STATUTORY INSTRUMENTS

2015 No. 1955

DEFENCE

The Armed Forces (Service Complaints) Regulations 2015

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

The Defence Council, in exercise of the powers conferred by sections 340B(1), (2) and (4), 340C(1) and (2), 340D(1), (2) and (6), 340F(2), 340G(1) and (3), and 340M(5) of the Armed Forces Act 2006(**1**), makes the following Regulations:

Citation and commencement

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

Interpretation

2.—(1) In these Regulations—

"the Act" means the Armed Forces Act 2006;

"Ombudsman" means the Service Complaints Ombudsman;

"service complaints process" means the process for the redress of service complaints under Part 14A of the Act or under any previous process for the redress of individual grievances under Part 14 of the Act;

"specified officer" means, in relation to a service complaint, the officer determined in relation to that complaint in accordance with regulation 3;

"statement of complaint" means the statement referred to in regulation 4(1).

(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 340B, 340C, 340D, 340F, 340G and 340M were inserted by section 2(1) of the Armed Forces (Service Complaints and Financial Assistance) Act 2015 c. 19. Section 340B(3) provides for the minimum period which must be specified in service complaints regulations made under section 340B(2)(c). Section 340B(5) prescribes, for the purposes of section 340B(4), the grounds on which a service complaint is not admissible. Section 340D(3) provides for the minimum period which must be specified in regulations made for the purposes of section 340D(2)(b). Section 340G(2) identifies one of the consequences which may be provided for in regulations made for the purposes of section 340G(1)(c).

(3) The actions under these Regulations specified in paragraph (4) must be carried out by posting, sending electronically or delivering in person to the intended recipient.

(4) The actions specified in this paragraph are—

(a) notifying the complainant;

(b) the complainant making a service complaint;

(c) the complainant making an application to the Ombudsman;

(d) the complainant bringing an appeal;

(e) sending a draft copy of a decision or determination to a person under regulation 14(6);

(f) giving a notification under regulation 15.

(5) Any reference in these Regulations to the day on which a person received notification shall be deemed to be a reference to the second day after the day on which the notification was posted, sent electronically or delivered in person to the intended recipient.

(6) Where a complainant—

(a) makes a service complaint in accordance with regulation 4(1),

(b) makes an application to the Ombudsman under regulation 7(1),

(c) brings an appeal under regulation 10(1), or

(d) makes an application to the Ombudsman under regulation 12(1),

the complainant shall be deemed to have done so on the day on which the statement of complaint, application or, as the case may be, the appeal was posted, sent electronically or delivered in person to the recipient in accordance with the requirements of these Regulations.

Specified officer

3.—(1) Subject to paragraphs (2) and (3), the specified officer is the complainant's commanding officer, unless the complainant has ceased to be subject to service law. If the complainant has ceased to be subject to service law, the specified officer is—

(a) the person who was the complainant's last commanding officer or that officer's successor in post; or

(b) such other officer as may instead be appointed as the specified officer by the Defence Council or by a person authorised by the Defence Council.

(2) Subject to paragraph (3), if the officer who would be the specified officer in accordance with paragraph (1) is the subject of the service complaint, or is alleged in the statement of complaint to be implicated in any way in the matter or matters complained of, the specified officer is his or her immediate superior in the chain of command.

(3) If the officer who would be the specified officer in accordance with paragraph (2) (referred to in sub-paragraph (a) as "O") is also the subject of the service complaint, or is alleged in the statement of complaint to be implicated in any way in the matter or matters complained of, the specified officer is an officer appointed by the Defence Council or by a person authorised by the Defence Council who—

(a) is of the same rank as, or of equal rank to, O; and

(b) is not so subject or alleged to be implicated.

Procedure for making a service complaint

4.—(1) A service complaint is made by a complainant making a statement of complaint in writing to the specified officer.

(2) The statement of complaint must state—

(a) how the complainant thinks himself or herself wronged;

(b) any allegation which the complainant wishes to make that the complainant's commanding officer or his or her immediate superior in the chain of command is the subject of the complaint or is implicated in any way in the matter, or matters, complained about;

(c) whether any matter stated in accordance with sub-paragraph (a) involved discrimination, harassment, bullying, dishonest or biased behaviour, a failure by the Ministry of Defence to provide medical, dental or nursing care for which the Ministry of Defence was responsible or the improper exercise by a service policeman of statutory powers as a service policeman;

(d) if the complaint is not made within the period which applies under regulation 6(1), (4) or (5), the reason why the complaint was not made within that period;

(e) the redress sought; and

(f) the date on which the statement of complaint is made.

(3) The statement of complaint must also state one of the following—

(a) the date on which, to the best of the complainant's recollection, the matter complained about occurred or probably occurred;

(b) that the matter complained about occurred over a period, and the date on which, to the best of his or her recollection, that period ended or probably ended;

(c) that the matter complained about is continuing to occur;

(d) that the complainant is unable to recollect the date referred to in sub-paragraph (a) or (b).

(4) A service complaint may only be made by one person, but other persons may make service complaints about the same or similar matters.

(5) 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.

Action on receipt of a service complaint and admissibility

5.—(1) After receipt of a statement of complaint, the specified officer must decide whether the complaint is admissible in accordance with section 340B(5).

(2) For the purposes of section 340B(5)(c), a service complaint is not admissible if—

(a) the complaint does not meet the requirements of whichever of section 340A(1) and (2) applies to the complainant; or

(b) the complaint is substantially the same as a complaint brought by the same person which has either been decided previously under the service complaints process or is currently being considered under the service complaints process.

(3) If the specified officer decides that any part or all of the service complaint is admissible, he must notify the complainant in writing of the decision and refer that part or all of the service complaint to the Defence Council.

(4) If the specified officer decides that any part or all of the service complaint is not admissible, he must notify the complainant in writing of the decision, giving the reasons for the decision and informing the complainant of his or her right to apply for a review of the decision by the Ombudsman.

Period for making a service complaint and power to stay

6.—(1) Subject to paragraphs (4) and (5), a person may not make a service complaint after three months beginning with the relevant day.

(2) Except in a case within paragraph (3), the "relevant day" means the day on which the matter the person wishes to complain about occurred or (if it occurred over a period of time) the last day on which it occurred.

(3) Where it appears to the specified officer that, before a service complaint about a matter is or would be considered, the person is or was expected or required to comply with another formal system for the consideration of that matter, the "relevant day" means the day on which it appears to the specified officer that the person exhausts or exhausted the process provided for under that other formal system.

(4) If a matter is or has been capable of being pursued as a claim under Chapter 3 of Part 9 of the Equality Act 2010(**2**), a service complaint may not be made about the matter after six months beginning with the day on which the matter complained about occurred or, where the matter occurred over a period of time, the final day of that period.

(5) If a matter is or has been capable of being pursued as a claim under Chapter 4 of Part 9 of the Equality Act 2010, a service complaint may not be made about the matter after the end of the qualifying period for a claim as determined in accordance with section 129 of that Act.

(6) A person may make a service complaint after the end of the period in whichever of paragraphs (1) and (4) applies to the complaint if, in all the circumstances, the specified officer considers it is just and equitable to allow this.

(7) Where a person makes a service complaint about a matter, and it appears to the specified officer that the person is expected or required to comply with another formal system for consideration of that matter, the specified officer may stay consideration of part or all of the complaint until the person has exhausted the process provided for under that other formal system.

Ombudsman's review of admissibility

7.—(1) After receiving an application by the complainant for a review of the specified officer's decision that a service complaint is not admissible, the Ombudsman must decide whether the service complaint is admissible and notify both the specified officer and the complainant in writing of his or her decision and the reasons for it.

(2) The Ombudsman must not consider an application under paragraph (1) made after four weeks beginning with the day the complainant received notification of the specified officer's decision, unless the Ombudsman considers it is just and equitable to allow the complainant to apply after that period.

(3) A decision by the Ombudsman in relation to admissibility is binding on the complainant and the specified officer.

(4) Where under paragraph (1) the Ombudsman decides that the service complaint is admissible, the specified officer must refer the complaint to the Defence Council as soon as reasonably practicable.

Application of these regulations where further matters raised by way of complaint

8. If the complainant raises an additional matter by way of complaint at any time after the specified officer has made a decision on the admissibility of a service complaint, that matter must be made the subject of, and dealt with as, a fresh service complaint.

(**2**) 2010 c. 15; Part 9 was amended by paragraphs 12 to 15 of the Schedule to the Armed Forces (Service Complaints and Financial Assistance) Act 2015 c. 19.