
STATUTORY INSTRUMENTS

2015 No. 1969

The Armed Forces (Service Complaints and Financial Assistance) Act 2015 (Transitional and Savings Provisions) Regulations 2015

PART 3

Pre-commencement complaints: application of the new complaints provisions

Pre-commencement complaints treated as made under new complaints provisions

- 6.—(1) This regulation applies to a pre-commencement complaint other than—
- (a) a Part 2 complaint; or
 - (b) a finalised complaint.
- (2) A complaint to which this regulation applies is referred to in these Regulations as “a Part 3 complaint”.
- (3) The new complaints provisions⁽¹⁾ apply to a Part 3 complaint—
- (a) in the case of a complaint made under section 334(1)(a) (complaint by person subject to service law), as if it were a complaint made under section 340A(1); and
 - (b) in the case of a complaint made under section 334(1)(b) (complaint by person who has ceased to be subject to service law), as if it were a complaint made under section 340A(2).

Application of the new complaints provisions to Part 3 complaints

- 7.—(1) Paragraphs (2) to (4) make provision about the application of the new complaints provisions to a Part 3 complaint.
- (2) The statement of complaint delivered under old regulation 6 is to be treated as if it were a statement of complaint made under new regulation 4.
- (3) Where an officer has been appointed under regulation 3(b) of the old regulations as the prescribed officer, the appointment has effect as an appointment of the specified officer under new regulation 3(1)(b).
- (4) Where an officer has been appointed under regulation 5 of the old regulations as the prescribed officer, the appointment has effect as an appointment of the specified officer under new regulation 3(3).
- (5) Old regulations 14 to 18 apply instead of new regulation 6 (period for making a service complaint), with a reference in those regulations to a prescribed officer treated as a reference to the specified officer.

(1) For the definition of “the new complaints provisions”, see section 6(5) of the Armed Forces (Service Complaints and Financial Assistance) Act 2015 (c. 19).

(6) The reference in section 340B(5) (whether a service complaint is not admissible) to regulations under section 340A(4) is to be treated as if it were a reference to regulations made under section 334(2).

(7) New regulation 11 (time limit for appealing against a decision) applies as if, for paragraph (1), there were substituted—

“(1) An appeal under regulation 10(1) against a decision under regulation 9(2)(a) or (b) may be proceeded with if—

(a) the appeal is brought—

(i) within the period of six weeks beginning with the day on which the complainant received notification under regulation 9(3) of that decision; or

(ii) within the period of three months beginning with the day on which the matter complained of occurred, or where the matter occurred over a period of time, the day at the end of the period; or

(b) the appeal is brought after the end of both of the periods mentioned in sub-paragraph (a) but the Defence Council consider it is just and equitable to permit the appeal to be proceeded with.”

(8) In the event that the draft Regulations are made, regulation 5(2) of those Regulations (allegations in relation to which independent persons must be appointed) applies as if, for sub-paragraphs (a) to (f), there were substituted sub-paragraphs (a) to (g) of regulation 9(1) of the Armed Forces (Redress of Individual Grievances) Regulations 2007(2) except that for the purposes of this paragraph—

(a) “alleges” is omitted from sub-paragraphs (a) to (f); and

(b) in sub-paragraph (g)—

(i) “concerns” is omitted; and

(ii) “improper” is inserted between “the” and “exercise”.

(9) Paragraphs (10) to (13) apply to a Part 3 complaint made following a referral by the Service Complaints Commissioner to the relevant officer under section 338(2).

(10) The Armed Forces (Service Complaints Commissioner) Regulations 2007 (“the 2007 Regulations”) continue to have effect for the purpose of making a notification under regulation 3 of those Regulations of an event that happened before the commencement date.

(11) In its application by virtue of paragraph (10), regulation 3 of the 2007 Regulations applies as if the reference to notifying the Commissioner were to notifying the Service Complaints Ombudsman.

(12) In the event that the draft Regulations are made, regulation 6 of those Regulations applies in relation to an occurrence of an event mentioned in that regulation that happens on or after the commencement date as if the complaint had been made following a referral by the Ombudsman to the appropriate officer under section 340N(1).

(13) In the event that the draft Regulations are made, in its application by virtue of paragraph (12), regulation 6 of those Regulations applies as if the requirement to notify imposed on the appropriate officer were a requirement to notify imposed on the relevant officer.

(14) In this regulation, “the draft Regulations” means the Armed Forces (Service Complaints Miscellaneous Provisions) Regulations 2015(3) laid in draft before Parliament under section 373(3) on 28th October 2015 for approval by resolution of each House of Parliament.

(2) [S.I. 2007/3353](#).

(3) ISBN 9780111140222. The draft Regulations are printed and published by The Stationery Office. They are available on [legislation.gov.uk](http://www.legislation.gov.uk) (link: http://www.legislation.gov.uk/ukdsi/2015/9780111140222/pdfs/ukdsi_9780111140222_en.pdf) or may be purchased from booksellers which sell draft statutory instruments.

Part 3 complaint refused at an initial stage

8.—(1) Paragraphs (2) and (3) apply to a Part 3 complaint that, but for regulation 3(2) of these Regulations (pre-commencement complaints refused at an initial stage after 1st October 2015 are not finalised complaints), would be a finalised complaint because it has been refused at an initial stage before the commencement date.

(2) The refusal is to be treated as if it were a decision made by the specified officer under new regulation 5(1) that the complaint is not admissible.

(3) New regulation 7(2) (time limit for asking the Ombudsman to review a decision that a complaint is not admissible) applies to the complaint as if the reference to four weeks were to three months.

Part 3 complaint approved at the initial stage but a first substantive decision has not been notified

9.—(1) Paragraph (2) applies if, before the commencement date, a Part 3 complaint has been approved at the initial stage but the first substantive decision has not been notified to the complainant.

(2) The complaint is to be treated as if it had been referred under new regulation 5(3) to the Defence Council.

(3) For the purposes of this regulation, a Part 3 complaint has been approved at the initial stage if decision 1 and decision 2, as described in paragraphs (4) and (5) respectively, have both been made.

(4) Decision 1 is an initial decision on subject matter that all or some of the matters contained in a statement of complaint are matters about which a service complaint may be made where the approval (and consequently a reference in this regulation to the complaint having been approved) refers only to those matters about which a service complaint may be made.

(5) Decision 2 is an initial decision on timeliness that—

- (a) the statement of complaint was delivered within the period provided for in old regulations 15 to 17; or
- (b) the service complaint may be made after the end of that period by virtue of old regulation 18.

Part 3 complaint where a first substantive decision has been notified but no application for referral has been made

10.—(1) Paragraph (4) applies in relation to a Part 3 complaint if, immediately before the commencement date, condition A or B is satisfied.

(2) Condition A is that—

- (a) the prescribed officer has made a first substantive decision;
- (b) he or she has notified the complainant of that decision; and
- (c) the complainant has not applied under old regulation 21(a) for the complaint to be referred to a superior authority.

(3) Condition B is that—

- (a) the superior officer has made a first substantive decision;
- (b) he or she has notified the complainant of that decision; and
- (c) the complainant has not applied under old regulation 25(a) for the complaint to be referred to the Defence Council.

(4) The decision of the prescribed or superior officer is to be treated as if it were a decision of a person or panel of persons under new regulation 9(2), notified to the complainant under new regulation 9(3).

Part 3 complaint where a first substantive decision has been notified and an application for referral has been made

11.—(1) Paragraphs (4) and (5) apply in relation to a Part 3 complaint if, immediately before the commencement date, condition A or B is satisfied.

(2) Condition A is that—

- (a) the prescribed officer has made a first substantive decision;
- (b) he or she has notified the complainant of that decision;
- (c) the complainant has applied under old regulation 21(a) for the complaint to be referred to a superior authority; and
- (d) the prescribed officer has not decided whether to make the referral.

(3) Condition B is that—

- (a) the superior officer has made a first substantive decision;
- (b) he or she has notified the complainant of that decision;
- (c) the complainant has applied under old regulation 25(a) for the complaint to be referred to the Defence Council; and
- (d) the superior officer has not decided whether to make the referral.

(4) The decision of the prescribed or superior officer mentioned at paragraph (2)(a) or (3)(a) is to be treated as if it were a decision of a person or panel of persons under new regulation 9(2), notified to the complainant under new regulation 9(3).

(5) The application made by the complainant under old regulation 21(a) or 25(a) is to be treated as if it were an appeal under new regulation 10(1) against the decision under new regulation 9(2), in relation to which the Defence Council must decide, under new regulation 11, whether the appeal can be proceeded with.

Part 3 complaint where a first substantive decision has been notified, an application for referral has been made and the prescribed or superior officer has agreed to make the referral

12.—(1) Paragraphs (4) and (5) apply in relation to a Part 3 complaint if, immediately before the commencement date, condition A or B is satisfied.

(2) Condition A is that—

- (a) the prescribed officer has made a first substantive decision;
- (b) he or she has notified the complainant of that decision;
- (c) the complainant has applied under old regulation 21(a) for the complaint to be referred to a superior authority;
- (d) the prescribed officer has agreed to refer the complaint to a superior officer or the Defence Council; and
- (e) the complainant has not been notified of the decision on the complaint by the superior officer or Defence Council (or a service complaint panel to which the Defence Council delegated the decision).

(3) Condition B is that—

- (a) the superior officer has made a first substantive decision;
- (b) he or she has notified the complainant of that decision;
- (c) the complainant has applied under old regulation 25(a) for the complaint to be referred to the Defence Council;
- (d) the superior officer has agreed to refer the complaint to the Defence Council; and
- (e) the complainant has not been notified of the decision on the complaint by the Defence Council (or a service complaint panel to which the Defence Council delegated the decision).

(4) The decision of the prescribed or superior officer mentioned at paragraph (2)(a) or (3)(a) is to be treated as if it were a decision of a person or panel of persons under new regulation 9(2), notified to the complainant under new regulation 9(3).

(5) The application made by the complainant under old regulation 21(a) or 25(a) is to be treated as if it were an appeal under new regulation 10(1) against the decision under new regulation 9(2), in relation to which the Defence Council—

- (a) have decided, under new regulation 11, that the appeal can be proceeded with; and
- (b) must decide, under new regulation 13(1), who is to determine the appeal.