

201[] No. 0000

DEFENCE

Armed Forces (Service Complaints) Regulations 201[]

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

The Defence Council, in exercise of the powers conferred by section 340B(1) 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) Regulations 201[] and come into force on *[date to be inserted]*.

Interpretation

2. In these Regulations—

“the Act” means the Armed Forces Act 2006;

[“the *Secretary of State regulations*” means]

“in writing” includes communications -

- (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;

“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 that Act or under any of the Army Act 1955(b), the Air Force Act 1955(c) and the Naval Discipline Act 1957(d).

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) 2006 c.52. Section 340B was inserted by section 2 of the Armed Forces (Service Complaints and Financial Assistance) Act [].

(b) 1955 c. 18. *[footnotes to be completed]*

(c) 1955 c. 19.

(d) 1957 c. 53.

- (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.

(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 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) is also the subject of the service complaint, or is alleged in the 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 who:

- (a) is of the same rank as, or of equal rank to, that officer; and
- (b) is not so subject or alleged to be implicated.

Procedure for making a service complaint

4.—(1) A service complaint must be made in writing to the specified officer.

(2) The complaint must state—

- (a) how the complainant thinks himself or herself wronged;
- (b) whether the complainant's commanding officer or his or her immediate superior in the chain of command is the subject of the complaint or is alleged to be implicated in any way in the matter, or matters, complained about;
- (c) whether the complainant considers that the complaint is of a description prescribed in *[Secretary of State regulations]* under section 340E(2);
- (d) if the complaint is not made within the period referred to in regulation 5(3)(b) the reasons why the complaint was not made within that period;
- (e) the redress sought;
- (f) the date on which the complaint is made.

(3) The 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 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 complainant.

Action on receipt of a service complaint and admissibility *[in addition, provision possibly to be made regarding the validity of a complaint]*

5.—(1) On receipt of a service complaint, the specified officer must as soon as reasonably practicable decide whether the complaint is admissible in accordance with section 340B of the Act.

(2) If the specified officer decides that the service complaint is admissible, he or she must notify the complainant in writing and refer the complaint to the Defence Council as soon as reasonably practicable.

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

- (a) *the complaint does not state an alleged wrong;*

- (b) subject to regulation 6, the complaint is made more than three months beginning with the date on which the matter complained about occurred; or
- (c) 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.

(4) In determining the admissibility of a service complaint, the specified officer must decide whether it is admissible in accordance with each of sub-paragraphs (3)(a) to (c).

(5) If the specified officer decides that any or all of paragraphs 3(a) to (c) apply to the matter, or (as the case may be) to all of the matters complained of, he or she must inform the complainant in writing that the service complaint is not admissible, stating the reasons for the decision and informing the complainant of his or her right to apply for a review of that decision by the Ombudsman.

(6) If the specified officer decides that the service complaint is not admissible because any or all of paragraphs 3(a) to (c) apply (as the case may be) to some, but not all, of the matters complained of, he or she must:

- (a) treat the remaining matters as an admissible service complaint; and
- (b) inform the complainant in writing that the other matters are not ones about which an admissible service complaint may be made, stating the reasons for the decision and informing the complainant of his or her right to apply for a review of that decision by the Ombudsman.

Period for making a service complaint: further provisions

6.—*(1) Certain matters, such as housing or pay and allowances, can be complained about using one of a specific set of internal complaints processes, known as ‘special to type’ processes. Provision to be made here as to the relationship between those processes and the service complaints system for the purposes of calculating time limits.*

(2) If a matter is or has been capable of being pursued as a claim under the Equality Act 2010(a) a service complaint may be made about the matter at any time on or before the end of the qualifying period for a claim under that Act. The end of the qualifying period must be determined in accordance with section 129 of that Act.

(3) A service complaint may be made on a date after the end of the period in whichever of regulation 5(3)(b) and paragraph (1) applies to the complaint, if in all the circumstances it is just and equitable for the specified officer to permit this. This paragraph does not apply to a complaint within paragraph (2).

Ombudsman’s review of admissibility

7.—*(1) On receipt of an application for a review of the specified officer’s decision that a service complaint is not admissible, the Ombudsman must determine whether the service complaint is admissible and notify both the specified officer and the complainant in writing of his or her determination giving reasons for the determination.*

(2) The Ombudsman must not consider an application under paragraph (1) made more than four weeks beginning with the day the complainant is notified of the specified officer’s decision, unless the Ombudsman considers it is just and equitable to allow the complainant to apply outside 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 determines that the service complaint is admissible, the specified officer must refer the complaint to the Defence Council as soon as reasonably practicable.

(a) 2010 c. 15

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, these must be made, and dealt with, as a fresh service complaint.

Decisions on a service complaint

9.—(1) Subject to *[any requirement by regulations made by the Secretary of State under section 340E(1)(b),]* on receipt of a referral of a service complaint from the specified officer, the Defence Council must decide as soon as reasonably practicable whether the complaint is to be dealt with -

- (a) by a person or panel of persons appointed by the Council; or
- (b) by the Council themselves.

(2) The person or panel of persons appointed to deal with the service complaint or (in a paragraph (1)(b) case) the Defence Council must as soon as is reasonably practicable -

- (a) decide whether the complaint is well-founded; and
- (b) if the decision is that the complaint is well-founded -
 - (i) decide what redress (if any), within the authority of the person or persons on the panel or (in a paragraph (1)(b) case) the Defence Council, would be appropriate; and
 - (ii) grant any such redress.

(3) The person or panel of persons appointed to deal with the service complaint or (in a paragraph (1)(b) case) the Defence Council must notify the complainant in writing of the decisions made under paragraph (2), giving reasons for the decisions.

(4) If the decisions made under paragraph (2) are made by a person or panel of persons appointed under paragraph (1)(a), that person or panel of persons must inform the complainant of the right of appeal under regulation 10(1).

(5) If the decisions made under paragraph (2) are made by the Defence Council under paragraph (1)(b), the Defence Council must inform the complainant of the right to apply to the Ombudsman to investigate any allegation of maladministration in connection with the handling of the service complaint.

Procedure for bringing an appeal

10.—(1) Where a decision under regulation 9(2) is made, by a person or panel of persons appointed under regulation 9(1)(a), the complainant has a right to appeal to the Defence Council against that decision.

(2) An appeal under paragraph must be brought in writing to the Defence Council.

(3) The appeal must state *[requirement to give reasons for the appeal? Further consideration being given to how exactly appeals will be brought].*

(4) In a case to which regulation 11(2) applies, the complainant must state the reasons why the appeal was not brought within the period specified in paragraph (5).

(5) Subject to regulation 11(1) and (2), an appeal cannot be proceeded with unless it is brought within six weeks beginning with the day on which the complainant received notification under regulation 9(3) of the decision appealed against.

Decision whether to proceed with an appeal

11.—(1) On receipt of an appeal under regulation 10(1), the Defence Council must decide as soon as reasonably practicable whether the appeal can be proceeded with.

(2) An appeal may be brought on a date after the end of the period specified in regulation 10(5) if in all the circumstances it is just and equitable for the Defence Council to permit this.

(3) If the Defence Council decides that an appeal cannot be proceeded with, they must inform the complainant in writing, giving reasons for that decision and informing the complainant of the right to apply for a review of that decision by the Ombudsman. *[further provision under consideration as to possible grounds for refusal to allow an appeal to proceed – see regulation 10(3) also].*

Ombudsman’s review of a decision not to proceed with an appeal

12.—(1) On receipt of an application for a review of the Defence Council’s decision under regulation 11(1) that an appeal cannot be proceeded with, the Ombudsman must determine whether the appeal can be proceeded with and notify both the Council and the complainant in writing of his or her determination, giving reasons for the determination.

(2) The Ombudsman must not consider an application under paragraph (1) made more than four weeks beginning with the day the complainant is notified of the decision under regulation 11(1), unless the Ombudsman considers it is just and equitable to allow the complainant to apply outside that period.

(3) A determination by the Ombudsman in relation to an appeal is binding on the complainant and the Defence Council.

Determination of appeals

13.—(1) Where the Defence Council, or following a review, the Ombudsman, decides that the appeal can be proceeded with, subject to *[any requirement by regulations made by the Secretary of State under section 340E(1)(b)]*, the Defence Council must decide, as soon as reasonably practicable, whether the appeal is to be dealt with –

- (a) by the person or panel of persons appointed by the Council; or
- (b) by the Council themselves.

(2) The person or panel of persons appointed to consider the appeal, or as the case may be, the Defence Council must, as soon as reasonably practicable–

- (a) decide whether the complaint is well-founded; and
- (b) if the decision is that the complaint is well-founded –
 - (i) decide what redress (if any), within the authority of, as the case may be, the person, or the persons on the panel, or (in a paragraph (1)(b) case) the Defence Council, would be appropriate, and
 - (ii) grant any such redress.

(3) The person or panel of persons appointed to consider the appeal, or as the case may be, the Defence Council, must notify the complainant in writing of the decisions under paragraph (2), giving reasons for the decisions and informing the complainant of the complainant’s right to apply to the Ombudsman to investigate any allegation of maladministration in connection with the handling of the service complaint.

Procedure with respect to decisions and determinations

14.—(1) For the purposes of making a decision under regulation 9(2), or a determination under regulation 13(2), the person or panel of persons, or (as the case may be), the Defence Council, may request the complainant, or such other person as they consider appropriate, to supply information or produce documents.

(2) In respect of a request under paragraph (1), the person or panel of persons, or (as the case may be), the Defence Council may impose any such time limit for the supply of the information or production of other documents, as they consider reasonable in the circumstances.

(3) Should the information or documents requested under paragraph (1) not be supplied or produced within the time limit under paragraph (2), the person or panel of persons or (as the case may be) the Defence Council may proceed to reach a decision or determination based on the information or documents available.

Delegation of functions by the Defence Council

15.—(1) Subject to paragraph (2), the Defence Council may delegate to any person, to such extent and subject to such conditions as the Council consider appropriate, any of the Council's functions under these Regulations.

(2) The Defence Council must not delegate its functions:

- (a) in a case within regulation 9(1)(b), of making a decision under regulation 9(2); or
- (b) in a case within regulation 13(1)(b) of making a decision under regulation 13(2).

[insert here]
on behalf of the Defence Council

EXPLANATORY NOTE

(This note is not part of the Regulations)

[to be completed]