EXPLANATORY MEMORANDUM TO

THE ARMED FORCES (SERVICE COMPLAINTS) (AMENDMENT) REGULATIONS 2022

2022 No. 494

1. Introduction

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

2. Purpose of the instrument

2.1 This instrument makes amendments to the Armed Forces (Service Complaints) Regulations 2015 ("the 2015 Regulations") and comes into force on 15th June 2022. The 2015 Regulations make provision about the procedure for making and dealing with a service complaint and related appeals. It specifies the grounds on which an appeal against a decision on a service complaint can be made and changes the time limit for bringing an appeal. It also amends the definition of a specified officer to whom a service complaint must be made and the information which must be included in a statement of complaint.

3. Matters of special interest to Parliament

Matters of special interest to the [Joint Committee on Statutory Instruments OR the Select Committee on Statutory Instruments OR the Sifting Committees]

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom, the Isle of Man and the British Overseas Territories except Gibraltar.

4.2 The territorial application of this instrument is the United Kingdom, the Isle of Man and the British Overseas Territories except Gibraltar.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

6. Legislative Context

6.1 This instrument is made under sections 340B, 340D and 373 of the Armed Forces Act 2006 ("the 2006 Act"), as amended by the Armed Forces Act 2021 ("the 2021 Act"). It amends the 2015 Regulations, which set out the procedure for making and dealing with a service complaint. The 2021 Act makes provision for regulations to restrict the grounds on which an appeal against a first instance decision on a service complaint made by a person or panel appointed by the Defence Council can be brought, and requires that such regulations enable the Service Complaints Ombudsman, on an application by a complainant, to review a decision by the Defence Council that an appeal was not brought on a valid ground.

6.2 Section 340B(2) of the 2006 Act provides that a service complaint must be made to an officer of a description specified in regulations. This instrument amends the current description, which is set out in regulation 3 of the 2015 Regulations.

6.3 This instrument also amends regulations 4, 10 and 11 of the 2015 Regulations, which set out the procedure for making a service complaint and bringing an appeal. The amendments introduced by this instrument restrict the grounds on which an appeal to the Defence Council against a decision on a complaint can be brought, and change the period for bringing such an appeal. They also make consequential amendments to the current procedure for making an appeal.

6.4 This instrument is made alongside the Armed Forces (Service Complaints Ombudsman Investigations) (Amendment) Regulations 2022 which amend the date from which the time limit is calculated for making an application to the Service Complaints Ombudsman to investigate a service complaint that has been finally determined or related maladministration in the handling of such a complaint.

7. Policy background

What is being done and why?

Appeals

7.1 Currently, the service complaints system allows appeals to be brought against the decision of a person or panel of persons appointed by the Defence Council where the person making the complaint is dissatisfied with the outcome for any reason. This instrument will restrict the grounds on which an appeal can be brought to instances where:

- there was a material procedural error;
- the decision was based on a material error as to the facts;
- there is new evidence, and it is likely that the decision would have been materially different if the evidence had been made available to the person or panel determining the complaint.

This will bring the current system into closer alignment with MOD's civilian grievances system, which allows appeals to be brought only where there is new evidence or suggestion of a procedural error which may change the outcome of the original decision. The complainant will be able to apply to the Service Complaints Ombudsman to review a decision by the Defence Council that an appeal cannot be proceeded with because it is out of time or does not meet the grounds of appeal.

7.2 This instrument also reduces the time limit for bringing an appeal from six weeks to two weeks. The Service Complaints Ombudsman, the House of Commons Defence Committee and others have expressed concern about delays in the service complaints process. It is important for all concerned that service complaints are progressed in a timely manner at each stage of the process, and there is an expectation that 90% of complaints should be completed within 24 weeks. The Service Complaints Ombudsman has reported that under the current arrangement, only 46% of Service Complaints made in 2019 were resolved to this timeframe. It has been found that a large proportion of individuals were waiting until the last moment to lodge their appeal.

7.3 This time limit will now be two weeks, beginning with the day on which the complainant received notification of the decision on the service complaint. This is considered to be in line with best practice in the private and public sectors. There will continue to be exemptions to the time limit where the Defence Council consider this is just and equitable (for example, where the requirements of the service have reasonably prevented the complainant from meeting the two-week deadline).

Specified Officer

7.4 The Wigston Review into inappropriate behaviours in the Armed Forces found that people had lost trust in the service complaints system, with stakeholders questioning the system's impartiality and lack of independence from the chain of command 'at every level' – this was echoed in the House of Commons Defence Committee's report, 'Protecting those who protect us: Women in the Armed Forces from Recruitment to Civilian Life'. The Wigston Review stated that a 'parallel channel' should be developed to allow complaints to be raised outside of a complainant's chain of command.

7.5 A service complaint must be made to an officer of a specified description ("the specified officer"). Currently under the 2015 Regulations, this will be the complainant's commanding officer or, where the complainant is no longer in service, their last commanding officer or that officer's successor in post, unless certain exceptions apply. The specified officer must decide whether the complaint is admissible.

7.6 The amendments made to the definition of specified officer in this instrument will take this function away from the complainant's chain of command. This will enable the Defence Council to establish central admissibility teams in each Service of the Armed Forces, and appoint specified officers who are subject matter experts to assess the admissibility of a complaint. The complainant will no longer be asked to identify whether their commanding officer is implicated in the complaint, but to give names (where known) of anyone alleged to be the subject of, or implicated in, the complaint. This is to ensure that a complaint is not considered by someone who is in any way implicated in the complaint. Where the person who would otherwise be the specified officer is the subject of / implicated in the complaint, an alternative specified officer will be appointed.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act

9. Consolidation

9.1 There are no plans to consolidate the legislation amended by this instrument.

10. Consultation outcome

10.1 A public consultation has not been undertaken on this instrument. The single Services and the Service Complaints Ombudsman have been invited to comment on the draft legislation.

11. Guidance

11.1 Information about the changes will be made available by means of a Joint Service Publication on gov.uk. Internal communications will also provide information about the changes, ahead of and following implementation.

11.2 The Service Complaints Ombudsman will also set out any relevant changes for complainants on their website.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument as no, or no significant impact on the private, voluntary or public sectors is foreseen.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 This instrument is aimed at improving the fairness, effectiveness and efficiency of the Service Complaints system which is reviewed annually by the Ombudsman in their annual report which is laid before Parliament. Monitoring and reviewing the success of this instrument will be done as part of the Ministry of Defence's published response to those reports and the issues the reports highlight in relation to the procedures set out in this instrument.

15. Contact

15.1 David Howarth at the Ministry of Defence (email: david.howarth107@mod.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Samantha des Forges, Director of Diversity & Inclusion at the Ministry of Defence can confirm that this Explanatory Memorandum meets the required standard.

15.3 Leo Docherty MP at the Ministry of Defence can confirm that this Explanatory Memorandum meets the required standard.