STATUTORY INSTRUMENTS

2015 No. 2064

DEFENCE

The Armed Forces (Service Complaints Miscellaneous Provisions) Regulations 2015

Made - - - -	*17th December 2015*
Coming into force - -	*1st January 2016*

The Secretary of State, in exercise of the powers conferred by section 340A(4), 340E(1), 340M(6) and 340N(4) of the Armed Forces Act 2006(**1**), makes the following regulations:

In accordance with section 373(3) of the Armed Forces Act 2006 a draft of this instrument was laid before, and approved by resolution of, each House of Parliament.

Citation and commencement

1. These Regulations may be cited as the Armed Forces (Service Complaints Miscellaneous Provisions) Regulations 2015 and come into force on 1st January 2016.

Interpretation

2.—(1) In these Regulations—

"the Act" means the Armed Forces Act 2006;

"appropriate officer" has the same meaning as in section 340N(2);

"finally determined" has the same meaning as in section 340H(5);

"independent" shall have the same meaning as in section 340E(4);

"in writing" includes—

(a) transmitted by electronic means;

(b) received in a legible form; and

(c) capable of being used for subsequent reference;

"Ombudsman" means the Service Complaints Ombudsman.

(2) In these Regulations, unless otherwise specified, a reference to a section is a reference to that section of the Act.

(**1**) 2006 c. 52. Sections 340A, 340E, 340M and 340N were inserted by section 2(1) of the Armed Forces (Service Complaints and Financial Assistance) Act 2015 c. 19. See section 340E(5) for the definition of "specified" in that section.

Excluded complaints

3.—(1) A person may not make a service complaint about a matter within the Schedule.

(2) A person may not make a service complaint about—

(a) a decision under regulations made for the purposes of section 340B(4)(a) (admissibility of the complaint);

(b) a decision under regulations made for the purposes of section 340C(2) (decision on the service complaint);

(c) a decision under regulations made for the purposes of section 340D(2)(c) (decision relating to whether an appeal has been brought before the end of the specified period);

(d) a determination of an appeal brought under regulations made for the purposes of section 340D(1) (appeals);

(e) alleged maladministration (including undue delay) in connection with the handling of his or her service complaint;

(f) a decision by the Ombudsman for the purposes of any provision of Part 14A of the Act;

(g) the handling by the Ombudsman of a service complaint;

(h) a decision for the purposes of regulations made under section 334(2) whether a service complaint could be made about a matter;

(i) a decision under regulations made for the purposes of paragraph (b) of section 334(5) whether a service complaint, or an application referred to in that paragraph, could be made after the end of a prescribed period.

Appointment of person or panel of persons by the Defence Council

4.—(1) The following persons shall not be appointed by virtue of section 340C(1)(a), 340D(2)(d) or 340M(2) (the appointment of a person or panel of persons to decide a service complaint, determine an appeal or reconsider a service complaint)—

(a) a person who is the subject of the complaint or is, in the statement of complaint made in accordance with regulations made for the purposes of section 340B(1) and (2), alleged to be implicated in any way in the matter complained of;

(b) an officer of the Naval Chaplaincy Service, the Royal Army Chaplains Department or the Royal Air Force Chaplains Branch.

(2) Additionally, a person who was appointed by virtue of section 340C(1)(a) to decide the complaint, or who was otherwise involved in the investigation or consideration of the complaint for the purposes of deciding the complaint, shall not be appointed by virtue of section 340D(2)(d).

Independent persons

5.—(1) Paragraph (3) applies if—

(a) the Defence Council act by virtue of section 340D(2)(d) or section 340M(2)(a) in relation to a service complaint; and

(b) the statement of complaint made in accordance with regulations made for the purposes of section 340B(1) and (2) includes an allegation within paragraph (2).

(2) An allegation referred to in paragraph (1)(b) is an allegation that the complainant has been the subject of—

(a) discrimination;

(b) harassment;

(c) bullying;

(d) dishonest or biased behaviour;

(e) a failure of the Ministry of Defence to provide medical, dental or nursing care for which the Ministry of Defence was responsible; or

(f) the improper exercise by a service policeman of statutory powers as a service policeman.

(3) The Defence Council must appoint—

(a) a person who is independent; or

(b) a panel that includes at least one member who is independent.

(4) In this regulation, "discrimination" means discrimination or victimisation on the grounds of colour, race, ethnic or national origin, nationality, sex, gender reassignment, status as a married person or civil partner, religion, belief or sexual orientation, and less favourable treatment of the complainant as a part-time employee.

Notifications to the Ombudsman

6. Where in accordance with section 340N(1), the Ombudsman refers to the appropriate officer a communication that alleges that a person who is or was subject to service law has been wronged, the appropriate officer shall within 3 weeks beginning with the occurrence of any of the following events notify the Ombudsman—

(a) that he or she has informed the person that the allegation has been referred;

(b) that he or she has complied with section 340N(3)(b);

(c) of the decision of the person whether he or she wishes to make a service complaint in respect of the alleged wrong;

(d) of a decision under regulations made for the purposes of section 340B(4)(a) that the service complaint is not admissible;

(e) of a decision under regulations made for the purposes of section 340C(2) whether the complaint is well-founded and, if so, on what redress is appropriate;

(f) of a decision under regulations made for the purposes of section 340D(2)(c) that an appeal may not be brought because of the expiry of the specified period;

(g) of a determination of an appeal brought under regulations made for the purposes of section 340D(1);

(h) of the withdrawal of a service complaint made in respect of the alleged wrong.

Mark Lancaster
Parliamentary Under Secretary of State
Ministry of Defence

17th December 2015