

ARMED FORCES (SERVICE COMPLAINTS AND FINANCIAL ASSISTANCE) BILL [HL]

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Armed Forces (Service Complaints and Financial Assistance) Bill [HL] as brought from the House of Lords on 20 October 2014 (Bill 102).

- These Explanatory Notes have been prepared by the Ministry of Defence in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- The Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

NOTE: The format of these Explanatory Notes is different from that currently used in Notes for other Bills. Before the Government and the Parliamentary authorities decide whether to adopt this new format for all Government Bills they will take into account any feedback from readers. If you have any comments on the new format, please send them by email to goodlaw@cabinet-office.x.gsi.gov.uk as soon as possible and in any event by 31 January 2015.

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Overview of the Bill

The Bill deals with two matters:

- Reform of the service complaints system
- Payments to charities and other organisations which support the armed forces community.

Policy background

The Service Complaints Commissioner (currently Dr Susan Atkins) is required to report annually on whether the current system for handling service complaints, which was set up by the Armed Forces Act 2006, is fair, efficient and effective. Dr Atkins has frequently criticised the system as ineffective, overloaded and beset by delay. In her annual report on service complaints for the year 2013, which was published on 27 March 2014, the Service Complaints Commissioner said she could not provide an assurance that the current system was working. She was critical of how long it took to resolve complaints, particularly those relating to bullying, harassment and improper behaviour. The Commissioner also raised the issue of the level of manpower needed to support the system. The House of Commons Defence Committee has also taken a close interest in these matters and published a report on the work of the Service Complaints Commissioner on 12 February 2013. This report raised concerns about the workings of the complaints system and recommended the creation of an Armed Forces Ombudsman.

The Government has worked with Dr Susan Atkins to consider the most appropriate way to reform the service complaints system. The Government's intentions for reform were set out in a written ministerial statement made on 13 March 2014. This Bill makes the legislative changes needed to take forward those reforms.

The Armed Forces (Service Complaints and Financial Assistance) Bill:

- Creates a Service Complaints Ombudsman to replace the existing Service Complaints Commissioner. The Ombudsman will be appointed by Her Majesty on the recommendation of the Defence Secretary.
- Sets out the framework for the redress of service complaints including who can make a complaint and how complaints will be investigated (both internally within the armed forces and, if necessary, by the Ombudsman). The Bill introduces a reformed and streamlined appeals process. The proposed service complaints process is set out at Annex B.

- Gives the new Ombudsman powers in relation to the complaints system. These powers include the ability to investigate, on application by the complainant, whether an individual complaint has been handled properly during the internal process; a power to recommend action to the Defence Council to put matters right; a power to overturn a decision to exclude a complaint; and a power to require the production of information and documents for the purposes of an investigation (backed with the ability to refer a potential act of contempt of court to the High Court or Court of Session for them to inquire into). The detail of the complaints procedure will, as now, largely be set out in secondary legislation and the Bill includes powers to set out in regulations the details governing the reformed complaints system (including on the admissibility of complaints, eligibility of decision-makers, requirements relating to independent decision-making and procedural matters in relation to Ombudsman investigations). The Bill provides for the continuation of certain functions currently exercised by the Service Complaints Commissioner: the referral of allegations into the service complaints system, the right to be notified of the progress of those complaints and a duty to prepare an annual report on the system to the Secretary of State which is then laid before Parliament.
- Includes a power to make payments to charities, benevolent organisations and others for the benefit of the armed forces community.

Legal background

The legislation relating to the existing system for the redress of service complaints is set out in a combination of primary and subordinate legislation. The current provisions are:

- sections 334 to 339 and 366 of the Armed Forces Act 2006, which include changes made by the Armed Forces Act 2011
- the Armed Forces (Redress of Individual Grievances) Regulations 2007 (SI 2007/3353)
- the Armed Forces (Service Complaints Commissioner) Regulations 2007 (SI 2007/3352)
- the Armed Forces Redress of Individual Grievances (Procedures and Time Limits) Regulations 2007. These can be found on the MOD's gov.uk website at annex D of Joint Service Publication 831 "Redress of Individual Grievances: Service Complaints Issue 2.2" via the following link: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/27866/jsp831_v2

The Armed Forces Act 2006 will continue to be the main Act dealing with complaints within the armed forces, and this Bill inserts new provisions into the 2006 Act.

Territorial application of the Bill in the UK

The provisions of the Bill extend to the whole of the United Kingdom. The matters to which the provisions of the Bill relate are not within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly; so no Legislative Consent Motions are required.

Commentary on provisions of the Bill

1. The Bill repeals those provisions of Part 14 of the Armed Forces Act 2006 which currently set out the system for redress of individual grievances for members of the armed forces. It also repeals section 366 of the Armed Forces Act 2006, which makes provision for the office of the Service Complaints Commissioner.

2. The Bill inserts in the Armed Forces Act 2006 new Part 14A, which sets out the framework of a reformed system for the redress of service complaints. The Bill provides for the creation of the office of Service Complaints Ombudsman and sets out the powers and functions of the Ombudsman, which will be greater than those of the Service Complaints Commissioner. Some of the new sections allow or require the making of regulations to set out the detail of the processes and procedures governing the reformed system and some substantive matters.

Clause 1: Creation of office of Service Complaints Ombudsman

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3. Clause 1 inserts into the Armed Forces Act 2006 new section 365B, which creates the office of Service Complaints Ombudsman, and repeals section 366 of the Armed Forces Act 2006, thereby abolishing the office of Service Complaints Commissioner. There will be transitional provision to ensure continuity of office from the Service Complaints Commissioner to the Service Complaints Ombudsman, to ensure continuity of functions and to provide for the treatment of complaints which have already begun under the current redress system before the new provisions come into force. These are likely to remain on the current system rather than moving onto the new system.

New section 365B Service Complaints Ombudsman

4. This section establishes the office of Service Complaints Ombudsman. It also sets out the eligibility criteria for appointment and the Ombudsman's status; notably providing that the Ombudsman cannot be a member of the armed forces or the civil service and will not be regarded as a Crown servant.

Clause 2: Reform of system for redress of individual grievances

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5. Clause 2 inserts new Part 14A into the Armed Forces Act 2006. This provides the framework for the new system for dealing with the redress of service complaints in new sections 340A to 340O of the 2006 Act. The reformed system will in many ways be similar to the previous one but changes will include making the system more streamlined by ensuring that matters will be decided with no more than one level of appeal. This will involve removing the current right in all cases to go to the Defence Council; and removing the ability of a limited number of Service personnel to have a service complaint referred to Her Majesty. The underlying policy aim is that the Defence Council will identify the lowest level with the necessary authority to deal with a complaint fully and to identify a higher level to provide a single level of appeal. In some cases, however, the sole level of decision will be at Defence Council level given the nature of those cases or their wide reaching potential implications.

6. The Defence Council, which is responsible for the command of the armed forces, will, as now, be responsible for making regulations providing in detail for the internal system of redress which meets the requirements of the new legislation.

7. The Secretary of State will also have functions of making regulations about certain aspects of the internal system, specifically about:

- matters excluded from the internal system (under new section 340A)
- who may be appointed to decide complaints and as to when, for example, independent members are required (under new section 340E)
- the role of the Ombudsman (under new sections 340H, 340I, 340L and 340N).

New section 340A Who can make a service complaint?

8. This section deals with who can make a service complaint. As now, serving or former members of the armed forces will be able to bring a complaint where they think they have been wronged in relation to their service in the armed forces. It also provides in section 340A(4) for the Secretary of State to make regulations regarding which complaints are excluded from the system.

New section 340B Procedure for making a complaint and determining admissibility

9. This section provides in section 340B(1) for the Defence Council to make regulations - referred to in the Bill as "service complaints regulations" - about the procedure for making and dealing with a service complaint. It also states some key aspects of bringing a complaint that must be covered in Defence Council regulations. The complaint must go to an officer who will decide whether the complaint is admissible. The officer must tell the complainant of his decision. If the officer rejects the complaint, the complainant will be able to go to the Ombudsman for a final decision on admissibility. The regulations may specify a time limit for bringing a complaint, which must be at least three months after the thing complained about happened.

10. A number of issues may arise at this stage such as whether the person has identified a potential wrong relating to his or her service in the armed forces, whether the complaint is about an excluded matter or whether it is made outside the applicable time limit.

New section 340C Decisions on service complaints

11. Under this section the Defence Council regulations will have to provide for the Council to appoint a person, a panel of persons, or the Council itself, to decide a complaint and to grant any redress within the Defence Council's authority which is appropriate. The Defence Council will have to ensure that any person or panel appointed is or will be authorised by the Council to grant appropriate redress.

New section 340D Appeals

12. It is expected that, ordinarily, complaints will follow a two stage process involving an initial decision and (if required) an appeal. This section sets out stage two of the reformed system, which will only apply in respect of service complaints not considered by the Defence Council itself in the first instance. Under this section the Defence Council will be able to consider the appeal itself or appoint a person or panel to do so. Again the Defence Council will have to ensure that whoever is appointed is or will be authorised by the Council to grant appropriate redress. Defence Council regulations may specify a time limit for bringing an appeal, which must be at least six weeks from the time the complainant received the initial decision.

New section 340E Further provision about persons and panels deciding service complaints etc

13. The Secretary of State will have the power to make regulations under section 340E(1) regarding the eligibility and independence of any person or panel appointed by the Defence Council under section 340C or 340D. Under this power it may be appropriate to exclude, for example, persons who have previously been involved in the matter. Independent members may be required in a number of circumstances, including in some cases to meet requirements of independence under article 6 of the European Convention on Human Rights.

New section 340F Investigation of complaints and delegation of Defence Council functions

14. Under this section, the Defence Council may authorise someone to help investigate service complaints on behalf of decision-makers. It also provides that regulations made by the Defence Council may enable the Council to delegate various of its functions to other persons.

New section 340G Service complaints: other time limits

15. Time limits can be put in place by Defence Council regulations for taking different steps in the process. It is also envisaged that regulations will provide the Ombudsman with the power to review decisions not to proceed with a complaint because the complainant has failed to meet a time limit.

New section 340H Ombudsman investigations

16. If a complainant is unhappy about the way the internal process has worked, he or she will be able to go to the Service Complaints Ombudsman with allegations that their complaint has not been handled properly - taking the language used in the section, that there has been "maladministration" in connection with the handling of the complaint. The Ombudsman will be able to investigate the allegations, and decide whether there has been maladministration and whether that has, or could have, caused injustice. Regulations made by the Secretary of State may set a time limit for applying to the Ombudsman, which must not be less than six weeks after the complainant is notified of the final decision in the internal process. This is important in ensuring not only that any allegations are examined while the circumstances are still reasonably current, but also that, after a set period, all parties can have some confidence that the matter is closed.

New section 340I Procedure on Ombudsman investigations

17. The Ombudsman will have a power to decide whether to take on a case and when to bring it to an end. Where there has been an appeal in the internal process the Ombudsman's main focus will usually be on the appeal level, but the Ombudsman will be able to look at mishandling at any stage to see whether it may have 'infected' the final decision. But the Ombudsman's role is not to revisit the original complaint. It is to investigate allegations that the complaint was not properly handled. The aim is that everyone should be satisfied that the internal system has worked properly and that, if it has not, the failures have been identified.

New sections 340J Power to require information, documents and evidence and 340K Obstruction and contempt

18. Under the internal system the Defence Council, as head of the chain of command, will be able to get the information it needs to look into a complaint. As an outsider, the Ombudsman is given statutory powers to compel, if necessary, the production of documents or other information for the purposes of an investigation. To this extent, this Ombudsman, like others, will have a position like that of a judge in civil proceedings. Under section 340K the Ombudsman will have the backing of the powers of the courts if someone unlawfully obstructs him or her in carrying out an investigation or does something which would count as a "contempt" of court.

New sections 340L Report and recommendations and 340M Action following receipt of report

19. After completing an investigation into possible maladministration, the Ombudsman will be required to produce a report setting out his or her findings. If the Ombudsman makes a finding of maladministration, the report must also state what the Ombudsman recommends as a result of that finding. These recommendations include any recommendations the Ombudsman has for remedying the maladministration and any injustice which has, or could have, resulted from the maladministration. The report will have to be sent to at least the Defence Council and the person who brought the complaint. The Secretary of State may make regulations containing provision for the correction of accidental errors in reports and about obligations that may be imposed on persons to whom reports are sent. The Defence Council will be responsible for considering the Ombudsman's findings and recommendations and telling the Ombudsman what steps will be taken in response to them. This could involve a reconsideration of the complaint, in the light of the Ombudsman's recommendations, by a person, a panel of persons or the Defence Council itself. This means that the Defence Council will not be free to ignore the Ombudsman's recommendations, but will have some leeway in deciding what to do.

New section 340N Referral of certain allegations

20. Like the Service Complaints Commissioner under the current system, the Ombudsman will be able to receive from anyone allegations of wrongs done to a particular person in the armed forces. The Ombudsman will be able to refer an allegation to the officer who would receive a complaint from a complainant. That officer must then inform the prospective complainant that the allegation has been received and ask whether that person wants to complain and, if the person does want to complain, whether he or she knows how to do so. Regulations made by the Secretary of State will specify that the Ombudsman will then have to be kept updated about whether a service complaint has been brought and, if so, how it progresses.

New section 340O Annual report by Ombudsman

21. The Ombudsman will have to prepare an annual report to the Secretary of State for Defence. It will focus on the efficiency, effectiveness and fairness of the reformed system and how the Ombudsman has exercised his or her functions. The report will be placed before Parliament.

Clause 4: Financial Assistance for benefit of the armed forces community

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22. Clause 4 authorises the Secretary of State to give financial assistance, for example by way of grants, loans or otherwise, to any person - including charitable institutions and other third sector and public bodies - in support of activities that benefit any part of the armed forces community. Where the recipient of the financial assistance is not a public body, additionally the activities must be for a charitable, benevolent or philanthropic purpose. The armed forces community includes serving members of the regular and reserve forces, veterans and their families. "Families" will include partners, former partners and children and can include other persons connected with serving personnel and veterans. The Secretary of State will be able to put conditions on the financial assistance he gives, for example as to the purposes it can be used for.

Clause 5: Extent

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23. This Bill has United Kingdom-wide extent. It can be extended to the Isle of Man, the Channel Islands and the British overseas territories by Order in Council.

Schedule: Service complaints: consequential amendments

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24. The Schedule lists the amendments to be made to existing primary legislation, including amendments to the following Acts:

- House of Commons Disqualification Act 1975
- Armed Forces Act 2006
- Equality Act 2010.

Commencement

25. Clauses 4 to 7 will come into force on Royal Assent. Clauses 1 to 3 and the Schedule will come into force on days appointed by the Secretary of State in regulations which are not subject to parliamentary procedure.

Financial implications of the Bill

The main increases in public expenditure resulting from the Bill are:

- The increased cost of a full-time Ombudsman and additional staff to support the role. The Ministry of Defence estimates these costs as around £530k a year.
- Additional fees for independent persons appointed to decide service complaints or appeals. The Ministry of Defence estimates these costs as around £10-30k a year.

The additional expenditure will be met from within the MOD's existing resource allocation. Details of the costs are set out in the impact assessment published alongside the Bill.

The above figures are estimates only and may change.

Parliamentary approval for financial costs

A money resolution in the House of Commons will be required to authorise the following:

- Expenditure (mentioned above) resulting from the new provisions about service complaints.
- Expenditure under clause 4 on the giving of financial assistance for the benefit of the armed forces community.

Related documents

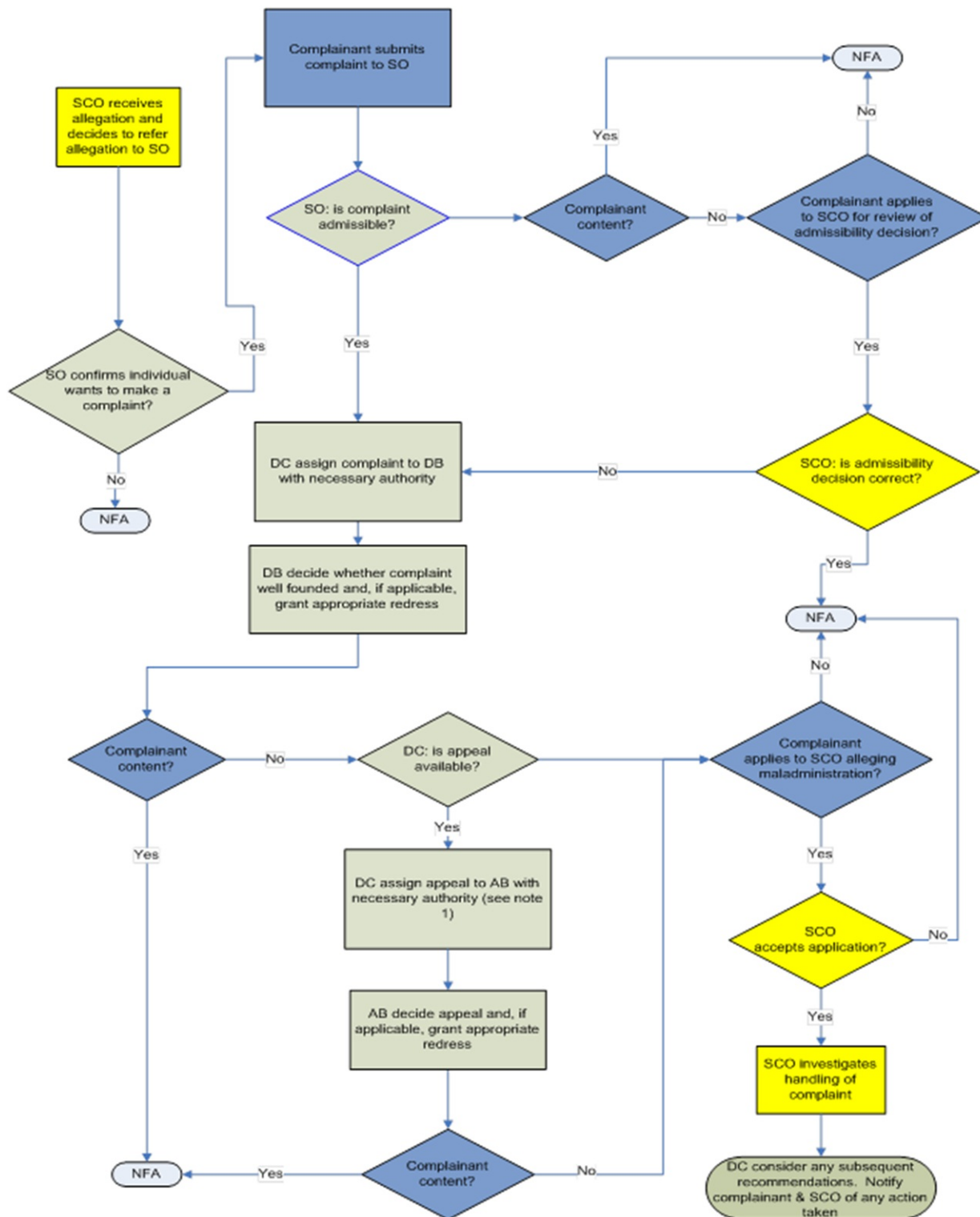
The following documents are relevant to the Bill and are available at <https://www.gov.uk/government/collections/armed-forces-service-complaints-and-financial-assistance-bill-2014>:

- Impact assessment
- Delegated Powers memorandum
- Human rights memorandum
- Draft Regulations: Armed Forces (Service Complaints) Regulations; Armed Forces (Service Complaints Miscellaneous Provisions) Regulations; Armed Forces (Service Complaints Ombudsman Investigations) Regulations

Annex A- Territorial application of each Part of the Bill

Part	England	Wales		Scotland		Northern Ireland	
		Application	Legislative Consent Motion	Application	Legislative Consent Motion	Application	Legislative Consent Motion
1 (reform of the service complaints system) Clauses 1-2 and the Schedule	In full	In full	No	In full	No	In full	No
2 (payments to charities and other organisations which support the armed forces community) Clause 4	In full	In full	No	In full	No	In full	No

Annex B- New Complaints Process



Note 1 - If appeal deemed out of time, complainant can apply to SCO for review. SCO decision is final.

Glossary

AB = Appeal Body, DB = Decision Body, DC = Defence Council, NFA = No Further Action, SCO = Service Complaints Ombudsman, SO = Specified Officer

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