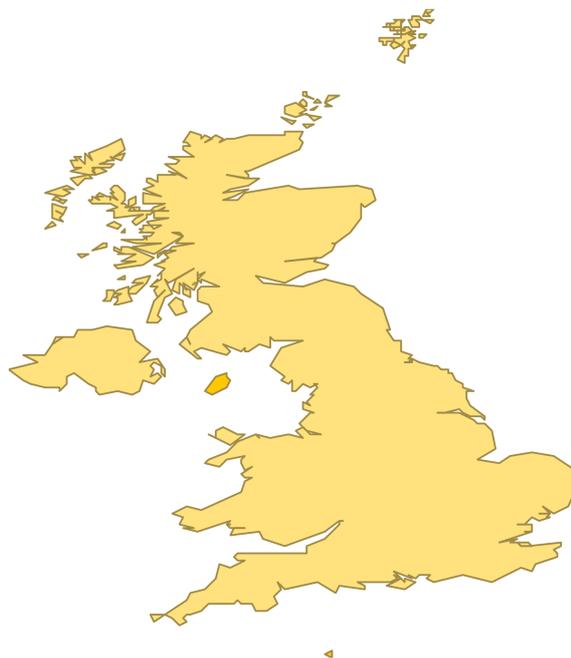


# United Kingdom

## Issues

- The regulations governing the right to conscientious objection are not in the public domain, and information is difficult to obtain by members of the public, and also by members of the Armed Forces.
- Decision making on an application for conscientious objection in the first instance is by the respective branch of the Armed Forces itself, and not by an independent body. Only the appeal body – the Advisory Committee on Conscientious Objectors – is an independent body.



## Military recruitment

### Conscription

Britain only had short periods of conscription.

Conscription was originally introduced in 1916, but

abolished in 1919. It was re-introduced in May 1939 and

remained in force on a war-time footing until 1948. In that year, the National Service Act provided for conscription for five years with an option for renewal every five years. The provision was renewed in 1953, but before the next renewal in 1958, the government had announced in the 1957 annual Defence Review that it was to be legally phased out by the end of 1960. In the same review the governments' commitment to the 'British H-bomb' was announced, rendering large military forces an unnecessary expense. The last conscripts were discharged in 1963<sup>1</sup>.

### Professional soldiers

Recruitment to the UK's Armed Forces is voluntary. The regulations and terms of service differ considerably between the three different branches of the Armed Forces – the Army, Royal Navy, and Royal Air Force.

All three Armed Forces recruit from the age of 16<sup>2</sup>, the army more intensively than the other two, which generally prefer recruits with some qualifications or qualification potential. Unlike the other two Armed Forces, the army requires under-18s to serve a longer minimum term than adults, by not counting the period up to the 18<sup>th</sup> birthday as part of the minimum requirement. The Army also enlists more recruits in any year than the two other Armed Forces added together. Also the Royal Air Force recruits from the age of 16<sup>3</sup>.

More reason for concern is that the Armed Forces target young people even younger – and that goes down to 12 years “old”:

- According to a report of the National Audit Office, “*the services also target marketing activity at young people before they become eligible to join the Armed Forces at 16 years old*”<sup>4</sup>.
- a special “Army Student Presentation Team” target young people aged 14–21 at schools, colleges and universities. The “SPT”, as it is called, promotes itself to schools with the argument that their “*presentation also complements Key Stages 3 and 4 of the Citizenship element of the National Curriculum*”.
- The Armed Forces maintain a special website – <http://www.mycamouflage.co.uk/> – targeted at 13–17

1 Peace Pledge Union 1996. Response to CONCODOC inquiry.

2 Royal Navy: Royal Navy Careers: Eligibility. <http://www.royal-navy.mod.uk/server/show/nav.6251>, accessed 1 October 2008, Royal Air Force: The Royal Air Force Terms of Service Regulations 2007, [http://www.opsi.gov.uk/si/si2007/uksi\\_20070650\\_en\\_1](http://www.opsi.gov.uk/si/si2007/uksi_20070650_en_1), accessed 2 October 2008, Army: Armed Forces Careers Office Form 5, March 2007

3 Royal Air Force: <http://www.raf.mod.uk/careers/istherafforme/joiningage.cfm>, accessed 1 October 2008

4 National Audit Office, Ministry of Defence – Recruitment and Retention in the Armed Forces, 3 November 2006, [http://www.nao.gov.uk/publications/nao\\_reports/05-06/05061633-L.pdf](http://www.nao.gov.uk/publications/nao_reports/05-06/05061633-L.pdf)

years old youth, which also offers a “members area”, featuring “*games, videos and other cool features*”. Young people who sign up for this site also “*get ARMY magazine three times a year – packed with exciting articles on Army life, quizzes and competitions*”.

- Cadet Forces: According to the official website, “*there are currently 253 CCF contingents based in both state and independent schools and colleges throughout the UK*”<sup>5</sup>. In addition, an even higher number of Sea Cadet Corps, Army Cadet Forces and Air Training Corps exist.

Situating recruiting offices in deprived areas indicates so-called 'economic conscription' policy of the armed forces.

Serving personnel are severely restricted in their human rights, far beyond what could be deemed necessary. For the army, QR(Army) J5.581 states: “*a. Regular service personnel are not to take any active part in the affairs of any political organisation, party or movement. They are not to participate in political marches or demonstrations.*”<sup>6</sup>

## **Conscientious objection**

### **Conscientious objection for conscripts**

As the United Kingdom does not maintain conscription, there are no regulations for conscientious objection in case conscription should be introduced again. Historically, provision was always made for conscientious objection.

### **Conscientious objection for professional soldiers**

Each one of the three services has its own regulations governing the right to conscientious objection. These have so far not been in the public domain, and have only recently been obtained by War Resisters' International under the Freedom of Information Act 2000. These are:

- Instruction 006 – Retirement or Discharge on Grounds of Conscience for the Army, including the Territorial Army;
- AP3392 Vol 5. Leaflet 113, Procedure for Dealing with Conscientious Objectors within the Royal Air Force for the Air Force;
- Personnel, Legal, Administrative and General Orders 0801, Application for Discharge on Grounds of Conscientious Objection for the Navy.

While the application procedure is similar for the three branches of the Armed Forces, there are also important differences.

Generally, an application has to be submitted to the Commanding Officer, together with written evidence to support the case (i.e. references). In case of religious conscientious objectors, a statement by a minister of the religion concerned should also be included.

It has to be pointed out that for all three services an application for discharge on grounds of conscience does not prevent deployment. During the time the application is being processed, the applicant remains a member of the Armed Forces with all duties this implies. There is no right to ask for service without arms during the processing of the CO application.

While the regulations for the army and the navy do allow for applications to be made at any time, the regulations for the Air Force state under paragraph 9:

“*Applications will not be considered from any applicant who is:*

1. *Absent without leave or a deserter.*
2. *The subject of outstanding disciplinary action.*
3. *Undergoing a sentence of detention or imprisonment.*

*Until such time as the individual has returned to unit, any outstanding disciplinary action has been taken and any sentence imposed*

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5 <http://www.mod.uk/DefenceInternet/AboutDefence/WhatWeDo/ReserveForcesandCadets/DRFC/TheCombinedCadetForceAUniqueEducationalPartnership.htm>

6 Queens Regulation (Army), J5.581a

*has been completed.*<sup>7</sup>

According to the appeal court judgement *Mohisin Khan v RAF*, paragraph 9 has been added with the update of the regulations on 28 October 2003<sup>8</sup>.

## Practice

It is almost impossible to describe the practice in the last years – or even decades – as the entire system is almost unheard of. Until recently, the regulations governing the right to conscientious objection have not been in the public domain. In a 2005 report, Mark Stolwijk wrote, concerning the regulations for the army: *“The Ministry of Defence considers the Instruction as a confidential document and it is actually forbidden to publish the Instruction outside the army. There are believed to be similar instructions for the navy and the air force, but the content of these instructions is not known.”*

In August 2007, War Resisters' International submitted a request for information under the Freedom of Information Act 2000, and finally received the regulations for all three forces. As mentioned in the introduction, the rules and regulations governing this right are not easy to come by, making it difficult for serving personnel to claim this right. The term “conscientious objection” does not yield any results using the Ministry of Defence's search utility<sup>9</sup>, nor is it included in the MoD's index<sup>10</sup>.

It is therefore not surprising that not many serving soldiers or officers know about the existence of this right, and make use of it. This is contrary to United Nations Commission on Human Rights resolution 1998/77, in which the Commission affirms *“the importance of the availability of information about the right to conscientious objection to military service, and the means of acquiring conscientious objector status, to all persons affected by military service”*<sup>11</sup>. Until recently, the regulations have not even been available to organisations counselling conscientious objectors, such as At Ease.

The lack of access to and knowledge about the right to conscientious objection has also been an issue in the case of reservist Leading Aircraftman Mohisin Khan, who went absent without leave when recalled for service. He claimed that he was not aware of the right to conscientious objection. In its judgement, the High Court says *“It is, however, true that the call-out materials in this case, like the 1997 Regulations, do not mention conscientious objection expressly. In that respect, it would seem that the information provided to the recalled reservist could be improved”*<sup>12</sup>.

It is therefore no surprise that according to the information obtained by War Resisters' International, only six individuals (3 RAF personnel, 3 Navy personnel) have applied for discharge on the grounds of conscientious objection since 2000. Of these cases, five were successful (3 RAF personnel, 2 Navy personnel)<sup>13</sup>. War Resisters' International is also aware of the case of an Army Reserve Officer who applied for discharge as conscientious objector, but has then simply been discharged administratively, as if his application had been a matter of convenience rather than conscience<sup>14</sup>.

It is also no surprise that the Advisory Committee on Conscientious Objectors has not convened since 2001, and only handled 36 appeals from 1970 to 2001 (in fact from 1970-1996<sup>15</sup>).

## Draft evasion and desertion

### penalties

Penalties for desertion and absence without leave and for other military related crimes are regulated in the Armed Forces Act 2008<sup>16</sup>.

According to section 8, desertion can be punished with life imprisonment if the aim was to avoid a period of

7 AP3392 Vol 5, Leaflet 113

8 *Mohisin Khan v RAF*, [2004] EWHC (2230), paragraph 57, <http://www.hmcourts-service.gov.uk/judgmentsfiles/j2822/khan-v-raf.htm>, accessed 1 October 2008

9 Search performed on 1 October 2008

10 <http://www.mod.uk/DefenceInternet/AZIndex/AtozList.htm>, accessed 1 October 2008

11 United Nations, Commission on Human Rights, resolution 1998/77, Conscientious objection to military service, 22 April 1998

12 *Mohisin Khan v RAF*, [2004] EWHC (2230), paragraph 57, <http://www.hmcourts-service.gov.uk/judgmentsfiles/j2822/khan-v-raf.htm>

13 It is interesting that according to information obtained by David Gee in March 2007, from April 2001 to March 2006 there had been four successful applications, all from Air Force personnel, and none for the Navy or Army. These numbers do not add up.

14 Email Bill Hetherington, Peace Pledge Union, 2 October 2008

15 Email Bill Hetherington, Peace Pledge Union, 20 September 2007

16 Armed Forces Act 2006, [http://www.opsi.gov.uk/Acts/acts2006/ukpga\\_20060052\\_en\\_2#gp1-pt1-pb3-l1g8](http://www.opsi.gov.uk/Acts/acts2006/ukpga_20060052_en_2#gp1-pt1-pb3-l1g8), accessed 1 October 2008

active service, otherwise with no more than two years imprisonment.

Being absent without leave can also be punished with imprisonment of up to two years (section 9).

Disobedience to lawful commands can be punished with up to ten years imprisonment (section 12).

## Practice

According to media reports, many soldiers are trying to get out of their service using a variety of means. John McDonnell, Labour MP, said that the numbers of British troops trying to absent themselves from service in Iraq were rising. According to him, a lot more seeking to avoid service, through different mechanisms<sup>17</sup>.

According to military law expert Gilbert Blades, who represents soldiers at courts martial, the numbers leaving because of Iraq are often obscured as they were not counted as conscientious objectors<sup>18</sup>.

Two high-profile cases of Iraq war resisters underline this point. Benjamin Griffin, a former SAS soldier, refused to return to Iraq while on leave in March 2005 after three month of service in Baghdad. Unexpectedly, he was discharged from the army “with a glowing testimonial”<sup>19</sup>.

Malcolm Kendall-Smith, a medical officer in the Royal Air Force, fared less well. He refused to serve in Iraq in July 2005, and was subsequently court-martialed, and sentenced to eight month imprisonment, plus a discharge from the Air Force.

While Kendall-Smith did not argue with conscientious objection<sup>20</sup>, but on the grounds of the illegality of the war in Iraq, his case raises the issue of selective conscientious objection.

Taken together, the cases of Khan, Griffin and Kendall-Smith leave completely open the question whether the United Kingdom might formally recognise selective objection in the case of a member of the professional armed forces. Selective objection was sometimes recognised in implementing conscription legislation.

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17 At least 1,000 UK soldiers desert, BBC News, 28 May 2006, <http://news.bbc.co.uk/1/hi/uk/5024104.stm>, accessed 1 October 2008

18 At least 1,000 UK soldiers desert, BBC News, 28 May 2006, <http://news.bbc.co.uk/1/hi/uk/5024104.stm>, accessed 1 October 2008

19 SAS man quits in protest at 'illegal' Iraq war, The Guardian, 13 March 2006, <http://www.guardian.co.uk/Iraq/Story/0,,1729553,00.html>, accessed 1 October 2008

20 RAF doctor jailed over Iraq refusal, The Guardian, 13 April 2006, <http://www.guardian.co.uk/Iraq/Story/0,,1753241,00.html>, accessed 1 October 2008