



Ministry  
of Defence

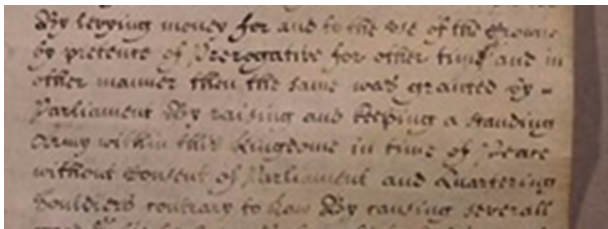
# ARMED FORCES BILL



## Renewal and the Bill of Rights 1688

Since the Bill of Rights 1688, the legislation governing the Army (and more recently the Royal Navy and the Royal Air Force) has been subject to regular renewal by Act of Parliament. Since the 1950s, an Armed Forces Act has been required every five years for this purpose.

Regular renewal by Parliament fulfils the requirement in the Bill of Rights 1688 that: “the raising or keeping a standing Army within the Kingdome in time of Peace unlesse it be with Consent of Parlyament is against Law”



Currently, it is the Armed Forces Act 2006 which provides nearly all the provisions for the existence of a system for the Armed Forces of command, discipline and justice, enabling the

Armed Forces to be recruited and maintained as disciplined bodies.

Unless renewed by Act of Parliament, the 2006 Act will expire at the end of 2016. The Armed Forces Bill contains provision to renew the 2006 Act until the end of 2021.

- The 2006 Act introduced a single system of law that applies to all service personnel. Before that Act, the three Services operated within separate statutory frameworks of discipline.
- The 2011 Act amended the 2006 Act, most notably by requiring an annual Armed Forces Covenant report to be presented to Parliament.



## Overview of Clauses

- 1.** Provides for the continuation in force, for a further period up to the end of 2021, of the 2006 Act.
- 2.** Extends the circumstances in which a commanding officer may require co-operation with a preliminary test for drugs or alcohol after an accident.
- 3-5.** Simplifies the processes governing the bringing of charges for criminal and disciplinary offences under the 2006 Act.
- 6.** Increases, from 12 to 24 months, the period for which a sentence of service detention may be suspended by the Court Martial.
- 7-12.** Creates a statutory framework for immunity from prosecution and other assurances for offenders who co-operate in investigations.

- 13. And the Schedule to the Act.** Bring the 2006 Act into force in the Isle of Man and the British overseas territories (except Gibraltar).
- 14.** Repeals redundant provisions in the Criminal Justice and Public Order Act 1994 relating to discharge from the Armed Forces for homosexual acts.
- 15.** Amends section 25 of the Social Security Act 1989 so that war pensions committees may be given functions relating to benefits payable under armed and reserve forces compensation schemes.
- 16-17.** Gives MOD fire-fighters the same statutory powers to act in an emergency as civilian fire and rescue authority fire-fighters.

# Clause 1

## **Duration of the Armed Forces Act 2006:**

The primary purpose of the Armed Forces Bill is to provide for the continuation in force of the Armed Forces Act 2006, which would otherwise expire at the end of 2016. Clause 1 provides for continuation of the 2006 Act for a year from the date on which the Bill receives Royal Assent, and allows further renewal thereafter by Order in Council for up to a year at a time, but not beyond the end of 2021.

Crucially, the 2006 Act confers powers and sets out procedures to enforce the duty of members of the Armed Forces to obey lawful commands. The central effect of expiry of the 2006 Act would be to end the powers and provisions to maintain the Armed Forces as disciplined bodies.

## Clause 2

### **Post-accident testing for alcohol and drugs:**

Currently, a commanding officer may only require a member of the Armed Forces or a civilian subject to service discipline to co-operate with a preliminary test for drugs or alcohol on suspicion of an offence.

Clause 2 extends the circumstances in which a commanding officer may require co-operation with such a test.

It provides for post-accident preliminary testing without the need for suspicion that the person to be tested may have committed an offence. The new powers to require co-operation with such tests only apply after accidents involving aircraft or ships or after other serious accidents.

## Clauses 3-5

### **Simplifying the process of charging offences under the 2006 Act:**

These clauses make a number of changes to provisions in Part 5 of the 2006 Act which deal with the process of deciding whether a person is to be charged with a service offence under that Act. The changes simplify the process.

For example, currently some cases which cannot be dealt with by the commanding officer (CO) must nonetheless be referred by the investigating service police to the CO and then from the CO to the Director of Service Prosecutions for a decision on the charge and prosecution. Clause 3 provides instead that, where there is sufficient evidence to charge an offence which the CO cannot deal with, the service police may refer the case straight to the Director of Service Prosecutions.

Clause 4 makes a minor technical clarification to the procedure for the referral of linked cases from the CO to the DSP. Clause 5 provides for the DSP to bring charges himself.



## Clause 6

### **Increasing the period for which a sentence of service detention may be suspended:**

This clause increases, from 12 to 24 months, the maximum period for which a sentence of service detention may be suspended by the Court Martial. Civilian courts and the Court Martial already have the ability to suspend sentences of imprisonment for up to 24 months. This measure would provide the Court Martial with greater flexibility and allow, in appropriate circumstances, for rehabilitation during service.

The change will mean that a sentence of up to 2 years service detention will be capable of being suspended by the Court Martial for a period of up to 2 years (in line with the civilian provisions regarding suspension of terms of imprisonment as amended by the Legal Aid and Punishment of Offenders Act 2012).

## Clauses 7-12

### **Offenders assisting investigations and prosecutions:**

Clauses 7 and 8 allow the Director of Service Prosecutions, in return for assistance provided by a person to an investigation or prosecution, to enter into an agreement with the person giving them immunity from prosecution or an undertaking that information will not be used against them in proceedings.

Clauses 9 to 12 make provision with respect to reduced sentences for those who provide such assistance.

The provisions closely follow those in the Serious Organised Crime and Policing Act 2005 which apply to civilian prosecutors and courts.

## Clause 13 and Schedule

### **Bringing the 2006 Act into force in the Isle of Man and British overseas territories:**

This clause provides for the 2006 Act, as it currently has effect in the UK, to come into force in the Isle of Man and the British overseas territories (except Gibraltar).

The department is consulting with the Government of Gibraltar about extending the provisions of the 2006 Act to that territory.

The Schedule makes further provision in connection with AFA 2006 and the Isle of Man and British overseas territories.

## Clause 14

### **Repeals relating to discharge for homosexual acts:**

The Sexual Offences Act 1967 decriminalised homosexual acts committed in private between consenting adults but it provided (in section 1(5)) that this did not prevent an act from being an offence under service law. Section 1(5) was repealed by section 146 of the Criminal Justice and Public Order Act 1994 but section 146(4) states that this does not prevent a homosexual act from being ground for discharging a member of the Armed Forces.

Clause 14 removes that wording (and similar wording in section 147(3) of the 1994 Act with respect to Northern Ireland). It was formerly government policy that homosexuality was incompatible with service in the Armed Forces. That policy was abandoned in January 2000.

## Clause 15

### **War pensions committees and armed and reserve forces compensation schemes:**

The Secretary of State may make regulations under section 25 of the Social Security Act 1989 to give war pensions committees functions relating to war pensions and war pensioners (such as considering complaints made by pensions recipients). The committees' existing functions relate primarily to the war pensions scheme which provides compensation for injury or death caused by service in the Armed Forces before 6 April 2005.

Clause 15 amends section 25, allowing committees to also be given functions relating to the scheme which provides compensation for injury or death caused by service in the armed forces on or after 6 April 2005. War pensions committees are commonly known as Veterans Advisory and Pensions Committees (VAPCs).

## Clauses 16-17

### **Powers of MOD fire-fighters in an emergency:**

These clauses give MOD fire-fighters the same powers to act in emergencies as employees of civilian fire and rescue authorities. Those powers include powers to enter premises by force if necessary, to close roads and to regulate traffic.

Clause 16 also makes it an offence to obstruct an MOD fire-fighter who is acting in an emergency. Clause 17 gives MOD fire-fighters the same exemptions from provisions in certain Acts (e.g. rules on drivers' hours) as employees of fire and rescue authorities.

## Useful links

### **Armed Forces Bill Homepage**

<http://services.parliament.uk/bills/2015-16/armedforces.html>

### **Commons Select Committee**

<http://www.parliament.uk/business/committees/committees-a-z/commons-select/armed-forces-bill-committee-2015/>

### **Supporting documents**

<https://www.gov.uk/government/collections/armed-forces-bill-2015>

### **For further information please contact:**

[MinLords-PrivateOffice@mod.uk](mailto:MinLords-PrivateOffice@mod.uk)

## Topics in the Bill

- Duration of the Armed Forces Act 2006
- Testing for alcohol and drugs
- Investigation and charging of service offences
- Suspended sentences of service detention
- Offenders assisting investigations and prosecutions
- The Armed Forces Act 2006 outside the United Kingdom
- Repeals relating to discharge for homosexual acts
- Veterans Advisory and Pensions Committees (VAPCs)
- Ministry of Defence fire-fighters

As introduced into the House of Lords in January 2016