and 5 employers said that employment protection is offered on a discretionary basis (2 public sector, 1 hotels, restaurants and bars, 1 electricity, gas and water, 1 media). Details provided by employers included:

"Time off for training etc." (Anonymous employer, public sector)

"Unpaid time off. Continuation of service and pension service. Return to return to same job." (Anonymous employer, media sector)

"If an employee is a member of the volunteer reserve forces, or the regular reserve forces and is called up (or recalled) at short notice for military operations the Company will ensure the employee is reinstated into their previous role on their return providing they write to us not later than the third Monday after demobilisation"

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specifying a return date within the next 13 weeks. That date may be postponed for a further 13 weeks (because of illness or injury or in other mitigating circumstances) so long as the employee returns to work within 6 months after demobilisation.” (Anonymous employer, hotels, restaurants and bars)

“Although I have answered 'No', we do have an Absence Policy in place that outlines process and procedure regarding reservists in general, including the TA, Fire Service and Life Boats.” (Anonymous employer, transport, storage and communications)

Employer respondents were asked if they have experienced any difficulties or benefits in relation to Reservist employees. Two public sector employers said that they have experienced difficulties. An employer in the transport, storage and communications sector commented;

“Employees who wish to volunteer, are very happy that the company can and does accommodate their (often immediate) absence. However, this is most usually for the short-term, a long-term absence is more difficult to accommodate.”

General employment protection

Respondents were asked if, in general, they think that specific employment protection should be introduced for Reservists. The majority of respondents (89%) supported the introduction of employment protection for Reservists. There was support from all types of respondents, including from the 4 employers who have employed, or currently employ, one or more Reservists.

Reasons expressed by the respondents who supported the introduction of specific employment protection for Reservists included that –

- It is appropriate that, like their UK counterparts, Jersey Reservists should be afforded employment protection.
- Reservists (and their families) should not be placed at a potential disadvantage as a result of being mobilised.
- Given the UK strategy to increase the percentage of Reservists compared with regular Armed Forces recruitment/retention must not be deterred by the lack of employment protection.
- Given the potentially greater call on the services of Reservists in the future, there may be an increasing expectation on Jersey employers to support Reservists.
- To recognise the vital work of Reservists that is undertaken for the benefit of the Island and the commonwealth.
- To improve employer understanding of what is required of a Reservist.

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Reasons expressed by the small number of respondents who opposed the introduction of specific employment protection for Reservists included that there may be other situations in which employees require periods of time off work (for example, sickness, or caring for a family member) and questioned why Reservists should be afforded greater protection than other employees, particularly given that their Reservist status is a choice.

Respondents were then asked to consider in more detail whether the Employment Law should be amended to provide employment protection for Reservists, in a number of different areas. Each area of potential employment protection is outlined below, including a summary of the responses received.

1. The right of a Reservist to return to work upon return from active service

- The right to return to work

Respondents were asked if Reservists should have the right to return to work after a period of active service and, if yes, whether the Reservist should have the right to return to;

- a) The same job
- b) The same job, or an equivalent job
- c) The most favourable job and the most favourable terms and conditions that the employer can offer, if the employer is not able to offer (a) or (b).

In the UK, employers are obliged to re-employ Reservists in the same role and on equally favourable terms and conditions as soon as they are reasonably able to do so. If this is not reasonable and practical, a Reservist must be re-employed in the most favourable job and on the most favourable terms and conditions that are available.

The majority of those who responded to this question supported at least one of the 3 options – more than 80% in each case – indicating general agreement that Reservists should have a right to return to work (respondents were permitted to answer ‘yes’ to more than one option). The most popular option was the right to return to the same or an equivalent job; 23 respondents supported this option of the 24 who responded to this question (96%).

Comments from some respondents included that, whilst a return to the same job might have been preferred, whether this is practicable depends on a number of factors such as:

- Whether the period of active service is a known/defined period

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- The length of time that the Reservists is actually away from the workplace
- Changes in business needs during the period of service, e.g. redundancies
- Reservist injury or medical condition
- Reservist skill fade
- The size of the business
- The opportunities within the business to undertake an equivalent job.

Respondents were also asked whether Reservists should have the right to return to work regardless of the length of time that is taken off work for mobilisation and demobilisation.

More than two-thirds of respondents (68%) agreed that Reservists should have the right to return to work regardless of the length of time that is taken off work. Comments from respondents indicated that this is primarily because the duration is outside of the Reservists control.

A number of respondents had concluded that, other than in exceptional circumstances, such as where demobilisation or post operational leave is extended due to injury, the period is already limited to 12 months accumulated over a 3 year period. This is because the 1996 Reserve Forces Act sets out the maximum duration of service under a call-out order.

A number of respondents commented that the right should not be time limited as long as the time off work directly relates to the period of active service.

Concerns expressed by respondents who supported a time limit on the right to return to work included:

- It is unrealistic to expect employers to carry on their businesses with consistency if there is no maximum period
- This would place an additional burden on businesses in Jersey, particularly small businesses
- Reservists may choose to extend their period of mobilisation or leave with no regard for the employer
- The right should be sufficient to allow for the maximum absence on Reservist duties that is ordinarily expected – 12 months
- Covering vacancies long-term can be expensive.

The Forum understands that, if a Reservist is mobilised, their employer (including any employer in Jersey) is reimbursed by the MOD for any financial loss that they incur as a result of an employee being mobilised, up to a maximum of £110 per day in relation to any replacement staff costs incurred by the employer that exceed the relevant earnings of the Reservist. The employer can also claim costs for

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advertising, paying agency fees for replacement staff, pension contributions and essential re-training costs when the Reservist returns to work.

A number of respondents made a connection between this proposed new right and family friendly rights, suggesting that the right to return to work and protection from dismissal should mirror the rights that are proposed in respect of statutory maternity leave. The Forum is aware that legislation is currently being drafted that would introduce a right to maternity leave. This will include the right to return to **the same job** where a woman returns to work **immediately after** up to 18 weeks of statutory maternity leave.

The Forum has previously recommended⁴ that women should have a right to 18 weeks' maternity leave (to be extended to 26 weeks in phase 2 of family-friendly rights) with the right for a woman to return to the same job after that period of leave. Having considered whether employees should have the right to return to an equivalent job, the Forum had concluded that it was not necessary to consider such a right given the recommendation for a maximum of 26 weeks' maternity leave. If a longer period of statutory maternity leave had been recommended, the Forum might have recommended the right to return to an equivalent (rather than the same) job. Where an employer offers a greater contractual entitlement to maternity leave, the employer may specify whether a more limited right to return applies after the statutory period of maternity leave has been exhausted.

- **Notice of intention to return to work**

In the UK, Reservists have the right to return to work. Whilst Reservists are not required to advise their employer prior to mobilising that they intend to return to work, it is likely that, in practice, this discussion takes place at an early stage.

Reservists retain the right to return to work by advising their employer (in writing) of that intention by the third Monday after the end of their full-time service (i.e. roughly a 3 week period which falls within the period of post-operational leave). Reservists must advise their employer of the date on which they will be available to return to work within a further 3 week period and the proposed return date itself must be no later than 6 weeks after the Reservist's last day of full-time service (other than where there is reasonable cause for a later date).

All of the consultation respondents (100%) agreed that a Reservist should be required to advise their employer if they intend to return to work. Most of the respondents who commented said that this is necessary to allow the employer to

⁴ Employment Forum recommendation on 'Maternity, paternity and family friendly working' – <http://gov.je/SiteCollectionDocuments/Working%20in%20Jersey/R%20EmploymentForumsRecommendationMaternityPaternityFamilyFriendly%2020091211%20EV.pdf>

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make plans, for example in regard to employees who have been appointed as replacements. A number of respondents emphasized the importance of good communication between the Reservist and the employer.

Some of the comments from respondents indicated that Reservists should be required to advise their employer **before** mobilisation of their intention to return to work on the basis that is not unreasonable to do this if the employer is required to hold the job open, potentially for an undefined period of time. Whilst a woman taking statutory maternity leave will not be required to advise the employer before going on maternity leave that she intends to return to work, a maternity leave period is likely to be shorter.

Respondents were asked to indicate within what time period a Reservist should be required to advise their employer that they intend to return to work. Some respondents suggested that Reservists should be required to advise their employer immediately on returning from mobilisation during the period of post operational leave. Others suggested that the employer should be notified as soon as reasonably practicable during that period of post operational leave, which is usually at least 30 days.

Respondents were also asked to indicate at what stage the employer must be notified of the date from which the Reservist will be available to return to work (and were permitted to answer 'yes' to both options). Twenty-one of 24 respondents (88%) said that the actual return to work date should be given when the Reservist initially advises the employer of his or her intention to return to work. Sixteen of 22 respondents (78%) said that the actual return to work date should be given within a maximum period of time after advising the employer of his or her intention to return to work, with suggested maximum periods ranging from 3 weeks to 3–6 months.

In preparing this recommendation, the Forum has considered the Minister's proposals in relation to maternity leave that relate to the right to return to work and periods of notice. The Forum has also considered whether a different provision might be more straightforward, such as requiring the Reservist to notify their employer of both their intention to return to work and the actual date from which they are available to return to work within, for example, a 4 week period.

The Forum is not aware of any particular issues or problems with the requirements in the UK that give approximately a 6 week period overall and some of the responses indicate that Reservists and their employers are already familiar with these periods.

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- Minimum period of re-employment

Respondents were asked if Reservists should have the right to return to work for a minimum period of time after returning from mobilisation, as provided in the UK. Of 32 responses, 26 agreed (81%). Comments from those respondents who were in favour included the following points –

- This is essential to give the Reservist time to settle back into the workplace
- This also places a duty on the Reservist to commit to the employer for a minimum period of time

Comments from the respondents who opposed such protection (3 employers, 2 employees and 1 Reservist) included the following points –

- Employers should not be forced to employ for a minimum period of time
- Reservists should return to their previous terms and conditions of employment
- There is no equivalent statutory protection for employees returning from other types of leave, e.g. maternity.
- There is no reason why Reservists should be more or less secure in their jobs than other employees
- If given the right to return to work, Reservists will have some protection because a dismissal must be fair and notice or pay in lieu must be given.

Those respondents who were in favour of a minimum period of re-employment were asked if the minimum period should be based on the Reservist's length of previous service for the employer, as it is in the UK. Of the 23 responses, 14 (61%) did not agree that the minimum period of re-employment should be calculated in this way.

A comment from a law firm summed up some of the general concerns; *"To create an obligation on an employer to employ Reservists for a minimum period of time may be burdensome for an employer and would need to be subject to appropriate and necessary exclusions. For example, dismissal should still be allowed in circumstances of redundancy and gross misconduct. The right to be protected from dismissal would also place the Reservist in a better position than employees returning from other forms of leave such as maternity leave or long term sickness. We are not sure why Reservists should be treated differently, and more beneficially, in this respect."*

Some respondents suggested alternatives, including calculating the minimum re-employment period by linking it to the statutory period of notice or the period of mobilisation, and that the minimum period of re-employment should be the same for all Reservists, regardless of length of service.

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2. Protection from unfair dismissal, from day one of employment, on grounds of Reserve service or call-up liability

The Employment Law currently provides that dismissal is automatically unfair in a number of specified circumstances. If an employee is dismissed and the reason, or the main reason, is one of the specified circumstances, it will be regarded as automatically unfair, regardless of any consideration of reasonableness. In addition, the usual age limits and qualifying period of service do not apply, which means that an employee can claim unfair dismissal from day one of employment (despite not having 26 weeks' service with the employer) and despite being over retirement age.

The 'automatically' unfair reasons for dismissal currently include dismissal or selection for redundancy on grounds relating to trade union membership or activities and for asserting or bringing proceedings against an employer to enforce a statutory right. Further automatically unfair grounds for dismissal are expected to be added when family friendly and discrimination legislation are introduced.

Respondents were asked, if a Reservist is dismissed and the reason (or the main reason) for dismissal is, or is connected with, the employee's membership of a Reserve Force, whether this should be treated as an automatically unfair dismissal from day one of employment.

66% of respondents agreed with the introduction of a new automatically unfair reason for dismissal relating to Reservists and 34% of respondents did not agree.

Comments from those respondents who were opposed to introducing this employment protection included concern that –

- There is no equivalent automatically unfair dismissal provision relating to maternity and pregnancy
- The proposed protection is too wide in that it refers to reasons for dismissals **connected with**, rather than directly relating to, service as a Reservist
- The employer may have to make redundancies.

Comments supporting the introduction of a new automatically unfair reason for dismissal included the following points;

- To align with proposals relating to statutory maternity leave
- It is essential to encourage the recruitment of Reservists
- If employment protection is introduced for Reservists, a dismissal relating to the denial of those rights should be automatically unfair.

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3. Provision for the fair dismissal of employees who have been employed to replace Reservists during a period of active service

Article 71 of the Employment Law provides that a dismissal is justified (and so is fair) if a person has been employed specifically to replace an employee who is absent because of pregnancy or childbirth, or who is suspended on medical or maternity grounds, and that employment is terminated in order to make it possible to give the work to the returning employee. The Forum considered whether this provision could be widened to those who have been employed to temporarily replace Reservists.

Respondents were asked if the dismissal of a replacement employee on the return of the Reservist after a period of active service should be regarded as automatically fair in the following circumstances;

- a) The replacement employee's terms of employment specify that employment will be terminated on the return to work of the Reservist employee
- b) The terms of employment specify a precise date that the contract will end
- c) The terms of employment specify an expected contract end date, but with the option for either party to give notice earlier
- d) In any other specified circumstances.

Of those who responded to each question, 83% agreed with option (a), 83% agreed with option (b), and 74% agreed with option (c).

Generally, the responses indicated support for the inclusion of an automatically fair reason for dismissal where a replacement employee is dismissed on the return of the Reservist, as long as the terms of the contract are clear to the replacement employee. Employers are likely to be reassured that replacement employees could not claim unfair dismissal if they are dismissed to allow a Reservist to be re-employed. This may remove a potential barrier to the recruitment of Reservists.

The provisions of Article 71 currently apply where, on engaging the employee, the employer informs them, in writing, that their employment will be terminated on the resumption of work by another employee who is, or will be, absent.

4. Permission for MOD to contact employer

Respondents were asked if any employment protection for Reservists should be dependent upon the Reservist having given permission for the MOD to contact their employer directly. 84% of those who responded to this question agreed and 16% disagreed.

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Comments opposing such a requirement included concerns about the risks for Reservists in terms of rejection prior to recruitment. The Forum understands that Reservists are generally unlikely to hide their Reservists status from a prospective employer because the support of their employer is vital. Comments in favour referred to the importance of openness and honesty in the employment relationship. The Forum notes that openness and honesty in the employment relationship does not have to rely on, but may be encouraged by, a formal system for notifying employers.

A person who becomes a Reservist or re-engages as a Reservist is required as a condition of joining or re-engaging to give permission for the MOD to write to their employer direct. This 'Employer Notification' system is intended to ensure that employers are aware that they employ a member of the Reserve Forces and of the benefits, rights and responsibilities in relation to annual training and mobilisation of Reservists. Reservists must inform their unit if they change employer. This applies to Reservists and their employers in Jersey.

Four weeks after a person becomes a Reservist, re-engages as a Reservist, or starts a new job, the MOD will write to the Reservist's employer. This gives the Reservist a chance to talk to their employer first. A temporary waiver, up to 12 months, may be granted by a unit's Commanding Officer so that an employer is not contacted where there are reasonable grounds, such as where the Reservist may be placed at a disadvantage at work. If a Reservist is called up for mobilisation, their employer will be notified, even if a waiver is in place.

Reservists are always strongly encouraged to tell their employer, including in employment interviews. It may be a condition of a Reservist's civilian employment that the employer is notified if they have a second or part-time job (which is how Reserve Forces membership may be viewed). In such cases, Reservists must tell their employer or they might be breaking the terms of their contract of employment.

The UK does not provide that any employment protection is dependent upon a Reservist having given their permission for their employer to be contacted direct by the MOD.

5. Other employment protection

Respondents were asked if any other employment protections should be considered for Reservists. A small number of comments were provided which are set out in Appendix 2. One respondent suggested that the social security contribution records of Reservists should be protected. The Forum notes that arrangements are in place so that the MOD, as the employer of the Reservist, pays social security contributions in Jersey to protect the records of Reservists during periods of full-time service.

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Whilst some of the suggestions might be considered for inclusion in future employment law developments (e.g. unpaid time off for public duties), the Forum makes no further recommendations for employment protection.

6. Potential problems

Respondents were asked if they foresee any problems with introducing any of the proposed employment protections. 61% of those who responded to this question said that they did not foresee problems and 39% said that they did foresee problems.

One respondent (an anonymous public sector employer) had referred to concerns about payment: *“Hopefully future policy changes will ensure that they aren't receiving payment twice over (i.e. reservist payment AND full salary).”*

Whilst the matter of pay provided to Reservists by the MOD is outside the remit of this consultation, the Forum has attempted to determine whether this comment needs to be addressed. The Forum understands that a Reservist could be paid twice when they undertake a training exercise, depending on whether the period of leave offered by the employer is paid or unpaid. The Forum understands that this is a matter for the individual policy of the employer. Once mobilised, a Reservist is employed by the MOD and the MOD provides financial support to Reservists to cover loss of employment earnings and benefits. A serving Soldier may not undertake any other employment and so should not receive pay as if employed by their civilian employer.

Other comments from respondents noted the following points:

- Increased protection for Reservists may increase employer reluctance to employ them
- A potential detrimental impact on small businesses
- The likelihood of employer representative groups opposing any protection
- A requirement to justify why this particular group is to be protected over other groups.

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Employment Protection for Armed Forces Reservists

SECTION 5 – RECOMMENDATION

Having considered the information received during consultation and the views of respondents, the Forum considered whether any specific employment protection for Reservists should be introduced via the Employment Law. The Forum appreciates the concerns, for small employers in particular, that any additional employment legislation may be seen as a burden.

Some of the responses have suggested that Jersey could simply introduce the same protections as the UK. The Forum wishes to ensure that any additional protection is as straightforward as possible and not overly onerous for local employers.

In preparing this recommendation, the Forum has considered the Minister's proposals in relation to maternity leave, including the right to return to work after a period of statutory maternity leave and protection against unfair dismissal. The Forum was concerned that Reservists should not be afforded greater employment protection than women who are pregnant or on maternity leave as this would be difficult to justify and may be counter-productive for Reservists.

The Forum is aware that the Minister's political priorities for 2014 relate to family-friendly legislation. If complex provisions are required to address employment protection for Reservists, the introduction of any protection for Reservists could be deferred. The Forum made its recommendation on family friendly legislation in 2008 and would strongly support that legislation being given priority.

Since 2001, JACS has received 2 queries relating to employment rights for Reservists and there are no known instances of a Reservist in Jersey presenting an unfair dismissal complaint to the Tribunal. This, along with the comments received during consultation, indicates that the lack of employment protection for Reservists appears to have created few problems to date.

The number of Reservists in Jersey is currently small and so potentially only a small number of employers might be affected by the introduction of additional employment protection. However, the MOD strategy requires the number of Reservists to increase, with an expectation to recruit around 40–50 additional Reservists in Jersey over the next 4 to 5 years. In addition, the Forum is aware that the lack of employment protection may be a barrier to the recruitment of people with particular skills and professions who otherwise may be unwilling to put their careers at risk.

Overall, the consultation revealed support for the introduction of specific employment protection for Reservists and the Forum recommends that protection should be introduced, as follows:

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Employment Protection for Armed Forces Reservists

1. The right of a Reservist to return to work upon return from active service

- *Right to return to work*

Noting that mobilisation is likely to be for no more than 12 months in any 3 year period in the majority of cases, the Forum recommends that Reservists should have the right to return to work regardless of the length of time that is taken off work, other than where the Reservist does not return to work on the date that has been agreed with the employer without good reason, voluntarily chooses to extend their period of active service, or volunteers for an additional period of active service. The Forum considers that it is not reasonable to expect the employer to support such a decision and continue to keep a job open, unless by mutual agreement.

The Forum had considered whether a tiered approach would be appropriate, as suggested by some respondents. For example, if the total period of active service is such that the employee returns within a 26 week period, the employee would have the right to return to the same job, but if the employee is out of the workplace for more than 26 weeks, they would have the right to return to either the same or an equivalent job. This is likely to be overly complicated given that the period of active service may be unknown and it would bring uncertainty for the employer, the employee and any staff employed as temporary replacements.

If Reservists are given the right to return to the same or an equivalent job, then a woman returning from a period of statutory maternity leave will have greater protection (the right to return to the same job after 18 weeks' leave). However, this provides some balance given the uncertainty for the employer in the imprecise period of leave for a Reservist, by comparison with a fixed period of statutory maternity leave. In addition, other than in respect of 2 weeks' compulsory leave immediately after the birth, a woman on maternity leave receives no pay from her employer, unless she has a contractual entitlement to maternity pay. A Reservist has greater protection in that the MOD employs the Reservist during the period of active service and provides financial compensation to cover loss of employment earnings and benefits up to £548 per day.

Noting that, in the majority of cases, a period of active service is likely to be for no more than 12 months accumulated in any 3 year period, the Forum recommends that Reservists should have the right to return to the same job, or an equivalent job. This more flexible right takes into account some of the concerns of respondents about the practicability of a Reservist returning to the same job (e.g. changes in business needs during the period of leave).

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Employment Protection for Armed Forces Reservists

- *Notice of intention to return to work*

The Forum recommends that a Reservist should be required to give the employer notice of his or her intention to return to work within the same periods as the UK; essentially this means that Reservists retain the right to return to work by advising their employer (in writing) of that intention by the third Monday after the end of their full-time service (i.e. roughly a 3 week period which falls within the period of post-operational leave). Reservists must advise their employer of the date on which they will be available to return to work within a further 21 day period and the proposed return date itself must be no later than 6 weeks after their last day of full-time service (other than where there is reasonable cause for a later date).

- *Minimum period of re-employment*

The Forum recommends that Reservists should not have the right to return to work for a minimum period of time after returning from active service. Such a right is not essential and a statutory right does not apply in relation to any other types of leave or time off work. The Forum can see no reason to justify why Reservists should have greater protection than other employees.

2. Protection from unfair dismissal, from day one of employment, on grounds of Reserve service or call-up liability

The Forum understands that the Minister intends to introduce any employment protection for Reservists either simultaneously with, or after, the legislation for family friendly rights which will include an automatic protection against unfair dismissal on grounds relating to pregnancy and maternity.

The Forum recommends the introduction of automatic protection against unfair dismissal equivalent to that proposed to be introduced in the UK via the Defence Reform Bill. The Bill would provide that dismissal is automatically unfair where the reason (or if more than one reason, the main reason) for a dismissal is, or is connected with, the employee's membership of a Reserve force.

The Forum notes that, in Jersey, the maximum amount that the Employment Tribunal may award as compensation for unfair dismissal where the employee has less than 26 weeks' service is 4 weeks' pay.

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3. Provision for the fair dismissal of employees who have been employed to replace Reservists during a period of active service.

The Forum recommends that the existing provisions of Article 71 should be extended to allow for the fair dismissal of employees who have been employed specifically to replace Reservists for a period that relates to Reserve service or mobilisation. The Forum considers that it is not necessary to include any different or additional details in the legislation relating to Reservists, such as what must be specified in the replacement employee's terms of employment.

4. Permission for MOD to contact employer

The Forum recommends that any employment protection for Reservists should not be subject to the Reservist giving permission for the MOD to contact his or her employer. UK employment protection is not dependent upon a Reservist having given their permission for their employer to be contacted direct by the MOD. A person who becomes a Reservist or re-engages as a Reservist is required as a condition of joining or re-engaging to give permission for the MOD to write to their employer direct. Four weeks after joining, re-engaging or starting a new job, the MOD will write to the Reservist's employer. This is already the case for Reservists and their employers in Jersey.

5. Other recommendations

During the preparation of this recommendation, it became evident to the Forum that the UK Employment Rights Act 1996 provides that a period of service in the Armed Forces does not break continuity of employment for the purpose of calculating length of service (but does not count as service), as long as the break in employment is no more than 6 months. The Forum recommends that equivalent provision should be made in the Employment Law.

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This recommendation was prepared by the following members of the Forum:

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APPENDIX 1 – UK POSITION⁵

Mobilisation

When Reservists are needed, they are ‘mobilised’ or ‘called out’. Mobilisation is the process of calling Reservists into a period of active service within the Regular Forces in support of military operations, serving alongside the Regular Armed Forces. All Reservists are committed to the possibility of being mobilised if necessary. They are normally required to serve abroad but it is possible they would be needed to serve in the UK, for example in the event of a national emergency.

When mobilised, a Reservist reports to their mobilisation centre where they undertake pre-mobilisation training, including a medical examination, before being accepted into full-time service. This process can take up to 4 weeks. They then join a regular unit for the duration of their mobilised service. Towards the end of their mobilised service, they return to the mobilisation centre to be demobilised.

The Reserve Forces Act 1996⁶ (the ‘Reserve Forces Act’) sets out the call-out powers under which Reservists can be mobilised for full-time service. There are 4 main powers under which mobilisation can take place:

- If it appears that national danger is imminent, a great emergency has arisen or if there has been an attack on the United Kingdom.
- If it appears that warlike operations are in preparation or progress e.g. Afghanistan.
- If it appears necessary or desirable to use Armed Forces on operations outside the UK for the protection of life or property; or on operations elsewhere in the world for the alleviation of distress or the preservation of life or property in time of disaster or apprehended disaster, e.g. the Balkans.
- If it appears necessary or desirable to use Armed Forces for urgent work of national importance.

The Ministry of Defence (MOD) uses ‘Intelligent Selection’, which identifies willing and available individuals for specific appointments. This allows Reservists to be selected according to their skills as well as taking into account their personal and employment circumstances, which includes consulting with the Reservist's employer. Legally, all mobilisations are compulsory. Sometimes the MOD cannot meet its requirements by identifying willing and available individuals, (e.g. when operational deadlines are short), in which case a Reservist may be mobilised without taking account of personal, welfare and employment issues.

⁵ For more information see the website www.sabre.mod.uk

⁶ www.legislation.gov.uk/ukpga/1996/14/contents

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The length of mobilisation currently ranges from 3 months or less, up to a legal maximum of 12 months in total, accumulated over a 3 year period.

Employer Notification

Reservists are encouraged to discuss their status and commitments at job interviews or to tell their employer if they intend to become a Reservist. Anyone who becomes a Reservist, or seeks to renew their commitment (re-engage), must give permission for the MOD to write to their employer direct. A Reservist who has accepted but has not started a job is regarded as an employee for the purpose of the employer notification system.

This 'Employer Notification' system ensures that employers are aware if they employ a Reservist or if an existing employee joins the Reserve Forces. The Employer Notification system extends to employers in Jersey.

The Reserve Forces Act does not require that a minimum period of notice is given prior to a Reservist being mobilised, however the MOD aims to give at least 28 days' notice and a Reservist will often have 6 months' notice that they will be mobilised. Where a Reservist is employed on a fixed-term contract for 6 months or less, the employer is not notified in advance that they employ a Reservist, but is notified if and when an employee is to be mobilised.

When an employee is to be mobilised, the MOD sends a mobilisation information pack to the employer to provide information including the date and possible duration of mobilisation, statutory rights and responsibilities, how to apply for an exemption and how to apply for financial compensation. Mobilisation information packs are also sent to employers in Jersey.

If a Reservist is mobilised and the employer believes that their absence would cause serious harm to the business, both the employer and the Reservist have the right to seek an exemption, deferral or revocation of the mobilisation. There is flexibility and the reasons will be taken into account; the success of such a request will often depend upon the specific skill set of the individual.

Financial compensation

If a Reservist is mobilised, the employer does not have to pay them any salary or associated benefits for the duration of their operational duty. The MOD provides financial assistance to Reservists and their employers⁷, including those in Jersey. A Reservist can claim financial support to cover loss of employment earnings and

⁷ Reserve Forces (Call-out and Recall) (Financial Assistance) Regulations 2005
www.legislation.gov.uk/ukxi/2005/859/contents

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benefits, up to £548 per day. Employers may also claim for any financial loss that they incur as a result of an employee being mobilised, up to a maximum of £110 per day in relation to any replacement costs incurred that exceed the relevant earnings of the Reservist. The employer can also claim costs for advertising, paying agency fees for replacement staff, pension contributions and essential re-training costs when the employee returns to work.

There is no facility to extend the Reserve Forces (Safeguard of Employment) Act⁸ to Jersey by Order in Council. However, the Reserve Forces Act is in the process of being revised under the Defence Reform Bill and it has provisionally been agreed to extend to Jersey the protections relating to Reservists' pay and compensation for employers' financial losses. Whilst the law has not yet been extended, the MOD already makes equivalent payments to Reservists and their employers in Jersey. The Forum is therefore not required to consult or make a recommendation on these matters.

The Forum understands that the MOD provisions for employers to claim financial compensation are straightforward and easy to use and these will continue to be available to Jersey employers.

Demobilisation

Demobilisation occurs when a Reservist returns from active duty to the mobilisation centre. Procedures are in place to help Reservists readjust to civilian life after returning from the front line.

1. **Adaption** – Before returning home, a Reservist may undergo a process of 'winding down' with their unit in a controlled environment for up to 4 days.
2. **Assessment** – On arrival in the UK, Reservists are taken to a demobilisation centre, where the process of reintegration continues, including medical assessments, briefings on stress, their return to work, welfare guidance and advice.
3. **Post-operational leave** – The Reservist is then formally demobilised and starts a period of post-operational leave. During mobilisation, Reservists accrue (with the MOD rather than the employer) the right to a period of leave which is paid by the MOD. The length of leave depends on the length of mobilisation and is an average of around 30 days. Employers are encouraged to make regular contact with their Reservist employee during this period to help ease their return to work.

⁸ Reserve Forces (Safeguard of Employment) Act 1985 www.legislation.gov.uk/ukpga/1985/17

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4. **Last day of full-time service** – A Reservist's final day of post-operational leave is their last day of full-time service and their final day of pay from the MOD. A Reservist must write to their employer to formally state their readiness to return to work no later than the third Monday following their last day of full-time service and their start date should be within 6 weeks of their last day of full-time service.

Employment Protection

The 1996 Employment Rights Act provides that mobilisation does not break a Reservist's continuity of employment for the purpose of calculating their length of service, as long as the Reservist returns to work within 6 months of the end of their full-time service. The period of mobilisation does not break service, but does not count as service. Terms and conditions of employment effectively continue during the period of mobilisation; the employer continues to provide employment related pay and benefits and the MOD compensates the employer financially. Reservists accrue the right to paid leave with the MOD, rather than their employer, during the period of mobilisation.

In addition, the Reserve Forces (Safeguard of Employment) Act provides Reservists who have a liability to be mobilised with 2 types of protection:

1. Protection from unfair dismissal

It is a criminal offence, with liability to a fine, for an employer to terminate a Reservist's employment, without their consent, solely or mainly because the Reservist has a liability to be mobilised. In addition, compensation is payable to the Reservist of up to 5 weeks' pay.

As set out in the Secretary of State for Defence's White Paper, 'Reserves in the Future Force 2020: valuable and valued'⁹ (3 July 2013), there are plans to remove the qualifying period of employment for protection against unfair dismissal if a dismissal relates to a Reservist's service.

The Defence Reform Bill seeks to introduce this new 'automatically unfair dismissal' where the reason (or the main reason) for dismissal is, or is connected with, the employee's membership of a Reserve Force (as defined in section 374 of the Armed Forces Act). This means that dismissal will be regarded as unfair, regardless of any consideration of reasonableness and the employee can make a complaint of unfair dismissal to an Employment Tribunal from day one of employment.

⁹ www.gov.uk/government/uploads/system/uploads/attachment_data/file/210470/Cm8655-web_FINAL.pdf

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2. The right to return to work

When a Reservist employee completes a period of full-time service, their employer is obliged to re-employ them. The employer must re-employ the Reservist in the same role and on equally favourable terms and conditions as soon as they are reasonably able to do so. If this is not reasonable and practical, a Reservist must be re-employed in the most favourable job and on the most favourable terms and conditions that are available.

Whilst Reservists may be included in a redundancy pool, 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. A Reservist must not be made redundant on the grounds of their Reserve service duties or their liability to be mobilised.

In order to retain the right to return to work, after demobilisation, a Reservist must write to their employer within the period between the end of their full-time service and the third Monday after that date asking to return to their former job. Either at that time, or within a further 3 week period, the Reservist must advise their employer of the date on which they will be available to return to work which must be no later than 6 weeks after their last day of full-time service. The Reservist must be re-employed from, or as soon as possible after, the date on which they told the employer that they would be ready to return and cannot be made to return to work before this date.

If the Reservist and the employer agree a return date and terms, then no further action needs to be taken. If the employer offers alternative employment and the Reservist is dissatisfied with the offer, they must inform the employer immediately in writing, stating why there is reasonable cause for them not to accept it. If a Reservist believes that an employer's response to their application to return to work denies their rights, an application can be made to a Reinstatement Committee for assessment.

Employers are obliged to employ Reservists who return to work for a minimum of 13, 26, or 52 weeks, depending on their length of employment service prior to mobilisation. These minimum periods of employment are intended to act as a safeguard and they apply unless circumstances genuinely prevent it, such as in an insolvency situation. After the minimum period of employment, the normal rules relating to dismissal and redundancy apply.

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APPENDIX 2 – QUOTES FROM CONSULTATION RESPONSES

1. Respondents were asked if, in general, they think that specific employment protection should be introduced for Reservists.

“Why should they be protected, we have several thousand unemployed that need work. We are told there are safety provisions in place such as income support, and the so called back to work schemes and advance plus.” (Nicolas Jouault, employee)

“It is their choice to be a Reservist and if you afford protection, there may well be other groups equally as deserving.” (Anonymous consultant)

“This should be covered under 'Special Leave' and should, as such, apply to people who have to take time out to care for loved one with terminal illnesses, who themselves have a long-term serious illness etc.” (Anonymous Human Resources Manager, Public sector)

“Overall, we believe that the introduction of employment protection for Armed Forces Reservists and guidance for employers in how to handle such matters, is positive. A number of Jersey Reservists do (or will) provide similar support to the Armed Forces as their UK counterparts when they are mobilised on active service and accordingly, it is appropriate that they should benefit from the same level of protection and support. Further, Reservists are to be utilised more following the Secretary of States for Defence’s White paper Future Reserves 2020 strategy so it is encouraging that protection is being considered now. It is important for Reservists and their employers to understand the implications for them.” (Anonymous law firm)

“It is important to recognise the contribution AFR (Armed Forces Reservists) make to our communities and should therefore afford employment protection if they are willing to put themselves forward as an AFR.” (Anonymous employer, media)

“Reservists carry out vital work in the national interest when mobilised, and should not be placed at a potential employment disadvantage as a result of being mobilised.” (Anonymous employee)

“We should be consistent with UK law and extend the right to protection for Reservists.” (Human Resources, States of Jersey)

“The UK Government have been clear in its decision to reduce the number of regular servicemen and women. However, the need to ensure we have sufficient numbers of Soldiers, Sailors and Airmen is still critically important for the security of our country. Jersey makes an excellent contribution via Jersey Field Squadron which we must maintain. Recruitment is always challenging and we must do all we can to encourage

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people to serve in the reserve forces. I served as a Regular Soldier myself for 22 years and know well the huge contribution the TA make.” (Employee, Robert Wareing-Jones)

“It appears that international expectation upon Jersey may place us under pressure to allow any Reservists to be mobilized and, in tandem with this, that we provide such individuals with a level of employment protection during any tour of duty.” (Jersey Advisory and Conciliation Service (JACS))

“Reservists in Jersey should have the same employment protection as in the UK. This applies to both those serving in the local Field Squadron and other Reservists living in the Island. It is imperative that Jersey is seen to be supporting Reservists living in Jersey.” (Anonymous Reservist)

“I actually applied to join the reserves last year, but have found I cannot while I live in Jersey as I cannot take the risk for my family. Jersey does not have the same protections as the UK – I would not be entitled to any unpaid leave from work, nor would I have any protection if my employer did not like it. If I did get called up my job would have to be filled and it may not be there to go back to.” (Anonymous employee)

“Having a reserve force is largely beneficial to both the island and the commonwealth and it is in our best interest to protect these reservists. Recruitment would inevitably increase if civilian jobs were safeguarded. There needs to be greater understanding from employers of the time needed to be spent for training and mobilization of these reservists. These reservists do a fantastic job, and should no longer feel as though being a TA soldier is a burden to employers.” (James Philpott, employee)

“Safe guarding the reservists job when mobilised is crucial to the individual and his/her family. It could be the tie break between volunteering for operational duties or not. It would also be a positive step in recruiting and retention.” (Anonymous, unspecified)

“They deserve that protection. What sort of society lets their Islanders go off to hostile locations, representing the island of Jersey and then not secure their employment on their safe return. It's the right thing to do.” (Anonymous employer, electricity, gas and water)

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2. Respondents were asked if Reservists should have the right to return to work after mobilisation and, if yes, whether the Reservist should have the right to return to;
- a) The same job
 - b) The same job, or an equivalent job
 - c) The most favourable job and the most favourable terms and conditions that the employer can offer, if the employer is not able to offer (a) or (b).

“Reservists should not be disadvantaged.” (Lt. Cdr. Stephen Gavey, Reservist)

“They should not have to forfeit their civilian employment when they come back from a tour that is basically to protect us.” (Sgt. Paul Davey, ex Jersey field Squadron Royal Militia)

“Should not be penalised for being called up but if the employer needs to find a new employee to do the job of the reservist they should be allowed to.” (Anonymous student)

If A is economically and practically undesirable for the general wellbeing of the business, then B has to be the best substitution. Allowing businesses to choose 'favourable' terms could result in decreased working hours and therefore reduced income for the soldiers family, ergo reducing potential number of recruits.” (James Philpott, employee)

“The same job would be ideal although dependant on time away or change in circumstances (potential Injury, Skill Fade) an equivalent job should be suitable. Reservist/Employer relationship, communication is key for it to work.” (Anonymous Reservist)

“We are also generally supportive of the proposal that Reservists should have the right to return to employment following a period of mobilisation. However, business needs and resources change over time. A Reservist can be mobilised for up to a year, and in the meantime a lot of structural change can occur within a business. Accordingly, it is our view that the protection should include the right to return to the same or a comparable job, where possible. This will provide some security for the employee concerned and should also enable the employer to make reasonable changes to its business during the employee’s absence. We understand that mobilisation is likely to be for a limited period. However, if an extended period of mobilisation is likely, we consider that this should be relevant to the employer’s duty to keep employment open.” (Anonymous law firm)

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“Reservists should have the right to return to the same job or an equivalent job whenever possible. In certain circumstances this may be impracticable in which case option (c) should apply.” (Anonymous employee)

“As tours of duty along with the pre- and post- processes can mean that an employee is not available for a significant period of time, smaller employers are likely to struggle with keeping exactly the same job open for the Reservist to return to, especially in light of the current employment market. For that reason it is considered more reasonable to consider Option C as being the minimum requirement and one which is less onerous on employers.” (JACS)

“If the time frame is known for the mobilisation then the Company should be able to decide if they are able to hold the role open for the employee. However if the time is unknown or longer than the Company can sustain, then a suitable alternative should be sought. The issue arises when the timeframe of mobilisation was lengthy then a role may not be available for the employee, especially if for example redundancies had to be made during the period of mobilisations. And secondly, any medical conditions upon the end of the mobilisation which would render the employee unable to work would mean that the employer may be responsible for any sick pay, whilst still trying to keep a role open for the Reservist.” (CIPD Jersey Group)

“This should (as in all cases of returns to work) be dependent on the size of the employer and the variety of jobs they offer. Being a reservist (like taking maternity leave, etc.) is a choice. Whether we like it or not our employment laws are increasingly putting small businesses OUT of business.” (Anonymous HR Manager, Public sector)

“We understand that there is an argument that the burden of keeping a job open for a reservist may be unmanageable for small businesses. However, this can be worked around by offering replacement staff fixed term contracts as businesses do when employees take maternity leave.” (Anonymous employer, hotels restaurants and bars)

“Any legislation should mirror that of Family Friendly rights and although Jersey has no Family Friendly legislation at this time, these 2 pieces of legislation should be mirror where possible when considering, return to work, right to return to the same job, the right not to be unfairly dismissed for reasons for etc.” (Anonymous employer, media)

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3. Respondents were asked whether Reservists should have the right to return to work regardless of the length of time that is taken off work for mobilisation and demobilisation.

“There should be a cut off time so that employers can realistically cover and keep the role open. This needs to be considered carefully as would add a burden to the small businesses in the Island which make up most of our employers”. The CIPD Jersey Group suggested the following time limitation on the right to return to work after mobilisation and demobilisation; “12 weeks’ unpaid leave – return to own role. 12 to 26 weeks’ unpaid leave – return to a comparable role. 26 weeks and over – no automatic right to return to work.” (CIPD Jersey Group)

“There must be some protection to enable employers to carry on their businesses with consistency. Covering vacancies long term can be expensive (administrative / cost).” (Anonymous employer, transport, storage and communications)

“This isn't workable for small businesses, and it isn't even workable for some big businesses. Rather than business size what matters is the number of similar posts within a company.” (Anonymous HR Manager, public sector)

“Some reservists extend their mobilisation periods for whatever reason without consideration for their civilian employers.” (Captain L.W. Bryan, Reservist and employer, public sector)

“I think this has to be aligned with the business and should be considered reasonable with both parties, i.e. if the length of mobilization was 9 months every 18 months, I think it's unreasonable to expect to keep a position available for that length of time. Reservists need to understand the business needs too, and when enlisting for operations (as most are optional), they need to consider their employers and therefore make sacrifices, i.e. go on one 9 month operation every 3 years or so, as opposed to every 18 months.” (James Philpott, employee)

“A maximum of a 12 month period including deployment training, deployment and post tour leave.” (Lee Madden, Reservist)

“It is difficult to say that a Reservist must return to work within a minimum period of time. However, we do not consider that it could be difficult for an employer to keep a job open indefinitely and, in our view, it would be unfair to expect them to do so. Accordingly, the right to return to work should be available for a minimum period of time.” (Anonymous law firm)

“As JACS agrees that Reservists should have the right to return to work after mobilisation/demobilisation, albeit not necessarily in the same role (see 6 above), it

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appears to be necessary to offer that protection regardless of the length of time that is taken off for mobilisation and demobilisation up to a maximum period of 12 months.” (JACS)

“I think that putting time limits on such a matter would be unfair, it is not down to the individual how long he is away for, and therefore should not be punished for something he is not in control of.” (Anonymous student)

“Tours may be extended for operational reasons, outside of the reservists control.” (Anonymous Reservist)

“If mobilised reservist has no choice but to comply and needs protection.” (Lt. Cdr. Stephen Gavey, Reservist)

“They should not have to forfeit their civilian employment when they come back from a tour where there is no time limit, after all this person has written out a blank cheque for his/her life to protect us.” (Sgt. Paul Davey, ex Jersey field Squadron Royal Militia)

“(The right should be sufficient to allow for the maximum absence on Reservist duties that is ordinarily expected). It appears that the maximum a Reservist may be absent from work is 11 months in a 5 year period (this Consultation Document, page 8 states “the Forum is advised that this may mean that a Reservist is unable to work in their usual employment for up to 11 months in total during a 5 year period”). We have suggested a maximum period as we understand in the event that a Reservist is injured during his/her service he/she will not be demobilised until satisfactory medical clearance. It appears to be possible, therefore, for the mobilisation period to extend beyond 11 months, albeit not the intention. We do not believe it to be realistic for the right to return to work to be for an indefinite period.” (JACS)

“If it is compulsory mobilisation and the length of Mobilisation is out of the Soldiers control the Soldier should not be disadvantaged, however the RFA 96 has strict guidelines on how long a Soldier can be mobilised. Again Employer/Reservist communication is key. Normal mobilised service is max of 11.5 months in every 5 years.” (Anonymous Reservist)

“Only if time off is directly for mobilisation and demobilisation and not extended leave for any other reason.” (Anonymous employer, media)

“Unless the employee volunteers for additional tours of duty beyond a reasonable period (say a year).” (Anonymous employee)

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4. Respondents were asked whether Reservists should they be obliged to advise their employer if they intend to return to work after mobilisation.

“For employment planning purposes, e.g. so that the employer can provide adequate notice to any cover being used.” (Anonymous employer, transport, storage and communications)

“It is reasonable for Reservists to be obliged to advise their employer of their intention to return to work after mobilisation, so that the employer can plan accordingly.” (Anonymous employee)

“An employer will need to make contingency plans for the return of the Reservist and, whilst there may be a predicted return to work date given at the start of any mobilisation, the employee should have a duty to keep in touch during their tour of duty and advise if they wish to return to the employer at the end of such a tour.” (JACS)

“It important to keep the employer informed of the employees intentions. This would usually be discussed beforehand.” (Anonymous Reservist)

“The MOD should lay out to the employer they will be back after their service and in the meantime here is your compensation to employ a temp replacement for the duration.” (Anonymous Reservist)

“Again, this should mirror that of Family Friendly legislation in the case of returning from Maternity leave.” (Anonymous employer, media)

“Should they decide that they do not want to return/want to return they should advise the employer at least 21 days (or their notice period if they are able) before they are mobilised.” (CIPD Jersey Group)

“So that a business can manage its requirements and operations, we consider that a Reservist should be required to tell their employer of their intention to return. Where possible, this intention should be stated prior to mobilisation and the employee should advise the employer of their intended return to work date as early as possible.” (Anonymous law firm)

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- 5. Respondents were asked to indicate within what time period, after a Reservist has returned from mobilisation, they should be obliged to advise their employer that they intend to return to work.**

“On start of post-mobilisation leave.” (Lt. Cdr. Stephen Gavey, Reservist)

“Immediately or as soon as practically possible. The AFR will still have a responsibility to their employer under their contract of employment therefore they should be required to inform their employer immediately or as soon as practically possible.” (Anonymous employer, media)

“A Reservist should be obliged to advise their employer that he intends to return to work within the same period that is required for UK Reservists. The UK requirements in respect of the timescale for Reservists to advise their employer of their intention to return to work after demobilisation seems reasonable.” (Anonymous employee)

“JACS believes the Reservist should advise the employer of their intention at least 1 month before they wish to return to work. The business need for workload planning; serving notice on a temp/FTC employee; consideration of any training that may be required; notification to clients.” (JACS)

“Once a reservist is de-mobilised they will normally get 30 days’ paid leave. It should be then at the de-mob centre and end date is given that the employer is notified.” (Jason K. Cronin, employee, Trade Union steward and former Reservist)

“Within a week after the Demobilisation to notify when the leave period and payment from the MOD ceases.” (Anonymous, unspecified)

“They should give a date ASAP, as the military will give them at least a month’s paid leave after the tour and in that time they should be able to give a decisive date.” (Sgt Paul Davey, ex Jersey field Squadron Royal Militia)

“A date should be set before or upon return to UK. A Soldier will have approx One Month Post-Operative Tour Leave (POTL) to take. There may be instances when the Soldier returning may not be able to work due to Injury both Physical & Mentally. If this is the case then the employer will still be compensated (if in receipt) and the Reservist will not return to work until fit to do so.” (Anonymous Reservist)

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- 6. Respondents were asked to indicate at what stage a Reservist should be required to advise their employer of the specific date from which they will be available to return to work.**

"Immediately or as soon as practically possible." (Anonymous employer, media)

"I am not clear on how much notice reservists get themselves, but would recommend a time period that is reasonable in the circumstances." (Anonymous employer, hotels restaurants and bars)

"Once a reservist is de-mobilised in the UK they will normally get 30 days' paid leave. It should be then at the de-mob centre and end date is given that the employer is notified." (Jason K. Cronin, employee, Trade Union steward and former Reservist)

"The reservist will know their return dates well in advance of deployment and therefore should discuss the best date to return with the employer, in my opinion, the employee should aim to be back at work within a month of returning." (James Philpott, employee)

"They should give a date ASAP, as the military will give them at least a month's paid leave after the tour and in that time they should be able to give a decisive date." (Sgt. Paul Davey, ex Jersey field Squadron Royal Militia)

"A reservist will be told when mobilised when their end of tour date is (that includes POTL). The Reservists should communicate this when mobilised and arrange a mutual return date." (Anonymous Reservist)

- 7. Respondents were asked if reservists should have the right to return to work for a minimum period of time after returning from mobilisation.**

"This question can be interpreted in many ways; Should a reservist return to work at the agreed time, they should have to work for a period of 3 months before they resign, however this should not be legislation, but decided by the employer. And would also be dependent on the amount of time the Reservist has had off. However should their work not come up to standard they should be subject to the same procedures as other staff and should not be protected under any form of automatic unfair dismissal. However employers should not be forced by law to recruit someone for a minimum period of time just because they are Reservists." (CIPD Jersey Group)

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“Businesses should be able to operate with limited restrictions on how they normally run their business and not forced by law to employ someone for a minimum period of time.” (Anonymous employer, media)

“This would not be necessary if proper consultation/discussion takes place as soon as mobilisation is certain. It would be built into employers’ manpower plans, and reservists’ career plans.” (Anonymous employer, transport, storage and communications)

“A right to return to work after mobilisation for at least a minimum period of time is essential otherwise this right becomes almost meaningless.” (Anonymous employee)

“Employers are obligated and compensated to hold that position for the reservist, the reservist must also uphold their side of the agreement and return the support they were given.” (Captain L.W. Bryan, Reservist and employer, public sector)

“Resettlement after active service is critical. It takes time to adjust and must form part of the contract.” (Robert Wareing-Jones, employee)

“A guaranteed minimum period of time would act as a safeguard, allowing the Reservist to settle back in to normal working life. A proviso will be necessary in the event that circumstances genuinely prevent it, such as in an insolvency situation.” (JACS)

“Should return on same terms and conditions as left for mobilisation.” (Lt. Cdr. Stephen Gavey, Reservist)

8. Respondents were also asked if that minimum period of re-employment should be based upon the Reservist’s length of previous service for the employer.

“The minimum period of employment on return from mobilisation should be proportionate to length of previous service with the employer in line with many other employment rights.” (Anonymous employee)

“In employment legislation there is a general acceptance that increased length of service provides for an increased level of protection for employees. It is believed it would be appropriate to carry this same approach forward and to apply it to the protected period of employment when a Reservist returns to work. The periods provided in UK legislation are reasonable in our view.” (JACS)

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“If linked to the duration of their statutory or contractual notice period, this should be regarded as fair to the employee.” (Anonymous employee)

“The timing should be the same across board to avoid confusion. It should be straightforward and avoid complicated calculations.” (Anonymous Reservist)

9. Respondents were asked, if a Reservist is dismissed and the reason (or the main reason) for dismissal is, or is connected with, the employee’s membership of a Reserve Force, whether this should this be treated as an automatically unfair dismissal from day one of employment.

“Again, this legislation should be closely aligned with Family Friendly legislation where it is unlawful to dismiss on the grounds of pregnancy or childbirth.” (Anonymous employer, media)

“Such a reason for dismissal is comparable with other reasons also treated as automatically unfair dismissal from day one of employment, and is in line with the UK Defence Reform Bill.” (Anonymous employee)

“Any dismissal involving the denial of a statutory right should be automatically unfair.” (JACS)

“Joining the Reserves should not affect your working week (unless you work weekends). if you are dismissed for "just" being a member of the reserves then that should be classed as unfair dismissal. Each case would have to individually assessed. It might be that the Reservist is taking too much time off which is not necessary (Min. Commitment 27 days per year) and effecting that individuals work output together with operational effectiveness of that employers company, that would constitute a different dismissal although related to the reserves forces.” (Anonymous Reservist)

“There remains the possibility that the reservist might manipulate their membership of a reserve force, causing their employer problems. Therefore, the reason above should not automatically be treated as unfair dismissal.” (Anonymous employer, transport, storage and communications)

“If it is SOLELY the reason then I would say "yes", but "connected with" will be interpreted totally in favour of the employee even if the employee is actually at fault in some way.” (Anonymous HR Manager, public sector)

“Dismissal on grounds of ill-health may be connected to the employees membership of a reserve force.” (Anonymous employer, hotels restaurants and bars)

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"This would relate to membership of a group whose activities could be prejudicial to the employers aims where dismissal could be justified." (Human Resources, States of Jersey)

"It depends on the job and the level of openness and honesty on the part of the reservist at the start of employment, If the reservist joins the reserve forces during employment he should have discussed it firstly with his employer to dispel apprehensions from the outset." (Captain L.W. Bryan, Reservist and employer, public sector)

"Because whilst the reservist has been away, the employer may have had to alter business plans and make redundancies." (Anonymous employee)

"No – Protection should not be given to the Reservists. They should be treated fairly, to enable them to fulfil their obligations, however an employer should be able to manage their business effectively and should they be dismissed, an employer would need a fair reason and a process would need to be followed." (CIPD Jersey Group)

10. Respondents were asked if the dismissal of a replacement employee on the return of the Reservist after mobilisation should be regarded as automatically fair in the following circumstances:

- a) The replacement employee's terms of employment specify that employment will be terminated on the return to work of the Reservist employee.
- b) The terms of employment specify a precise date that the contract will end.
- c) The terms of employment specify an expected contract end date, but with the option for either party to give notice earlier.
- d) In any other specified circumstances.

"Termination in accordance with the normal provisions of a fixed term contract – i.e. at a specified date or under specified circumstances is fair." (Anonymous employee)

"Any replacement employee must be taken on with the knowledge that their position is temporary and dependant on the return date of the reservist. Unfair dismissal for the above mentioned reasons cannot apply here." (Anonymous Reservist)

"a) and b) above are too constraining on both parties as they require both parties to maintain employment when it may not be desirable for one or the other; c) above only provides for a specific end of contract date which may not be known at the time the contract is entered into (the Reservist may not know at that time when he/she can return). We would prefer an option as follows: When the terms of employment

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specify that employment will be terminated either: a) on the return to work of the Reservist employee, or b) on a precise date that the contract will end with the option for either party to give earlier notice.” (JACS)

“FTCs cause some concern for employers generally, but if they knew that the return of a Reservist from mobilisation would not give rise to JET claims, then this would give some reassurance and possibly remove a potential barrier to the recruitment of Reservists in the first instance.” (JACS)

“However, the temporary employee must understand this. The employer should have a duty to explain it to them, and if the contract is terminated early they should have some rights to paid notice.” (Anonymous employee)

“It is good employment practice when recruiting a replacement to inform them of the reason for their employment. Accordingly, any replacement should be aware that their employment is likely to be limited to the period of time whilst the Reservist is mobilised. Accordingly, we can see a basis for expanding Article 71 of the Employment (Jersey) Law 2003 to cover situations where a reservist returns to work and the replacement’s employment is required to be terminated.” (Anonymous law firm)

11. Respondents were asked if employment protection for Reservists should be dependent upon the Reservist having given permission for the MOD to contact their employer directly.

“I would recommend that employers have a policy to expect any employ who is, or wishes to become, a reservist to make this known in writing, requesting permission from the employer to have any absence resulting from membership accommodated. Without this foreknowledge an employer may consider a reservist to be in breach of contract. All such commitments must be known in advance.” (Anonymous employer, transport, storage and communications)

“It is reasonable to ensure that an employer is aware that they have a Reservist employee, as is the procedure in the UK (and currently extended to Jersey).” (Anonymous employee)

“Must be open and honest at all times to ensure this works well.” (Robert Wareing-Jones, employee)

“This may cause 'black listing' of reservists by employers.” (Jason K. Cronin, employee, Trade Union steward and former Reservist)

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“No reason why not; employee should advise anyway. However, employee should not have to declare until job offer is received/accepted to avoid rejection on grounds that may be mobilised.” (Lt Cdr Stephen Gavey, Reservist)

“If the applicant can’t be trusted to divulge that information then the MOD should have to in order to stop any situations where employees/employers claim they weren’t informed.” (Anonymous student)

“Fairness. But they should be given time to notify. Specifically, this should not apply 1) prior to taking up employment, 2) for temporary contracts, or 3) until any ‘trial’ period of employment has been completed. Otherwise the employee is taking a very big risk.” (Anonymous employee)

12. Respondents were asked if any other employment protections should be considered for Reservists.

“If they become disabled then they should be given some support and assistance.” (Nicolas Jouault, employee)

“That a period of at least one year the employee is Job protected in post.” (Jason K. Cronin, employee, Trade Union steward and former Reservist)

“Their pay should be protected, including incremental pay as well as promotion.” (Anonymous Reservist)

“Ability to contribute to Pension while mobilised (forces will fund). Protection of family benefits e.g. Health Care.” (Lt. Cdr. Stephen Gavey, Reservist)

“Whilst being mobilised States of Jersey Social Security payments should be met (for example the same as university students that receive credits) this would ensure that they would be entitled to Social Security benefits upon return if required. Note: Social Security payments should only be made for the duration of compulsory mobilisation not if hat Soldier has volunteered to extend.” (Anonymous Reservist)

“Unpaid time off work in additional to holiday – similar to UK public duties rules General right not to be discriminated against or disadvantaged in any way be being a reservist.” (Anonymous employee)

“Yes positive discrimination.” (Anonymous Reservist)

A huge problem is the willingness for reservists to actually advise employers about their service during the interview phase. Worried they will be automatically placed to

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the bottom of the pile, reservists have a fear of admitting their service. Legislation needs to cover unfair employment at this stage too, and employers should be able to provide sufficient evidence to a tribunal showing the reasons the reservist was not hired. (James Philpott, employee)

13. Respondents were asked if they foresee any problems with introducing any of the proposed employment protections.

“There would be few problems for a large employer such as the States of Jersey with sufficient administrative resources to manage this but this could be excessively onerous for a smaller employer.” (Human Resources, States of Jersey)

“I already see problems within my workforce to do with the training aspect of being a reservist. In some cases the reservists are being paid their salary AS WELL AS money for their reservist duties. In other cases some of the special leave they get for training is described as “a jolly” by others that attend it and when working in a very stressed and overworked department this causes problems with colleagues (and rightly so).” (Anonymous HR Manager, public sector)

“Smaller employers are likely to be concerned about the cost and business continuity implications of recruiting Reservists.” (JACS)

“SME Businesses will lobby that this protection should not be introduced as it could have an adverse effect on their business.” (Lee Madden, Reservist)

“Any laws that protect the worker are normally viewed as a problem by the employer.” (Jason K. Cronin, employee, Trade Union steward and former Reservist)

“Employer bodies will initially object, but it is a reasonable proposal and a necessary one if Jersey wishes to retain any contribution to its own defence.” (Anonymous employee)

“Small businesses will suffer, as taking away an employee could be key to functionality of the business and some of these employees may be irreplaceable. There needs to be some kind of economic incentive for these businesses – maybe some kind of tax break, I'm not sure.” (James Philpott, employee)

“There would have to be a clear justification why this particular group were afforded additional protection when other groups are not.” (Anonymous consultant)

“One group that may feel that they are likely to be adversely affected by the implementation of changes for Reservists are small businesses. For example, a small business may feel that it cannot continue without a particular member of staff

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and replacing that member of staff could be difficult in a specialist industry. As much notice as possible should therefore be provided to employers of deployment to enable suitable replacements to be appointed. The 28 day period currently in place in the UK is a very short window in which to advertise, interview and recruit a replacement employee.” (Anonymous law firm)

“Small businesses will suffer, and those who are Reservists may not secure employment if they have a different set of regulations attached to them.” (CIPD Jersey Group)

14. Other comments

“The MOD has funds that help companies to overcome any loss they may get from an employee being recalled to the colours, so there is no real reason to punish reservists by not offering them the same rights and benefits that are afforded to them in the UK.” (Jason K. Cronin, employee, Trade Union steward and former Reservist)

“The legislation should be robust and must not give room to manipulation by employers. The employee must be protected from been bullied.” (Anonymous Reservist)

“Unless we support this it is difficult to see how the UK Governments wish to increase numbers will ever be achieved.” (Robert Wareing-Jones, employee)

“Not sure why we do not adopt UK provisions on like for like basis rather than re-invent the wheel and create a difference. Reservists can also have tax issues with HMRC and this should be sorted upfront.” (Lt. Cdr. Stephen Gavey, Reservist)

“Once again it is disappointing that the Minister is considering introducing further employment legislation when there has been a call to carry out a review of our current employment legislation by the Jersey CIPD Group and other professional bodies.” (Anonymous employer, media)

“Generally Jersey law is weak on all forms of public duty. Some general rights for employees engages in public duties that apply to military reservists as well as others engaged in valuable public service roles, would be the best way of facilitating the continuance of Jersey's strong tradition of public service and a local defence force in a modern world where everyone is employed and making a contribution to our way of life comes at a higher personal and financial cost than it used to.” (Anonymous employee)