EXPLANATORY MEMORANDUM TO

THE ARMED FORCES COMMISSIONER (FAMILY DEFINITION, AND CONSEQUENTIAL AND TRANSITIONAL PROVISION ETC.) REGULATIONS 2026

2026 No. [XXXX]

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Ministry of Defence and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments and the Secondary Legislation Scrutiny Committee.

2. Declaration

2.1 Louise Sandher-Jones, Parliamentary Under-Secretary (Minister for Veterans and People) at the Ministry of Defence confirms that this Explanatory Memorandum meets the required standard.

2.2 Samantha des Forges, SCS, Director of Conduct, Equity and Justice, at the Ministry of Defence confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Kelly McClarey at the Ministry of Defence can be contacted by email at the following address with any queries regarding the instrument: people-cej-afc@mod.gov.uk. Alternatively, the department can be contacted by telephone: +44 303378 2039.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The Armed Forces Act 2006 (AFA 06) was amended by the Armed Forces Commissioner Act 2025 (AFCA 25) to establish the Armed Forces Commissioner (the Commissioner), abolish the office of the Service Complaints Ombudsman (the Ombudsman) and transfer their functions to the new Commissioner because the Commissioner will exercise those functions instead. This instrument specifies who may be a relevant family member for the purposes of the new sections 365AA and 340IA AFA 06. It also makes consequential changes to regulations and transitional and savings provision as a result of the establishment of the Commissioner and abolition of the Ombudsman.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom, save for one Regulation for which the extent is England and Wales and Scotland.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom, save for one Regulation for which the extent is England and Wales and Scotland.

5. Policy Context

What is being done and why?

5.1 The AFCA 25 fulfils a manifesto commitment to create a new office of the Commissioner to be a direct point of contact for the Armed Forces to raise welfare issues that impact on their service life and whose functions will also include functions relating to relevant family members (as specified in this instrument).

5.2 The new office of the Commissioner will also take over the functions relating to the service complaints system currently exercised by the Ombudsman, and the office of the Ombudsman is accordingly abolished.

What was the previous policy, how is this different?

5.3 The Commissioner's wider functions relating to general service welfare include certain family members, and the AFA 06 requires that the relevant definition is set out in secondary legislation. The Commissioner is also taking over the Ombudsman's functions and that office is accordingly abolished. As a result, it is necessary to amend references to the Ombudsman in legislation.

5.4 The Armed Forces Commissioner is a new office with broad powers. As well as the current functions undertaken by the Ombudsman, the Commissioner will also be able to access Defence sites, information and personnel to investigate general service welfare matters. They will also be able to look into the welfare issues facing the families of serving personnel, which was not included in the Ombudsman's functions.

6. Legislative and Legal Context

How has the law changed?

6.1 The AFCA 25 amends the AFA 06 to create the office of the Commissioner, abolish the office of the Ombudsman and transfer the functions of the Ombudsman to the Commissioner. The Commissioner also has functions in relation to relevant family members of persons subject to service law, with the definition of relevant family members to be specified in regulations.

6.2 New section 340IA AFA 06 defines relevant family members as such descriptions of persons connected with a person subject to service law as may be specified in regulations. The purpose of this instrument is to specify what category of person is to be considered a relevant family member for these purposes and to also make consequential changes in secondary legislation to ensure that certain of the Ombudsman's previous functions can be exercised by the new Commissioner. It also makes transitional and savings provision in connection with those changes to clarify the status of actions taken by the Ombudsman prior to 1 April 2026 once their functions have been transferred to the Commissioner.

6.3 There are three related SIs: two negative SIs that will similarly come into force on 1 April 2026 and one SI subject to no procedure containing commencement regulations. These SIs are required to implement the provisions of section 340IA AFA 06 and to make the necessary consequential, transitional and savings provisions required to reflect the transfer of functions from the Ombudsman to the Commissioner.

Why was this approach taken to change the law?

6.4 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 The proposed definition of "relevant family members" was drafted in consultation with the Armed Forces Families Federations. The definition was also provided to and debated in Parliament via draft regulations during the Parliamentary passage of the AFCA 25. This instrument contains essentially the same definition as contained in those draft regulations. No consultation was required in respect of the amendments to reflect the change from the Ombudsman to the Commissioner as the changes are considered minor and technical and to ensure the service complaints system continues to function as intended.

8. Applicable Guidance

8.1 SI does not implement or require guidance.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because there is no significant impact on business, charities or voluntary bodies.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the effect of this instrument is to specify how family members are to be defined for the purposes of the AFCA 25 and to ensure that the service complaints system can continue to operate as intended for the benefit of its users.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because the effect of this instrument is to specify how family members are to be defined for the purposes of the AFCA 25 and to ensure that the service complaints system can continue to operate as intended for the benefit of its users.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that these provisions are subject to continued monitoring and review.

10.2 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument is related to two other SIs subject to the negative procedure and one SI subject to no procedure that are required to implement the provisions of section 340IA AFA 06 and to make the necessary consequential, transitional and savings provisions required to reflect the transfer of functions from the Ombudsman to the Commissioner.

11.2 This instrument is made under the prospective section 340IA(4) AFA 06 before its commencement in reliance on section 13 of the Interpretation Act 1978, which permits powers conferred by an Act to be exercised before the relevant provision is commenced where this is necessary or expedient for the purpose of giving full effect to the provision on its commencement. Defining "relevant family member" is considered a step necessary or expedient to give full effect to the Commissioner's power in new section 340IA(3) and to the rights under that provision of those people, and also to give full effect to the meaning of "general service welfare matter" and therefore also to the Commissioner's power in new section 340IA(1).

11.3 It was not possible to combine this instrument with the negative or no procedure SIs due to the lack of explicit power to use an alternative procedure in the relevant enabling Acts and that one of the negative SIs is revoking and remaking The Armed Forces (Service Complaints Ombudsman Investigations) Regulations 2015. The reason for two of the separate negative SIs is further that the enabling power(s) for one is conferred on the Secretary of State, and the Defence Council for the other.

12. European Convention on Human Rights

12.1 The Parliamentary Under-Secretary (Minister for Veterans and People) has made the following statement regarding Human Rights:
"In my view the provisions of the Armed Forces Commissioner (Family Definition, and Consequential and Transitional Provision etc.) Regulations 2026 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").