

D R A F T   S T A T U T O R Y   I N S T R U M E N T S

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**201[] No. 0000**

**DEFENCE**

**Armed Forces (Service Complaints Miscellaneous Provisions)  
Regulations 201[]**

*Made* - - - - \*\*\*\*\*201[]

*Coming into force* - - \*\*\*\*\*201[]

The Secretary of State, in exercise of the powers conferred by section 340A(4), [340E(1)] and 340N of the Armed Forces Act 2006(a), 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 201[] and come into force on *[date to be inserted]*.

**Interpretation**

2. In these Regulations—

“the Act” means the Armed Forces Act 2006;

“appropriate officer” has the same meaning as in section 340N(2) of the Act;

“the Service Complaints Regulations” means the Armed Forces (Service Complaints) Regulations 201[]

[“*independent member*” shall be interpreted as in accordance with section 340E(4) of the Act; to be retained if provisions are made under 340E]

“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.

**Excluded complaints**

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

(2) *[Provision to be made here to exclude complaints about any aspect of the handling of a complaint or about the result: these are a matter for appeal and application to the Ombudsman]*

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(a) 2006 c. 52. Sections 340A, 340E and 340N were inserted by section 2 of the Armed Forces (Service Complaints and Financial Assistance) Act 201[]

*Draft Regulations laid before Parliament under section 373(3) of the Armed Forces Act 2006, for approval by resolution of each House of Parliament.*

### **Appointment of person or panel of persons by the Defence Council under the Service Complaints Regulations**

**4.**—(1) The following persons shall not be appointed by virtue of section 340C(1)(a) of the Act (the appointment of a person or panel of persons to decide complaints):

- (a) a person who is the subject of the complaint or *[is, in the statement of complaint made in accordance with regulations made by the Defence Council under section 340B(2)(b), alleged to be implicated in any way in the matter, or matters, complained about]*; or
- (b) an officer of the Naval Chaplaincy Service, the Royal Army Chaplains Department or the Royal Air Force Chaplains Branch.

(2) The following persons shall not be appointed by virtue of section 340D(2)(d) of the Act (the appointment of a person or panel of persons to determine appeals):

- (a) a person who is the subject of the complaint, or *[is, in the statement of complaint made in accordance with regulations made by the Defence Council under section 340B(2)(b), alleged to be implicated in any way in the matter, or matters, complained about]*;
- (b) 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; or
- (c) an officer of the Naval Chaplaincy Service, the Royal Army Chaplains Department or the Royal Air Force Chaplains Branch.

### **Independent persons**

**5.**—(1) *Where the Defence Council acts for the purposes of section 340D(2)(d) of the Act in relation to a service complaint, they shall act in accordance with paragraph (3) by virtue of section 340D(2)(d) if the service complaint includes a statement by the complainant making an allegation within paragraph (2)*

(2) *The allegations referred to in paragraph (1) are:*

- (a) *allegations of discrimination;*
- (b) *allegations of harassment;*
- (c) *allegations of bullying;*
- (d) *[allegations concerning the exercise by a service policeman of his statutory powers as a service policeman].*

(3) *the Defence Council must appoint –*

- (a) *a person who is independent, [or of a description specified in paragraph []]; or*
- (b) *a panel that includes at least one independent member, [or of a description specified in paragraph []].*

(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 part-time employees.*

### **Notifications to the Ombudsman**

**6.** Where in accordance with section 340N of the Act, the Ombudsman refers to the appropriate officer a communication that alleges that a person subject to service law has been wronged, the appropriate officer shall within 21 days of the occurrence of any of the following events notify the Ombudsman of that occurrence—

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

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- (b) that the person has been made aware of the matters referred to in section 340N(3)(b) of the Act;
- (c) of the decision of the person that he or she wishes to make a service complaint in respect of the alleged wrong;
- (d) *[decision against admissibility because of time period and that the complainant informed of the right to go to the Ombudsman];*
- (e) *[decision against admissibility because of excluded matters and that the complainant informed of the right to go to the Ombudsman];*
- (f) of the withdrawal of a service complaint made in respect of the alleged wrong;
- (g) *of any decision under regulations under section 340C (decisions on service complaints and whether complainant informed of right to appeal or go to the Ombudsman)];*
- (h) *of a decision under regulations [regarding decisions on whether an appeal can proceed and whether complainant informed of the right to go to the Ombudsman]*
- (i) of an appeal decision under regulations under section 340D (determinations of appeal and the complainant informed of the right to go to the Ombudsman)];

*[insert here]*  
on behalf of the Secretary of State

**SCHEDULE** *[Updating of content and references required]*

Regulation 3

**1.** Subject to paragraph 2, a matter is within this Schedule if it—

- (a) is or was capable of being the subject of a complaint under the internal disputes resolution procedures established for the armed forces in accordance with section 50 of the Pensions Act 1995**(a)**;
- (b) is or was capable of being the subject of an appeal to the Discretionary Awards Panel;
- (c) is or was capable of being the subject of an appeal to the Discretionary Awards Appeals Panel;
- (d) is or was capable of being the subject of a review under rule D8 of the scheme set out in the Armed Forces Pension Scheme Order 2005**(b)**
- (e) is or was capable of being the subject of an appeal to a service appeals panel under paragraph 59 of the Criminal Injuries Compensation (Overseas) Scheme**(c)**;
- (f) is about any decision made under the scheme set out in the Armed Forces and Reserve Forces (Compensation scheme) Order 2005**(d)**;
- (g) is about any decision made under the scheme set out in the Naval, Military and Air Forces Etc (Disablement and Death) Service Pensions Order 2006**(e)**;
- (h) is or was capable of being the subject of an appeal under section 141 of the Act;
- (i) is or was capable of being subject of an appeal under the Courts-Martial (Appeals) Act 1968**(f)**;

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**(a)** 1995 c. 26.

**(b)** S. I. 2005/438, amended by S.I. 2007/717.

**(c)** The Criminal Injuries Compensation (Overseas) Scheme is a non-statutory, Ministry of Defence scheme under which lump sum payments may be made to members of the armed forces and their eligible dependants who in certain circumstances are killed or injured overseas as a result of a crime of violence.

**(d)** S.I. 2005/439, amended by S.I. 2006/1438.

**(e)** S.I. 2006/606, to which there are amendments not relevant to these regulations.

**(f)** 1968 c. 20.

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- (j) is a decision of a judge advocate under any provision in or made by virtue of the Act;
- (k) is a decision of the Director of Service Prosecutions, or of a prosecuting officer exercising a function of the Director of Service Prosecutions, under any provision in or made by virtue of the Act;
- (l) is a decision of the court administration officer made in exercise of a function of his under a provision in or made by virtue of the Act;
- (m) is a decision of a service policeman under any provision in or made by virtue of Chapter 1 of Part 5 of the Act;
- (n) is a decision of a commanding officer under Chapter 1 or 2 of Part 5 of the Act;
- (o) is a decision under—
  - (i) section 152 of the Act (review of summary findings and punishments);
  - (ii) section 177 of the Act (review of service compensation orders);
  - (iii) section 251(3) or (4) of the Act (time for payment of, or directing payment by instalments of, a fine or service compensation order);
  - (iv) section 267 of the Act (power of court to remit fine); or
  - (v) section 276 of the Act (compensation for miscarriages of justice);
- (p) is or was capable of being the subject of an appeal to a reserve forces appeal tribunal under section 81(4), 83(4) or 84(3) of the Reserve Forces Act 1996(a);
- (q) is a decision of the Security Vetting Appeals Panel in relation to the complainant;
- (r) is or was capable of being the subject of an appeal by the complainant to the Security Vetting Appeals Panel; or
- (s) *is an allegation of negligence in the provision by the Ministry of Defence of medical, dental or nursing care.*

2. Nothing in paragraph 1 shall prevent a person making a service complaint about any thing referred to in regulation 5(2) which he or she alleges has occurred in connection with a matter specified in paragraph 1.

*Draft Regulations laid before Parliament under section 373(3) of the Armed Forces Act 2006, for approval by resolution of each House of Parliament.*

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

*[to be completed]*