



# Armed Forces (Service Complaints and Financial Assistance) Act 2015

## 2015 CHAPTER 19

### *Service complaints*

#### **1 Creation of office of Service Complaints Ombudsman** **U.K.**

(1) After section 365A of the Armed Forces Act 2006 insert—

#### *“Service Complaints Ombudsman*

##### **365B Service Complaints Ombudsman**

- (1) The office of Service Complaints Ombudsman is established.
  - (2) The Ombudsman is to be appointed by Her Majesty on the recommendation of the Secretary of State.
  - (3) A person may not be appointed as the Ombudsman if the person is—
    - (a) a member of the regular or reserve forces, or
    - (b) employed in the civil service of the State.
  - (4) The Ombudsman holds and vacates office in accordance with the terms of his or her appointment.
  - (5) The Ombudsman may authorise a person working for the Ombudsman to exercise any function of the Ombudsman on his or her behalf.
  - (6) The Ombudsman is not to be regarded—
    - (a) as the servant or agent of the Crown, or
    - (b) as enjoying any status, immunity or privilege of the Crown.”
- (2) The office of Service Complaints Commissioner is abolished.

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*Changes to legislation: There are currently no known outstanding effects for the Armed Forces (Service Complaints and Financial Assistance) Act 2015, Cross Heading: Service complaints. (See end of Document for details)*

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- (3) Accordingly, in the Armed Forces Act 2006, omit section 366 and the italic cross-heading immediately preceding it.

**Commencement Information**

- II** S. 1 in force at 1.1.2016 by S.I. 2015/1957, reg. 2 (with savings and transitional provisions in S.I. 2015/1969)

**2 Reform of system for redress of individual grievances** **U.K.**

- (1) After section 340 of the Armed Forces Act 2006 insert—

**“PART 14A** **U.K.**

REDRESS OF SERVICE COMPLAINTS

*Service complaints*

**340A Who can make a service complaint?**

- (1) If a person subject to service law thinks himself or herself wronged in any matter relating to his or her service, the person may make a complaint about the matter.
- (2) If a person who has ceased to be subject to service law thinks himself or herself wronged in any matter relating to his or her service which occurred while he or she was so subject, the person may make a complaint about the matter.
- (3) In this Part, “service complaint” means a complaint made under subsection (1) or (2).
- (4) A person may not make a service complaint about a matter of a description specified in regulations made by the Secretary of State.

**340B Procedure for making a complaint and determining admissibility**

- (1) The Defence Council may make regulations (referred to in this Part as “service complaints regulations”) about the procedure for making and dealing with a service complaint.
- (2) Service complaints regulations must make provision—
  - (a) for a service complaint to be made to an officer of a specified description;
  - (b) about the way in which a service complaint is to be made (including about the information to be provided by the complainant);
  - (c) that a service complaint may not be made, except in specified circumstances, after the end of the specified period.

“Specified” means specified in the regulations.

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- (3) The period referred to in subsection (2)(c) must be at least three months beginning with the day on which the matter complained of occurred.
- (4) Service complaints regulations must make provision—
  - (a) for the officer to whom a service complaint is made to decide whether the complaint is admissible and to notify the complainant of that decision;
  - (b) for the Service Complaints Ombudsman, on an application by the complainant, to review a decision by the officer to whom a service complaint is made that the complaint is not admissible;
  - (c) for securing that the Ombudsman's decision in relation to admissibility, on such a review, is binding on the complainant and the officer to whom the complaint was made.
- (5) For the purposes of subsection (4), a service complaint is not admissible if—
  - (a) the complaint is about a matter of a description specified in regulations made under section 340A(4),
  - (b) the complaint is made after the end of the period referred to in subsection (2)(c) and the case is not one in which circumstances referred to in that provision apply, or
  - (c) the complaint is not admissible on any other ground specified in service complaints regulations.
- (6) Nothing in this Part with respect to the provision that must or may be made by service complaints regulations is to be taken as limiting the generality of subsection (1).

### *Decisions and appeals*

#### **340C Decisions on service complaints**

- (1) Service complaints regulations must provide for the Defence Council to decide, in the case of a service complaint that is found to be admissible, 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 regulations must provide for the person or panel appointed to deal with the complaint or (in a subsection (1)(b) case) the Defence Council—
  - (a) to decide whether the complaint is well-founded, and
  - (b) if the decision is that the complaint is well-founded—
    - (i) to decide what redress (if any), within the authority of (as the case may be) the person, the persons on the panel or the Defence Council would be appropriate, and
    - (ii) to grant any such redress.
- (3) The Defence Council must not appoint a person or panel to deal with a service complaint unless—
  - (a) the person is, or all the persons on the panel are, authorised by the Council to decide the matters mentioned in subsection (2) and to grant appropriate redress, or

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- (b) the Council propose to authorise that person or those persons for those purposes.
- (4) Provision made by virtue of subsection (1) is subject to regulations made under section 340E(1) (eligibility for appointment, requirements relating to independent decision-making, etc).

### **340D Appeals**

- (1) Service complaints regulations must make provision enabling the complainant in relation to a service complaint to appeal to the Defence Council against a decision on the complaint, where the decision was taken by a person or panel appointed by virtue of section 340C(1)(a).
- (2) The regulations may make provision—
  - (a) about the way in which an appeal is to be brought (including about the information to be provided by the complainant);
  - (b) that an appeal may not be brought, except in circumstances specified in the regulations, after the end of the period so specified;
  - (c) requiring the Defence Council to decide any question relating to whether an appeal has been brought before the end of the period referred to in paragraph (b) or (if not) whether circumstances referred to in that paragraph apply;
  - (d) requiring the Defence Council to decide whether an appeal is to be determined—
    - (i) by a person or panel of persons appointed by the Council, or
    - (ii) by the Council themselves.
- (3) The period referred to in subsection (2)(b) must be at least six weeks beginning with the day on which the complainant received notification of the decision appealed against.
- (4) The Defence Council must not appoint a person or panel to determine an appeal unless—
  - (a) the person is, or all the persons on the panel are, authorised by the Council to determine the appeal and to grant appropriate redress, or
  - (b) the Council propose to authorise that person or those persons for those purposes.
- (5) Provision made by virtue of subsection (2)(d) is subject to regulations made under section 340E(1) (eligibility for appointment, requirements relating to independent decision-making, etc).
- (6) Service complaints regulations must make provision—
  - (a) for the Service Complaints Ombudsman, on an application by the complainant, to review a decision by the Defence Council that an appeal cannot be proceeded with because—
    - (i) it was not brought before the end of the period referred to in subsection (2)(b), and
    - (ii) the case is not one in which circumstances referred to in that provision apply;

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- (b) for securing that the decision of the Ombudsman, on such a review, is binding on the complainant and the Defence Council.

### **340E Further provision about persons and panels deciding service complaints etc**

- (1) The Secretary of State may by regulations—
  - (a) provide that persons of a specified description may not be appointed by virtue of section 340C(1)(a) or 340D(2)(d) (whether or not as part of a panel);
  - (b) require the Defence Council, in relation to any service complaint of a specified description, to act by virtue of section 340C(1)(a) or 340D(2)(d) so as to appoint—
    - (i) a person who is independent, or of a specified description, or both;
    - (ii) a panel that satisfies one or more of the requirements listed in subsection (2).
- (2) Those requirements are—
  - (a) all of the members of the panel must be independent;
  - (b) the panel must include at least a specified number or proportion of independent members;
  - (c) the panel must include a person of a specified description.
- (3) Where a requirement within subsection (2)(b) has effect, the regulations may also require specified functions of the panel to be exercised by the independent members of the panel.
- (4) For the purposes of this section, a person (including a member of a panel) is independent if the person—
  - (a) is not a member of the regular or reserve forces or employed in the civil service of the State, and
  - (b) is included in a list maintained for the purposes of this section by the Secretary of State.
- (5) In this section, “specified” means specified in the regulations.

#### *Investigation, delegation and time limits*

### **340F Investigation of complaints and delegation of Defence Council functions**

- (1) The Defence Council may authorise a person to investigate a particular service complaint—
  - (a) on the Council's behalf, or
  - (b) on behalf of a person or panel of persons appointed to deal with a service complaint or to determine an appeal relating to a service complaint.
- (2) Service complaints regulations may authorise the Defence Council to delegate to any person, to such extent and subject to such conditions as the Council

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consider appropriate, any of the Council's functions under the preceding provisions of this Part.

- (3) Subsection (2) does not apply to—
- (a) the Defence Council's function of making service complaints regulations,
  - (b) the Council's function of dealing with a service complaint or determining an appeal, or
  - (c) any function of the Council by virtue of section 340C(3)(b) or 340D(4)(b) in connection with authorising a person to make decisions or determinations and to grant redress.
- (4) Subsection (2) does not affect the application of section 1(5) or (7) of the Defence (Transfer of Functions) Act 1964 (discharge by Service Boards of Defence Council functions) in relation to the Defence Council's functions under the preceding provisions of this Part.

### **340G Service complaints: other time limits**

- (1) Service complaints regulations may—
- (a) impose time limits for taking any step (in addition to any time limit for which this Part provides);
  - (b) specify circumstances in which a time limit does not apply;
  - (c) make provision about the consequences of not taking a step within a time limit.
- (2) The provision that may be made by virtue of subsection (1)(c) in relation to a particular time limit includes provision authorising a person specified in the regulations to decide that a service complaint, or an appeal against a decision on a service complaint, cannot be proceeded with because of a failure to take a step within that time limit.
- (3) Where service complaints regulations make provision referred to in subsection (2), the regulations may also make provision—
- (a) for the Service Complaints Ombudsman, on an application by the complainant, to review a decision that a service complaint or an appeal cannot be proceeded with because of the failure to take the step within the time limit;
  - (b) for securing that the Ombudsman's decision on such a review is binding on the complainant and the person who made the decision to which the review relates.

#### *Investigations by Service Complaints Ombudsman*

### **340H Ombudsman investigations**

- (1) The Service Complaints Ombudsman may, on an application to the Ombudsman by a person within subsection (2), investigate—
- (a) a service complaint, where the Ombudsman is satisfied that the complaint has been finally determined;
  - (b) an allegation of maladministration in connection with the handling of a service complaint (including an allegation of undue delay),

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- where the Ombudsman is satisfied that the complaint has been finally determined;
- (c) an allegation of undue delay in the handling of a service complaint which has not been finally determined;
  - (d) an allegation of undue delay in the handling of a relevant service matter.
- (2) The following persons are within this subsection—
- (a) in a case relating to a service complaint, the complainant;
  - (b) in a case relating to a matter in respect of which a service complaint has not been made, the person who raised the matter,
- and, in relation to a case mentioned in paragraph (b), references in the remainder of this Part to the complainant and to a service complaint are to be read respectively as references to the person and the matter mentioned in that paragraph.
- (3) For the purposes of subsection (1)(d)—
- (a) “relevant service matter” means a matter of a kind about which a service complaint—
    - (i) may be made, whether or not at the time of the application to the Ombudsman such a complaint has been made, or
    - (ii) could have been made (but for provision made by virtue of section 340B(2)(c));
  - (b) the reference to the handling of a matter is to its handling before the making of a service complaint (if any) about the matter.
- (4) An application to the Ombudsman—
- (a) must be made in writing,
  - (b) must specify the kind (or kinds) of investigation which the complainant wishes the Ombudsman to carry out (an investigation under a particular paragraph of subsection (1) being a “kind” of investigation for this purpose), and
  - (c) must contain any other information specified in regulations made by the Secretary of State.
- (5) For the purposes of this section, a service complaint has been finally determined where—
- (a) a decision has been made, in accordance with service complaints regulations made by virtue of section 340C, on the complaint or the complaint to which the allegation of maladministration relates, and
  - (b) if the decision is one in respect of which service complaints regulations made by virtue of section 340D enable an appeal to be made, an appeal against the decision has been made and determined.
- (6) The purpose of an investigation is—
- (a) in the case of an investigation under subsection (1)(a), to decide whether the complaint is well-founded and, if so, to consider what redress (if any) would be appropriate;
  - (b) in the case of an investigation under subsection (1)(b), (c) or (d), to decide—
    - (i) whether the allegation is well-founded, and

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- (ii) if so, whether the maladministration or undue delay to which the allegation relates has or could have resulted in injustice being sustained by the complainant.
- (7) The power to carry out an investigation under subsection (1)(a) or (b) includes power to investigate any maladministration in connection with the handling of the service complaint where it becomes apparent to the Ombudsman during the course of an investigation that any such maladministration may have occurred.
  - (8) The Secretary of State may by regulations provide that an application in respect of a service complaint that has been finally determined may not be made to the Ombudsman, except in circumstances specified in the regulations, after the end of the period specified in the regulations.
  - (9) The period referred to in subsection (8) must be at least six weeks beginning with the date on which the complainant is notified—
    - (a) of the determination of an appeal against the decision on the complaint, or
    - (b) if the decision on the complaint is not one in respect of which service complaints regulations made by virtue of section 340D enable an appeal to be made, of that decision.
  - (10) It is for the Ombudsman to determine whether an application has been made in accordance with this section.
  - (11) Where the Ombudsman has carried out an investigation under subsection (1) (a) or (b) in relation to a service complaint, the Ombudsman may not investigate a subsequent application relating to the same complaint except in circumstances specified in regulations made by the Secretary of State.

### **340I Procedure on Ombudsman investigations**

- (1) It is for the Service Complaints Ombudsman to determine—
  - (a) whether to begin, continue or discontinue an investigation;
  - (b) whether to investigate a service complaint, or an allegation, as a whole or only in particular respects.
- (2) The Secretary of State may make regulations about the procedure to be followed in an investigation.
- (3) Subject to subsection (2), the procedure for carrying out an investigation is to be such as the Ombudsman considers appropriate in the circumstances.
- (4) In particular, the Ombudsman may make such inquiries as the Ombudsman considers appropriate.
- (5) The Secretary of State may by regulations—
  - (a) impose time limits for the taking by the Ombudsman or the complainant of any step specified in the regulations;
  - (b) specify circumstances in which a time limit does not apply.
- (6) Where—
  - (a) the Ombudsman carries out an investigation under section 340H(1)
  - (b) in connection with the handling of a service complaint, and



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- (b) before the complaint was made, the matter to which it relates was considered in accordance with a process for dealing with matters of that kind,

the Ombudsman may for the purposes of the investigation consider any alleged maladministration in connection with that process.

### **340J Power to require information, documents and evidence**

- (1) The Service Complaints Ombudsman may, for the purposes of an investigation, require a person to provide—
  - (a) documents in the person's possession or control, or
  - (b) other information in the person's possession or control.
- (2) The Ombudsman has the same powers as the High Court (or, in Scotland, the Court of Session), for the purposes of an investigation, in respect of—
  - (a) the attendance and examination of witnesses (including the examination of witnesses abroad), and
  - (b) the production of documents.
- (3) A person may not be required under this section to do anything that the person could not be compelled to do in civil proceedings before the High Court (or, in Scotland, the Court of Session).

### **340K Obstruction and contempt**

- (1) This section applies if a person—
  - (a) without lawful excuse, obstructs the discharge of any of the Service Complaints Ombudsman's functions relating to an investigation, or
  - (b) does any act in relation to an investigation that would constitute contempt of court if the investigation were proceedings in the High Court (or, in Scotland, the Court of Session).
- (2) The Ombudsman may certify the obstruction or act to the High Court (or, in Scotland, the Court of Session).
- (3) The court may inquire into the certified obstruction or act.
- (4) If the court, having heard any witness on behalf of or against the person and any statement in the person's defence, is satisfied that the person—
  - (a) without lawful excuse, obstructed the discharge of any of the Ombudsman's functions relating to the investigation, or
  - (b) did the act referred to in subsection (1)(b),it may deal with the person in any way in which it could deal with the person if he or she had committed contempt in relation to the court.
- (5) In this section, “act” includes an omission and references to the doing of an act are to be read accordingly.

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**Changes to legislation:** *There are currently no known outstanding effects for the Armed Forces (Service Complaints and Financial Assistance) Act 2015, Cross Heading: Service complaints. (See end of Document for details)*

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### *Reports of investigation*

#### **340L Report and recommendations**

- (1) The Service Complaints Ombudsman must, after carrying out an investigation, prepare a report setting out—
  - (a) the Ombudsman's findings, and
  - (b) any recommendations referred to in subsection (2).
- (2) Those recommendations are—
  - (a) on an investigation under section 340H(1)(a) where the Ombudsman finds that the service complaint to which the investigation relates is well-founded, the Ombudsman's recommendations (if any) on what redress would be appropriate;
  - (b) on an investigation under section 340H(1)(b), (c) or (d) where the Ombudsman finds that the allegation to which the investigation relates is well-founded, the Ombudsman's recommendations (if any) as a result of that finding;
  - (c) where, by virtue of section 340H(7), the Ombudsman finds maladministration in connection with the handling of a service complaint, the Ombudsman's recommendations (if any) as a result of that finding.
- (3) The Ombudsman may for the purposes of subsection (2)(b) or (c) make any recommendations that the Ombudsman considers appropriate, including recommendations for the purpose of remedying—
  - (a) the maladministration or undue delay to which the finding relates, and
  - (b) any injustice that the Ombudsman considers has or could have been sustained, in consequence of the maladministration or undue delay, by the complainant.
- (4) The report must include the Ombudsman's reasons for each of the findings and recommendations.
- (5) The Ombudsman must send a copy of the report to—
  - (a) the Defence Council,
  - (b) the complainant, and
  - (c) any other persons specified, or of a description specified, in regulations made by the Secretary of State.
- (6) The Ombudsman may send a copy of the report to any other persons the Ombudsman considers appropriate.
- (7) The Secretary of State may make regulations with respect to reports under this section; and the regulations may in particular include—
  - (a) further provision about the preparation of reports;
  - (b) provision for the correction of accidental errors in reports;
  - (c) provision about obligations (including obligations of confidentiality) that may be imposed on persons to whom reports are sent.

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**Changes to legislation:** *There are currently no known outstanding effects for the Armed Forces (Service Complaints and Financial Assistance) Act 2015, Cross Heading: Service complaints. (See end of Document for details)*

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### **340M Action following receipt of report**

- (1) The Defence Council must—
  - (a) consider a report under section 340L,
  - (b) notify the Service Complaints Ombudsman and the complainant, giving reasons in writing, of the action (if any) the Council decide to take in response to the findings and any recommendations contained in the report, and
  - (c) where the Council decide to reject a recommendation, notify the Ombudsman and the complainant, giving reasons in writing for the rejection.
- (2) Where the Defence Council decide that a service complaint should be reconsidered to any extent, they must decide whether the reconsideration is to be carried out—
  - (a) by a person or panel of persons appointed by the Council, or
  - (b) by the Council themselves;but this is subject to any provision made by virtue of subsection (6).
- (3) The Defence Council must not appoint a person or panel to reconsider a service complaint unless—
  - (a) the person is, or all the persons on the panel are, authorised by the Council to make the decisions required in connection with the reconsideration and to grant any appropriate redress, or
  - (b) the Council propose to authorise that person or those persons for those purposes.
- (4) The Defence Council may give such directions as they consider appropriate in connection with the reconsideration of a service complaint by a person or panel appointed under subsection (2)(a).
- (5) The power of the Defence Council under subsection (4) is subject to any provision made in service complaints regulations about—
  - (a) the procedure to be followed in connection with the reconsideration of a service complaint;
  - (b) the persons to be notified of the decision on reconsideration.
- (6) The power of the Secretary of State to make regulations under section 340E(1) includes power—
  - (a) to provide that persons of a specified description may not be appointed under subsection (2)(a) (whether or not as part of a panel);
  - (b) to require the Defence Council, in relation to any service complaint of a specified description, to act under subsection (2)(a) so as to appoint—
    - (i) a person who is independent, or of a specified description, or both;
    - (ii) a panel that satisfies one or more of the requirements listed in subsection (7);
  - (c) in a case where a requirement within subsection (7)(b) has effect, to require specified functions of a panel to be exercised by the independent members of the panel.

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- (7) These are the requirements mentioned in subsection (6)(b)(ii)—
  - (a) all of the members of the panel must be independent;
  - (b) the panel must include at least a specified number or proportion of independent members;
  - (c) the panel must include a person of a specified description.
- (8) The Defence Council may delegate to any person any of the Council's functions under this section, other than—
  - (a) the Council's function of reconsidering a service complaint, or
  - (b) any function of the Council by virtue of subsection (3)(b) in connection with authorising a person to make decisions and to grant redress.
- (9) Subsection (8) does not affect the application of section 1(5) or (7) of the Defence (Transfer of Functions) Act 1964 (discharge by Service Boards of Defence Council functions) in relation to the Defence Council's functions under this section.
- (10) Section 340E(4) and (5) apply for the purposes of subsections (6) and (7).

*Service Complaints Ombudsman's function of referring allegations*

**340N Referral of certain allegations**

- (1) Where the Service Complaints Ombudsman considers that a communication made to the Ombudsman alleges that a person named in the communication—
  - (a) is subject to service law and has been wronged in any matter relating to his or her service, or
  - (b) was wronged in any matter relating to his or her service which occurred while the person was subject to service law,
 the Ombudsman may refer the allegation to the appropriate officer.
- (2) “The appropriate officer” is the officer whom the Ombudsman considers to be the officer to whom a service complaint made by the person in respect of the alleged wrong is (under service complaints regulations) to be made.
- (3) If an allegation is referred under subsection (1), the appropriate officer must as soon as is reasonably practicable—
  - (a) inform the person that the allegation has been so referred,
  - (b) ensure that the person is aware of—
    - (i) the procedure for making a service complaint, and
    - (ii) the effect on the making of service complaints of provision made by virtue of section 340B(2)(c) (time limit), and
  - (c) ascertain whether the person wishes to make a service complaint in respect of the alleged wrong.
- (4) Regulations made by the Secretary of State must make provision—
  - (a) about matters that must be notified to the Ombudsman where an allegation is referred under subsection (1), and
  - (b) about the time by which notification must be given.

**Changes to legislation:** There are currently no known outstanding effects for the Armed Forces (Service Complaints and Financial Assistance) Act 2015, Cross Heading: Service complaints. (See end of Document for details)

### *Annual report by Service Complaints Ombudsman*

#### **340O Annual report on system for dealing with service complaints**

- (1) The Service Complaints Ombudsman must, for each calendar year, prepare a report covering the following matters.
  - (2) Those matters are—
    - (a) the efficiency, effectiveness and fairness with which the system for dealing with service complaints has operated during that year,
    - (b) the exercise by the Ombudsman during that year of the Ombudsman's functions under this Part, and
    - (c) such other aspects of the system mentioned in paragraph (a), and such matters relating to the functions mentioned in paragraph (b), as the Ombudsman considers appropriate or the Secretary of State may direct.
  - (3) The Ombudsman must give the report to the Secretary of State as soon as practicable after the end of the calendar year to which the report relates.
  - (4) The Secretary of State must, on receiving a report under subsection (1), lay it before Parliament.
  - (5) The Secretary of State may exclude from any report laid under subsection (4) any material whose publication the Secretary of State considers—
    - (a) would be against the interests of national security, or
    - (b) might jeopardise the safety of any person.
  - (6) The Secretary of State may require the Ombudsman to prepare and give to the Secretary of State a report on—
    - (a) any aspect of the system mentioned in subsection (2)(a);
    - (b) any matter relating to any of the Ombudsman's functions under this Part.”
- (2) In consequence of subsection (1), in the Armed Forces Act 2006, omit sections 334 to 339.

#### **Commencement Information**

**I2** S. 2 in force at 1.1.2016 by S.I. 2015/1957, reg. 2 (with savings and transitional provisions in S.I. 2015/1969)

### **3 Consequential amendments** **U.K.**

The Schedule contains amendments that are consequential on sections 1 and 2.

#### **Commencement Information**

**I3** S. 3 in force at 1.1.2016 by S.I. 2015/1957, reg. 2 (with savings and transitional provisions in S.I. 2015/1969)

**Changes to legislation:**

There are currently no known outstanding effects for the Armed Forces (Service Complaints and Financial Assistance) Act 2015, Cross Heading: Service complaints.