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STATUTORY INSTRUMENTS

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**1998 No. 1833**

**The Working Time Regulations 1998**

**PART V**

**SPECIAL CLASSES OF PERSON**

**Armed forces**

**38.**—(1) Regulation 37 applies—

- (a) subject to paragraph (2), to service as a member of the armed forces, and
- (b) to employment by an association established for the purposes of Part XI of the Reserve Forces Act 1996 <sup>M1</sup>.

(2) No complaint concerning the service of any person as a member of the armed forces may be presented to an employment tribunal under regulation 30 unless—

- [<sup>F1</sup>(a) that person (“the complainant”) has made a service complaint in respect of the same matter, and]
- (b) that complaint has not been withdrawn.

[<sup>F2</sup>(3) Where the service complaint is dealt with by a person or panel appointed by the Defence Council by virtue of section 340C(1)(a) of the Armed Forces Act 2006, it is to be treated for the purposes of paragraph (2)(b) as withdrawn if—

- (a) the period allowed in accordance with service complaints regulations for bringing an appeal against the person’s or panel’s decision expires,
- (b) there are grounds (of which the complainant is aware) on which the complainant is entitled to bring such an appeal, and
- (c) either—
  - (i) the complainant does not apply to the Service Complaints Ombudsman for a review by virtue of section 340D(6)(a) of the Armed Forces Act 2006 (review of decision that appeal brought out of time cannot proceed), or
  - (ii) the complainant does apply for such a review and the Ombudsman decides that an appeal against the person’s or panel’s decision cannot be proceeded with.]

(4) Where a complaint of the kind referred to in paragraph (2) is presented to an employment tribunal, the [<sup>F3</sup>procedures set out in service complaints regulations] may continue after the complaint is presented.

[<sup>F4</sup>(5) In this regulation—

“service complaint” means a complaint under section 340A of the Armed Forces Act 2006;

“service complaints regulations” means regulations made under section 340B(1) of that Act.]

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**Textual Amendments**

- F1** Reg. 38(2)(a) substituted (1.5.2022 for specified purposes, 15.6.2022 in so far as not already in force) by Armed Forces Act 2021 (c. 35), s. 24(1), **Sch. 3 para. 4(a)**; S.I. 2022/471, reg. 2(d); S.I. 2022/625, reg. 2
- F2** Reg. 38(3) substituted (1.5.2022 for specified purposes, 15.6.2022 in so far as not already in force) by Armed Forces Act 2021 (c. 35), s. 24(1), **Sch. 3 para. 4(b)**; S.I. 2022/471, reg. 2(d); S.I. 2022/625, reg. 2
- F3** Words in reg. 38(4) substituted (1.5.2022 for specified purposes, 15.6.2022 in so far as not already in force) by Armed Forces Act 2021 (c. 35), s. 24(1), **Sch. 3 para. 4(c)**; S.I. 2022/471, reg. 2(d); S.I. 2022/625, reg. 2
- F4** Reg. 38(5) substituted (1.5.2022 for specified purposes, 15.6.2022 in so far as not already in force) by Armed Forces Act 2021 (c. 35), s. 24(1), **Sch. 3 para. 4(d)**; S.I. 2022/471, reg. 2(d); S.I. 2022/625, reg. 2

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**Marginal Citations**

- M1** 1996 c.14.

**Changes to legislation:**

There are currently no known outstanding effects for the The Working Time Regulations 1998, Section 38.