



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](#)

Status: Point in time view as at 11/07/2023.

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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 [^{F1}, 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 [^{F2}persons] to be prosecuting officers.
- (2) [^{F3}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**

[^{F4}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 [^{F5}, 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**

[^{F6}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.]

[^{F7}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](#))

^{F8}366 Service Complaints Commissioner

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