EXPLANATORY MEMORANDUM TO

THE ARMED FORCES (REDRESS OF INDIVIDUAL GRIEVANCES) REGULATIONS 2007

2007 No. 3353

THE ARMED FORCES (SERVICE COMPLAINTS COMMISSIONER) REGULATIONS 2007

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1. This explanatory memorandum has been prepared by the Ministry of Defence and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 Members of the armed forces have no contract of employment and no system of collective bargaining. Disobedience to lawful commands are offences under the Service Discipline Acts, pay and other benefits are determined and altered unilaterally and historically, the rights of service personnel to bring legal claims against the Crown are also limited. It has therefore long been recognised that members of the armed forces should have some other effective way of obtaining redress for grievances. These instruments, which form part of a package of two Statutory Instruments and one set of Defence Council Regulations, therefore implement a new service complaints system for the armed forces, being made to implement sections 334 to 339 of the Armed Forces Act 2006.

2.2 A member or former member of the armed forces has the right to complain if he thinks himself wronged in a matter relating to his service, including bullying, harassment, discrimination, and biased, improper or dishonest behaviour. The Defence Council regulations provide for the officer to whom complaint is to be made and provide for the referral of complaints to a more senior officer or the Defence Council in stated circumstances. Under the Armed Forces (Redress of Individual Grievances) Regulations (the "Grievances Regulations") matters for which an alternative and more appropriate mechanism exists to resolve disputes cannot be made the subject of a service complaint under the 2006 Act.

2.3 The Grievances Regulations also provide for membership of service complaint panels. Under the 2006 Act the Defence Council may delegate to such panels its powers of decision in relation to service complaints. This includes provision as to when the panels must include an independent member. To provide further independence, the 2006 Act provides for the appointment of a Service Complaints Commissioner. The Armed Forces (Service Complaints Commissioner) Regulations specify the type of allegations which, if referred by the Commissioner to the relevant officer, give rise to a duty to check whether the person alleged to have been wronged wishes to make a complaint. The relevant officer is usually the commanding officer of the person alleged to have been wronged. The regulations also require that the

Service Complaints Commissioner reports annually to Parliament on the fairness, effectiveness and efficiency of the system.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Background

4.1 These statutory instruments enable the introduction with effect from 1 January 2008 of a new system to deal with complaints by members of the armed forces. Section 334 of the Armed Forces Act 2006 permits service persons and ex-service persons to complain about wrong against them relating to their service and provides for regulations with respect to the procedure for making and dealing with service complaints. Section 334(2) provides, however, that a service complaint may not be made about matters prescribed in regulations.

4.2 Section 335 of the Act provides for the delegation by the Defence Council to a service complaint panel of some or all of its powers in relation to a service complaint, including the power to decide whether a service complaint is well-founded and to decide the redress that should be granted.

4.3 Section 336 of the Act provides for the composition and procedure of the panels. Section 337 of the Act requires the Defence Council (at the complainant's request) to report to Her Majesty on a service complaint by an officer in order to receive Her directions on it. Section 338 of the Act provides for the referral by the Service Complaints Commissioner of prescribed allegations to the relevant officer (usually the commanding officer of the person alleged to have been wronged) and for the commanding officer to establish whether that person wishes to make a service complaint. Under section 339 of the Act , the Commissioner must make an annual report to Parliament as to the efficiency, effectiveness and fairness with which the service complaints system has operated, on the exercise of his functions within the system and on related matters as he sees fit.

5. Extent

5.1 These instruments apply to all of the United Kingdom. The Armed Forces Act 2006 applies to those subject to Service law, wherever they are in the world; and to Service courts, whether or not they are held in the United Kingdom.

6. European Convention on Human Rights

6.1 The Under Secretary of State for Defence has made the following statement regarding Human Rights:

In my view the provisions of the Armed Forces (Redress of Individual Grievances) Regulations 2007 and of the Armed Forces (Service Complaints Commissioner) Regulations 2007 are compatible with the Convention rights.

7. Policy background

7.1 The Armed Forces Act 2006 represents the first complete overhaul of the Service justice system in over fifty years, it harmonises practice and procedures across the armed forces, providing a single system of military law: soldiers, sailors and airmen will continue to be dealt with fairly and impartially but most significantly, by the same system of law, regardless of their Service. The Act makes significant changes and replaces the existing separate single-Service Acts with a single system in one Act.

7.2 Procedural improvements have been made to the redress of individual grievance system, to improve the speed of resolution, to provide transparency throughout the process and to increase consistency of dealing across the Services. The Act also introduces an independent element into the process, to give Service personnel greater confidence in the system and in recognition of the recommendations of both the House of Commons Defence Committee (in its third report of session 2004-05, published on 14 March 2005) and Mr Nicholas Blake QC in his Deepcut Review report (printed by Order of The House of Commons on 29 March 2006, reference HC 795) which placed firmly in the public eye the importance of demonstrating that bullying, harassment and other forms of inappropriate behaviour have no place in the armed forces and are effectively and openly dealt with. The Act provides that Service personnel have access to a system of redress in respect of a broad range of complaints, but excludes generalised complaints. The system is intended to deal with wrongs done against individuals. Moreover the Grievances Regulations exclude certain types of complaints, in particular where another system is either available or compulsory. For example, there is an internal disputes resolution procedure for dealing with a wide range of complaints relating to pension rights.

7.3 The regulations introduce into the redress system for some cases, an element which is independent of the chain of command. The Defence Council will delegate cases to be heard by service complaint panels. Under the Grievances Regulations an independent member, who will be neither a member of the regular or reserve Armed Forces nor a civil servant, must be appointed to service complaint panels for complaints about broadly: discrimination on racial grounds or on the grounds of sex, religion or belief, or sexual orientation; harassment, bullying; dishonesty and other improper or biased behaviour. Such behaviour might, for example, include taking steps to prevent unauthorised activity coming to light or a decision that is purportedly made for a particular reason when the actual reason would be unsustainable in the circumstances. The regulations also require an independent member for complaints alleging failure in clinical care at either primary or secondary care levels and allegations made against a service police person of misuse of their police powers.

7.4 Further independence and public scrutiny of the system will be provided by the appointment of a Service Complaints Commissioner, who must not be a member of the regular or reserve Armed Forces or civil servant.

7.5 The Armed Forces (Service Complaints Commissioner) Regulations specify the types of allegation which, if referred by the Commissioner to the relevant officer, give rise to a duty to check whether the person alleged to have been wronged wishes to make a complaint. He will also remain under a duty to inform the Commissioner of key events in the progress of any complaint made by the person alleged to have been wronged in response to the Commissioner's reference to the relevant officer. The relevant officer is usually the commanding officer of the person alleged to have been wronged. The types of allegation which give rise to the relevant officer's duties are

discrimination, harassment, bullying and any other dishonest, improper or biased behaviour.

7.6 The Commissioner will provide the Secretary of State with an annual report as to: the efficiency, effectiveness and fairness with which the complaints process has operated during that period; the exercise by the Commissioner during that period of his or her function of referring allegations; and other factors that the Commissioner considers appropriate or that the Secretary of State directs. The Secretary of State will lay each such report before Parliament.

7.7 The regulations, their applications and effects have been developed in full consultation with the armed forces. The Service Personnel Executive Group have agreed the principles of the new service complaints process and the single service staffs with responsibility for the implementation and management of the system have been instrumental in the detailed development of the policy instructions necessary for the drafting of these regulations.

7.8 A Joint Service Publication will be issued to explain the new arrangements and to provide supplementary guidance to complainants and to those responsible for handling service complaints.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for these instruments as they have no impact on business, charities or voluntary bodies.

9. Contact

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