



Armed Forces Act 2006

2006 CHAPTER 52

Second Group of Parts Miscellaneous Matters

PART 14

ENLISTMENT, TERMS OF SERVICE ETC

Enlistment, terms of service etc

328 Enlistment

- (1) The Defence Council may by regulations make provision with respect to the enlistment of persons in the regular forces (including enlistment outside the United Kingdom).
- (2) The regulations may in particular make provision—
 - (a) requiring the enlistment of persons in the regular forces to be undertaken by recruiting officers;
 - (b) as to the persons, whether or not members of the regular forces, who may be appointed as recruiting officers;
 - (c) prohibiting the enlistment of persons under the age of 18 without the consent of prescribed persons;
 - (d) deeming a person, in prescribed circumstances, to have attained (or not to have attained) that age;
 - (e) as to the procedure for enlistment (including requiring a recruiting officer to attest the enlistment);
 - (f) creating offences relating to knowingly giving false answers during the enlistment procedure;
 - (g) as to the approval for service of persons who have enlisted.
- (3) The regulations may also in particular make provision in connection with the validity of a person's enlistment, including provision—
 - (a) as to when, how and on what basis the validity of a person's enlistment may be challenged;
 - (b) deeming a person, in prescribed circumstances, to have been validly enlisted;

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- (c) conferring on a person a right to discharge in prescribed circumstances;
 - (d) as to the status of a person until he is discharged.
- (4) Where the regulations create an offence they may provide—
- (a) that the offence is a service offence and is punishable by any punishment mentioned in rows 2 to 12 of the Table in section 164; or
 - (b) that the offence is an offence triable summarily by a civilian court in the United Kingdom and is punishable by a fine not exceeding level 1 on the standard scale.
- (5) In this section and sections 329 to 331 “prescribed” means prescribed by regulations made by the Defence Council.

329 Terms and conditions of enlistment and service

- (1) The Defence Council may by regulations make provision with respect to the terms and conditions of enlistment and service of persons enlisting, or who have enlisted, in the regular forces.
- (2) The regulations may in particular make provision for the purposes of—
- (a) specifying the duration of the term for which a person is enlisted (whether by reference to a number of years or another criterion or both);
 - (b) requiring any such term to be one of service with a regular force, or to be in part service with a regular force and in part service with a reserve force;
 - (c) enabling a person to end his service with a regular force at a prescribed time, or to transfer at a prescribed time to a reserve force;
 - (d) restricting a person, in consideration of the acceptance by him of any benefit or advantage, from exercising any right referred to in paragraph (c);
 - (e) enabling a person enlisted for a term of service of a prescribed description to be treated as if he had enlisted for a term of service of a different description;
 - (f) enabling a person to extend or reduce the term of his service (whether with a regular force or a reserve force, or both);
 - (g) enabling a person to continue in service after completion of the term of his service;
 - (h) enabling a person in a reserve force to re-enter service with a regular force;
 - (i) enabling a person to restrict his service to service in a particular area;
 - (j) requiring a person who has restricted his service to service in a particular area to serve outside that area for a number of days in any year not exceeding a prescribed maximum.
- (3) The exercise of any right conferred on a person by virtue of subsection (2) may be made subject to prescribed conditions.
- (4) The Defence Council may also by regulations make provision enabling—
- (a) a member of the regular army of or below the rank of warrant officer, or
 - (b) a member of the Army Reserve of or below the rank of warrant officer who is in permanent service on call-out under any provision of the Reserve Forces Act 1980 (c. 9) or the Reserve Forces Act 1996 (c. 14),
- to be transferred between corps without his consent in prescribed circumstances.
- (5) Regulations under subsection (4) may in particular make provision for varying the terms and conditions of service of a person transferred between corps.

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- (6) In this section “corps” means any body of the regular army that may from time to time be declared by Royal Warrant to be a corps.

330 Desertion and absence without leave: forfeiture of service etc

- (1) The Defence Council may by regulations make provision—
- (a) with respect to the making of a confession by a member of the regular forces that he is guilty of an offence under section 8 (desertion);
 - (b) for the making of a determination as to whether a trial may be dispensed with in the case of a person who makes such a confession;
 - (c) for the forfeiture of a period of service of such a person where a trial is so dispensed with.
- (2) The Defence Council may also by regulations make provision for the forfeiture of a period of service of a member of the regular forces who is convicted of an offence under section 8.
- (3) Regulations under subsection (1) or (2) may include provision for enabling a determination to be made in prescribed circumstances restoring (in whole or in part) a forfeited period of service.
- (4) The Defence Council may also by regulations make provision with respect to—
- (a) the issue of a certificate of absence in respect of a member of the regular forces absent without leave for more than a prescribed period;
 - (b) the effects of such a certificate (in particular in connection with the pay and allowances of the person in respect of whom it is issued).

331 Discharge etc from the regular forces and transfer to the reserve forces

- (1) The Defence Council may by regulations make provision with respect to—
- (a) the discharge of members of the regular forces of or below the rank or rate of warrant officer;
 - (b) the transfer of such persons to the reserve forces.
- (2) The regulations may in particular make provision with respect to—
- (a) authorisation of a person’s discharge or transfer to a reserve force;
 - (b) the status of a person who is entitled to be, but has not yet been, discharged or transferred to a reserve force.
- (3) The regulations may also in particular make provision conferring on a warrant officer (other than an acting warrant officer) a right to be discharged—
- (a) following his reduction in rank or rate; or
 - (b) following his reduction in rank or rate in prescribed circumstances.
- (4) The regulations may also in particular make provision enabling—
- (a) the discharge of a person from the regular forces (including by virtue of subsection (3)), or
 - (b) the transfer of a person to a reserve force,
- to be postponed in prescribed circumstances.

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332 Restriction on administrative reduction in rank or rate

- (1) The rank or rate of a warrant officer or non-commissioned officer (“the relevant person”) may be reduced only by an order within subsection (2).
- (2) An order is within this subsection if—
 - (a) it is made by the relevant person’s commanding officer; and
 - (b) it reduces the rank or rate of the relevant person—
 - (i) by one acting rank or rate; or
 - (ii) if he has no acting rank or rate, by one substantive rank or rate.
- (3) An order reducing the rank of a person who is a corporal in any of Her Majesty’s air forces is within subsection (2)(b)(i) (if he is an acting corporal) or (2)(b)(ii) (if he is not) if, and only if, it reduces his rank to the highest rank he has held in that force as an airman.
- (4) A commanding officer who is of or below the rank of commodore, brigadier or air commodore may make an order within subsection (2) only with the permission of higher authority; but this does not apply if the relevant person is a lance corporal or lance bombardier.
- (5) Nothing in this section applies to a reduction in rank or rate by virtue of a sentence.
- (6) Nothing in this section applies in relation to the reversion of a person, otherwise than on account of his conduct, from his acting rank or rate to his substantive rank or rate.

333 Pay, bounty and allowances

- (1) Her Majesty may by warrant make provision with respect to pay, bounty and allowances for members of the regular or reserve forces.
- (2) A Royal Warrant made under this section may in particular—
 - (a) provide for the way in which pay, bounty and allowances are to be paid;
 - (b) impose conditions or restrictions on the making of such payments;
 - (c) confer a discretion on any person.
- (3) Provision that may be made by virtue of subsection (2)(b) includes in particular provision authorising the making of a deduction from a payment to a person—
 - (a) in respect of anything (including any service) supplied to him;
 - (b) in order to recover any overpayment or advance; or
 - (c) in order to reclaim any relevant payment.
- (4) For the purposes of subsection (3)(c) a payment is “relevant” if—
 - (a) it was made on condition that it would or might be repayable in specified circumstances; and
 - (b) any such circumstance has occurred.
- (5) A Royal Warrant under this section may not authorise the forfeiture of pay.
- (6) A Royal Warrant under this section may not make provision about money distributable under the Naval Agency and Distribution Act 1864 (c. 24).
- (7) Section 373(5) (power to make supplementary provision etc) applies in relation to Royal Warrants under this section.

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- (8) A Royal Warrant under this section may be amended or revoked by a further Royal Warrant under this section.
- (9) Nothing in this section prevents provision as to rates of allowances from being made otherwise than under this section.

Redress of individual grievances

334 Redress of individual grievances: service complaints

- (1) If—
 - (a) a person subject to service law thinks himself wronged in any matter relating to his service, or
 - (b) a person who has ceased to be subject to service law thinks himself wronged in any such matter which occurred while he was so subject,he may make a complaint about the matter under this section (a “service complaint”).
- (2) But a person may not make a service complaint about a matter of a description specified in regulations made by the Secretary of State.
- (3) The Defence Council must by regulations make provision with respect to the procedure for making and dealing with service complaints.
- (4) The regulations must in particular make provision requiring—
 - (a) a service complaint to be made to an officer of a prescribed description;
 - (b) the officer to whom a service complaint is made to decide whether to consider the complaint himself or to refer it to a superior officer of a prescribed description or to the Defence Council;
 - (c) a service complaint considered by the officer to whom the complaint is made to be referred, on the application of the complainant, to a superior officer of a prescribed description or (if the officer considers it appropriate) to the Defence Council;
 - (d) a superior officer to whom a service complaint is referred by virtue of paragraph (b) or (c) to decide whether to consider the complaint himself or to refer it to the Defence Council;
 - (e) a service complaint considered by a superior officer to whom the complaint is referred by virtue of paragraph (b) or (c) to be referred, on the application of the complainant, to the Defence Council.
- (5) Without prejudice to the generality of subsections (3) and (4), the regulations may also make provision—
 - (a) as to the way in which a service complaint is to be made (including provision as to the information to be provided by the complainant);
 - (b) that a service complaint, or an application of a kind mentioned in subsection (4)(c) or (e), may not be made, except in prescribed circumstances, after the end of a prescribed period.
- (6) A period prescribed under subsection (5)(b) must not be less than three months beginning with the day on which the matter complained of occurred.
- (7) If, under provision made by virtue of subsections (3) and (4)—
 - (a) an officer decides to consider a service complaint himself, or

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- (b) a service complaint is referred to the Defence Council, the officer or the Defence Council (“the appropriate person”) must decide whether the complaint is well-founded.
- (8) If the appropriate person decides that the complaint is well-founded, he must—
 - (a) decide what redress (if any), within his authority, would be appropriate; and
 - (b) grant any such redress.
- (9) In this section “prescribed” means prescribed by regulations made by the Defence Council.

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

- (1) The Defence Council may, to such extent and subject to such conditions as they consider appropriate, delegate to a panel of persons (a “service complaint panel”) all or any of the functions conferred on the Defence Council by or under section 334.
- (2) The delegation under subsection (1) of a function may relate to—
 - (a) a particular service complaint; or
 - (b) any service complaint of a description determined by the Defence Council.
- (3) The members of a service complaint panel, other than any member appointed by virtue of section 336(6)(a), are to be appointed by the Defence Council (see further section 336).
- (4) The Defence Council may, to such extent and subject to such conditions as they consider appropriate, delegate to a person employed in the civil service of the State or an officer—
 - (a) their function of deciding whether, and if so to what extent and subject to what conditions, they should delegate any of their functions to a service complaint panel under subsection (1);
 - (b) their function of appointing members of service complaint panels under subsection (3).
- (5) The delegation under subsection (4) of a function may relate to—
 - (a) a particular service complaint;
 - (b) any service complaint of a description determined by the Defence Council; or
 - (c) all service complaints.
- (6) The Defence Council may require a service complaint panel to assist them in carrying out any of the functions conferred on them by or under section 334.
- (7) The Defence Council may authorise a person (whether or not a service complaint panel or a member of such a panel) to investigate on their behalf—
 - (a) a particular service complaint; or
 - (b) any service complaint of a description determined by them.
- (8) In this section “service complaint” has the same meaning as in section 334.
- (9) Nothing in this section affects the application of section 1(5) or (7) of the Defence (Transfer of Functions) Act 1964 (c. 15) (discharge by Service Boards of Defence Council’s functions under any enactment etc) to the functions of the Defence Council (in particular, the functions conferred on them by or under section 334 and this section).

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336 Composition and procedure of service complaint panels

- (1) A person may not be a member of a service complaint panel unless he is—
 - (a) a senior officer (see subsection (4)); or
 - (b) a person employed in the civil service of the State;but this is subject to any regulations made by virtue of subsection (6)(a) (appointment of independent members).
- (2) A service complaint panel must consist of at least two members.
- (3) At least one member of a service complaint panel must be a senior officer.
- (4) In this section “senior officer” means an officer who is—
 - (a) subject to service law; and
 - (b) of or above the rank of commodore, brigadier or air commodore.
- (5) The Secretary of State may by regulations—
 - (a) make further provision with respect to the composition of service complaint panels;
 - (b) make provision as to the procedure of service complaint panels (either generally or in prescribed circumstances).
- (6) The regulations may in particular—
 - (a) require, in the case of any service complaint of a prescribed description, a service complaint panel to include one independent member;
 - (b) impose, in the case of all service complaints or any service complaint of a prescribed description, any requirement in addition to those imposed by subsections (1) to (4);
 - (c) impose, in the case of any service complaint of a prescribed description, a greater requirement than that imposed by any provision of those subsections (for example, requiring an officer to be of or above a higher rank than those specified in subsection (4) in order to be a senior officer for the purposes of this section).
- (7) In this section—

“independent member” means a person appointed by the Secretary of State who is not—

 - (a) a member of the regular or reserve forces; or
 - (b) a person employed in the civil service of the State;

“prescribed” means prescribed by regulations under this section;

“service complaint” has the same meaning as in section 334;

“service complaint panel” has the same meaning as in section 335.

337 Reference of individual grievance to Her Majesty

- (1) This section applies if conditions A to C are met.
- (2) Condition A is that a service complaint is made about a matter by—
 - (a) an officer; or
 - (b) a person who was an officer at the time the matter occurred.
- (3) Condition B is that—

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- (a) a decision on the complaint is taken by the Defence Council under section 334; and
 - (b) the Defence Council's function of taking that decision is not delegated to a service complaint panel to any extent.
- (4) Condition C is that the complainant makes an application to the Defence Council stating why, in his view—
- (a) he should be given redress; or
 - (b) he should be given different or additional redress.
- (5) The Defence Council must make a report on the complaint to Her Majesty, in order to receive the directions of Her Majesty on the complaint.
- (6) In this section—
- “service complaint” has the same meaning as in section 334;
 - “service complaint panel” has the same meaning as in section 335.

Role of Service Complaints Commissioner

338 Referral by Service Complaints Commissioner of certain allegations

- (1) This section applies where the Service Complaints Commissioner (“the Commissioner”) considers that any communication made to him contains an allegation that a person named in such a communication—
- (a) is subject to service law and has been wronged in a prescribed way; or
 - (b) was wronged in such a way while he was so subject.
- (2) The Commissioner may refer the allegation to the officer whom he considers to be the relevant officer.
- (3) If the allegation is referred under subsection (2), the officer to whom it is referred must as soon as is reasonably practicable—
- (a) inform the person that the allegation has been so referred;
 - (b) ensure that the person is aware of—
 - (i) the procedure for making a service complaint; and
 - (ii) the effect on the making of service complaints of any regulations made by virtue of section 334(5)(b) (time limits for service complaints); and
 - (c) ascertain whether he wishes to make a service complaint in respect of the alleged wrong.
- (4) Regulations made by the Secretary of State must provide that where the allegation is referred under subsection (2), the prescribed person must within the prescribed period notify the Commissioner of prescribed matters.
- (5) In this section—
- “prescribed” means prescribed by regulations made by the Secretary of State;
 - “relevant officer” means the officer to whom a service complaint made by the person in respect of the alleged wrong is (under regulations made under section 334) to be made;
 - “service complaint” has the same meaning as in that section.

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

- (1) The Service Complaints Commissioner (“the Commissioner”) must prepare and give to the Secretary of State, as soon as practicable after the end of each relevant period, a report as to—
 - (a) the efficiency, effectiveness and fairness with which the system under this Part for dealing with service complaints has operated during that period;
 - (b) the exercise by the Commissioner during that period of his function under section 338 of referring allegations; and
 - (c) such other aspects of the system mentioned in paragraph (a), and such matters relating to the function mentioned in paragraph (b), as the Commissioner considers appropriate or the Secretary of State may direct.
- (2) The Secretary of State must lay before Parliament each report under subsection (1) received by him.
- (3) The Secretary of State may exclude from any report laid under subsection (2) any material whose publication he considers—
 - (a) would be against the interests of national security; or
 - (b) might jeopardise the safety of any person.
- (4) The Secretary of State may require the Commissioner to prepare and give to him a report on—
 - (a) any aspect of the system mentioned in subsection (1)(a);
 - (b) any matter relating to the function mentioned in subsection (1)(b).
- (5) In this section—
 - “relevant period” means a period of one year beginning with—
 - (a) the date this section comes into force; or
 - (b) an anniversary of that date;
 - “service complaint” has the same meaning as in section 334.

Restriction on aliens

340 Restriction on aliens in regular forces etc

- (1) An alien may not be a member of—
 - (a) the regular forces; or
 - (b) any of Her Majesty’s forces raised under the law of a British overseas territory.
- (2) But the Defence Council may make regulations providing for subsection (1) not to apply to an alien who satisfies prescribed conditions.
- (3) Such a condition may require the alien—
 - (a) to be of a prescribed nationality; and
 - (b) to serve in a prescribed unit.
- (4) Section 3 of the Act of Settlement (1700 c. 2) does not prevent any person from being a member of any of Her Majesty’s forces.
- (5) In this section “prescribed” means prescribed by regulations made by the Defence Council.