

201[] No. 0000

DEFENCE

**Armed Forces (Service Complaints Ombudsman Investigations)
Regulations 201[]**

<i>Made</i> - - - -	****201[]
<i>Laid before Parliament</i>	****201[]
<i>Coming into force</i> - -	****201[]

The Secretary of State, in exercise of the powers conferred by sections 340H(2), (5) and (8), 340I(2) and (5) and 340L(5) and (7) of the Armed Forces Act 2006(a), makes the following regulations:

Citation and commencement

1. These Regulations may be cited as the Armed Forces (Service Complaints Ombudsman Investigations) Regulations 201[] and come into force on *[date to be inserted]*.

Interpretation

2. In these Regulations—

“in writing” includes communications -

- (a) transmitted by electronic means;
- (b) received in a legible form; and
- (c) capable of being used for subsequent reference;

“the Act” means the Armed Forces Act 2006;

“the Ombudsman” means the Service Complaints Ombudsman.

Provision of information in application to Ombudsman

3. An application to the Ombudsman under section 340H of the Act must:

- (a) state the maladministration which the complainant alleges occurred in connection with the handling of the complainant’s service complaint;
- (b) state any injustice which the complainant considers he or she has or may have suffered as a result of the alleged maladministration;
- (c) state any facts in support of the alleged maladministration under paragraph (a) and any resulting injustice under paragraph (b);

(a) 2006 c. 52. Sections 340H, 340I and 340L were inserted by section 2 of the Armed Forces (Service Complaints and Financial Assistance) Act 201*.

- (d) if the complaint is one in respect of which there has been a decision in writing by the Defence Council in accordance with regulations under section 340C of the Act, attach a copy of that decision;
- (e) if the complaint is one in respect of which there has been a determination in writing of an appeal in accordance with regulations under section 340D(1) of the Act, attach a copy of that determination;
- (f) state the date on which the complainant was notified of the decision under paragraph (d) or of the determination under paragraph (e);
- (g) if the application is not made within the period specified in regulation 6(1), the reasons why the application was not made within that period.

Amendment of application and making supplementary application

4. The complainant may with the permission of the Ombudsman (which permission shall not be unreasonably withheld) at any time—
- (a) make a supplementary application;
 - (b) amend any information in the application under regulation 3 or in a supplementary application.

Withdrawal of application

5. —(1) The complainant may, by notice in writing to the Ombudsman, withdraw his or her application at any time before the completion by the Ombudsman of the investigation under section 340H(1) of the Act.

(2) Upon receiving a notice under paragraph (1), the Ombudsman should send a copy of the notice to the Defence Council.

(3) On receipt of a notice under paragraph (1), the Ombudsman must consider, having regard to that notice, whether to begin, continue or discontinue an investigation.

Time limits: applications to the Ombudsman

6.—(1) Except as provided for in paragraph (2), the application may not be made after a period of six weeks beginning with the day on which the complainant is notified—

- (a) in a case within regulation 3(d), of the decision referred to in that paragraph;
- (b) in a case within regulation 3(e), of the determination referred to in that paragraph.

(2) An application may be made after the end of the period specified in paragraph (1), if the Ombudsman considers that in all the circumstances it is just and equitable to permit this.

Requirements for information, documents and evidence

7. Where the Ombudsman requires a person to provide documents or other information, he or she may:

(a) require those documents or that information to be provided within such period as the Ombudsman considers reasonable in the circumstances;

(b) specify the form or manner in which the documents or other information must be provided;

(c) proceed with the investigation and the preparation of a report under section 340L of the Act if the documents or other information is not provided within that period, or are not provided under paragraph (b).

Action following receipt of an application

8.—(1) If the Ombudsman decides not to conduct an investigation, the Ombudsman must inform the complainant and the Defence Council in writing of his or her decision and the reasons for it.

(2) If the Ombudsman decides to begin an investigation, he must send a copy of the application to the Defence Council as soon as reasonably practicable.

Investigation procedure

9.—(1) The Ombudsman must give:

- (a) the Defence Council, and
- (b) any other person alleged by the complainant to have been responsible for maladministration in connection with the handling of the service complaint,

an opportunity to comment on any allegations contained in the application.

(2) If the Ombudsman decides to hold an oral hearing for the purposes of the investigation, the oral hearing must be conducted in private, unless the Ombudsman considers that it is *[necessary]* to hold all or part of the hearing in public.

(3) If the Ombudsman decides to hold an oral hearing in public, the Ombudsman may impose such restrictions on attendance at, or the reporting of, that hearing, as he or she considers reasonable.

(4) Subject to paragraph (2), an investigation by the Ombudsman must be conducted in private.

(5) The Ombudsman may decide that a person may be represented, *[including by a legally-qualified person]*, in the investigation if the Ombudsman considers that is—

- (a) necessary for the fair determination of the investigation; or
- (b) necessary to protect the rights or interests of any person.

(6) The Ombudsman may pay to any person who attends a hearing to give evidence or supplies documents or other information for the purposes of an investigation—

- (a) such sums as the Ombudsman may determine in respect of expenses properly incurred by the person; and
- (b) such allowances as the Ombudsman may determine by way of compensation for the loss of the person's time,

subject to such conditions as he may determine.

Reports of investigation: preparation and confidentiality

10.—(1) If the Ombudsman sends a draft copy of the report to any person for comments, he or she must take into account any comments he or she receives from that person, refer to those comments in the final report and state in that report his or her response to those comments.

(2) Clerical mistakes in a report prepared by the Ombudsman under section 340L of the Act, or errors arising in a report from an accidental slip or omission, may be corrected by the Ombudsman by certificate under his or her hand.

(3) The Ombudsman must send a copy of a report prepared under section 340L of the Act to—

- (a) any person who may, in the opinion of the Ombudsman, be affected adversely by any of the findings or recommendations in the report, and
- (b) *[persons who communicated an allegation to the Ombudsman in accordance with section 340N of the Act, where the report relates to a service complaint which was made in respect of that allegation].*

(4) The Ombudsman must send any certificate under paragraph (2) to the Defence Council, the complainant and *[any person to whom a copy of the report must be sent under paragraph (3)]*.

(5) If a report prepared by the Ombudsman under section 340L of the Act—

- (a) mentions the name of any person other than the Defence Council [*or the Army Board, the Admiralty Board or the Air Force Board*], or
- (b) includes any particulars which, in the opinion of the Ombudsman, are likely to identify any such person and which in the Ombudsman's opinion can be omitted without impairing the [*effectiveness*] of the report, or
- (c) includes any information which, in the opinion of the Ombudsman, it would be against the interests of national security to publish,

that information must not be included in a version of the report sent to any persons in accordance with section 340L(6) of the Act, unless the person or, for information referred to in sub-paragraph (c), the Secretary of State consents.

(6) If the Ombudsman sends a copy of a report to a person in accordance with section 340L(6) of the Act, the Ombudsman may impose any obligation of confidentiality on that person which the Ombudsman considers necessary and lawful in the circumstances.]

(7) Marker for disclosure of information: we may need to provide for the Ombudsman to be able to disclose any information gathered for the purposes of an investigation where that information is required by another body or a court in accordance with statutory duties or for the purposes of litigation. We will consider whether this will then not permit the disclosure of any information which is prejudicial to the safety of the State or otherwise contrary to the public interest, or information which must be protected under other statutory or common law regimes.

[Subsequent applications to the Ombudsman

11. This regulation would set out any circumstances in accordance with section 340H(8) of the Act in which a second application may be made to the Ombudsman relating to the same complaint. These are likely to be rare, and we want to consider this further before proposing any firm rules. The sort of circumstances we have in mind here are:

- (a) *where the final decision stage of the internal redress process is effectively re-run following a finding of maladministration and recommendation by the Ombudsman, i.e. because there needed to be an independent panel of persons to consider the complaint; or*
- (b) *where the Ombudsman does not consider all of the allegations of maladministration the first time round, because for example it is sufficient to deal with just one of those allegations, e.g. it was obvious that the decision-making body needed to be changed to re-consider the complaint, and those other alleged failures are not in the event corrected by the new body, the applicant may be able to apply again to the Ombudsman for an investigation.]*

Guidance

12.—(1) The Ombudsman may publish guidance from time to time about the practices and procedures that the Ombudsman will adopt in carrying out his or her investigations.

(2) Before publishing guidance under paragraph (1), the Ombudsman must consult any persons the Ombudsman thinks appropriate.

Date

Anna Soubry
Minister of State
Ministry of Defence