

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT ARMED FORCES (SERVICE COMPLAINTS
MISCELLANEOUS PROVISIONS) REGULATIONS

Monday 14 December 2015

PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS
LONDON – THE STATIONERY OFFICE LIMITED

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Friday 18 December 2015

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The Committee consisted of the following Members:

Chair: MRS MADELEINE MOON

- | | |
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| † Chalk, Alex (<i>Cheltenham</i>) (Con) | † Hopkins, Kris (<i>Vice-Chamberlain of Her Majesty's Household</i>) |
| † Colvile, Oliver (<i>Plymouth, Sutton and Devonport</i>) (Con) | † Lancaster, Mark (<i>Parliamentary Under-Secretary of State for Defence</i>) |
| † Cummins, Judith (<i>Bradford South</i>) (Lab) | McCabe, Steve (<i>Birmingham, Selly Oak</i>) (Lab) |
| † Danczuk, Simon (<i>Rochdale</i>) (Lab) | † Maskell, Rachael (<i>York Central</i>) (Lab/Co-op) |
| † Farrelly, Paul (<i>Newcastle-under-Lyme</i>) (Lab) | † Oswald, Kirsten (<i>East Renfrewshire</i>) (SNP) |
| † Fuller, Richard (<i>Bedford</i>) (Con) | † Paterson, Steven (<i>Stirling</i>) (SNP) |
| † Hart, Simon (<i>Carmarthen West and South Pembrokeshire</i>) (Con) | † Thomas, Derek (<i>St Ives</i>) (Con) |
| † Haselhurst, Sir Alan (<i>Saffron Walden</i>) (Con) | † Williams, Craig (<i>Cardiff North</i>) (Con) |
| † Heaton-Harris, Chris (<i>Daventry</i>) (Con) | Glenn McKee, <i>Committee Clerk</i> |
| † Hollern, Kate (<i>Blackburn</i>) (Lab) | † attended the Committee |

Second Delegated Legislation Committee

Monday 14 December 2015

[MRS MADELEINE MOON *in the Chair*]

Draft Armed Forces (Service Complaints Miscellaneous Provisions) Regulations 2015

4.30 pm

The Parliamentary Under-Secretary of State for Defence (Mark Lancaster): I beg to move,

That the Committee has considered the draft Armed Forces (Service Complaints Miscellaneous Provisions) Regulations 2015.

It is a pleasure to serve under your chairmanship, Mrs Moon. The draft regulations are required as part of a package of measures to implement a new service complaints process and a service complaints ombudsman for the armed forces. The new legislation is designed to provide a streamlined and more effective internal redress system for our armed forces and new, strengthened external oversight through an ombudsman. The regulations will come into force on 1 January 2016. The new system is provided for in new section 365B and part 14A of the Armed Forces Act 2006, as inserted by sections 1 to 3 of, and the schedule to, the Armed Forces (Service Complaints and Financial Assistance) Act 2015.

The instrument is intended to promote fairness in the new system by preventing conflicts of interest and ensuring that complaints are dealt with by those who have the right experience and knowledge properly to assist the complainant. The instrument also covers procedural matters that provide essential safeguards and aspects of independence for our armed forces personnel.

The regulations include four important things, which I shall deal with in turn. First, we have, as for the existing system, made rules on who cannot be appointed to deal with a service complaint—for example, someone who is implicated in the matters complained about.

The second important aspect of the regulations is that we have set out those matters that cannot be raised as a service complaint. That is not a new aspect of the complaints process; such matters are provided for in the regulations covering the current system and have been updated in this instrument to take account of the new process and of experience. For example, challenges to decisions made in the internal redress system are excluded, as under the new legislation the ombudsman will be able to review or investigate them.

Similarly, the regulations exclude complaints about decisions made by the ombudsman. The ombudsman provides external oversight of the complaints system, so it would be contradictory for the complaints system to be able to overturn decisions of the ombudsman. Challenges to the decisions of external ombudsmen are best made in the courts.

One particular matter that I want to mention is the exclusion of complaints alleging clinical negligence or personal injury against the Ministry of Defence. The redress

system is not appropriate for deciding the complex, specialised medical and legal issues that can arise in clinical negligence and personal injury cases. It remains possible, however, to make a service complaint if a person believes we have not provided medical care when it was our responsibility to do so. As under the existing system, the regulations also exclude matters for which there are more appropriate alternative remedies. For example, challenges to decisions made in the court martial are best decided through the appeals system.

The third important effect of the regulations is to set out when at least one independent person must be appointed for deciding a service complaint. The main circumstance in which that will apply is where a complaint alleges bullying or similar misconduct. That is the same as under the current system and provides an extra safeguard for fairness in such sensitive cases, as well as giving a measure of external oversight as part of the internal system.

The fourth main effect of the regulations is to set out the matters that must be reported to the service complaints ombudsman when an allegation of a wrong suffered by a serviceperson has been referred by the ombudsman to the chain of command. Like the Service Complaints Commissioner for the Armed Forces now, the ombudsman will be able to receive allegations of wrongs done to service personnel. For example, a family member of a serviceperson will be able to approach the ombudsman with their concerns. The ombudsman will then be able to refer those cases to the chain of command and to track what happens. The regulations will ensure that the ombudsman is kept updated on progress and can respond to queries without comprising her investigative role.

Finally, the Joint Committee on Statutory Instruments has scrutinised the draft instrument and, in doing so, has brought to our attention three minor drafting points that we will seek to correct at the earliest available opportunity. However, we do not expect those points to affect the practical workings of the regulations. On the first point that has been raised, we accept that the definition of the expression “in writing” has been included unnecessarily in regulation 2(1).

On the second point that the Committee has brought to our attention, we will seek to provide further clarity on regulation 6(1). This regulation provides for when the period of three weeks begins from which the ombudsman is to be notified of certain events in connection with the progress of the matter that has been referred by the ombudsman as a potential service complaint. It also provides that the ombudsman is to be notified of each event that is listed in the regulation. We will seek to clarify the exact moment of the day from which the time period of three weeks applies, and that the period applies separately to each event that appears in the list.

The third of the JCSI’s points relates to a provision in the schedule to these regulations that excludes the right to make a complaint where there is a right of review for certain service police or prosecution matters. The Committee has said that the regulations refer incorrectly to those rights of review being “under” the code in which they appear, rather than being mentioned “in” that code. Again, we will look to make the correction at the earliest available opportunity. I hope that hon. Members will support these regulations today.

4.36 pm

Rachael Maskell (York Central) (Lab/Co-op): It is a pleasure to serve under your chairmanship, Mrs Moon, and to rise to support the creation of the ombudsman to address complaints raised across the armed forces through these draft regulations. I note that the statutory instrument is accompanied by a further four statutory instruments, which are not being considered by this Committee today.

Let me take us back to show how we have arrived at this point. The tragedy that shocked us all arising from the Deepcut barracks between 1995 and 2002 caused the Government at the time to review how complaints could be raised in the armed forces. The subsequent report brought about change through the historic Armed Forces Act 2006 and championed the provision for enhancing grievance management processes. The Act sought to harmonise procedures across the armed forces, with the aim being to establish best practice through a single procedure.

The Service Complaints Commissioner for the Armed Forces was created by the Act to address inappropriate behaviour, in particular instances of bullying, harassment and discrimination. The legislation did much to reform our armed forces, but, five years after its implementation in 2013, the Service Complaints Commissioner, Dr Susan Atkins, highlighted that the operation was

“not operating efficiently, effectively or fairly”

and

“neither swift, nor easy to use...having lost sight of the individual”.

Evidence about the increasing demand on the Service Complaints Commissioner has shown that the measure was a necessary step, and has enabled issues to be raised that would otherwise have gone unreported. We still know that far too many cases are not reported. Evidence shows that such cases impact on 10% of serving personnel, yet only 8% of those remain unreported. Since the roll-out of the 2006 Act, change has been called for. Labour was very much a part of the initial call for the role of the ombudsman to be created, so we welcome the fact that progress has been made.

For confidence to be built into the service, personnel need to be able to raise issues and to be protected if they do so. Much has been learnt across all areas of our public services in recent times about how best to raise complaints or matters of protective disclosure, and about ensuring that individuals can do so without fearing the repercussions. Being able to raise issues safely about the behaviours of others forms part of this necessary culture change. The Government are now on a learning journey in that regard and there is still much to get right. However, it is only right that the armed forces are also included in the development of a safer environment in which to raise concerns.

When dealing with matters of concern, expediency is imperative. Whether the matter appertains to professional or personal matters, time delayed is time lost in addressing the issue or finding the correct means to resolve a grievance dispute or concern. In reviewing how matters have been handled, ensuring a swift and fair response is vital for the complainant. That is why Dr Atkins's report was so concerning, as it highlighted the backlog of more than 430 cases for more than six months in 2012, which was a worsening of the situation in the Army and the RAF.

The Service Complaints Commissioner was right to press for the role to be changed to that of an ombudsman in her 2010 report, with the associated powers being upgraded, including the powers to investigate whether a complaint was handled properly during the internal process and to undertake investigations on the ombudsman's own initiative on systematic issues, cutting out the tiers of appeal.

The importance of independence of redress is increasingly being recognised across public services. It provides a space of safety and confidence in raising concerns, shortens procedures that in some cases have taken more than a year to progress, and, importantly, ensures that issues are addressed if there has been failure in the system further down the chain.

The mechanism also provides oversight, so that trends in matters raised with the ombudsman can be mapped at a more strategic level, as they currently are. Again, that makes the system more responsive to concerns. The fact that 615 people contacted the office of the Service Complaints Commissioner for the Armed Forces in 2014, and 725 in 2013, and that 572 complaints were received in 2012—a third up on that for 2011 and two thirds up on that for 2010—shows the scale of the issue. In particular, it highlights the need to get the system right for the future.

As to who should serve in the role of service complaints ombudsman, Labour has been clear that it should not be former service personnel or civil servants, and we are pleased that the Government have accepted our reasoning about that. For the system to be effective it is crucial to maximise confidence in it, and that is particularly important in dealing with cases of bullying, harassment and discrimination, when there is often an inherent distrust in the fairness of investigative procedures and formal processes.

There can be serious consequences to delay and getting the processes wrong in such matters. An ombudsman able to review the management of the process directly and expediently will make a difference. I have for many years worked closely with academics, and in industry, in the field of negative behaviours, and I know that expediency and rigour in processes are crucial if further long-term damage is to be avoided.

I note the additional requirement that an independent person must be appointed to investigate such matters. That is wholly appropriate and I ask that those individuals should be fully trained not only in carrying out independent investigations but in matters concerning bullying, harassment and discrimination, and other forms of negative behaviour.

The range of issues that will be within the scope of the ombudsman's oversight is set out in the regulations. It is important that that should be kept under review in case changes to that scope should be needed in future. However, I shall not ask for that without clear evidence. I note that matters of clinical negligence and personal injury, in particular, are to be excluded.

Labour is also in agreement that in view of the oversight that is part of the ombudsman's role, decisions on cases should be binding. The Minister was right to state that should there be a failure to fulfil the duty of the office, appeal should be a matter for the courts; but it should also be for Parliament to scrutinise concerns raised and take the necessary action to bring redress.

[*Rachael Maskell*]

The additional responsibility for family members to raise issues of wrongs against someone who is serving or has served in the armed forces, or someone who is deceased, is important. However, sufficient time must be provided to enable a family to bring their case to the attention of the ombudsman.

I am concerned about the timeline for the raising of concerns in all relevant matters. Given the lack of a trade union to provide independent advocacy, an allowance should be made to give personnel time to raise their concerns. In the sensitive areas of bullying, harassment and discrimination, it can take time for people to recognise the behaviour that they have been subjected to, and its impact. It may be another event that triggers that realisation—or a better understanding of bullying. Official definitions of bullying refer to instances happening over a period of time. Academics measure the previous two years in their research.

Trauma caused by bullying can take time to come to the surface and it can also take time to develop the confidence to raise claims of bullying. Someone with associated mental health challenges resulting from the negative behaviours they have experienced might not be in a place to make a complaint. The point is that when someone who has been through the process receives a rejection of their grievance locally, it can take much more effort for them to raise it with the ombudsman, particularly when they know that that decision will be final. A three-month time limit therefore allows far too short a period in which to raise a complaint. I note that the ombudsman has some discretion, but I ask for the timeline to be extended, to create the greater flexibility that is required. I reiterate the point that was well made in the House of Lords by my noble Friend Lord Tunnicliffe of Bracknell. He called for a version of the regulations to pass the plain English test before being made available to all those serving in the armed forces.

The regulations before us will not only help to fulfil the Government's responsibility under the armed forces covenant, but provide more confidence and ensure the safety of our servicemen and women, who deserve the best possible support when things go wrong to reciprocate their dedication and professionalism in how they serve us. In ensuring that the regulations work, I ask the Government to make resources, which have been an issue with the current office, available to the office of the service complaints ombudsman to avoid delay being introduced into the improved service. Should demand on the office increase, the Government should make further resources available to match that need. Labour supports the regulations' coming into force from 1 January 2016.

4.45 pm

Mark Lancaster: I thank the hon. Lady for her support in this important matter. I appreciate that she came to the House only at the general election and so was unable to be part of our discussions on the 2015 Act earlier this year, but it was a constructive process, which I am pleased had support from across the House. She highlighted some of the history behind where we are today, and the creation of the ombudsman, whom I have met on several occasions, is a positive step. The change will streamline the process to try to ensure that it is sped up, which is vital. Equally, we are determined

to advertise the process as widely as possible, because I accept that we must encourage people to feel able to make a complaint and that there should be as few barriers to that as possible.

The hon. Lady touched on the training of independent members who may be appointed. We put them through an induction programme to familiarise them with the armed forces and we also try to select individuals with considerable experience in similar areas, so I hope she will be reassured by that.

Rachael Maskell: Issues appertaining to bullying, harassment and discrimination are particularly sensitive, so I ask that specific training be provided to investigating officers.

Mark Lancaster: Okay. I hear that request. If I may, I will go away and look carefully at the current training package. I will then write to the hon. Lady outlining exactly what training is provided. If she still feels uneasy after that, we can discuss the matter further.

The hon. Lady also mentioned the case backlog, which, as I have already mentioned, is one reason why we have sought to streamline the process. I accept that some complaints have taken too long to resolve, potentially reducing confidence in the system. It must be remembered, however, that some complaints, including those that deal with improper behaviour, can be more complex and thus necessarily take longer to investigate. It is right that a reasonable amount of time is taken so that cases are handled fairly. We want to ensure that the system is fairer, more effective and more efficient than at present, while valuing quality outcomes as much as timeliness.

On the overall direction of travel, it is important to note that the regulations require the ombudsman to produce an annual report, which must be laid before Parliament. It must cover the system for dealing with complaints and the exercise by her of her functions. The same requirement has applied to the Service Complaints Commissioner. The ombudsman can include in the report any matters related to redress and her work as she decides. The Secretary of State can also ask her to address any matters. It is likely that the report, just like those of the Service Complaints Commissioner, will address trends and themes. I would expect the Government to address those trends and themes as we move forward.

The hon. Lady also spoke of how long complainants have to make a complaint. I recognise that it can take time for themes to develop and that it may take time for someone to build up the courage to make a complaint about an incident. Ultimately, however, it is worth remembering that the ombudsman's new powers already include the ability to overturn cases that are deemed to be out of time. Equally, given that we have the annual report, if we begin to see a theme of people who are deemed out of time to make a timely complaint, I am sure that we will endeavour to address it.

I hope I have touched on all the points that the hon. Lady raised. If, when I read *Hansard*, I see that I have not, I will write to her.

Rachael Maskell: I thank the Minister for his response. I also appreciate his commitment to follow up on the issues raised. I want to return to the timeline, because it is important that communications are made to ensure

that people have confidence in raising a complaint. Knowing that time limits are in place will act as a barrier to people raising complaints outside that three-month timeline. I ask that the flexibility that the ombudsman can exercise in such matters will be communicated and that that issue will be reviewed and considered closely in the reporting that the ombudsman makes.

Mark Lancaster: I accept that the hon. Lady is anticipating a problem. Given that we have the annual report, I will ensure that the ombudsman, Nicola Williams,

sees this debate, so that she is alerted to the concern that the timeline may well become a problem. I will ask her to look specifically at that issue, so that we can address it in one of her annual reports, if need be.

Question put and agreed to.

4.51 pm

Committee rose.

