



Ministry  
of Defence

# Qualification of Administrative Discharge for Veterans of the Ban

Qualification of past administrative discharge for same-sex sexual acts, perceived sexual orientation or gender identity pursuant to the policy that homosexuality was incompatible with life in the Armed Forces between 1967 and 2000.

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Version 1

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# Background

The Ministry of Defence and the Office for Veterans' Affairs jointly commissioned an independent review to better understand the experiences, impacts and implications of the policy prohibiting homosexuality in HM Armed Forces between 1967 and 2000 (the Independent Review).

## The purpose of this policy

1. This policy sets out the eligibility criteria and process to be followed in seeking to right the historic wrong of Service personnel being administratively discharged solely for same-sex sexual activity; actual or perceived sexual orientation; or gender identity.
2. Under this policy, applicants who were administratively discharged because of their sexual orientation or gender identity may apply to have their discharge reason amended or annotated in their records with the statement: "Discharge was pursuant to a policy subsequently held by the European Court of Human Rights to be unlawful". This was one of the recommendations of the Independent Review.
3. This policy applies only to those dismissed or discharged as a direct result of the historic policy that homosexuality was incompatible with life in HM Armed Forces between 27 July 1967 and 12 January 2000.

# The criteria for the application of this policy

4. A person may apply for qualification of their administrative discharge if they meet all of the following criteria:
  - a. The person was discharged from HM Armed Forces as a consequence of administrative action on the grounds of:
    - i. sexual orientation, or
    - ii. gender identity.
  - b. The discharge took place between 27 July 1967 and 12 January 2000.
  - c. There is no evidence of other misconduct which wholly or partly constituted grounds for the administrative discharge, i.e. it is clearly based solely on the Ban.
  - d. The grounds for discharge, if occurring at the time the decision on the application is made, would not be lawful grounds for discharge.
5. This can be applied to officers instructed to resign if there is evidence of the resignation following an administrative procedure based on sexual orientation or gender identity. If a resignation is recorded as the reason for discharge and there is no evidence of an administrative procedure, or the administrative procedure was not based on sexual orientation or gender identity, the applicant should be given the opportunity to provide supporting evidence; in the absence of this, the application should be rejected.

# Application and Registration of Interest Form

6. To submit an application, the applicant must complete the relevant 'Application and Registration of Interest' form on the [LGBT Veterans: support and next steps found at GOV.UK](#).
7. To complete the form, the applicant must provide:
  - a. the name, address, and date of birth of the affected veteran,
  - b. the name of the affected veteran at the time of discharge (if different), the veteran's Service number and Service dates.
8. An application can be made by a Person of Sufficient Interest if the person discharged has died. A Person of Sufficient Interest for the purpose of this policy is deemed to be:
  - a. The Personal Representative of the deceased's estate.
    - This will be the Executor named on the Grant of Probate/Confirmation (only in Scotland) where the deceased had a will.
    - This will be the Personal Representative named on the Letters of Administration where the deceased had no will.
  - b. A person who is entitled to personal property under the proved will of the deceased.
  - c. Official Next of Kin of the deceased.

This will be the first person from the following list who is still alive:

- Surviving Spouse or Civil Partner
- Children (or their descendants)
- Parents, brothers or sisters (or their descendants)
- Half siblings (or their descendants)
- Grandparents
- Uncles or aunts (or their descendants)

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- Half uncles or aunts (or their descendants)
- d. A person who meets one of the following definitions:
- A person who was in a relationship or living with the person who has died as their long-term partner.
  - Any person who was treated as a child of the deceased.
  - Any person who immediately before the death of the deceased was being financially supported, either wholly or partly, by the deceased.
9. Appropriate supporting evidence will be required for the consideration of applications by Persons of Sufficient Interest to confirm identity and relationship to the veteran.
10. Where a Person of Sufficient Interest is making the application on behalf of a deceased veteran, they must provide:
- The name and address of the person making the application.
  - The relationship of the person making the application to the person who has died and required evidence to support this.
  - The name, date of birth, Service dates and Service number of the person who has died.
  - A copy of the death certificate for the person who has died.

# How will the policy be implemented?

11. The Qualification of Administrative Discharge process will follow the below steps:

- a. Upon receipt of the application, records will be retrieved and examined to confirm that the individual meets the criteria set out in paragraph 4 and/or 5 above. If the reason for discharge is unclear, corroborative information may be sought from the applicant.
- b. The application will be reviewed by single-Service personnel staff who will make a recommendation to the Naval Secretary/Air Secretary/Director Personnel (or their delegates), as Decision Maker on whether to approve or deny the application for restorative measures. The Decision Maker shall communicate their decision to the Service allocated LGBT Point of Contact who will confirm the outcome to the applicant, alongside the delivery of other restorative measures if appropriate. The decision will be communicated to the LGBT Restorative Action team ahead of the applicant to ensure consistency in decision making across the three Services.
- c. If the criteria are met, the decision will be communicated to the applicant in writing and the discharge will be qualified on all relevant records held by MOD. For files still held physically, qualification will be added manually, whereas on digital files, the discharge reason will be changed. If the criteria are not met, the decision will be communicated to the applicant in writing.

# Deliberation under this policy

12. Each request will be considered against the published criteria and a determination made on a case-by-case basis, taking into account the requirements laid out above.
13. For qualification of an administrative discharge to be considered under this policy there must either be clear evidence that the administrative discharge was due to the Ban, or an absence of evidence of other misconduct/unsuitability that would have resulted in administrative discharge, and otherwise good conduct. This is likely to be evident from personnel and discipline records.
14. Applications will be considered on a reverse burden of proof basis. This means that the burden of proof will lie with Defence rather than the applicant to determine whether a fact or matter occurred. Unless Defence finds evidence to contradict the reported events or facts stated by the applicant, Defence will accept that the facts or experiences reported took place if on a balance of probabilities, they are more likely to have occurred than not.
15. For qualification of a resignation of an officer who was instructed through an administrative process to be considered under this policy, there must be clear evidence of the instruction being the cause of the resignation, and that the reason for the instruction was sexual orientation or gender identity. In any case in which an individual claims to have been instructed to resign because of their sexual orientation or gender identity, but for which there is no evidence of the instruction, the applicant should be given the opportunity to provide evidence. In the absence of such evidence, the case should be declined. In any cases where there is evidence of the instruction to resign but no evidence of the reason for the instruction, the case should be assessed on a reverse burden of proof on a balance of probabilities.



# Appeals and Review process.

16. An applicant is able to request that their application for the Qualification of Administrative Discharge under this policy is reconsidered on one or more of the following grounds:
  - a. That there was a material error of fact within the original decision on the application.
  - b. That there was a material procedural error in the processing of the application.
  - c. That there is new evidence that was not considered as part of the original application, and it is likely that the outcome of the application would have been materially different if the new evidence had been available in making the decision on the application.
  
17. In such cases, Defence will convene an Appeal Board which consists of: at least one member of the Defence Restorative Action team; at least one member of the relevant Service, who was not involved in the original decision; at least one lawyer from the relevant Service and at least one Senior Civil Servant, who will act as Chair. The Appeal Board will review any evidence available, including any new evidence provided by the applicant, and come to a decision. The Chair of the Appeal Board will inform the applicant of the outcome in writing.