Draft Regulations laid before Parliament under section 373(3) of the Armed Forces Act 2006, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2007 No.

DEFENCE

The Armed Forces (Redress of Individual Grievances) Regulations 2007

Made - - - -

Coming into force - - 1st January 2008

The Secretary of State makes the following Regulations in exercise of the powers conferred on him by sections 334(2), 336(5)(a) and 336(6) of the Armed Forces Act 2006(**a**):

In accordance with section 373(3) of the Armed Forces Act 2006 a draft of this instrument was laid before, and approved by resolution of, each House of Parliament.

Citation and commencement

1. These Regulations may be cited as the Armed Forces (Redress of Individual Grievances) Regulations 2007 and shall come into force on 1st January 2008.

Interpretation

2. In these Regulations—

"independent member" has the same meaning as in section 336 of the Act;

"relevant officer" has the same meaning as in section 338 of the Act;

"service complaint" has the same meaning as in section 334 of the Act;

"service complaint panel" has the same meaning as in section 335 of the Act;

"the Act" means the Armed Forces Act 2006;

"the Discretionary Awards Panel" means the body which, under authority delegated by the Secretary of State for Defence in relation to Royal Navy cases and under authority delegated by the Defence Council in relation to Army and Royal Air Force cases, exercises certain powers relating to the award of discretionary pension benefits;

"the Discretionary Awards Appeals Panel" means the body which decides appeals against decisions of the Discretionary Awards Panel;

Excluded complaints

3. A person may not make a service complaint about a matter within Schedule 1.

(**a**) 2006 c.52.

4. A person may not make a service complaint about a decision of the Defence Council under section 334(7) or (8) of the Act, whether or not the Defence Council delegated that decision to a service complaint panel.

Composition of service complaint panels

5. If a service complaint is made by an officer of or above the rank of rear admiral, major-general or air vice-marshal and any function of the Defence Council in relation to the service complaint is delegated to a service complaint panel, at least one officer appointed to the panel shall be of at least the same rank as, or of equal rank to, the complainant.

6. If—

(1) in the opinion of the Defence Council, its decision under section 334(7) or (8) of the Act in relation to a service complaint may involve consideration of a decision by, or other conduct of, an officer of or above the rank of rear admiral, major-general or air vice-marshal, and

(2) any function of the Defence Council in relation to the service complaint is delegated to a service complaint panel,

at least one officer appointed to the panel shall be of at least the same rank as, or of equal rank to, the officer whose decision or other conduct may fall to be considered.

7. The following persons shall not be appointed to a service complaint panel:

(1) a member of the Defence Council, the Admiralty Board, the Army Board or the Air Force Board; and

(2) an officer of the Naval Chaplaincy Service, the Royal Army Chaplains Department or the Royal Air Force Chaplains Branch.

8. A service complaint panel considering a service complaint shall not include a person who—

(1) acted in relation to the complaint as an officer of a prescribed description under section 334(4)(a) of the Act;

(2) acted in relation to the complaint as a superior officer of a prescribed description under section 334(4)(b) of the Act;

(3) has otherwise been involved in the investigation or consideration of the complaint;

(4) is, or was when the complaint was made, the commanding officer of the complainant; or

(5) is the subject of the complaint or is, in the statement of complaint made in accordance with regulations made under section 334(3) of the Act, alleged to be implicated in any way in the matter complained of.

9.—(1) A service complaint panel shall include one independent member in any case in which the service complaint:

(a) alleges discrimination;

(b) alleges harassment;

(c) alleges bullying;

(d) alleges dishonest, improper or biased behaviour;

(e) alleges a failure of the Ministry of Defence to provide medical, dental or nursing care and that the Ministry of Defence was responsible for providing that care;

(f) alleges negligence in the provision by the Ministry of Defence of medical, dental or nursing care; or

(g) concerns the exercise by a service policeman of his statutory powers as a service policeman.

(2) A service complaint panel shall include one independent member in the case of a service complaint about a decision of an officer referred to in regulation 8(1) or (2) that a service complaint, made in response to action under section 338(3)(c) of the Act by the relevant officer, shall not be allowed to proceed.

(3) In this regulation, "discrimination" means discrimination or victimisation on the grounds of colour, race, ethnic or national origin, nationality, sex, gender re-assignment, status as a married person or civil partner, religion, belief or sexual orientation, and less favourable treatment of part-time employees.

10. If a service complaint panel includes an independent member, the panel shall be composed of three members.

Application

11.—(1) Nothing in regulation 3 and Schedule 1, or in paragraph (3) and Schedule 2, shall have effect in relation to a matter of complaint that occurred before 1st January 2008, or which began before, and continues to occur after, that date.

(2) Nothing in regulations 4 to 10 shall have effect in relation to a complaint that was made before 1st January 2008.

(3) Schedule 2 shall have effect.

Name
Parliamentary Under Secretary of State
Ministry of Defence

Date

SCHEDULE 1

Regulation 3

1. Subject to paragraph 2, a matter is within this Schedule if it—

(a) is or was capable of being the subject of a complaint under the internal disputes resolution procedures established for the armed forces in accordance with section 50 of the Pensions Act 1995(**a**);

(b) is or was capable of being the subject of an appeal to the Discretionary Awards Panel;

(c) is or was capable of being the subject of an appeal to the Discretionary Awards Appeals Panel;

(d) is or was capable of being the subject of a review under rule D8 of the scheme set out in the Armed Forces Pension Scheme Order 2005(**b**);

(e) is or was capable of being the subject of an appeal to a service appeals panel under paragraph 59 of the Criminal Injuries Compensation (Overseas) Scheme(**c**);

(f) is about any decision made under the scheme set out in the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005(**d**);

(g) is about any decision made under the scheme set out in the Naval, Military and Air Forces Etc (Disablement and Death) Service Pensions Order 2006(**e**);

(h) is or was capable of being the subject of an appeal under section 141 of the Act;

(i) is or was capable of being the subject of an appeal under the Courts-Martial (Appeals) Act 1968(**f**);

(j) is a decision of a judge advocate under any provision in or made by virtue of the Act;

(**a**) 1995 c.26.
(**b**) S.I. 2005/438, amended by S.I. 2007/717
(**c**) The Criminal Injuries Compensation (Overseas) Scheme is a non-statutory, Ministry of Defence scheme under which lump sum payments may be made to members of the armed forces and their eligible dependants who in certain circumstances are killed or injured overseas as a result of a crime of violence.
(**d**) S.I. 2005/439, amended by S.I. 2006/1438.
(**e**) S.I. 2006/606, to which there are amendments not relevant to these regulations.
(**f**) 1968 c.20.

(k) is a decision of the Director of Service Prosecutions, or of a prosecuting officer exercising a function of the Director of Service Prosecutions, under any provision in or made by virtue of the Act;

(l) is a decision of the court administration officer made in exercise of a function of his under a provision in or made by virtue of the Act;

(m) is a decision of a service policeman under any provision in or made by virtue of Chapter 1 of Part 5 of the Act;

(n) is a decision of a commanding officer under Chapter 1 or 2 of Part 5 of the Act;

(o) is a decision under—

(i) section 152 of the Act (review of summary findings and punishments);

(ii) section 177 of the Act (review of service compensation orders);

(iii) section 251(3) or (4) of the Act (time for payment of, or directing payment by instalments of, a fine or service compensation order);

(iv) section 267 of the Act (power of court to remit fine); or

(v) section 276 of the Act (compensation for miscarriages of justice);

(p) is or was capable of being the subject of an appeal to a reserve forces appeal tribunal under section 81(4), 83(4) or 84(3) of the Reserve Forces Act 1996(**a**);

(q) is a decision of the Security Vetting Appeals Panel in relation to the complainant; or

(r) is or was capable of being the subject of an appeal by the complainant to the Security Vetting Appeals Panel.

2. Nothing in paragraph 1 shall prevent a person making a service complaint about any thing referred to in regulation 9(1)(a) to (d) which he alleges has occurred in connection with a matter specified in paragraph 1.

SCHEDULE 2

Regulation 11(3)

Transitory Provisions

1. In Schedule 1—

(a) the reference in its paragraph 1(h) to appeal under section 141 of the Act shall be construed as including a reference to appeal under section 83ZE of either of the 1955 Acts and to appeal under section 52FK of the 1957 Act;

(b) the reference in its paragraph 1(j) to a decision of a judge advocate under any provision in or made by virtue of the Act shall be construed as including a reference to a decision of a judicial officer or judge advocate under either of the 1955 Acts or under the 1957 Act;

(c) the reference in its paragraph 1(k) to a decision of the Director of Service Prosecutions, or of a prosecuting officer exercising a function of the Director of Service Prosecutions, under a provision in or made by virtue of the Act shall be construed as including a reference to a decision of the Naval Prosecuting Authority, the Army Prosecuting Authority or the Royal Air Force Prosecuting Authority or of any officer on behalf of any such authority under a provision in or made by virtue of either of the 1955 Acts or the 1957 Act;

(d) the reference in its paragraph 1(l) to a decision of the court administration officer made in exercise of a function of his under a provision in or made by virtue of the Act shall be construed as including a decision of a court administration officer made in exercise of a function of his under a provision in or made by virtue of either of the 1955 Acts or the 1957 Act;

(**a**) 1996 c.14.

(e) the reference in its paragraph 1(n) to a decision of a commanding officer under Chapter 1 or 2 of Part 5 of the Act shall be construed as including a reference to a decision of a commanding officer or of higher authority made under section 76 or 76A of either of the 1955 Acts or under section 52B or 52C of the 1957 Act;

(f) the reference in its paragraph 1(o)(i) to a decision under section 152 of the Act shall be construed as including a reference to a decision under section 115 of either of the 1955 Acts or under section 71B of the 1957 Act; and

(g) the reference in its paragraph 1(o)(v) to a decision under section 276 of the Act shall be construed as including a reference to a decision under section 10 of the Armed Forces Act 1991(**a**).

2. In this Schedule—

"the 1955 Acts" means the Army Act 1955(**b**) and the Air Force Act 1955(**c**); and

"the 1957 Act" means the Naval Discipline Act 1957(**d**).

(**a**) 1991 c.62.
(**b**) 1955 c.18
(**c**) 1955 c.19.
(**d**) 1957 c.53.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Under section 334 of the Armed Forces Act 2006 ("the 2006 Act") a person subject to service law, or who has ceased to be subject to service law, who thinks himself wronged in any matter relating to his service, may make a service complaint about the matter. Regulations 3 and 4 of, and Schedule 1 to, these Regulations prescribe the matters about which such a person may not make a service complaint.

The Act provides for service complaints to be referred in certain cases to a service complaint panel. Regulations 5 and 6 make further provision about the membership of the panel in particular cases.

Regulation 7 excludes members of the Defence Council or of any of the service Boards (which operate on behalf of the Defence Council) and service chaplains from membership of a service complaint panel. Regulation 8 makes further provision as to eligibility for membership and excludes from membership, among others, any person who has been involved in investigating or considering the service complaint.

Regulation 9 prescribes the service complaints for which a service complaint panel must include an independent member.

Regulation 10 requires service complaint panels with an independent member to have three members.

Regulation 11(1) and (2) make provision as to the application of these Regulations. Regulation 11(3) and Schedule 2 make transitory provision for references in the Regulations appropriate to the provisions of the 2006 Act to include references appropriate to provisions of certain other Acts relating to the Armed Forces. The 2006 Act provides so that the provisions of those other Acts may be repealed as the provisions of the 2006 Act are brought into effect.

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