

ARMED FORCES ACT 2006

EXPLANATORY NOTES

SECOND GROUP OF PARTS – MISCELLANEOUS MATTERS

Part 14 – Enlistment, Terms of Service Etc

Redress of individual grievances

665. The statutory right of complaint is considered a fundamental right of a service person. It dates back to at least the 19th century and largely reflects the fact that the terms of service of service personnel are not governed by domestic employment law. As a result service personnel do not have a contract of employment and their rights of legal remedy, in respect of matters arising from service, are limited. The internal statutory redress system has therefore always been of importance if a member of the armed forces is to be able to complain about any matter where he thinks himself wronged in relation to his service. Currently a redress of complaint proceeds through a service person's CO, through various layers of the command chain, to the Defence Council. In those circumstances the Service Board of the complainant's Service acts for the Defence Council. At any stage of the redress process, if satisfied with the decision of the decision-making authority then dealing with the complaint, the complainant can withdraw his complaint. If dissatisfied, the complaint will proceed on to the Service Board where two Board members decide the complaint.
666. These procedures have been found, in practice, to be slow. Service Boards have been overloaded with cases, and this has led to delay in cases being resolved. The sections in the Act are in part designed to speed up the process. In most cases a complaint will still be considered by a service person's CO and then go to one further level within the command chain. If a complaint is not capable of resolution by the command chain, most cases will proceed immediately to a service complaints panel. Service complaint panels are designed to take work away from the Service Boards and panels will be given delegated powers to act on behalf of the Defence Council. The panels will usually comprise serving officers of the rank of commodore, brigadier or above and civil servants. Membership of service complaint panels will come from outside the command chain of the complainant and could be drawn from another Service than that of the complainant or from the civil service. The Secretary of State may make regulations requiring that in the case of a service complaint of a particular description an independent member to sit on a service complaint panel. Examples of where an independent member appointed by the Secretary of State will sit is likely to be appropriate are complaints involving bullying, harassment or other misconduct.
667. Where the Defence Council has not delegated a case (either by delegating the particular case or a relevant category of cases to a complaints panel) they will still be able to decide the matter (as at present acting through a Service Board). In such cases, a Service Board could require a service complaint panel to assist the Board in carrying out its functions, e.g. a service complaint panel could be asked to investigate a particular matter and report to the Board with their recommendations.

668. In those cases where a Service Board deals with a complaint made by an officer, the officer if dissatisfied with the decision of the Service Board, may request reference of his individual grievance to Her Majesty.
669. The Act also provides for the appointment of a Service Complaints Commissioner. He will have two main functions (explained further below). One of these will be to receive from any person allegations that a member of the Armed Forces has been the victim of certain types of wrong in relation to his service. The Commissioner will have power to refer those allegations to an officer, who will have to check whether the alleged victim wishes to bring a complaint. The Commissioner's second main function will be to provide the Secretary of State with an annual report on the efficiency, effectiveness and fairness of the redress system.

Section 334: Redress of individual grievances: service complaints

670. This section allows a person who is, or who has previously been, subject to service law to make a complaint if he thinks himself wronged in any matter relating to his service.
671. Subsection (2) enables the Secretary of State to make regulations about the kind of matter that cannot be the subject of a complaint. It is envisaged that regulations will be made to exclude complaints about Service disciplinary proceedings (where other appeal procedures exist) and about matters involving pensions and reserve forces (where alternative dispute resolution and appeals procedures also exist).
672. Subsection (3) requires the procedure for making and dealing with complaints to be laid down in Defence Council regulations. Under subsection (4) the regulations must make provision for the kind of officer to whom a complaint is to be submitted. They must also provide so that:
- the officer is able to refer the matter to a prescribed superior officer or to the Defence Council
 - the complainant is able to require the matter to be referred to a prescribed superior officer, and
 - both the superior officer and the complainant are able to require the matter to be referred on to the Defence Council.
673. Defence Council regulations may also provide for the manner in which a complaint is to be handled and timescales for making a complaint and for a complainant to apply for his complaint to be referred to a superior officer or to the Defence Council (subsections (5) and (6)).
674. Any person considering a complaint must decide if the complaint is well-founded and if it is he must grant such redress which is within his authority to give and which he considers would be appropriate (subsections (7) and (8)).

Section 335: Service complaints: role of Defence Council and service complaint panels

675. This section permits the Defence Council to delegate all or some of its responsibilities under section 334 to a panel, referred to in the Act as a "service complaint panel". Members of a service complaint panel are appointed by the Defence Council (except independent members appointed by the Secretary of State where required by regulations under section 336(7)).
676. Subsection (4) permits the Defence Council (in relation to all or any complaints) to delegate to a civil servant or officer
- the decision on which of its functions are to be delegated to a service complaint panel, and

- the Council's function of appointing the panel members.
677. Subsections (6) and (7) enable the Defence Council to obtain assistance in other ways. Under subsection (6) the Defence Council may require a panel to assist them and (under subsection (7)) may appoint a person (including a panel or panel member) to investigate a complaint.

Section 336: Composition and procedure of service complaint panels

678. This section sets out the eligibility criteria for membership of a service complaint panel. Generally a member must be a serving officer of at least the rank of brigadier (or equivalent in the other services) or a civil servant. Panels must have at least two members, and at least one member must be a serving officer of such a rank. The section also empowers the Secretary of State to make further provision in regulations about its composition and procedure, including:
- provision for additional or stricter eligibility requirements, and
 - provision requiring a panel to include one member who is neither a member of the armed forces nor a civil servant.

Section 337: Reference of individual grievance to Her Majesty

679. Officers have traditionally had the right to have their complaint referred to the Sovereign for Her Majesty to decide whether to give the Defence Council any directions about the complaint. This section lays down certain conditions that must be satisfied for an officer to have his complaint referred to Her Majesty. One condition is that the complaint must have previously been decided by the Defence Council, i.e. by a Service Board, and that its function has not been delegated to a service complaints panel to any extent. So the matters about which an officer will be entitled to complain to Her Majesty will be limited to those matters that the Defence Council decides not to delegate decisions on to service complaint panels.

Section 338: Referral by Service Complaints Commissioner of certain allegations

680. Under this section the Service Complaints Commissioner (who is to be appointed under section 366) will be able to receive from any person allegations that a member of the Armed Forces has been the victim of certain types of wrong in relation to his service, or that a former member was the victim of such a wrong while in the Armed Forces. The wrongs in question will be prescribed in regulations made by the Secretary of State. It is intended that they will include bullying, harassment and other misconduct. The Commissioner will have power to refer those allegations to an officer, who will have to check whether the alleged victim wishes to bring a complaint about the alleged wrong.

Section 339: Reports by Commissioner on system for dealing with service complaints etc

681. Under this section the Commissioner must provide the Secretary of State with an annual report on the efficiency, effectiveness and fairness of the redress system, the exercise by him of his own function under section 338 of referring allegations and any related matters that he consider appropriate or the Secretary of State directs. The reports must be laid before Parliament by the Secretary of State. The Secretary of State is also empowered to require the Commissioner to provide him with other reports on aspects of the redress system or on matters relating to the Commissioner's function of referring allegations.