

EXPLANATORY MEMORANDUM TO
THE ARMED FORCES (SERVICE COMPLAINTS) REGULATIONS 2015

2015 No. 1955

**THE ARMED FORCES (SERVICE COMPLAINTS OMBUDSMAN
INVESTIGATIONS) REGULATIONS 2015**

2015 No. 1956

**THE ARMED FORCES (SERVICE COMPLAINTS AND FINANCIAL
ASSISTANCE) ACT 2015 (TRANSITIONAL AND SAVINGS PROVISIONS)
REGULATIONS 2015**

2015 No. 1969

AND

**THE ARMED FORCES (SERVICE COMPLAINTS AND FINANCIAL
ASSISTANCE) ACT 2015 (COMMENCEMENT) REGULATIONS 2015**

2015 No. 1957 (C. 121)

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Defence and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of these instruments

- 2.1 These instruments form part of a package of five statutory instruments required to implement a new service complaints system for the armed forces provided for in new section 365B and Part 14A of the Armed Forces Act 2006 (“the 2006 Act”), as inserted by sections 1 to 3 of, and the Schedule to, the Armed Forces (Service Complaints and Financial Assistance) Act 2015 (“the 2015 Act”). The fifth instrument, the Armed Forces (Service Complaints Miscellaneous Provisions) Regulations 2015 (“the Miscellaneous Provisions Regulations”), is subject to the affirmative procedures.
- 2.2 A member or former member of the armed forces has the right to make a service complaint if he or she thinks himself or herself wronged in a matter relating to his or her service, including if he or she alleges bullying, harassment or discrimination, or biased or dishonest behaviour. These instruments are:
 - Defence Council Regulations about the procedure for making and dealing with a service complaint. These Regulations provide for: how a service complaint is to be made, how decisions on the admissibility of a complaint are to be made, appointments of decision makers on service complaints and what those

decisions need to cover. Time limits in respect of the internal process are also provided for in these Regulations;

- Secretary of State Regulations on the procedure to be followed in an investigation by the Service Complaints Ombudsman under new section 340H(1) of the 2006 Act, including application requirements and time limits;
- Secretary of State Regulations on the transitional and savings provisions to make clear what is to happen in respect of all pre-commencement complaints which are still being considered in the existing system on the commencement of the new system; and
- Secretary of State Regulations commencing sections 1 to 3 of, and the Schedule to, the 2015 Act.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Armed Forces (Service Complaints and Financial Assistance) Act 2015 (Transitional and Savings Provisions) Regulations 2015 (“the Transitional Regulations”) make provision for the way in which complaints made under the old complaints provisions are to be dealt with after the commencement of the new provisions (and the repeal of the old). In doing so they seek to address issues that might in practice arise. They do not address issues that will not in practice arise. In particular, they do not deal with the situation where one, but not both, of the decisions made at the beginning of the complaint (termed the initial decision on subject matter and the initial decision on timeliness in the Regulations) has been taken before the commencement date. That is because, to the extent both decisions need to be taken, they will be taken on the same occasion.
- 3.2 Regulation 7 of the Transitional Regulations refers to the Miscellaneous Provisions Regulations. These are currently before Parliament for approval by each House of Parliament. In the event that Parliament approves the Miscellaneous Provisions Regulations and these are then made, they will come into force on 1st January 2016 along with the other instruments being made in connection with the introduction of the new complaints system. The effect of the provisions in regulation 7 is to modify the application of certain provisions in the Miscellaneous Provisions Regulations in relation to Part 3 complaints (as defined in the Transitional Regulations) if the Miscellaneous Provisions Regulations are made. Although referring to draft Regulations is unusual, it is appropriate to do so in this context in order that those provisions apply appropriately if they are made.

Other matters of interest to the House of Commons

- 3.3 As these instruments are subject to negative resolution procedure and have not been prayed against (or in the case of the commencement regulations, are subject to no parliamentary procedure), consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Along with the Miscellaneous Provisions Regulations, these instruments enable the implementation of a new system to deal with complaints by members or former

members of the armed forces under Part 14A of 2006 Act, as amended. The Miscellaneous Provisions Regulations provide for:

- The matters about which a person may not make a service complaint;
- Persons who may not be appointed to decide a service complaint or an appeal or re-consideration of one;
- The circumstances which require the Defence Council to appoint at least one independent person on an appeal or re-consideration; and
- The events which require the appropriate officer in the service complaints system to notify the new Service Complaints Ombudsman following a complaint which was made after an initial referral from him or her.

4.2 Collectively, these five instruments will make clear how both the new internal redress system and the new Ombudsman investigation procedures are to operate. The Miscellaneous Provisions Regulations are subject to the affirmative procedure and were laid on 28 October 2015.

5. Extent and Territorial Application

5.1 The extent of these instruments is the United Kingdom.

5.2 The territorial application of these instruments is the United Kingdom.

6. European Convention on Human Rights

6.1 As these instruments are subject to negative resolution procedure (or in the case of the commencement Regulations, no parliamentary procedure), no statement is required.

7. Policy background

What is being done and why

7.1 Members of the armed forces have no contract of employment and no system of collective bargaining. Disobedience to lawful commands are offences under the 2006 Act, pay and other benefits are determined and altered unilaterally, and historically the rights of service personnel to bring legal claims against the Crown are also limited. It has therefore long been recognised that members of the armed forces should have some other effective way of obtaining redress for grievances.

7.2 Currently, under the 2006 Act the Service Complaints Commissioner is required to report annually on whether the current system for handling service complaints under the Act is fair, efficient and effective. The first Commissioner, Dr Atkins, frequently criticised the system as ineffective, overloaded and beset by delay. In her annual report on service complaints for the year 2013 the Service Complaints Commissioner said she could not provide an assurance that the current system was working and was critical of how long it took to resolve complaints particularly those relating to bullying and harassment. She also raised the issue of the level of manpower needed to support the system. The House of Commons Defence Committee had also taken a close interest in these matters and published a report on the work of the Service Complaints Commissioner on 12 February 2013. This report raised concerns about the workings of the complaints system and recommended the creation of an Armed Forces Ombudsman.

7.3 The Government worked with Dr Atkins to consider the most appropriate way to reform the service complaints system. The Government's intentions for reform were

set out in a written ministerial statement made on 13 March 2014. The subsequent Armed Forces (Service Complaints and Financial Assistance) Bill received Royal Assent on 26 March 2015. It introduces a more streamlined internal service complaints process and creates a new Service Complaints Ombudsman with powers to investigate service complaints and review certain procedural decisions taken during the internal process.

7.4 These instruments have the following aims:

- The rules on how to make a service complaint and on how it is to be handled are intended to support fairness, consistency of approach and clarity, as well as providing for certain rights and obligations as required by the parent Act;
- The rules for applying to the Ombudsman, and the procedures which can be followed by the Ombudsman during an investigation are intended also to support consistency of approach and fairness, and in particular include matters which if not provided for in legislation could not be enforced by the Ombudsman, such as time limits;
- The rules for transitioning existing complaints to the new system are intended to ensure that as many existing complainants as possible benefit from the new streamlined process in the reformed redress of complaints system and oversight by the Ombudsman. For those complaints that remain on the old system after commencement of the new system, transition arrangements and savings provisions aim to retain some existing rights and to provide access to the Ombudsman.

8. Consultation outcome

8.1 There has been no formal consultation on these instruments. A draft of the Armed Forces (Service Complaints) Regulations 2015 and of the Ombudsman Investigations Regulations was published for introduction of the Bill in June 2014 and revised when the Bill entered the House of Commons in December 2014.

9. Guidance

9.1 Guidance will be set out in a Joint Service Publication for anyone involved in a service complaint such as a complainant or a respondent and for those involved in delivering the service complaints process. A Joint Service Publication is an authoritative set of rules or guidelines specific to, and applicable across, the Ministry of Defence. Internal communications will also describe the main changes, ahead of and following implementation.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument because no impact on business is foreseen.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 These instruments and the other associated instrument for implementing the new system are intended to assist with the fairness, effectiveness and efficiency of the system and that will be reviewed annually by the Ombudsman in her annual report which is laid before Parliament. Monitoring and reviewing the success of these instruments will be done as part of the Ministry of Defence's published response to those reports and the issues the reports highlight in relation to the procedures set out in these instruments.

13. Contact

- 13.1 Tracy Sexton at the Ministry of Defence telephone: 0207 218 0564 or email: tracy.sexton743@mod.uk is the point of contact regarding these instruments.