EXPLANATORY MEMORANDUM TO

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

2022 No. 496

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 Ombudsman Investigations) Regulations 2015 ("the 2015 Regulations") and comes into force on the 15th June 2022. The 2015 Regulations make provision about investigations by the Service Complaints Ombudsman, including the procedure to be followed. This instrument amends 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.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

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 section 340H(8) of the Armed Forces Act 2006 ("the 2006 Act"), as amended by the Armed Forces Act 2021 ("the 2021 Act") and amends the 2015 Regulations, which make provision about Ombudsman investigations, including the procedure to be followed.

6.2 The 2021 Act introduced powers to restrict the grounds on which an appeal to the Defence Council against a decision on a service complaint can be brought. Consequently, it amended section 340H of the 2006 Act to make provision about the time limit for applications to the Service Complaints Ombudsman about a service complaint in cases where a complainant is notified that their appeal against the decision on the complaint was not made on a valid ground. Where a complainant receives a decision that their appeal was not made on a valid ground, the time-limit for

applying to the Ombudsman for an investigation under section 340H(1)(a) or (b) of the 2006 Act now runs from the "relevant date", as set out in section 340H(9A) to (9C) of that Act.

6.3 This instrument amends regulation 4 of the 2015 Regulations to reflect these changes to the primary legislation and provide that the time-limit to apply to the Service Complaints Ombudsman for an investigation will now run from the relevant date. It is made alongside the Armed Forces (Service Complaints)(Amendment) Regulations 2022 which, amongst other things, limit the grounds on which an appeal against a decision on a service complaint can be brought.

7. Policy background

What is being done and why?

7.1 Regulation 4 of the 2015 Regulations currently states that an application to the Ombudsman for an investigation on a service complaint or an allegation of maladministration in connection with the handling of a service complaint may not be made after a period of six weeks, beginning with the day on which the complainant received notification that their complaint has been finally determined. At present, this will be notification of either the decision on the first-instance decision (where the service complaint has been heard by the Defence Council) or the decision on the appeal (where the service complaint has been heard by a person or panel appointed by the Defence Council).

7.2 The changes made by this instrument reflect amendments made to the primary legislation by the Armed Forces Act 2021, and the fact that service complaints heard by a person or panel appointed by the Defence Council will no longer have an automatic right of appeal. The changes made by this instrument will ensure a complainant who erroneously thinks they have a valid ground of appeal will not be prevented from applying to the Service Complaints Ombudsman, by providing that the time limit will run from the latest decision on the validity of their appeal rather than the first-instance decision.

7.3 The time limit to apply to the Service Complaints Ombudsman for an investigation on a complaint that has been finally determined will now run from:

- where an appeal has been made and determined, the day the complainant receives notification of the decision on the appeal;
- where the appeal cannot be proceeded with because (and only because) it was not brought on a valid ground, the day the complainant receives the final invalidity decision. The final invalidity decision will be either the decision of the Defence Council that the appeal is inadmissible (where the complainant does not seek a review of that decision), or the decision of the Service Complaints Ombudsman (where the complainant seeks a review of that decision and the decision is upheld);

7.4 where the complainant does not have grounds (of which they are aware) on which they are entitled to bring an appeal against the decision, the day the complainant receives notification of the decision on the service complaint.

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 describe the main changes, ahead of and following implementation.

11.2 The Service Complaints Ombudsman will 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.