



# Armed Forces Act 2021

## 2021 CHAPTER 35

### *Service in the armed forces*

#### **8 Armed forces covenant**

- (1) AFA 2006 is amended as follows.
- (2) In the heading of Part 16A, omit “Report”.
- (3) After section 343A insert—

#### **“343AA Due regard to principles: England**

- (1) In exercising in relation to England a relevant function, a person or body specified in subsection (3) must have due regard to—
  - (a) the unique obligations of, and sacrifices made by, the armed forces,
  - (b) the principle that it is desirable to remove disadvantages arising for service people from membership, or former membership, of the armed forces, and
  - (c) the principle that special provision for service people may be justified by the effects on such people of membership, or former membership, of the armed forces.
- (2) In this section “relevant function”, in relation to a person or body specified in subsection (3), means—
  - (a) a relevant housing function,
  - (b) a relevant education function, or
  - (c) a relevant healthcare function.
- (3) The specified persons and bodies are—
  - (a) a local authority in England;
  - (b) the governing body of a maintained school in England;
  - (c) the proprietor of an Academy in England;
  - (d) a non-maintained special school;

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- (e) the governing body of an institution within the further education sector in England;
  - (f) a special post-16 institution;
  - (g) the National Health Service Commissioning Board;
  - (h) a clinical commissioning group;
  - (i) a National Health Service trust in England;
  - (j) an NHS foundation trust.
- (4) In this section “relevant housing function” means a function under or by virtue of any of the following—
- (a) Part 6 of the Housing Act 1996 (allocation of housing accommodation);
  - (b) Part 7 of the Housing Act 1996 (homelessness: England);
  - (c) Part 1 of the Housing Grants, Construction and Regeneration Act 1996 (grants, etc for renewal of private sector housing);
  - (d) section 1 of the Homelessness Act 2002 (duty of local housing authority in England to formulate a homelessness strategy);
  - (e) section 150 of the Localism Act 2011 (tenancy strategies);
  - (f) regulation 3 of the [Regulatory Reform \(Housing Assistance\) \(England and Wales\) Order 2002 \(S.I. 2002/1860\)](#) (power of local housing authorities to provide assistance), so far as that regulation deals with the provision of financial assistance for a purpose corresponding to any purpose specified in section 23 of the Housing Grants, Construction and Regeneration Act 1996 (disabled facilities grants: purposes).
- (5) In this section “relevant education function” means a function under or by virtue of any of the following—
- (a) the Education Act 1996;
  - (b) Part 3 of the School Standards and Framework Act 1998 (school admissions);
  - (c) section 175 of the Education Act 2002 (duties of local authorities and governing bodies in relation to welfare of children);
  - (d) any provision of Part 3 of the Children and Families Act 2014, so far as it deals with special educational provision.
- (6) In this section “relevant healthcare function” means a function under or by virtue of—
- (a) the National Health Service Act 2006, or
  - (b) any provision of Part 3 of the Children and Families Act 2014 (children and young people in England with special educational needs or disabilities), so far as it deals with health care provision.
- (7) In this section “health care provision” and “special educational provision” are to be interpreted as if this section were in Part 3 of the Children and Families Act 2014 (see section 21 of that Act).
- (8) In this section—
- “Academy” has the same meaning as in the Education Act 1996 (see section 579(1) of that Act);

“clinical commissioning group” means a body established under section 14D of the National Health Service Act 2006;

“governing body”, in relation to an institution within the further education sector, has the meaning given by section 90 of the Further and Higher Education Act 1992;

“institution within the further education sector” is to be interpreted in accordance with section 91(3) of the Further and Higher Education Act 1992;

“local authority in England” means a county council in England, a district council, a London borough council, the Common Council of the City of London, or the Council of the Isles of Scilly;

“non-maintained special school” means a school which is approved under section 342 of the Education Act 1996;

“maintained school” has the same meaning as in the School Standards and Framework Act 1998 (see section 20 of that Act);

“proprietor”, in relation to an Academy, has the meaning given by section 579(1) of the Education Act 1996;

“special post-16 institution” has the same meaning as in the Children and Families Act 2014 (see section 83 of that Act).

### **343AB Due regard to principles: Wales**

- (1) In exercising in relation to Wales a relevant function, a person or body specified in subsection (3) must have due regard to—
  - (a) the unique obligations of, and sacrifices made by, the armed forces,
  - (b) the principle that it is desirable to remove disadvantages arising for service people from membership, or former membership, of the armed forces, and
  - (c) the principle that special provision for service people may be justified by the effects on such people of membership, or former membership, of the armed forces.
- (2) In this section “relevant function”, in relation to a person or body specified in subsection (3), means—
  - (a) a relevant housing function,
  - (b) a relevant education function, or
  - (c) a relevant healthcare function.
- (3) The specified persons and bodies are—
  - (a) a local authority in Wales;
  - (b) the governing body of a maintained school in Wales;
  - (c) a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006;
  - (d) a Special Health Authority established under section 22 of the National Health Service (Wales) Act 2006, other than a cross-border Special Health Authority;
  - (e) a National Health Service trust in Wales.
- (4) In this section “relevant housing function” means a function under or by virtue of any of the following—

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- (a) Part 6 of the Housing Act 1996 (allocation of housing accommodation);
  - (b) Part 1 of the Housing Grants, Construction and Regeneration Act 1996 (grants, etc for renewal of private sector housing);
  - (c) Part 2 of the [Housing \(Wales\) Act 2014 \(anaw 7\)](#);
  - (d) regulation 3 of the [Regulatory Reform \(Housing Assistance\) \(England and Wales\) Order 2002 \(S.I. 2002/1860\)](#) (power of local housing authorities to provide assistance), so far as that regulation deals with the provision of financial assistance for a purpose corresponding to any purpose specified in section 23 of the Housing Grants, Construction and Regeneration Act 1996 (disabled facilities grants: purposes).
- (5) In this section “relevant education function” means a function under or by virtue of any of the following—
- (a) the Education Act 1996;
  - (b) Part 3 of the School Standards and Framework Act 1998 (school admissions);
  - (c) section 175 of the Education Act 2002 (duties of local authorities and governing bodies in relation to welfare of children);
  - (d) sections 2 to 7 and 9 of the [Learner Travel \(Wales\) Measure 2008 \(nawm 2\)](#);
  - (e) Chapters 2 (individual development plans) and 3 (supplementary functions) of Part 2 of the [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(anaw 2\)](#).
- (6) In this section “relevant healthcare function” means a function under or by virtue of the National Health Service (Wales) Act 2006.
- (7) In this section—
- “cross-border Special Health Authority” means a Special Health Authority which is established under the National Health Service Act 2006 and the National Health Service (Wales) Act 2006 by virtue of—
- (a) paragraph 1(2) of Schedule 2 to the National Health Service (Consequential Provisions) Act 2006, or
  - (b) the power under section 28 of the National Health Service Act 2006 and the power under section 22 of the National Health Service (Wales) Act 2006 being exercised together;
- “local authority in Wales” means the council of a county or county borough in Wales;
- “maintained school” has the same meaning as in the School Standards and Framework Act 1998 (see section 20 of that Act).

### **343AC Due regard to principles: Scotland**

- (1) In exercising in relation to Scotland a relevant function, a person or body specified in subsection (3) must have due regard to—
- (a) the unique obligations of, and sacrifices made by, the armed forces,
  - (b) the principle that it is desirable to remove disadvantages arising for service people from membership, or former membership, of the armed forces, and

- (c) the principle that special provision for service people may be justified by the effects on such people of membership, or former membership, of the armed forces.
- (2) In this section “relevant function”, in relation to a person or body specified in subsection (3), means—
- (a) a relevant housing function,
  - (b) a relevant education function, or
  - (c) a relevant healthcare function.
- (3) The specified persons and bodies are—
- (a) a local authority in Scotland;
  - (b) a local authority landlord;
  - (c) an integration authority (within the meaning of section 59 of the [Public Bodies \(Joint Working\) \(Scotland\) Act 2014 \(asp 9\)](#));
  - (d) a person or body in their capacity as an appropriate agency for the purposes of section 23 of the [Education \(Additional Support for Learning\) \(Scotland\) Act 2004 \(asp 4\)](#);
  - (e) a Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978;
  - (f) a Special Health Board constituted under section 2 of that Act;
  - (g) the Common Services Agency for the Scottish Health Service.
- (4) In this section “relevant housing function” means a function under or by virtue of any of the following—
- (a) sections 19 to 21 of the Housing (Scotland) Act 1987 (housing lists etc);
  - (b) Part 2 of that Act (homeless persons);
  - (c) sections 1 and 2 (homelessness: strategies and advice) of the [Housing \(Scotland\) Act 2001 \(asp 10\)](#);
  - (d) section 71(2)(e) of the [Housing \(Scotland\) Act 2006 \(asp 1\)](#) (adaptation of a house for a disabled person).
- (5) In this section “relevant education function” means a function under or by virtue of any of the following—
- (a) in Part 2 of the Education (Scotland) Act 1980 (rights and duties of parents and functions of education authorities in relation to individual pupils), sections 28A, 28B, 42 and 51;
  - (b) sections 1 and 2 of the [Standards in Scotland’s Schools etc. Act 2000 \(asp 6\)](#) (provision of school education: right of child and duty of education authority);
  - (c) the [Education \(Additional Support for Learning\) \(Scotland\) Act 2004 \(asp 4\)](#), except sections 15 to 21 of, and Schedule 1 to, that Act;
  - (d) Part 3 (children’s services planning) of the [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#).
- (6) In this section “relevant healthcare function” means a function under or by virtue of the National Health Service (Scotland) Act 1978.
- (7) In this section—

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“local authority in Scotland” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994;

“local authority landlord” has the same meaning as in the [Housing \(Scotland\) Act 2001 \(asp 10\)](#) (see section 11(3) of that Act).

### **343AD Due regard to principles: Northern Ireland**

- (1) In exercising in relation to Northern Ireland a relevant function, a person or body specified in subsection (3) must have due regard to—
  - (a) the unique obligations of, and sacrifices made by, the armed forces,
  - (b) the principle that it is desirable to remove disadvantages arising for service people from membership, or former membership, of the armed forces, and
  - (c) the principle that special provision for service people may be justified by the effects on such people of membership, or former membership, of the armed forces.
- (2) In this section “relevant function”, in relation to a person or body specified in subsection (3), means—
  - (a) a relevant housing function,
  - (b) a relevant education function, or
  - (c) a relevant healthcare function.
- (3) The specified persons and bodies are—
  - (a) the Northern Ireland Housing Executive;
  - (b) the Education Authority established under section 1(1) of the [Education Act \(Northern Ireland\) 2014 \(c. 12 \(N.I.\)\)](#);
  - (c) the Board of Governors of a grant-aided school in Northern Ireland;
  - (d) the Regional Health and Social Care Board established under section 7 of the [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1 \(N.I.\)\)](#);
  - (e) a Local Commissioning Group appointed under section 9 of the [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009](#);
  - (f) a Health and Social Care trust established by virtue of Article 10 of the [Health and Personal Social Services \(Northern Ireland\) Order 1991 \(S.I. 1991/194 \(N.I. 1\)\)](#), other than the Northern Ireland Ambulance Service Health and Social Care Trust.
- (4) In this section “relevant housing function” means a function under or by virtue of any of the following—
  - (a) Articles 22 (house allocation scheme) and 22A (allocation only to eligible persons) of the [Housing \(Northern Ireland\) Order 1981 \(S.I. 1981/156 \(N.I. 3\)\)](#);
  - (b) Part 2 (housing the homeless) of the [Housing \(Northern Ireland\) Order 1988 \(S.I. 1988/1990 \(N.I. 23\)\)](#), except Article 15;
  - (c) Chapter 2 of Part 3 of the [Housing \(Northern Ireland\) Order 2003 \(S.I. 2003/412 \(N.I. 2\)\)](#), so far as that Chapter relates to disabled facilities grants.
- (5) In this section “relevant education function” means a function under or by virtue of any of the following—

- (a) Article 52 (school transport) of the [Education and Libraries \(Northern Ireland\) Order 1986 \(S.I. 1986/594 \(N.I. 3\)\)](#);
  - (b) in Part 2 (special educational needs) of the [Education \(Northern Ireland\) Order 1996 \(S.I. 1996/274 \(N.I. 1\)\)](#), Articles 6 to 16 and 19 to 20A;
  - (c) Article 16(4) and (5) (admission criteria) of the [Education \(Northern Ireland\) Order 1997 \(S.I. 1997/866 \(N.I. 5\)\)](#);
  - (d) Articles 17 (duty on boards of governors to safeguard and promote the welfare of pupils) and 22 (admission to special schools of children resident outside Northern Ireland) of the [Education and Libraries \(Northern Ireland\) Order 2003 \(S.I. 2003/424 \(N.I. 12\)\)](#).
- (6) In this section “relevant healthcare function” means a function under or by virtue of any of the following, so far as the function relates to health care—
- (a) the [Health and Personal Social Services \(Northern Ireland\) Order 1972 \(S.I. 1972/1265 \(N.I. 14\)\)](#);
  - (b) the [Health and Personal Social Services \(Northern Ireland\) Order 1991 \(S.I. 1991/194 \(N.I. 1\)\)](#);
  - (c) the [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1 \(N.I.\)\)](#).
- (7) In this section—
- “disabled facilities grant” has the meaning given by Article 35(4) of the [Housing \(Northern Ireland\) Order 2003](#);
  - “grant-aided school” means a grant-aided school within the meaning of the [Education and Libraries \(Northern Ireland\) Order 1986](#);
  - “health care” means all forms of health care provided for individuals, whether relating to physical or mental health.

### **343AE Sections 343AA to 343AD: guidance**

- (1) The Secretary of State may issue guidance relating to the duties imposed by sections [343AA\(1\)](#), [343AB\(1\)](#), [343AC\(1\)](#) and [343AD\(1\)](#).
- (2) A person or body specified in subsection (3) of section [343AA](#), [343AB](#), [343AC](#) or [343AD](#) must have regard to any guidance for the time being in force under subsection (1) when exercising a relevant function.
- (3) The Secretary of State may from time to time revise any guidance issued under this section.
- (4) Guidance under this section—
  - (a) may not be issued unless a draft has been laid before Parliament, and
  - (b) comes into force on whatever day the Secretary of State may appoint by regulations.
- (5) Before laying draft guidance under this section before Parliament the Secretary of State must consult—
  - (a) the Welsh Ministers so far as the guidance relates to devolved Welsh functions,

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- (b) the Scottish Ministers so far as the guidance relates to devolved Scottish functions,
  - (c) the relevant Northern Ireland department so far as the guidance relates to devolved Northern Ireland functions, and
  - (d) any other persons the Secretary of State considers appropriate.
- (6) Subsection (4) has effect in relation to any revised guidance.
- (7) Subsection (5) has effect in relation to any revised guidance unless the Secretary of State considers that the proposed revisions to the guidance are insubstantial.
- (8) The Secretary of State must publish the version currently in force of any guidance issued under this section.
- (9) For the purposes of this section a function is a “devolved Welsh function” if—
- (a) it deals with a matter in respect of which functions are exercisable by the Welsh Ministers or the First Minister for Wales, or
  - (b) a provision conferring the function would be within the legislative competence of Senedd Cymru if contained in an Act of Senedd Cymru (assuming that any consent by a Minister of the Crown were given).
- (10) For the purposes of this section a function is a “devolved Scottish function” if—
- (a) it deals with a matter in respect of which functions are exercisable by the Scottish Ministers or the First Minister, or
  - (b) a provision conferring the function would be within the legislative competence of the Scottish Parliament if contained in an Act of that Parliament.
- (11) For the purposes of this section a function is a “devolved Northern Ireland function” if—
- (a) it deals with a matter in respect of which functions are exercisable by a Northern Ireland department, or
  - (b) a provision conferring the function—
    - (i) would be within the legislative competence of the Northern Ireland Assembly, and would not require the consent of the Secretary of State, if contained in an Act of that Assembly, or
    - (ii) is contained in, or was made under, Northern Ireland legislation, and would be within the legislative competence of the Northern Ireland Assembly, and would require the consent of the Secretary of State, if contained in an Act of that Assembly.

### **343AF Sections 343AA to 343AD: power to add bodies and functions**

- (1) The Secretary of State may by regulations—
- (a) amend section 343AA by—
    - (i) specifying additional functions that are to be relevant functions in relation to persons and bodies specified in subsection (3) of that section, or
    - (ii) specifying additional persons or bodies in that subsection;



- (b) amend section 343AB by—
    - (i) specifying additional functions that are to be relevant functions in relation to persons and bodies specified in subsection (3) of that section, or
    - (ii) specifying additional persons or bodies in that subsection;
  - (c) amend section 343AC by—
    - (i) specifying additional functions that are to be relevant functions in relation to persons and bodies specified in subsection (3) of that section, or
    - (ii) specifying additional persons or bodies in that subsection;
  - (d) amend section 343AD by—
    - (i) specifying additional functions that are to be relevant functions in relation to persons and bodies specified in subsection (3) of that section, or
    - (ii) specifying additional persons or bodies in that subsection.
- (2) In subsection (1) a reference to a provision of this Act includes a reference to that provision as amended by virtue of subsection (1).
- (3) A function specified by virtue of subsection (1)(a)(i), (b)(i), (c)(i) or (d)(i) must be a function under or by virtue of—
  - (a) primary legislation, or
  - (b) retained direct EU legislation.
- (4) A person or body specified by virtue of subsection (1)(a)(ii), (b)(ii), (c)(ii) or (d)(ii) must be a person or body by whom functions are exercisable under or by virtue of—
  - (a) primary legislation, or
  - (b) retained direct EU legislation.
- (5) Nothing in sections 343AA to 343AD limits the fields to which functions added by virtue of subsection (1) may relate.
- (6) The powers conferred by subsection (1) include power to make consequential amendments of any of sections 343AA to 343AE.
- (7) Before making regulations under subsection (1) the Secretary of State must consult—
  - (a) the Welsh Ministers so far as the regulations contain provision that is within Welsh devolved competence,
  - (b) the Scottish Ministers so far as the regulations contain provision that is within Scottish devolved competence,
  - (c) the relevant Northern Ireland department so far as the regulations contain provision that is within Northern Ireland devolved competence, and
  - (d) any other persons the Secretary of State considers appropriate.
- (8) For the purposes of this section a provision is within Welsh devolved competence if it—
  - (a) would be within the legislative competence of Senedd Cymru if contained in an Act of Senedd Cymru (assuming that any consent by a Minister of the Crown were given), or

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- (b) is provision which could be made in subordinate legislation by the Welsh Ministers acting alone.
- (9) For the purposes of this section a provision is within Scottish devolved competence if it—
  - (a) would be within the legislative competence of the Scottish Parliament if contained in an Act of that Parliament, or
  - (b) is provision which could be made in subordinate legislation by the Scottish Ministers or the First Minister.
- (10) For the purposes of this section a provision is within Northern Ireland devolved competence if it—
  - (a) would be within the legislative competence of the Northern Ireland Assembly, and would not require the consent of the Secretary of State, if contained in an Act of that Assembly, or
  - (b) is provision which could be made in subordinate legislation by a Northern Ireland department.
- (11) In this section “primary legislation” means—
  - (a) an Act of Parliament;
  - (b) an Act of the Scottish Parliament;
  - (c) a Measure or Act of Senedd Cymru;
  - (d) Northern Ireland legislation.”
- (4) In section 343B (interpretation of Part 16A)—
  - (a) in subsection (1), in the words before paragraph (a), for “section 343A” substitute “this Part”;
  - (b) subsection (4) is amended as follows—
    - (i) in the definition of “relevant family members”, after “means” insert “such persons as may be prescribed, and for the purposes of section 343A also includes”;
    - (ii) at the appropriate place insert—
      - ““relevant function”, in relation to a person or body specified in subsection (3) of [section 343AA](#), [343AB](#), [343AC](#) or [343AD](#), has the meaning given by subsection (2) of the same section;
      - “relevant Northern Ireland department” means any Northern Ireland department the Secretary of State thinks appropriate;”;
  - (c) after subsection (4) insert—
    - “(4A) In subsection (4) “prescribed” means prescribed by regulations made by the Secretary of State under this subsection.
    - (4B) Before making regulations under subsection (4A) the Secretary of State must consult—
      - (a) the Welsh Ministers so far as the regulations contain provision that is within Welsh devolved competence,
      - (b) the Scottish Ministers so far as the regulations contain provision that is within Scottish devolved competence,
      - (c) the relevant Northern Ireland department so far as the regulations contain provision that is within Northern Ireland devolved competence, and

(d) any other persons the Secretary of State considers appropriate.

(4C) Subsections (8) to (10) of section 343AF apply for the purposes of subsection (4B) as they apply for the purposes of that section.”

(5) In section 373 (orders, regulations and rules), in subsection (3), after paragraph (ed) (inserted by section 11) insert—

- “(ee) regulations under section 343AE(4),
- (ef) regulations under section 343AF,
- (eg) regulations under section 343B(4A),”.

## 9 Reserve forces: flexibility of commitments

(1) Section 24 of the Reserve Forces Act 1996 (commitments to a period of full-time service) is amended as follows.

(2) In the heading, omit “full-time”.

(3) In subsection (1)—

- (a) omit “(a “full-time service commitment”)”;
- (b) omit “full-time” in the second place it occurs.

(4) After subsection (1) insert—

“(1A) The period of service specified in a commitment under this section (whether originally, or by virtue of a variation under subsection (5)(a))—

- (a) may be a period of full-time service;
- (b) so far as orders or regulations under section 4 permit, may—
  - (i) be a period of service on a part-time basis, or
  - (ii) include one or more periods of service on a part-time basis as well as one or more periods of full-time service.

(1B) Orders or regulations under section 4 may enable a commitment under this section to contemplate periods of special or extended leave.”

(5) In subsection (2)—

- (a) in paragraph (a), omit “full-time” in each place it occurs;
- (b) in paragraph (c), for “full-time service” substitute “service under the commitment”.

(6) In subsection (3)—

- (a) in the words before paragraph (a), for “full-time service commitment” substitute “commitment under this section”;
- (b) in paragraph (a), for “full-time service” substitute “service under the commitment”;
- (c) after paragraph (a) insert—
  - “(aa) must specify the place at which the person is to begin performing duties;”.

(7) In subsection (4)—

- (a) in the words before paragraph (a), for “full-time service” substitute “service under a commitment under this section”;

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- (b) in paragraph (a), omit “concerned”.
- (8) In subsection (5)—
  - (a) in the words before paragraph (a), for “full-time service commitment” substitute “commitment under this section”;
  - (b) in paragraph (b), omit “full-time”;
  - (c) in paragraph (c), omit “full-time”.
- (9) In subsection (6), for “full-time service” substitute “service under a commitment under this section”.
- (10) In subsection (7)—
  - (a) in the words before paragraph (a), for “full-time service” substitute “service under a commitment under this section”;
  - (b) in paragraph (a), for “full-time service” substitute “service under the commitment”;
  - (c) in paragraph (b)—
    - (i) omit “full-time” in the first place it occurs;
    - (ii) after “by him” insert “under the commitment”;
    - (iii) for “full-time service” in the second place it occurs, substitute “service under the commitment”.
- (11) In subsection (8), for “full-time service” substitute “service under a commitment under this section”.
- (12) In subsection (9), for “full-time service” substitute “service under a commitment under this section”.
- (13) In subsection (10), omit the definition of “full-time service”.
- (14) In section 25 of the Reserve Forces Act 1996 (additional duties commitment), after subsection (2) insert—
 

“(2A) Subject to any provision made by orders or regulations under section 4, an additional duties commitment may provide for duties for a period to be performed on any basis, including full-time or part-time.”
- (15) [Schedule 2](#) contains—
  - (a) amendments that are consequential on or otherwise connected with this section, and
  - (b) transitional provision.

## 10 Service complaints appeals

- (1) Part 14A of AFA 2006 (redress of service complaints) is amended as follows.
- (2) Section 340D (appeals) is amended as follows.
- (3) In subsection (2)—
  - (a) after paragraph (a) insert—
    - “(aa) restricting the grounds on which an appeal against a decision on a complaint (or on a complaint of a description specified in the regulations) may be brought;”;
  - (b) after paragraph (c) insert—

- “(ca) requiring the Defence Council to decide any question relating to whether an appeal has been brought on valid grounds;”.
- (4) In subsection (3), for “six” substitute “two”.
- (5) In subsection (6)—
- (a) after paragraph (a) insert—
- “(aa) 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 it was not brought on a valid ground;”;
- (b) in paragraph (b) for “such a review,” substitute “a review such as is mentioned in paragraph (a) or (aa).”.
- (6) Section 340H (ombudsman investigations) is amended as follows.
- (7) After subsection (5) insert—
- “(5A) A decision on a service complaint is not to be taken to fall within subsection (5)(b) if the complainant does not have grounds (of which the complainant is aware) on which the complainant is entitled to bring an appeal against the decision.”
- (8) In subsection (9)—
- (a) in the words before paragraph (a), for “six” substitute “two”;
- (b) for the words from “date” to the end substitute “relevant date (see subsection (9A))”.
- (9) After subsection (9) insert—
- “(9A) For the purposes of subsection (9) “the relevant date” in relation to a service complaint that has been finally determined is—
- (a) where the service complaint falls within subsection (5)(b), the date on which the complainant is notified of the determination of the appeal;
- (b) where the decision on the service complaint does not fall within subsection (5)(b)—
- (i) if the conditions in subsection (9B) are met, the date of the final invalidity decision;
- (ii) otherwise, the date of the decision on the service complaint.
- (9B) The conditions mentioned in subsection (9A)(b)(i) are that—
- (a) the complainant brings an appeal against the decision on the service complaint;
- (b) the Defence Council decides that the appeal cannot be proceeded with because (and only because) it was not brought on a valid ground;
- (c) on any review of that decision of the Defence Council in accordance with regulations made by virtue of section 340D(6)(aa), the decision is upheld.
- (9C) In subsection (9A)(b) “the date of the final invalidity decision” means—
- (a) if the complainant does not apply for a review by the Service Complaints Ombudsman of the decision mentioned in subsection (9B)(b), the date on which the Defence Council notifies the complainant of that decision;

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*Status: This is the original version (as it was originally enacted).*

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- (b) if the complainant does apply for such a review, the date on which the Service Complaints Ombudsman notifies the complainant that the appeal cannot be proceeded with because it was not brought on a valid ground.”

(10) Schedule 3 contains amendments consequential on this section.