

United Kingdom of Great Britain and Northern Ireland

Human Rights and the Armed Forces

**Submission to the 91st Session of the Human Rights Committee:
October 2007**

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Main concerns

- 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.
- It is disturbing that the Royal Air Force does not allow applications for discharge on grounds of conscience while disciplinary action is ongoing, or the conscientious objector is absent without leave or a deserter.
- Members of the Armed Forces "*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*". This is a serious infringement of the right to freedom of association and to freedom of peaceful assembly, as enshrined in Article 21 and 22 ICCPR.
- Members of the Armed Forces are prohibited from standing in parliamentary elections, and need to seek approval from the Ministry of Defence to stand in local authority elections. This is a serious infringement of Article 25 paragraph (b) of the ICCPR.

1 Introduction

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 1963¹.

However, the fact that recruitment today relies on voluntary sign-up for military service, this does not mean that there are no problems in relation to conscientious objection, or other human rights aspects. While Britain is among the few countries that provide for conscientious objection for its professional soldiers, the rules and regulations governing this right is 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 utility², nor is it included in the MoD's index³. In fact, the rules and regulations governing the right to conscientious objection have previously not been in the public domain, and have only been obtained by War Resisters' International on 17 September 2007 using the Freedom of Information Act 2000. According to the information obtained, 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)⁴.

This report focuses on human rights in relation to serving personnel of the UK Armed Forces, with a special focus on the rights to conscientious objection. While only five persons have been discharged on grounds of conscientious objection, War Resisters' International is also aware of a few cases of imprisonment of objectors to the war in Iraq. On 28 May 2006, the BBC reported that more than 1,000 members of the British military have deserted since the start of the Iraq war⁵. According to the same report, military law expert Gilbert Blades, who represents soldiers at courts martial, said the numbers leaving because of Iraq were often obscured as they were not counted as conscientious objectors.

1 Peace Pledge Union 1996. Response to CONCODOC inquiry.

2 Search performed on 19 September 2007

3 <http://www.mod.uk/DefenceInternet/AZIndex/AtozList.htm>, accessed 19 September 2007

4 Ministry of Defence, Response to Freedom of Information Act request, 17 September 2007, 17-08-2007-161349-004 Speck

5 At least 1,000 UK soldiers desert, BBC News, 28 May 2006,

<http://news.bbc.co.uk/1/hi/uk/5024104.stm>

2 Legal situation

2.1 Recruitment and service contract

Recruitment to the UK's Armed Forces is voluntary. It is allowed to volunteer for the armed forces from the age of 16¹.

For the army and navy, the normal contract is 22 years, but there is a right to terminate (having given 12 months' notice) after four years in the army and in the navy². For the air force, engagements may be for 3, 6 or 9 years, but the longer terms may be reduced to three years by giving 18 months' notice.

Although one can volunteer at 16, for the army the period preceding the 18th birthday does not count as part of the requisite three-years minimum (it does for the four years for the Navy, and for the Air Force).

In addition, the right to give notice to terminate one's service may need to be restricted under certain conditions, especially "*being permitted to attend a course of instruction*", or "*being permitted to transfer to another corps*"³. This means in such cases the minimum service time extends to six years from the end of specialist training or advantage⁴. Although the soldier concerned has to voluntarily "restrict" his/her right, it can be doubted that all those doing so are aware of the full consequences.

The army, in particular, focuses on recruiting 16-year-olds. 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*"⁵.

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

- 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 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*"⁶. 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*

1 Queen's Regulation for the Army (QR(Army)), 9.073; similar regulations exist for the Royal Navy and Royal Air Force.

2 QR(Army), 9.073. Notice can be given after a minimum of three years, but this obviously means the minimum service time is four years from the age of 18, or from joining the forces (whichever is the later)

3 QR(Army), 9.096b,c

4 Army Terms of Service Regulations 1992, Regulation 11

5 National Audit Office, Ministry of Defence – Recruitment and Retention in the Armed Forces, 3 November 2006, http://www.nao.org.uk/publications/nao_reports/05-06/05061633-I.pdf

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

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."⁷

War Resisters' International considers this a serious violation of Articles 21 and 22 of the ICCPR, although Article 22 allows "*the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right*" (of freedom of association). However, restriction to the right to freedom of assembly is only allowed "*in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.*"

In addition, members of the Armed Forces are not allowed to stand as candidate in parliamentary elections, and permission from the Ministry of Defence is necessary to stand in elections to a local authority¹. This is a serious violation of Article 25 para (b) of the ICCPR.

2.2 Conscientious objection

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.

⁷ QR(Army), J5.581a

¹ QR(Army), J5.584, J5.585, J 5.586

2.2.1 Application procedure(s)

Although the procedures are similar for the three branches of the Armed Forces, they will here be treated separately.

Army	Air Force	Navy
<p>Officers and soldiers are dealt with separately, although differences mainly have to do with bureaucracy - there are no differences in substance.</p> <p>Officers</p> <p>For officers, at first instance the Army Retirements Board (ARB) will consider an application, which has to be made as a normal application for premature voluntarily retirement. Applications should include a written submission giving the reasons, plus at least statements from two referees.</p> <p>The ARB will also request written reports from the COs Commanding Officer, and from the unit padre or chaplain. The application then goes through the normal chain of command, with more comments added to it on the way.</p> <p>The ARB can either approve the application, or reject it. On rejection, the conscientious objector can appeal to the Army Retirement Appeals Board (ARAB), which can again approve or reject the application.</p> <p>After a rejection by ARAB, an appeal is possible to the Advisory Committee on Conscientious Objectors.</p>	<p>An application has to be submitted to the Commanding Officer, together with written evidence to support his case (i.e. references). In case of religious conscientious objectors, a statement by a minister of the religion concerned should also be included.</p> <p>Depending on the status of the conscientious objector (officer or airman), the application will be forwarded to a range of authorities by his/her parent unit.</p> <p>The applicant is then to be interviewed by the Officer Command Personnel Management Squadron (OC PMS), and "<i>counselled on the possible implication of such action. ... It may be appropriate to suggest that the individual should defer proceeding with the application for a short period in which to reflect. This period should not, however, exceed 10 working days</i>".</p> <p>The applicant will also be interviewed by his Commanding Officer, who will then forward the application with any supporting evidence and his report to the RAF Personnel Management Agency (RAF PMA).</p> <p>If the application is approved, the applicant will either be called on to resign under the terms of Premature Voluntary Release (for officers) or given a compassionate discharge.</p>	<p>An application is possible at any time, and should be submitted accompanied by a written statement on the grounds on which he or she is applying.</p> <p>Similar to the Air Force, "<i>it may be appropriate in certain cases to suggest that an applicant should defer his or her request for a week or two and give the matter further thought</i>".</p> <p>The Commanding Officer submits the application, together with a report and his/her personal recommendations to the appropriate Administrative Authority.</p> <p>The detailed procedure is slightly different for normal navy ranks, officers, and young officers.</p> <p>For officers, it has to be noted that "<i>it will be a condition of release that the officer must agree to repay any uniform or educational costs for which he is liable</i>".</p> <p>If an application is not approved, there exists the option to appeal to the Advisory Committee on Conscientious Objectors.</p>

<p>Soldiers</p> <p>Soldiers are to apply in writing to their Commanding Officer, providing similar evidence as officers. The application is then forwarded to the "appropriate superior headquarters" by the Commanding Officer, together with a recommendation. The division or district commander can either authorise the discharge, or not. In case the application is not authorised, the Commanding Officer will be instruct to interview the applicant and give the reason(s) why discharge has not been authorised, and inform the soldier of his right to ask for his application to be forwarded to the Advisory Committee on Conscientious Objectors (ACCO).</p>	<p>If the application is turned down, the applicant may appeal to the Advisory Committee on Conscientious Objectors.</p>	
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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:

- a. *Absent without leave or a deserter.*
- b. *The subject of outstanding disciplinary action.*
- c. *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 has been completed."¹

According to the appeal court judgement *Mohisin Khan v RAF*, paragraph 9 has been added with the update of the regulations on 28 October 2003².

2.2.2 Appeal procedure(s)

For all three forces, appeals are possible to the Advisory Committee on Conscientious Objectors (ACCO). The Committee is appointed by the Lord Chancellor, and consists of a chairman and deputy chairman, and four lay members. ACCO hearings are held in public. The ACCO orders the applicant to attend a hearing, during which the Committee makes an assessment of the sincerity of the applicant. A hearing by the ACCO needs to be attended by the Chairman or the Vice-Chairman plus two lay members. The commanding officer is

¹ AP3392 Vol 5, Leaflet 113

² *Mohisin Khan v RAF*, [2004] EWHC (2230), paragraph 57, <http://www.hmcourts-service.gov.uk/judgmentsfiles/j2822/khan-v-raf.htm>

also represented at the hearing. The hearings are held in public and applicants are allowed to be accompanied by family members, friends or a solicitor.

After the hearing, the ACCO makes a consultative decision, which needs to be confirmed by the Ministry of Defence¹.

3 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 utility², nor is it included in the MoD's index³.

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 Commissions 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*”⁴. 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 Aircraftsman 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*”⁵

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)⁶.

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)⁷.

1 Mark Stolwijk: The Right to Conscientious Objection in Europe, 2005, <http://wri-irg.org/co/rta/unitedkingdom.htm>

2 Search performed on 19 September 2007

3 <http://www.mod.uk/DefenceInternet/AZIndex/AtozList.htm>, accessed 19 September 2007

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

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

6 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.

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

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 mechanisms¹.

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 objectors².

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"³.

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 objection⁴, but with the illegality of the war in Iraq, his case raises the issue of selective conscientious objection.

4 Conclusions

While the United Kingdom is among the few countries that provide for the right to conscientious objection for professional soldiers, the implementation of this right in specific regulations for the three branches of the Armed Forces are problematic.

Firstly, there is the issue of lack of access to these regulations, and lack of knowledge about them.

Secondly, in the first instance, applications are dealt with within the administration of the respective branch of the Armed Forces, and not by an independent body. This leaves the possibilities for manipulation wide open.

Thirdly, the restrictions on the human rights of Armed Forces personnel are far beyond what could be deemed necessary in a democratic society.

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

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

3 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>

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