



Ministry
of Defence

Armed Forces Bill 2021 Summary



Background

Since the Bill of Rights 1688, the legislation making the provision necessary for the Armed Forces to exist as a disciplined force has been subject to regular renewal by an Act of Parliament.

The next renewal is needed by the end of 2021. The primary purpose of these Acts is to provide for the continuation for a further period of up to five years of the legislation enabling the Armed Forces to be recruited and maintained as disciplined bodies; that legislation is the Armed Forces Act 2006. The 2006 Act introduced a single system of law and the Service Justice System that applies to all Service personnel wherever in the world they are operating. The 2006 Act was implemented in 2009, replacing three separate Service Discipline Acts that dated back to the 1950s. The 2006 Act continues to serve our Armed Forces well and subsequent Armed Forces Acts have brought the 2006 Act up to date for the contemporary needs of the Services.

In 2017, in preparation for this Bill, MOD commissioned an independent review of the Service Justice System (SJS) to ensure that it continues to be transparent, fair and efficient. The review made 79 recommendations for improvement and the Bill includes provision to implement a few of these which require primary legislation. In common with other five-yearly Bills, this one contains a small number of proposals which fall outside the ambit of Service discipline.



marks the measures that deliver recommendations from the Service Justice System review conducted by HHJ Lyons, also referred to as the Lyons Review.

Importantly, this Bill will strengthen the legislative basis of the Armed Forces Covenant to help ensure that those who serve or have served and their families are treated with fairness and respect in the communities they serve.

Summary of the Bill

Clause 1: Duration of Armed Forces Act

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 2021. Failure to do so would end the powers and provisions to maintain the Armed Forces as disciplined bodies.

Clause 2: Constitution of the Court Martial

LR The Court Martial consists of a judge advocate and, in proceedings which require it, lay members. Lay members are usually officers or warrant officers. Lay members perform a similar function to a Crown Court jury. They make findings on a charge by majority verdict; the judge advocate does not vote but the judge advocate and lay members together decide sentence. The Bill will implement the recommendation of the SJS review to allow three or six lay members to sit on a Court Martial, and that a person of the rank of staff sergeant or equivalent can be a lay member. It also introduces qualified majority voting where there are six lay members on the Court Martial.

Clause 3: Nomination of Circuit judge to sit as judge advocate

LR The Bill provides the Lord Chief Justice of England and Wales with a power to nominate a Circuit judge to sit as a judge advocate following a request by the Judge Advocate General. At present, the Lord Chief Justice is empowered only to nominate a puisne judge of the High Court of England and Wales.

Clauses 4 to 6: Power to rectify mistakes

LR The Bill provides a power for a commanding officer to vary or rescind a punishment they have awarded in error at a summary hearing (sometimes referred to as a “slip rule”). The Court Martial already has similar powers to rectify errors. The Bill also introduces similar powers in respect of the Summary Appeal Court and the Service Civilian Court.

Clause 7: Concurrent jurisdiction

Concurrent jurisdiction arises where either the Service Justice System or the civilian criminal justice system has jurisdiction to try criminal offences committed by service personnel in the UK. The Bill will place a duty on the Director of Service Prosecutions and each of the heads of the civilian prosecution services across the UK to agree protocols on the handling of cases where there is concurrent jurisdiction. The Bill provides that the protocol must give guidance to relevant prosecutors to assist in the decision as to where a case should be prosecuted. Where the protocol applies, and prosecutors are unable to resolve a disagreement as to the appropriate jurisdiction for a case, the relevant head of the civilian prosecution service will make the final decision.



Clause 8: Armed Forces Covenant

The Bill will strengthen the Covenant by imposing a duty to have due regard to the principles of the Armed Forces Covenant, as follows: (a) the unique obligations of, and sacrifices made by, the Armed Forces; (b) the principle that it is desirable to remove disadvantages arising for Service personnel from membership, or former membership, of the Armed Forces; and (c) the principle that special provision for Service personnel may be justified by the effects on such people of membership, or former membership, of the Armed Forces. These principles are already set out in the existing duty on the Secretary of State to make an annual Armed Forces Covenant report. The new duty will apply to specified persons or bodies when exercising certain housing, education or healthcare

Clause 9: Reserve forces: flexibility of commitments

The Bill amends the Reserve Forces Act 1996 to replace the full-time service commitment, which enables members of a reserve force to volunteer to undertake a period of full-time service, with a new continuous service commitment. The continuous service commitment will enable members of a reserve force to volunteer to undertake a period of full-time or part-time service putting them on a par with their regular counterparts.

Clause 10: Service complaints appeals

As part of wider reforms to increase efficiency and speed of the statutory service complaints system, the Bill reduces the minimum time which can be set out in

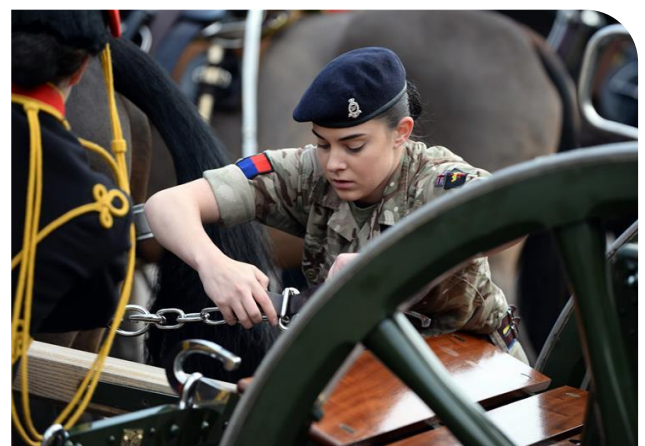
regulations for complainants to lodge appeals or apply to the Service Complaints Ombudsman and permits the possibility of restricting the grounds upon which an appeal can be brought.

Clause 11: Service police: complaints and misconduct

LR The Bill creates a new regime for complaints against the Service Police. It does so by establishing the Service Police Complaints Commissioner and introducing a power to enable the creation of a regime for complaints which is modelled on the regime for the civilian police in England and Wales set out in the Police Reform Act 2002. Additional powers are taken so that similar provision can be made for super-complaints and concerns raised by whistle blowers.

Clause 12: Power of commanding officer to award service detention: Royal Marines

The Bill gives a commanding officer the power to award a punishment of service detention to a corporal in the Royal Marines. At present only a person of a rank beneath that of corporal in the Royal Marines may be awarded this punishment by a commanding officer. This will ensure commanding officers have the same powers to punish corporals in the Royal Marines as they do in respect of Leading Hands in the Royal Navy who hold an equivalent rank.



Clause 13: Deprivation orders

Deprivation orders will be available when commanding officers the Court Martial and the Service Civilian Court sentence offenders. The order deprives offenders of any rights they had in relation to property used to commit a service offence, or that the offender intended to use for that purpose. The provisions are modelled on deprivation orders which are available to civilian courts in England and Wales under section 152 of the Sentencing Act 2020.



Clauses 14 & 15: Driving disqualification

The Bill introduces driving disqualification orders into the Service Justice System. The Court Martial and Service Civilian Court do not currently have the ability to disqualify offenders from driving in the United Kingdom when sentencing. The new provisions are modelled on discretionary driving disqualification orders which are available to civilian courts in England and Wales under section 162 of the Sentencing Act 2020.

Clause 16: Removal of requirement to take into account offences in member States

The Bill removes the requirement for service courts to take account of EU member State convictions in the same way as UK convictions. The result will be that EU member State convictions will be treated the same as those with previous convictions imposed in any other country outside of the United Kingdom. The decision to remove these requirements reflects the approach being taken in relation to civilian sentencing law in England and Wales.



Clause 17: Rehabilitation periods: England and Wales

The Bill restores rehabilitation periods to the service punishments of reprimand and severe reprimand by amending the Rehabilitation of Offenders Act 1974. Currently these punishments are immediately “spent” meaning that they cannot be taken into account, for example, by promotion boards. The result of this amendment is that these punishments will have a rehabilitation period of 12 months for adults and 6 months for young offenders, during which time the punishments may be considered in relation to a person’s conduct and service.



Clause 18: Posthumous pardons in relation to certain abolished service offences

The Bill amends section 164 of the Policing and Crime Act 2017 to extend posthumous pardons for abolished service offences. At present section 164 (insofar as it relates to the Armed Forces) refers only to historical (here meaning pre-1881) service offences of men who served in the Navy but not in respect of those who served in the Army or the Royal Marines (when ashore). Section 164 provides for posthumous pardons for those convicted of, or cautioned for, certain specified abolished sexual offences with the effect that if anyone was convicted of or cautioned for such an abolished offence (and has since died) they may be pardoned for that offence.

Clause 19: Power of British overseas territories to apply AFA 2006

The Bill amends section 357 of the Armed Forces Act 2006 that allows a British overseas territory to apply all or any of the provisions of the AFA 2006 (with or without modification) to a locally raised force. The Bill clarifies that the Armed Forces Act 2006

may be applied by a British overseas territory even when the section does not extend to that overseas territory. As a result of amendments made by the Armed Forces Acts in 2011 and 2016, the AFA 2006 no longer extends to Gibraltar. This measure confirms that Gibraltar legislation can apply the AFA 2006 (with or without modification) to bring the Royal Gibraltar Regiment into the UK's Service Justice System despite the extant provisions of the AFA 2006.

Clause 20: Time limit for appeals in respect of war pensions: Scotland and Northern Ireland

This clause amends the Pensions Appeal Tribunals Act 1943 to enable the late appeal for the War Pension Scheme and the Armed Forces Compensation Schemes in Scotland and Northern Ireland to be aligned with those for England and Wales. At present, the 1943 Act provides that a late appeal may only be brought in Scotland and Northern Ireland in certain circumstances, set out in regulations. This measure will enable the Minister to make provision for cases where an appeal is made between twelve and twenty four months after the decision in the claim, and will allow an appeal submitted in this extended 12-month period to be treated as if it was in time provided the conditions in the regulations are met.

