



# Armed Forces Act 2006

## 2006 CHAPTER 52

### PART 18

#### COMMANDING OFFICER AND OTHER PERSONS WITH FUNCTIONS UNDER ACT

##### *Officers*

#### **360 Meaning of “commanding officer”**

The officer who is the “commanding officer” of a person for the purposes of any provision made by or under this Act shall be determined by or under regulations made by the Defence Council.

##### **Commencement Information**

**11** S. 360 in force at 15.10.2007 by [S.I. 2007/2913](#), [art. 2](#)

#### **361 Meaning of “higher authority”**

In this Act “higher authority”, in relation to a commanding officer, means any officer in the commanding officer's disciplinary chain of command who is superior in that chain of command to the commanding officer.

##### **Commencement Information**

**12** S. 361 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**13** S. 361 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

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## *Court officials*

### **362 Judge advocates**

In this Act “judge advocate” means—

- (a) the Judge Advocate General;
- (b) a person appointed under section 30(1)(a) or (b) or (2) of the Courts-Martial (Appeals) Act 1951 (c. 46) (assistants to the Judge Advocate General); or
- (c) a puisne judge of the High Court in England and Wales [<sup>F1</sup>, or a Circuit judge,] who (following a request by the Judge Advocate General) is nominated by or on behalf of the Lord Chief Justice of England and Wales to sit as a judge advocate.

#### **Textual Amendments**

- F1** Words in s. 362(c) inserted (1.5.2022) by [Armed Forces Act 2021 \(c. 35\)](#), **ss. 3, 24(1)**; [S.I. 2022/471](#), reg. 4(a)

#### **Commencement Information**

- I4** S. 362 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))
- I5** S. 362 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

### **363 Court administration officer**

- (1) There shall be a court administration officer for the Court Martial, the Service Civilian Court and the Summary Appeal Court.
- (2) The court administration officer is to be appointed by the Defence Council.

#### **Commencement Information**

- I6** S. 363 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))
- I7** S. 363 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

## *Service Prosecuting Authority*

### **364 Director of Service Prosecutions**

- (1) Her Majesty may appoint a person as the Director of Service Prosecutions.
- (2) A person may be appointed as the Director of Service Prosecutions only if he—
  - (a) has a ten year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41);
  - (b) is an advocate or solicitor in Scotland of at least ten years' standing;
  - (c) is a member of the Bar of Northern Ireland, or a solicitor of the Court of Judicature of Northern Ireland, of at least ten years' standing; or
  - (d) has in a relevant territory rights and duties similar to those of a barrister or solicitor in England and Wales, has had those rights and duties for at least

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ten years, and is subject to punishment or disability for breach of professional rules.

- (3) The Director of Service Prosecutions shall hold and vacate office in accordance with the terms of his appointment.
- (4) In this section “relevant territory” means—
  - (a) any of the Channel Islands;
  - (b) the Isle of Man;
  - (c) a Commonwealth country; or
  - (d) a British overseas territory.

#### Commencement Information

**I8** S. 364 in force at 24.6.2008 by [S.I. 2008/1650](#), [art. 4\(b\)](#)

### 365 Prosecuting officers

- (1) The Director of Service Prosecutions (“the Director”) may appoint [<sup>F2</sup>persons] to be prosecuting officers.
- (2) [<sup>F3</sup>A person] may be appointed as a prosecuting officer only if he—
  - (a) has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990;
  - (b) is an advocate or solicitor in Scotland;
  - (c) is a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland; or
  - (d) has in a relevant territory rights and duties similar to those of a barrister or solicitor in England and Wales, and is subject to punishment or disability for breach of professional rules.
- (3) A prosecuting officer shall hold and vacate office in accordance with the terms of his appointment.
- (4) A prosecuting officer may, unless the Director otherwise directs, exercise any function of the Director.
- (5) In this section “relevant territory” has the same meaning as in section 364.

#### Textual Amendments

**F2** Word in [s. 365\(1\)](#) substituted (23.12.2016) by [Armed Forces Act 2011 \(c. 18\)](#), [ss. 21\(a\)](#), 32(3); [S.I. 2016/1232](#), [art. 2](#)

**F3** Words in [s. 365\(2\)](#) substituted (23.12.2016) by [Armed Forces Act 2011 \(c. 18\)](#), [ss. 21\(b\)](#), 32(3); [S.I. 2016/1232](#), [art. 2](#)

#### Modifications etc. (not altering text)

**C1** [S. 365\(4\)](#) excluded (1.8.2013) by [The Armed Forces \(Retrial for Serious Offences\) Order 2013 \(S.I. 2013/1852\)](#), [arts. 1](#), [27\(1\)](#) (with [art. 3](#))

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#### Commencement Information

- I9** S. 365 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))
- I10** S. 365 in force at 6.5.2009 for specified purposes by [S.I. 2009/1167](#), **art. 3(a)**
- I11** S. 365 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

### *[<sup>F4</sup>Provost Marshals*

#### Textual Amendments

- F4** S. 365A and cross-heading inserted (2.4.2012) by [Armed Forces Act 2011 \(c. 18\)](#), **ss. 5, 32(3)**; [S.I. 2012/669](#), **art. 4(a)**

### **365A Provost Marshals: appointment**

- (1) No appointment of a person to be Provost Marshal of a service police force [<sup>F5</sup>, or to be Provost Marshal for serious crime,] may be made except by Her Majesty.
- (2) To be eligible for appointment as a Provost Marshal, a person must be a provost officer.]

#### Textual Amendments

- F5** Words in [s. 365A\(1\)](#) inserted (1.5.2022 for specified purposes, 5.12.2022 in so far as not already in force) by [Armed Forces Act 2021 \(c. 35\)](#), **ss. 12(2), 24(1)**; [S.I. 2022/471](#), **reg. 2(e)**; [S.I. 2022/1095](#), **reg. 4**

### *[<sup>F6</sup>Service Complaints Ombudsman*

#### Textual Amendments

- F6** [S. 365B](#) and cross-heading inserted (1.1.2016) by [Armed Forces \(Service Complaints and Financial Assistance\) Act 2015 \(c. 19\)](#), **ss. 1(1), 7(1)**; [S.I. 2015/1957](#), **reg. 2** (with savings and transitional provisions in [S.I. 2015/1969](#))

### **365B Service Complaints Ombudsman**

- (1) The office of Service Complaints Ombudsman is established.
- (2) The Ombudsman is to be appointed by Her Majesty on the recommendation of the Secretary of State.
- (3) A person may not be appointed as the Ombudsman if the person is—
  - (a) a member of the regular or reserve forces, or
  - (b) employed in the civil service of the State.
- (4) The Ombudsman holds and vacates office in accordance with the terms of his or her appointment.

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- (5) The Ombudsman may authorise a person working for the Ombudsman to exercise any function of the Ombudsman on his or her behalf.
- (6) The Ombudsman is not to be regarded—
  - (a) as the servant or agent of the Crown, or
  - (b) as enjoying any status, immunity or privilege of the Crown.]

### *[<sup>F7</sup>Service Police Complaints Commissioner*

#### **Textual Amendments**

- F7** Ss. 365BA, 365BB and cross-heading inserted (1.11.2022 for specified purposes, 20.2.2023 for specified purposes, 19.6.2023 in so far as not already in force) by [Armed Forces Act 2021 \(c. 35\)](#), [ss. 11\(2\)](#), [24\(1\)](#); [S.I. 2022/1095](#), [reg. 3](#); [S.I. 2023/158](#), [reg. 4](#); [S.I. 2023/621](#), [reg. 2](#)

### **365BA Service Police Complaints Commissioner**

- (1) There is to be a Service Police Complaints Commissioner.
- (2) The Commissioner is to have the functions conferred on the Commissioner by or under this Act or any other enactment.
- (3) Schedule 14A makes further provision with respect to the Commissioner.

### **365BB Investigating officers**

- (1) The Service Police Complaints Commissioner may appoint persons to be investigating officers.
- (2) An investigating officer holds and vacates office in accordance with the terms of the officer's appointment.
- (3) An investigating officer may, unless the Commissioner otherwise directs, exercise any function of the Commissioner.]

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#### **Textual Amendments**

- F8** S. 366 and cross-heading omitted (1.1.2016) by virtue of [Armed Forces \(Service Complaints and Financial Assistance\) Act 2015 \(c. 19\)](#), [ss. 1\(3\)](#), [7\(1\)](#); [S.I. 2015/1957](#), [reg. 2](#) (with savings and transitional provisions in [S.I. 2015/1969](#))

### **<sup>F8</sup>366 Service Complaints Commissioner**

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