

ARMED FORCES (SERVICE COMPLAINTS AND FINANCIAL ASSISTANCE) ACT 2015

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Armed Forces (Service Complaints and Financial Assistance) Act 2015 which received Royal Assent on 26 March 2015.

- These Explanatory Notes have been prepared by the Ministry of Defence in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by Parliament.
- The Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Notes need to be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

Table of Contents

Subject	Page of these Notes
Overview of the Act	Page 3
Policy background	Page 3
Legal background	Page 4
Territorial application of the Act in the UK	Page 4
Commentary on provisions of the Act	Page 5
Section 1: Creation of office of Service Complaints Ombudsman	Page 5
Section 2: Reform of system for redress of individual grievances	Page 6
Section 4: Financial Assistance for benefit of the armed forces community	Page 10
Section 5: Extent	Page 10
Section 6: Transitional Provision	Page 10
Schedule: Service complaints: consequential amendments	Page 11
Commencement	Page 11
Hansard references	Page 12
Annex A- Territorial application of each Part of the Act	Page 14

Overview of the Act

The Act deals with two matters:

- Reform of the service complaints system
- Payments to charities and other organisations which support the armed forces community.

Policy background

The Service Complaints Commissioner is required to report annually on whether the current system for handling service complaints, which was set up by the Armed Forces Act 2006, is fair, efficient and effective. The former Commissioner, Dr Susan Atkins, has frequently criticised the system as ineffective, overloaded and beset by delay. In her annual report on service complaints for the year 2013, which was published on 27 March 2014, Dr Atkins said she could not provide an assurance that the current system was working. She was critical of how long it took to resolve complaints, particularly those relating to bullying, harassment and improper behaviour. She also raised the issue of the level of manpower needed to support the system. The House of Commons Defence Committee has 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.

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. This Act makes the legislative changes needed to take forward those reforms.

The Armed Forces (Service Complaints and Financial Assistance) Act 2015:

- Creates a Service Complaints Ombudsman to replace the existing office of Service Complaints Commissioner. The Ombudsman will be appointed by Her Majesty on the recommendation of the Defence Secretary.
- Sets out the framework for the redress of service complaints including who can make a complaint and how complaints will be investigated (both internally within the armed forces and, if necessary, by the Ombudsman). The Act introduces a reformed and streamlined appeals process.

- Gives the new Ombudsman powers in relation to the complaints system. These powers include: the ability to investigate, on application by the complainant, a service complaint or whether an individual complaint has been handled properly during the internal process (including an allegation of undue delay); a power to recommend action to the Defence Council to put matters right; a power to overturn a decision that a complaint is not admissible; and a power to require the production of information and documents for the purposes of an investigation (backed with the ability to refer a potential act of contempt of court to the High Court or Court of Session for them to inquire into). The detail of the complaints procedure will, as now, largely be set out in secondary legislation and the Act includes powers to set out in regulations the details governing the reformed complaints system (including on the admissibility of complaints, eligibility of decision-makers, requirements relating to independent decision-making and procedural matters in relation to Ombudsman investigations). The Act provides for the continuation of certain functions currently exercised by the Service Complaints Commissioner: the referral of allegations into the service complaints system, the right to be notified of the progress of those complaints, and a duty to prepare an annual report on the system (which is given to the Secretary of State and then laid before Parliament).
- Confers a power on the Secretary of State to make payments to charities, benevolent organisations and others for the benefit of the armed forces community.

Legal background

The legislation relating to the existing system for the redress of service complaints is set out in a combination of primary and subordinate legislation. The relevant provisions are:

- sections [334 to 339](#) and [366](#) of the Armed Forces Act 2006, which include changes made by the Armed Forces Act 2011
- [the Armed Forces \(Redress of Individual Grievances\) Regulations 2007](#) (SI 2007/3353)
- [the Armed Forces \(Service Complaints Commissioner\) Regulations 2007](#) (SI 2007/3352)
- the Armed Forces Redress of Individual Grievances (Procedures and Time Limits) Regulations 2007. These can be found on the MOD's gov.uk website at annex D of Joint Service Publication 831 "Redress of Individual Grievances: Service Complaints Issue 2.2" via the following link: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/27866/jsp831_v2/

The Armed Forces Act 2006 will continue to be the main Act dealing with complaints within the armed forces, and this Act inserts new provisions into the 2006 Act.

Territorial application of the Act in the UK

The provisions of the Act extend to the whole of the United Kingdom.

Commentary on provisions of the Act

1. The Act repeals those provisions of Part 14 of the Armed Forces Act 2006 which set out the existing system for the redress of individual grievances for members of the armed forces. It also repeals section 366 of the Armed Forces Act 2006, which makes provision for the office of the Service Complaints Commissioner.

2. The Act inserts into the Armed Forces Act 2006 new Part 14A, which sets out the framework of a reformed system for the redress of service complaints. The Act provides for the creation of the office of Service Complaints Ombudsman and sets out the powers and functions of the Ombudsman, which will be greater than those of the Service Complaints Commissioner. Some of the new provisions allow or require the making of regulations to set out the detail of the processes and procedures governing the reformed system and some substantive matters.

Section 1: Creation of office of Service Complaints Ombudsman

E • W • S • NI

3. Section 1 inserts into the Armed Forces Act 2006 new section 365B, which creates the office of Service Complaints Ombudsman. It also repeals section 366 of the Armed Forces Act 2006, thereby abolishing the office of Service Complaints Commissioner. There will be transitional provision made under the power conferred on the Secretary of State by section 6 to ensure continuity of office from the Service Complaints Commissioner to the Service Complaints Ombudsman, to ensure continuity of functions and to provide for the treatment of complaints which have already begun under the current redress system before the new provisions come into force.

New section 365B Service Complaints Ombudsman

4. This section establishes the office of Service Complaints Ombudsman. It also sets out the eligibility criteria for appointment and the Ombudsman's status - notably providing that the Ombudsman cannot be a member of the armed forces or the civil service and will not be regarded as a Crown servant.

Section 2: Reform of system for redress of individual grievances

E · W · S · NI

5. Section 2 inserts new Part 14A into the Armed Forces Act 2006. This provides the framework for the new system for dealing with the redress of service complaints in new sections 340A to 340O of the 2006 Act. Although there will be many similarities between the reformed system and the existing one, changes will include making the system more streamlined by ensuring that matters will be decided with no more than one level of appeal. This will involve removing the current right in all cases to go to the Defence Council; and removing the ability of a limited number of Service personnel to have a service complaint referred to Her Majesty. The underlying policy aim is that the Defence Council will identify the lowest level with the necessary authority to deal with a complaint fully, as well as a higher level to provide a single level of appeal. In some cases, however, the sole level of decision will be at Defence Council level given the nature of those cases or their wide reaching potential implications.

6. The Defence Council, which is responsible for the command of the armed forces, will, as now, be responsible for making regulations providing in detail for the internal system of redress which meets the requirements of the new legislation.

7. The Secretary of State will also have functions of making regulations about certain aspects of the internal system, specifically about:

- matters excluded from the internal system (under new section 340A)
- who may be appointed to decide complaints and as to when, for example, independent members are required (under new section 340E)
- the role of the Ombudsman (under new sections 340H, 340I, 340L and 340N).

New section 340A Who can make a service complaint?

8. This section deals with who can make a service complaint. As under the existing system, serving or former members of the armed forces will be able to bring a complaint where they think they have been wronged in relation to their service in the armed forces. It also provides in section 340A(4) for the Secretary of State to make regulations regarding which complaints are excluded from the system.

New section 340B Procedure for making a complaint and determining admissibility

9. This new section provides in subsection (1) for the Defence Council to make regulations - referred to in the new Part 14A as "service complaints regulations" - about the procedure for making and dealing with a service complaint. It also states some key aspects of bringing a complaint that must be covered in the Defence Council regulations. The complaint must go to an officer who will decide whether the complaint is admissible. The officer must tell the complainant of his decision. If the officer rejects the complaint, the complainant will be able to go to the Ombudsman for a final decision on admissibility. The regulations may specify a time limit for bringing a complaint, which must be at least three months after the matter complained about happened.

10. A number of issues may arise at this stage such as whether the person has identified a potential wrong relating to his or her service in the armed forces, whether the complaint is about an excluded matter or whether it is made outside the applicable time limit.

New section 340C Decisions on service complaints

11. Under this section the Defence Council regulations will have to provide for the Council to appoint a person, a panel of persons, or the Council itself, to decide a complaint and to grant any appropriate redress within the authority of the person, panel or Council. The Defence Council will have to ensure that any person or panel appointed is or will be authorised by the Council to grant appropriate redress.

New section 340D Appeals

12. It is expected that, ordinarily, complaints will follow a two stage process involving an initial decision and (if required) an appeal. This section sets out stage two of the reformed system, which will only apply in respect of service complaints that are not considered by the Defence Council itself in the first instance. Under this section the Defence Council will be able to consider the appeal itself or to appoint a person or panel to do so. Again the Defence Council will have to ensure that whoever is appointed is or will be authorised by the Council to grant appropriate redress. Defence Council regulations may specify a time limit for bringing an appeal, which must be at least six weeks from the time the complainant received the initial decision.

New section 340E Further provision about persons and panels deciding service complaints etc

13. The Secretary of State will have the power to make regulations under section 340E(1) regarding the eligibility and independence of any person or panel appointed by the Defence Council under section 340C or 340D. Under this power it may be appropriate to exclude, for example, persons who have previously been involved in the matter. Independent members may be required in a number of circumstances, including in some cases to meet requirements of independence under article 6 of the European Convention on Human Rights.

New section 340F Investigation of complaints and delegation of Defence Council functions

14. Under this section, the Defence Council may authorise someone to investigate a service complaint on behalf of the Council, or on behalf of a panel or person appointed to decide the complaint or to determine an appeal relating to the complaint. It also provides that regulations made by the Defence Council may enable the Council to delegate some of its functions to other persons.

New section 340G Service complaints: other time limits

15. Time limits can be put in place by Defence Council regulations for taking different steps in the process. It is also envisaged that regulations will provide the Ombudsman with the power to review decisions not to proceed with a complaint because the complainant has failed to meet a time limit.

New section 340H Ombudsman investigations

16. This section describes the Ombudsman's investigation powers.

17. The first two cases to which those powers relate are service complaints in respect of which a final determination has been made under the internal redress system set out in the preceding provisions of new Part 14A for the Armed Forces Act 2006 (see new section 340H(1)(a) and (b) and (5)). If a complainant is unhappy with the outcome of a service complaint, or about the way the internal system has worked, he or she will be able to apply to the Ombudsman for an investigation into the complaint or an alleged maladministration in connection with the handling of the complaint.

18. Where the Ombudsman investigates a service complaint, the purpose of the investigation (as set out in new section 340H(6)) is to decide whether the complaint is well-founded and, if the Ombudsman thinks it is, to consider what if any redress would be appropriate. Where the Ombudsman investigates alleged maladministration in connection with the handling of a complaint, the purpose of the investigation is to decide whether the allegation is well-founded and, if the Ombudsman thinks it is, to decide whether the maladministration has or could have resulted in injustice to the complainant. In addition, where the Ombudsman investigates a service complaint or alleged maladministration, the Ombudsman can go on to investigate other, non-alleged maladministration where the possibility that such maladministration may have occurred becomes apparent during the course of the investigation (new section 340H(7)).

19. Regulations made by the Secretary of State may set a time limit for applying to the Ombudsman to investigate a service complaint or an allegation of maladministration in the handling of a service complaint, where the complaint is one that has been finally determined under the internal redress system. The time limit must not be less than six weeks after the complainant is notified of the final determination in the internal system. This is important in ensuring not only that allegations relating to service complaints that have been finally determined are examined while the circumstances are still reasonably current, but also that, after a set period, all parties can have some confidence that the matter is closed.

20. Where the Ombudsman has already investigated a service complaint that has been finally determined under the internal system, or an allegation of maladministration in connection with the handling of such a complaint, new section 340H(11) provides that the Ombudsman cannot investigate a subsequent application relating to the complaint except in circumstances set out in regulations made by the Secretary of State.

21. The other cases to which the Ombudsman's investigation powers relates are concerned with allegations of undue delay: see new section 340H(1)(c) and (d). The Ombudsman may investigate:

- an allegation of undue delay in the handling of a service complaint that has not yet been finally determined under the internal redress system;
- an allegation of undue delay in the handling of a "relevant service matter" - that is, a matter of a kind about which a service complaint may be made or could have been made but for the expiry of a time limit in accordance with the service complaints regulations.

22. The purpose of an investigation into alleged undue delay is to decide whether the allegation is well-founded and, if the Ombudsman thinks it is, to decide whether the undue delay has or could have resulted in injustice to the complainant. There is to be no formal time limit for applying for an investigation under new section 340H(1)(c) or (d) into undue delay.

New section 340I Procedure on Ombudsman investigations

23. The Ombudsman will have a power to decide whether to take on a case and when to bring it to an end. The Ombudsman will also have a power to investigate a service complaint or allegation in whole or in part. If the Ombudsman is satisfied that particular aspects of a complaint or allegation have already been satisfactorily dealt with, this power would permit the Ombudsman not to re-open those aspects. Where there has been an appeal in the internal process the Ombudsman's main focus will usually be on the appeal level, but - when carrying out an investigation under new section 340H(1)(b) into maladministration - the Ombudsman will be able to look at maladministration at any stage (including before the making of a service complaint) to see whether it may have 'infected' the final decision.

New sections 340J Power to require information, documents and evidence and 340K Obstruction and contempt

24. Under the internal redress system the Defence Council, as head of the chain of command, will be able to get the information they need to look into a complaint. As an outsider, the Ombudsman is given statutory powers to compel, if necessary, the production of documents or other information for the purposes of an investigation. To this extent, this Ombudsman, like others, will have a position like that of a judge in civil proceedings. Under section 340K the Ombudsman will have the backing of the powers of the courts if someone unlawfully obstructs him or her in carrying out an investigation or does something which would count as a "contempt" of court.

New sections 340L Report and recommendations and 340M Action following receipt of report

25. After completing an investigation under new section 340H, the Ombudsman will be required to produce a report setting out his or her findings and any recommendations resulting from those findings. The recommendations that may be made following particular kinds of investigation are set out in new section 340L(2).

26. The Ombudsman's report will have to be sent to at least the Defence Council and the person who brought the complaint. The Secretary of State may make regulations containing provision for the correction of accidental errors in reports and about obligations that may be imposed on persons to whom reports are sent. The Defence Council will be responsible for considering the Ombudsman's findings and recommendations and telling the Ombudsman what steps will be taken in response to them. This could involve a reconsideration of the complaint, in the light of the Ombudsman's recommendations, by a person, a panel of persons or the Defence Council itself. This means that the Defence Council will not be free to ignore the Ombudsman's recommendations, but will have some leeway in deciding what to do.

New section 340N Referral of certain allegations

27. As the Service Complaints Commissioner under the existing system, the Ombudsman will be able to receive from anyone allegations of wrongs done to a particular person in the armed forces. The Ombudsman will be able to refer an allegation to the officer who would receive a complaint from a complainant. That officer must then inform the prospective complainant that the allegation has been received and ask whether that person wants to complain and, if the person does want to complain, whether he or she knows how to do so. Regulations made by the Secretary of State will specify that the Ombudsman will then have to be kept updated about whether a service complaint has been brought and, if so, how it progresses.

New section 340O Annual report by Ombudsman

28. The Ombudsman will have to prepare an annual report to the Secretary of State for Defence. It will focus on the efficiency, effectiveness and fairness of the reformed system and how the Ombudsman has exercised his or her functions. The report will be placed before Parliament.

Section 4: Financial Assistance for benefit of the armed forces community

E • W • S • NI

29. Section 4 authorises the Secretary of State to give financial assistance, for example by way of grants, loans or otherwise, to any person - including charitable institutions and other third sector bodies, and public bodies - in support of activities that benefit any part of the armed forces community. Where the recipient of the financial assistance is not a public body, additionally the activities must be for a charitable, benevolent or philanthropic purpose. The armed forces community includes serving members of the regular and reserve forces, veterans and their families. "Families" will include partners, former partners and children and can include other persons connected with serving personnel and veterans. The Secretary of State will be able to put conditions on the financial assistance he gives, for example as to the purposes for which it can be used.

Section 5: Extent

E • W • S • NI

30. This Act has United Kingdom-wide extent. It can be extended to the Isle of Man, the Channel Islands and the British overseas territories by Order in Council.

Section 6: Transitional Provision

31. Section 6 confers a power on the Secretary of State to make regulations containing transitional, transitory or saving provision in connection with the coming into force of sections 1 to 3 and the Schedule.

Schedule: Service complaints: consequential amendments

E • W • S • NI

32. The Schedule lists the amendments to be made to existing primary legislation, including amendments to the following Acts:

- Equal Pay Act (Northern Ireland) 1970
- House of Commons Disqualification Act 1975
- Sex Discrimination (Northern Ireland) Order 1976
- Race Relations (Northern Ireland) Order 1997
- Armed Forces Act 2006
- Equality Act 2010

Commencement

33. Sections 4 to 8 will come into force on Royal Assent. Sections 1 to 3 and the Schedule will come into force on a day (or days) appointed by the Secretary of State in regulations.

Hansard references

34. The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard reference
<i>House of Lords</i>		
First Reading	5 June 2014	<u>Vol. 754 Col. 21 - 22</u>
Second Reading	23 June 2014	<u>Vol. 754 Col. 1029 - 1057</u>
Committee	9 July 2014	<u>Vol. 755 Col. 223 - 268</u>
Report	29 July 2014	<u>Vol. 755 Col. 1533 - 1553</u>
Third Reading	20 October 2014	<u>Vol. 756 Col. 423 - 434</u>
Consideration of Commons Amendments	16 March 2015	<u>Vol. 760 Col. 918 - 936</u>
<i>House of Commons</i>		
First Reading	21 October 2014	No debate
Second Reading	2 February 2015	<u>Vol. 592 Col. 39 - 74</u>
Committee	10 February 2015	<u>Public Bill Committee Armed Forces (Service Complaints and Financial Assistance) Bill : 1st Sitting</u>
	10 February 2015	<u>Public Bill Committee Armed Forces (Service Complaints and Financial Assistance) Bill : 2nd Sitting</u>
Report	9 March 2015	<u>Vol. 594 Col. 25 - 50</u>
Third Reading	9 March 2015	<u>Vol. 594 Col. 50 - 54</u>

Stage	Date	Hansard reference
Royal Assent	26 March 2015	<u>House of Lords Hansard Vol. 760 Col. 1589</u>
	26 March 2015	<u>House of Commons Hansard Vol. 594 Col. 1682</u>

Annex A- Territorial application of each Part of the Act

Part	England	Wales		Scotland		Northern Ireland	
		Application	Legislative Consent Motion	Application	Legislative Consent Motion	Application	Legislative Consent Motion
1 (reform of the service complaints system) Sections 1-2 and the Schedule	In full	In full	No	In full	No	In full	No
2 (payments to charities and other organisations which support the armed forces community) Section 4	In full	In full	No	In full	No	In full	No

© Crown copyright 2015

Printed in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament

4/2015 49297 19585

Published by TSO (The Stationery Office) and available from:

Online

www.tsoshop.co.uk

Mail, Telephone, Fax & E-mail

TSO

PO Box 29, Norwich, NR3 1GN

Telephone orders/General enquiries: 0870 600 5522

Fax orders: 0870 600 5533

E-mail: customer.services@tso.co.uk

Textphone: 0870 240 3701

The Houses of Parliament Shop

12 Bridge Street, Parliament Square

London SW1A 2JX

Telephone orders/General enquiries: 020 7219 3890

Fax orders: 020 7219 3866

Email: shop@parliament.uk

Internet: <http://www.shop.parliament.uk>

TSO@Blackwell and other Accredited Agents

£6.00

ISBN 978-0-10-560008-4



9 780105 600084