



Armed Forces Act 2021

2021 CHAPTER 35

Service in the armed forces

10 Service complaints appeals

- (1) Part 14A of AFA 2006 (redress of service complaints) is amended as follows.
- (2) Section 340D (appeals) is amended as follows.
- (3) In subsection (2)—
 - (a) after paragraph (a) insert—
 - “(aa) restricting the grounds on which an appeal against a decision on a complaint (or on a complaint of a description specified in the regulations) may be brought;”;
 - (b) after paragraph (c) insert—
 - “(ca) requiring the Defence Council to decide any question relating to whether an appeal has been brought on valid grounds;”.
- (4) In subsection (3), for “six” substitute “two”.
- (5) In subsection (6)—
 - (a) after paragraph (a) insert—
 - “(aa) for the Service Complaints Ombudsman, on an application by the complainant, to review a decision by the Defence Council that an appeal cannot be proceeded with because it was not brought on a valid ground;”;
 - (b) in paragraph (b) for “such a review,” substitute “a review such as is mentioned in paragraph (a) or (aa).”.
- (6) Section 340H (ombudsman investigations) is amended as follows.
- (7) After subsection (5) insert—
 - “(5A) A decision on a service complaint is not to be taken to fall within subsection (5)(b) if the complainant does not have grounds (of which the

complainant is aware) on which the complainant is entitled to bring an appeal against the decision.”

(8) In subsection (9)—

- (a) in the words before paragraph (a), for “six” substitute “two”;
- (b) for the words from “date” to the end substitute “relevant date (see subsection (9A))”.

(9) After subsection (9) insert—

“(9A) For the purposes of subsection (9) “the relevant date” in relation to a service complaint that has been finally determined is—

- (a) where the service complaint falls within subsection (5)(b), the date on which the complainant is notified of the determination of the appeal;
- (b) where the decision on the service complaint does not fall within subsection (5)(b)—
 - (i) if the conditions in subsection (9B) are met, the date of the final invalidity decision;
 - (ii) otherwise, the date of the decision on the service complaint.

(9B) The conditions mentioned in subsection (9A)(b)(i) are that—

- (a) the complainant brings an appeal against the decision on the service complaint;
- (b) the Defence Council decides that the appeal cannot be proceeded with because (and only because) it was not brought on a valid ground;
- (c) on any review of that decision of the Defence Council in accordance with regulations made by virtue of section 340D(6)(aa), the decision is upheld.

(9C) In subsection (9A)(b) “the date of the final invalidity decision” means—

- (a) if the complainant does not apply for a review by the Service Complaints Ombudsman of the decision mentioned in subsection (9B)(b), the date on which the Defence Council notifies the complainant of that decision;
- (b) if the complainant does apply for such a review, the date on which the Service Complaints Ombudsman notifies the complainant that the appeal cannot be proceeded with because it was not brought on a valid ground.”

(10) Schedule 3 contains amendments consequential on this section.