

EXPLANATORY MEMORANDUM TO
THE ARMED FORCES (SERVICE COMPLAINTS) (CONSEQUENTIAL
AMENDMENTS) ORDER 2008

2008 No. [DRAFT]

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 Sections 334 to 339 of the Armed Forces Act 2006 (the 2006 Act), and regulations made under those provisions, make changes to the system under which members of the Armed Forces are allowed to make complaints about matters relating to their service. This instrument amends four statutory instruments in order that they refer to the new Service complaints procedure.

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

3.1 Before 1 January 2008 a complaint could not be presented by a member of the Armed Forces to an employment tribunal in relation to a matter provided for in the regulations listed in paragraph 4.2 below unless a complaint under Service complaint procedures had been made about the same matter and had not been withdrawn. The effect of this instrument is to repeat that requirement by reference to the new Service complaints procedure under the 2006 Act. However, the new provisions for Service complaints replaced the earlier provisions and came into force on 1 January 2008. During the period until this Order is made, there is no requirement that a complaint under the Service complaint procedures must be made before a complaint to the employment tribunal under the relevant regulations can be made.

4. Legislative Background

4.1 Section 334 of the 2006 Act makes new provision for Service complaints. That section and the regulations made under it provide for procedures which replace those previously made under the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957 (collectively known as the Service Discipline Acts). The new procedures apply to Service complaints made on or after 1 January 2008. This Order makes consequential amendments to a number of sets of regulations by adding a reference to the procedures under the 2006 Act.

4.2 The regulations that are being amended are: regulation 38 of the Working Time Regulations 1998 (S.I. 1998/1833); regulation 13 of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (S.I. 2000/1551); regulation 36 of the Employment Equality (Religion or Belief) Regulations 2003 (S.I. 2003/1660); and regulation 36 of the Employment Equality (Sexual Orientation) Regulations 2003 (S.I. 2003/1661). All of these require that, before a complaint is submitted to an employment tribunal, a member of the Armed Forces must have made a complaint in respect of the same matter under the Service procedures.

4.3 References to the Service complaint procedures under the Service Discipline Acts have been retained in the amended regulations because the Service complaints procedures under the Service Discipline Acts will continue to apply to Service complaints that were made before 1 January 2008.

5. Territorial Extent and Application

5.1 This instrument applies to all of 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 (Service Complaints) (Consequential Amendments) Order 2008 are compatible with the Convention rights.

7. Policy background

7.1 The consequential amendments contained in this Order reflect the policy that members of the Armed Forces should make a complaint under the Service complaints procedures before making a complaint to an employment tribunal under the regulations amended by this instrument. In this way, Service authorities are made aware of, and have the opportunity to address, causes of complaint before formal proceedings are commenced.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

9.1 Mrs S McIntosh at the Ministry of Defence, telephone 020 7218 0564 or email sue.mcintosh641@mod.uk, is the point of contact regarding this instrument.