

2022 No. 494

DEFENCE

**The Armed Forces (Service Complaints) (Amendment)
Regulations 2022**

<i>Made</i> - - - -	<i>27th April 2022</i>
<i>Laid before Parliament</i>	<i>4th May 2022</i>
<i>Coming into force</i> - -	<i>15th June 2022</i>

The Defence Council makes the following Regulations in exercise of the powers conferred by sections 340B(1) and (2), 340D(1), (2) and (6) and 373(5)(a) of the Armed Forces Act 2006(a).

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Armed Forces (Service Complaints) (Amendment) Regulations 2022 and come into force on 15th June 2022.

(2) These Regulations extend to the United Kingdom, the Isle of Man and the British Overseas Territories except Gibraltar.

Amendment of the Armed Forces (Service Complaints) Regulations 2015

2.—(1) The Armed Forces (Service Complaints) Regulations 2015(b) are amended as follows.

(2) In regulation 2(1) (interpretation), in the definition of “specified officer”, for “determined” substitute “appointed”.

(3) For regulation 3 (specified officer) substitute—

“**3.**—(1) Subject to paragraph (2), a specified officer is an officer appointed by the Defence Council, or by a person authorised by the Defence Council, for the purposes of deciding whether any service complaint is admissible.

(2) If in relation to a service complaint the officer who would be the specified officer in accordance with paragraph (1) is also the subject of the service complaint, or is alleged in the statement of 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 or by a person authorised by the Defence Council who is not so subject or alleged to be implicated.”

(4) In regulation 4(2) (procedure for making a service complaint), for sub-paragraph (b) substitute—

“(b) the name, where known, of any person who is alleged by the complainant to be the subject of the complaint or implicated in any way in the matter, or matters, complained about;”.

(a) 2006 c. 52. Sections 340B and 340D were inserted by section 2(1) of the Armed Forces (Service Complaints and Financial Assistance) Act 2015 (c. 19). Section 340D was amended by section 10(2) to (5) of the Armed Forces Act 2021 (c. 35).

(b) S.I. 2015/1955.

- (5) In regulation 10 (appeals against decisions on a service complaint)—
- (a) for paragraph (1) substitute—

“(1) Where a decision under regulation 9(2)(a) or (b) is made by a person or panel of persons appointed under regulation 9(1)(a), the complainant may appeal to the Defence Council against that decision on one or more of the following grounds—

 - (a) that there was a material procedural error;
 - (b) that the decision was based on a material error as to the facts;
 - (c) that there is new evidence, and it is likely that the decision would have been materially different if the new evidence had been made available to that person or panel.”;
 - (b) after paragraph (1) insert—

“(1A) For the purposes of paragraph (1)(c), “new evidence” is evidence which was not available, and could not with the exercise of reasonable diligence by the complainant have been made available, before the decision was made.”;
 - (c) in paragraph (3), for the words from “state” to the end substitute “must set out the grounds on which the appeal against the decision is made.”;
 - (d) in paragraph (4), for “11(1)” substitute “11(1)(b)”.
- (6) For regulation 11 (and the heading to that regulation) substitute—

“Further provision about bringing an appeal

- 11.**—(1) An appeal under regulation 10(1) against a decision under regulation 9(2)(a) or (b) may be proceeded with if—
- (a) the Defence Council decides the appeal is brought on at least one valid ground under regulation 10(1); and
 - (b) the appeal is brought—
 - (i) within two weeks beginning with the day on which the complainant received notification under regulation 9(3) of the decision on the service complaint; or
 - (ii) after the end of the period stated in paragraph (i) but the Defence Council consider it is just and equitable to allow the appeal to be proceeded with.
- (2) If the Defence Council decides that an appeal cannot be proceeded with, they must notify 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.”.

Saving Provision

3. The amendments made by regulation 2(5) and (6) of these Regulations do not have any effect in relation to a service complaint where a decision on the complaint under regulation 9(2)(a) or (b) of the Armed Forces (Service Complaints) Regulations 2015 was made before 15th June 2022.

26th April 2022

Leo Doherty
Member of the Defence Council
Ministry of Defence

27th April 2022

Charlie Pate
Member of the Defence Council
Ministry of Defence

EXPLANATORY NOTE

(This note is not part of the Regulations)

Under section 340A(1) and (2) of the Armed Forces Act 2006 (c. 52) (“the Act”), a person subject to service law, or who has ceased to be subject to service law, who thinks they have been wronged in any matter relating to their service, may make a service complaint about the matter.

These Regulations amend the Armed Forces (Service Complaints) Regulations 2015 (S.I. 2015/1955) (“the 2015 Regulations”), which make provision about the procedure for making and dealing with a service complaint and related appeals.

Regulation 2(2) and (3) amend the definition of specified officer.

Regulation 2(4) amends regulation 4 of the 2015 Regulations, which sets out the information which must be included in a statement of complaint. This must now include the name, where known, of any person who is alleged by the complainant to be the subject of, or implicated in, the complaint.

Regulation 2(5) amends regulation 10 of the 2015 Regulations. The amendments made by this regulation set out the grounds on which an appeal against a decision on a service complaint by a panel or person appointed by the Defence Council can be brought, and make consequential amendments to the current procedure for making an appeal.

Regulation 2(6) replaces regulation 11 of the 2015 Regulations with a new provision. It provides that an appeal may be proceeded with where it has been brought on a valid ground, and within the time limits specified in the regulation. This will now be two weeks beginning with the day on which the complainant received notification of the decision on the service complaint, unless the Defence Council considers that it is just and equitable to allow the appeal to be proceeded with after such period. The complainant has a right to apply to the Ombudsman for a review of the Defence Council’s decision that an appeal cannot be proceeded with.

Regulation 3 contains a saving provision to ensure that the changes relating to appeals in regulation 2(5) and (6) will not apply to a service complaint where a decision under regulation 9(2)(a) or (b) of the 2015 Regulations was made on that complaint before 15th June 2022.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

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