STATUTORY INSTRUMENTS

2015 No. 1969

DEFENCE

The Armed Forces (Service Complaints and Financial Assistance) Act 2015 (Transitional and Savings Provisions) Regulations 2015

Made - - - -	*3rd December 2015*
Laid before Parliament	*7th December 2015*
Coming into force - -	*1st January 2016*

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 6 of the Armed Forces (Service Complaints and Financial Assistance) Act 2015(**1**).

PART 1

Preliminary matters

Citation and commencement

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

Interpretation

2.—(1) A reference in these Regulations to a section is, unless stated otherwise, to that section of the Armed Forces Act 2006(**2**).

(**1**) 2015 c. 19.

(**2**) 2006 c. 52. Sections 335 and 336 were amended by, and section 336A was inserted by, the Armed Forces Act 2011 (c. 18), section 20. Sections 334 to 339 and 366 are repealed by sections 1(3) and 2(2) of the Armed Forces (Services Complaints and Financial Assistance) Act 2015 (c. 19). Section 1(1) of the 2015 Act inserts section 365B into the 2006 Act and section 2(1) inserts Part 14A (sections 340A to 340O). Section 3 of, and the Schedule to, the 2015 Act amends section 373 and 374 of the 2006 Act and repeals section 20 of the 2011 Act; see in particular paragraphs 9 to 11 and 16 of the Schedule to the 2015 Act. In relation to the commencement of sections 1 to 3 of, and the Schedule to, the 2015 Act, see S.I. 2015/1957.

(2) A reference in these Regulations to any of the old complaints provisions(**3**) is, unless the context requires otherwise, to that provision as it had effect immediately before the commencement date.

(3) In these Regulations—

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

"commencement date" means 1st January 2016;

"complainant" means a person who has made a pre-commencement complaint(**4**);

"finalised complaint" has the meaning given in regulation 3 of these Regulations;

"first substantive decision" means a decision, under section 334(7) and (8), as to whether a pre-commencement complaint is well-founded and, if so, the appropriate redress, made by—

(a) a prescribed officer; or

(b) a superior officer to whom the decision was referred under old regulation 12(b) or (d);

"initial decision on subject matter" means a decision by a prescribed officer under old regulation 10(a) as to whether regulations made under section 334(2) (certain matters may not be the subject of a service complaint) apply to any or all of the matters in a statement of complaint delivered under old regulation 6;

"initial decision on timeliness" means a decision by a prescribed officer under old regulation 11(a) as to—

(a) whether the complainant has delivered his or her statement of complaint within the period provided for in old regulations 15 to 17; and

(b) if the statement of complaint was not delivered within that period, whether the service complaint may be made by virtue of old regulation 18 (a service complaint may be made after the end of the period if it is just and equitable to do so);

"new regulations" means the Armed Forces (Service Complaints) Regulations 2015(**5**) and "new" immediately before "regulation" indicates that the regulation in question is part of those Regulations;

"old regulations" means the Armed Forces Redress of Individual Grievances (Procedures and Time Limits) Regulations 2007(**6**) and "old" immediately before "regulation" indicates that the regulation in question is part of those Regulations;

"Part 2 complaint" has the meaning given in regulation 4(3) of these Regulations;

"Part 3 complaint" has the meaning given in regulation 6(2) of these Regulations;

"prescribed officer" has the same meaning as in old regulation 2(a);

"relevant officer" has the same meaning as in section 338(5);

"section 337 complainant" means a complainant who—

(a) is an officer at the time of the making of the complaint; or

(b) was an officer at the time the matter complained of occurred;

"service complaint" means a complaint made under section 334(1) or section 340A(1) or (2);

"service complaint panel" has the same meaning as in section 335(1);

(**3**) For the definition of "the old complaints provisions", see section 6(5) of the Armed Forces (Service Complaints and Financial Assistance) Act 2015 (c. 19).
(**4**) For the definition of "pre-commencement complaint", see section 6(5) of the Armed Forces (Service Complaints and Financial Assistance) Act 2015 (c. 19).
(**5**) S.I. 2015/1955.
(**6**) These Regulations were made on 19th December 2007 by the Defence Council. They are not a statutory instrument.

"the Service Complaints Commissioner" (or "the Commissioner") means a person appointed under section 366(2);

"the Service Complaints Ombudsman" (or "the Ombudsman") means a person appointed under section 365B(2);

"specified officer" has the same meaning as in new regulation 2(1);

"statement of complaint" means a statement of complaint delivered under old regulation 6 or made under new regulation 4;

"superior officer" has the same meaning as in old regulation 2(b).

(4) For the purposes of these Regulations, a pre-commencement complaint has been refused at an initial stage if either decision 1 or decision 2, as described in paragraphs (5) and (6) respectively, has been made.

(5) Decision 1 is an initial decision on subject matter that some or all of the matters in a statement of complaint are matters about which a service complaint may not be made where the refusal (and consequently a reference in these Regulations to the complaint having been refused) refers only to those matters about which a service complaint may not be made.

(6) Decision 2 is an initial decision on timeliness that—

(a) the statement of complaint was not delivered within the period provided for in old regulations 15 to 17; and

(b) the complaint may not be made after the end of that period by virtue of old regulation 18.

Finalised complaints

3.—(1) A pre-commencement complaint is finalised if, before the commencement date, it has been—

(a) withdrawn;

(b) subject to paragraph (2), refused at an initial stage;

(c) subject to paragraph (3), refused at a referral stage; or

(d) the subject of a decision of the Defence Council (or a service complaint panel to which the Defence Council delegated the making of the decision) under section 334(7) and (8) as to—

(i) whether the complaint is well-founded; and

(ii) if so, the appropriate redress,

which has been notified to the complainant.

(2) Paragraph (1)(b) does not apply to a complaint where the complainant was notified of the refusal after 1st October 2015.

(3) Paragraph (1)(c) does not apply to a complaint where the complainant was notified of the refusal after 3rd December 2015.

(4) For the purposes of this regulation, a pre-commencement complaint has been refused at a referral stage if either of the following decisions has been made—

(a) a decision by the prescribed officer not to refer the complaint to a superior officer or the Defence Council under old regulation 21(c); or

(b) a decision by the superior officer not to refer the complaint to the Defence Council under old regulation 25(c).

PART 2

Pre-commencement complaints: continuation of the old complaints provisions and application of the Ombudsman provisions

Pre-commencement complaints where there has been two decisions on the complaint

4.—(1) Sections 334 to 336A and 338, and provisions made under them, continue to have effect in relation to a pre-commencement complaint where before the commencement date—

(a) a prescribed officer has referred the complaint to a superior officer under old regulation 21(c) (referral following a first substantive decision by the prescribed officer); and

(b) the superior officer has notified the complainant of his or her decision under old regulation 24.

(2) Paragraph (1) does not apply to a finalised complaint.

(3) A complaint to which paragraph (1) applies is referred to in these Regulations as "a Part 2 complaint".

(4) In its application to a communication purporting to relate to a Part 2 complaint, old regulation 19(b) (further communications amounting to a new complaint) applies as if—

(a) the reference to "these Regulations" were to the new regulations; and

(b) the reference to "a new service complaint" were to a service complaint within the meaning of section 340A.

Provisions about the Ombudsman applicable to Part 2 complaints

5.—(1) In its application to a Part 2 complaint, regulation 3 of the Armed Forces (Service Complaints Commissioner) Regulations 2007(**7**) applies as if the reference to notifying the Service Complaints Commissioner were to notifying the Service Complaints Ombudsman.

(2) Paragraphs (3) to (7) apply if—

(a) a complainant has applied under old regulation 25(a) for a Part 2 complaint to be referred to the Defence Council; and

(b) the superior officer has refused to refer the complaint to the Defence Council under old regulation 25(c).

(3) The complainant may apply to the Ombudsman for a review of the decision of the superior officer.

(4) The Ombudsman must decide whether the complaint must be referred to the Defence Council by the superior officer under old regulation 25(c) and must notify both the superior officer and the complainant in writing of his or her decision, giving reasons.

(5) The decision of the Ombudsman is binding on the complainant and the superior officer.

(6) The Ombudsman must not consider an application under paragraph (3) made after a period of four weeks beginning with the day the complainant received notification of the decision of the superior officer.

(7) Paragraph (6) does not apply if the Ombudsman considers it is just and equitable to allow the complainant to apply after that period.

(**7**) S.I. 2007/3352.

(8) Sections 340H to 340M (investigations by the Ombudsman and reports on investigations), and provisions made under them, apply to a Part 2 complaint as if it were a service complaint made under section 340A.

(9) In its application by virtue of paragraph (8), section 340H(5) applies as if there were substituted—

> "(5) For the purposes of this section, a service complaint has been finally determined where the Defence Council (or a service complaint panel to which the Defence Council delegated the making of the decision) have decided under section 334(7) and (8) whether the complaint is well-founded (and, if so, the appropriate redress)."

(10) In its application by virtue of paragraph (8), regulation 3 of the Armed Forces (Service Complaints Ombudsman Investigations) Regulations 2015(**8**) applies as if—

(a) for paragraph (2)(a), there were substituted—

> "(a) those aspects which the complainant disagrees with of a decision made under section 334(7) and (8) (including where that decision was taken by a service complaint panel to which the Defence Council delegated the decision) as to whether the service complaint was well founded, and, if so, the appropriate redress, or of a decision for the purposes of regulations made under section 340M(5) (reconsideration of a service complaint);"; and

(b) for paragraph (5), there were substituted—

> "(5) If the application asks for an investigation under section 340H(1)(a) or (b), the complainant must attach to the application a copy of any decision made under section 334(7) and (8) (including where that decision was taken by a service complaint panel to which the Defence Council delegated the decision), as to whether the complaint is well founded and, if so, the appropriate redress, or of any related decision for the purposes of regulations made under section 340M(5)."

PART 3

Pre-commencement complaints: application of the new complaints provisions

Pre-commencement complaints treated as made under new complaints provisions

6.—(1) This regulation applies to a pre-commencement complaint other than—

(a) a Part 2 complaint; or

(b) a finalised complaint.

(2) A complaint to which this regulation applies is referred to in these Regulations as "a Part 3 complaint".

(3) The new complaints provisions(**9**) apply to a Part 3 complaint—

(a) in the case of a complaint made under section 334(1)(a) (complaint by person subject to service law), as if it were a complaint made under section 340A(1); and

(b) in the case of a complaint made under section 334(1)(b) (complaint by person who has ceased to be subject to service law), as if it were a complaint made under section 340A(2).

(**8**) S.I. 2015/1956.
(**9**) For the definition of "the new complaints provisions", see section 6(5) of the Armed Forces (Service Complaints and Financial Assistance) Act 2015 (c. 19).