

2015 No. 1956

DEFENCE

**The Armed Forces (Service Complaints Ombudsman
Investigations) Regulations 2015**

<i>Made</i>	- - - -	<i>3rd December 2015</i>
<i>Laid before Parliament</i>		<i>7th December 2015</i>
<i>Coming into force</i>	- -	<i>1st January 2016</i>

The Secretary of State, in exercise of the powers conferred by sections 340H(4), (8) and (11), 340I(2) and (5) and 340L(5) and (7) of the Armed Forces Act 2006(a), makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Armed Forces (Service Complaints Ombudsman Investigations) Regulations 2015 and come into force on 1st January 2016.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Armed Forces Act 2006;

“Ombudsman” means the Service Complaints Ombudsman;

“relevant service matter” has the same meaning as in section 340H(3).

(2) In these Regulations, unless otherwise specified, a reference to a section is a reference to that section of the Act.

(3) The actions specified in paragraph (4) must be carried out by posting or sending electronically to the intended recipient.

(4) The actions specified in this paragraph are—

- (a) the complainant making an application to the Ombudsman referred to in regulation 3(1);
- (b) the Ombudsman notifying the complainant and the Defence Council under regulation 5(1);
- (c) the Ombudsman sending a copy of an application to the Defence Council under regulation 5(3);
- (d) the Ombudsman notifying the complainant and the Defence Council under regulation 5(4) or 6(3);

(a) 2006 c. 52. Sections 340H, 340I and 340L were inserted by section 2(1) of the Armed Forces (Service Complaints and Financial Assistance) Act 2015 c. 19. Section 340H(9) provides for the minimum period of time which must be specified in regulations made under section 340H(8).

- (e) the complainant notifying the Ombudsman under regulation 6(1);
- (f) the Ombudsman sending a copy of a notification to the Defence Council under regulation 6(2)(a);
- (g) the Ombudsman sending a copy of a draft report under regulation 9(1) or a copy of a report under regulation 9(4);
- (h) the Ombudsman sending a certificate to a person under regulation 9(5).

(5) In any provision of these Regulations which applies to an investigation or requested investigation within section 340H(1)(d), a reference to “the complainant” includes a reference to the person who raised the relevant service matter to which the investigation or requested investigation relates.

Provision of information in application to Ombudsman

3.—(1) This regulation applies if a complainant makes an application to the Ombudsman under section 340H.

- (2) If the application asks for an investigation within section 340H(1)(a), it must state—
 - (a) those aspects which the complainant disagrees with of a decision under regulations made for the purposes of section 340C(2) (decision on the service complaint), of a determination of an appeal brought under regulations made for the purposes of section 340D(1) (appeals), or of a decision for the purposes of regulations made under section 340M(5) (reconsideration of a service complaint);
 - (b) his or her reasons for disagreeing; and
 - (c) the redress which the complainant considers would be appropriate.
- (3) If the application asks for an investigation within section 340H(1)(b), it must state—
 - (a) the maladministration (including any undue delay) which the complainant alleges occurred in connection with the handling of the complainant’s service complaint;
 - (b) any injustice which the complainant considers he or she has or may have suffered as a result of the alleged maladministration; and
 - (c) the facts by reference to which maladministration within sub-paragraph (a) and any resulting injustice within sub-paragraph (b) are alleged to have occurred.
- (4) If the application asks for an investigation within section 340H(1)(c) or (d), it must state—
 - (a) the undue delay which the complainant alleges occurred in connection with the handling of the complainant’s service complaint or, as the case may be, the relevant service matter;
 - (b) any injustice which the complainant considers he or she has or may have suffered as a result of the alleged undue delay; and
 - (c) the facts by reference to which undue delay within sub-paragraph (a) and any resulting injustice within sub-paragraph (b) are alleged to have occurred.
- (5) If the application asks for an investigation within section 340H(1)(a) or (b), the complainant must attach to the application a copy of any related decision under regulations made for the purposes of section 340C(2), of any related determination of the appeal brought under regulations made for the purposes of section 340D(1), or of any related decision for the purposes of regulations made under section 340M(5).
- (6) The application must state the date on which it is made.
- (7) If the application is not made within the period specified in regulation 4(1), it must state the reason why.
- (8) The application shall be deemed to have been made on the day on which the application was posted or sent electronically to the Ombudsman.

Time limits: applications to the Ombudsman

4.—(1) Subject to paragraph (2), an application to the Ombudsman which asks for an investigation within section 340H(1)(a) or (b) may not be made after a period of six weeks beginning with the day on which the complainant received notification that his or her complaint has been finally determined within the meaning of section 340H(5).

(2) An application may be made after the end of the period stated in paragraph (1), if the Ombudsman considers that it is just and equitable to allow this.

(3) In this regulation, the reference to the day on which the complainant received notification shall be deemed to be a reference to the second day after the day on which the notification was posted or sent electronically to the complainant.

Action following application or decision to investigate under section 340H(7)

5.—(1) In response to an application under section 340H(1), the Ombudsman must decide under section 340I(1) whether to begin an investigation, and then notify the complainant and the Defence Council of his or her decision, giving reasons for the decision.

(2) If the Ombudsman decides to begin an investigation, despite the application under section 340H(1) having been made after the end of the period stated in regulation 4(1), the Ombudsman must explain in his or her decision the reasons why the Ombudsman considers it just and equitable to do so.

(3) If the Ombudsman decides to begin an investigation, he or she must send a copy of the application to the Defence Council.

(4) If the Ombudsman decides to investigate any maladministration which becomes apparent to the Ombudsman in accordance with section 340H(7), he or she must notify the complainant and the Defence Council of that decision, giving reasons for the decision.

Notice of wish to withdraw application

6.—(1) The complainant may notify the Ombudsman in writing that he or she wishes to withdraw his or her application at any time before the completion by the Ombudsman of the investigation in relation to that application.

(2) After receipt of a notification under paragraph (1), the Ombudsman must—

- (a) send a copy of the notification to the Defence Council; and
- (b) decide, having regard to that notification, whether to begin, continue or discontinue the investigation.

(3) The Ombudsman must notify the complainant and the Defence Council of his or her decision under paragraph (2)(b), giving reasons for the decision.

Requirements for information, documents and evidence

7. Where under section 340J the Ombudsman requires a person to provide a document or other information for the purposes of an investigation, the Ombudsman may—

- (a) require the document or the information to be provided within such period as he or she considers reasonable;
- (b) specify the form or manner in which the document or the information must be provided;
- (c) if the document or information is not provided within the period referred to in paragraph (a), or is not provided in accordance with paragraph (b), nonetheless complete the investigation and the preparation of a report under section 340L(1).

Investigation procedure

8.—(1) The Ombudsman must give—

- (a) the Defence Council,
- (b) any person alleged by the complainant in his or her application under section 340H(1) to have been responsible for maladministration (including any undue delay) in connection with the handling of the service complaint,
- (c) any person who the Ombudsman considers is a subject of the service complaint,
- (d) any person who the Ombudsman considers is likely to be the subject of criticism in relation to that person's character or professional reputation in the findings or recommendations in the Ombudsman's report under section 340L(1),

an opportunity to comment on any relevant matter.

(2) If the Ombudsman decides to hold an oral hearing for the purposes of an investigation, the oral hearing must be conducted in private, unless the Ombudsman considers that it is necessary to hold all or part of the hearing in public.

(3) If the Ombudsman decides to hold an oral hearing in public, the Ombudsman may impose such restrictions on attendance at, or the reporting of, that hearing as he or she considers reasonable.

(4) The Ombudsman may decide that a person may be represented, including by a legally-qualified person, at a hearing, if the Ombudsman considers that is—

- (a) necessary for the fair determination of the investigation; or
- (b) necessary to protect the rights or interests of any person.

(5) The Ombudsman may pay to any person who attends a hearing to give evidence or supplies a document or information for the purposes of an investigation—

- (a) such sums as the Ombudsman may determine in respect of expenses properly incurred by the person (excluding any legal expenses or fees); and
- (b) such allowances as the Ombudsman may determine by way of compensation for the loss of the person's time.

(6) In paragraph (1), "relevant matter" means—

- (a) any allegation contained in the application by the complainant under section 340H(1); and
- (b) any possible maladministration which the Ombudsman investigates under section 340H(7).

Reports of investigation: preparation and confidentiality

9.—(1) The Ombudsman may send a copy of a draft of his or her report under section 340L(1) on an investigation to the complainant and any person within regulation 8(1)(a) to (d).

(2) If the Ombudsman receives any comment from such a person on the draft report, he or she may refer to those comments in the final report and state in that report his or her response to those comments.

(3) Clerical mistakes in the report and errors arising in the report from an accidental slip or omission may be corrected by the Ombudsman by certificate under his or her hand.

(4) The Ombudsman must send a copy of the report to—

- (a) the subject, if any, of the service complaint; and
- (b) any person who is, in the opinion of the Ombudsman, the subject of criticism in the report's findings or recommendations in relation to that person's character or professional reputation^(a).

(5) The Ombudsman must send any certificate under paragraph (3) to the Defence Council, the complainant and any person to whom a copy of the report must be sent under paragraph (4).

^(a) Section 340L(5) requires the Ombudsman to send the report also to the complainant and the Defence Council.

(6) Where the Ombudsman sends a copy of the report or a draft of the report to any person (whether under a duty to do so or not), the Ombudsman may impose any obligation of confidentiality on that person which the Ombudsman considers appropriate and lawful in the circumstances.

(7) For the purposes of paragraph (6), the grounds on which the Ombudsman may decide that an obligation of confidentiality is appropriate include the ground that disclosure would be—

- (a) against the interests of national security; or
- (b) might jeopardise the safety of any person.

Subsequent applications to the Ombudsman

10.—(1) The Ombudsman may investigate under section 340H(1)(a) or (b) a subsequent application relating to a service complaint where, and to the extent that, he or she is satisfied that the subsequent application relates to a reconsideration of the complaint under section 340M(2).

(2) Subject to paragraph (3), an application to the Ombudsman under paragraph (1) may not be made after a period of six weeks beginning with the day on which the complainant received notification, in accordance with regulations made under section 340M(5), of a decision referred to in section 340M(5)(b).

(3) An application may be made after the end of the period stated in paragraph (2), if the Ombudsman considers that it is just and equitable to allow this.

(4) In this regulation, the reference to the day on which the complainant received notification shall be deemed to be a reference to the second day after the day on which the notification was posted or sent electronically to the complainant.

Mark Lancaster
Parliamentary Under Secretary of State
Ministry of Defence

3rd December 2015

EXPLANATORY NOTE

(This note is not part of the Regulations)

Under section 340A(1) and (2) of the Armed Forces Act 2006 (“the Act”) a person subject to service law, or who has ceased to be subject to service law, who thinks himself or herself wronged in any matter relating to his or her service, may make a service complaint about the matter. Under section 340H(1) of the Act the complainant may apply to the Service Complaints Ombudsman (“the Ombudsman”) to investigate his or her complaint or related maladministration.

These Regulations make provision about Ombudsman investigations, including the procedure to be followed.

Regulation 3 specifies the information required in an application by a complainant to the Ombudsman.

The period for a complainant to make an application to the Ombudsman is specified in regulation 4, including the circumstances in which the Ombudsman may accept an application after the end of the period.

Regulation 5 requires the Ombudsman to decide whether to begin an investigation and to notify specified persons of his or her decision. Where the Ombudsman decides to investigate further maladministration in accordance with section 340H(7) of the Act, he or she must provide written reasons for that decision to the complainant and the Defence Council.

If the complainant notifies the Ombudsman of his or her wish to withdraw an application the Ombudsman must send a copy of the notification to the Defence Council and decide, in the light of the notification, whether to begin, continue or discontinue the investigation (regulation 6).

Regulation 7 empowers the Ombudsman to request information and documents for the purposes of an investigation and to continue with the investigation even if they are not provided as requested.

Regulation 8(1) requires the Ombudsman to give specified persons an opportunity to comment on matters which are the subject of an investigation. Regulation 8 also provides for oral hearings, with where the Ombudsman may permit representation, and for the payment of expenses and allowances.

The Ombudsman may, under regulation 9(1), send a copy of a draft report to the complainant and to persons specified in regulation 8(1), and may refer in the final report to any comments received. Regulation 9(4) states the persons to whom the Ombudsman must send a copy of the final report (in addition to the complainant and the Defence Council, who must receive a copy under section 340L(5) of the Act). Regulation 9 also empowers the Ombudsman to impose duties of confidentiality on those provided with a copy of a draft, or the final, report.

Regulation 10 enables the Ombudsman to investigate a subsequent application relating to a complaint, where that application relates to a reconsideration of the complaint following a decision by the Ombudsman.

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£6.00

UK201512048 12/2015 19585

<http://www.legislation.gov.uk/id/uksi/2015/1956>

ISBN 978-0-11-114157-1



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