

ARMED FORCES BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Armed Forces Bill as brought from the House of Commons on 14 July 2021 (HL Bill 42).

- These Explanatory Notes have been prepared by the Ministry of Defence in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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These Explanatory Notes relate to the Armed Forces Bill as brought from the House of Commons on 14 July 2021 (HL Bill 42)

Overview of the Bill

- 1 The primary purpose of this Bill is to renew the Armed Forces Act 2006 (“AFA 2006”) and, in so doing, continue in force the primary legislation governing the armed forces. The Bill also provides for measures to maintain the effectiveness of the service justice system so that it continues to meet the needs of the armed forces and it will further incorporate the Armed Forces Covenant into law.
- 2 The Bill deals with the following matters:
 - Duration of the AFA 2006
 - Service courts, summary hearings and jurisdiction
 - Service in the armed forces
 - Service police: complaints, misconduct etc
 - Sentencing and rehabilitation
 - Posthumous pardons
- 3 The Bill was brought from the House of Commons to the House of Lords on 14 July 2021. The Bill was introduced in the House of Commons on 26 January 2021 and carried over from the previous parliamentary session. The Bill was then re-introduced in the House of Commons in this parliamentary session on 12 May 2021 and completed its remaining stages in the House of Commons with Report and Third Reading on 13 July 2021.

Policy background

- 4 Since the 1950s, an Armed Forces Act has been required every five years to continue in force the legislation enabling the armed forces to be recruited and maintained as disciplined bodies. Since 2009 the relevant legislation has been the AFA 2006, most of which came into force in 2009: this has been kept in force by further Armed Forces Acts in 2011 and 2016.
- 5 The AFA 2006 replaced separate disciplinary regimes for, respectively, the Royal Navy, Army and Royal Air Force. In so doing it introduced a single system of service law that provides nearly all the provisions for the existence of a system for the armed forces of command, discipline and justice. It also provides a more limited system for dealing with offences committed by certain civilians in circumstances closely connected with the armed forces. The AFA 2006 covers matters such as offences, the powers of the service police, and the jurisdiction and powers of commanding officers and of the service courts, in particular the Court Martial. Further, it contains a substantial number of other important provisions for the armed forces, such as provision for enlistment, pay and service complaints.
- 6 In 2017, in preparation for this Bill, the Ministry of Defence commissioned an independent review of the Service Justice System with the aim of ensuring its effectiveness. The review was carried out by HH Shaun Lyons, a retired senior Crown Court judge. Shaun Lyons was supported by Sir Jon Murphy, a former Chief Constable for Merseyside. The Review, which was published in February 2020, made 79 recommendations.¹ The Government response to

¹ Ministry of Defence, *Service Justice System review* (February 2020): <https://www.gov.uk/government/publications/service-justice-system-review>

the Review is outlined in two written ministerial statements: dated 27 February 2020² and 12 November 2020.³

- 7 Most of the recommendations of the Service Justice System Review do not require primary legislation in order to implement them. This Bill contains provisions relating to those recommendations of the Service Justice System Review which do. Those recommendations concern: the handling of cases committed in the United Kingdom which could be tried in either the service justice system or the civilian criminal justice system (particularly murder, manslaughter and rape) (recommendations 1 to 3 of Part 1; recommendation 23 of Part 2); the constitution of the Court Martial (recommendation 4 of Part 1; recommendations 24 to 26 of Part 2); Circuit judges sitting in the Court Martial (recommendation 7 of Part 1); provision to permit the correction of mistakes in sentencing at summary hearing (recommendation 43 of Part 2) and independent oversight of the service police (recommendation 44 of Part 2).
- 8 In common with other five-yearly Armed Forces Acts, this Bill contains measures which fall outside the ambit of the service justice system. Notably, the Bill makes provision for the Armed Forces Covenant in fulfilment of the Government manifesto commitment at the general election in December 2019 that the Government would “further incorporate the Armed Forces Covenant into law”. The new provision is part of the Government’s program to ensure that members of the armed forces, veterans and their families are treated fairly. The Bill also makes changes to the basis on which reservists can enter voluntary commitments to serve with the armed forces. It also makes provision about service complaints, the statutory complaints system by which service personnel can complain where they think themselves wronged in any matter relating to their service in the armed forces.

Legal background

Service justice system

- 9 The AFA 2006 contains most of the primary legislation for the service justice system. The service justice system is the current disciplinary regime for the armed forces. It applies to service personnel (referred to in the Act as “persons subject to service law”) wherever they are in the world. The regime also applies to some civilians, for example, when they are living or working with the armed forces on certain bases overseas. They are referred to in the AFA 2006 as “civilians subject to service discipline”.
- 10 The service justice system in the AFA 2006 creates a system for dealing with “service offences”; defined in section 50 of the AFA 2006. These are mainly set out in Part 1 of the AFA 2006. There are specific service offences relating to discipline in the armed forces. They include, for example, insubordination or disobedience to lawful commands. These are referred to as “service disciplinary offences”. It is also a service offence for a service person (or civilian subject to service discipline) to commit an act which is an offence under the criminal law of England and Wales; or would be an offence if it were done in England and Wales; see section 42 of the AFA 2006. Such offences are known as “criminal conduct offences”.
- 11 The AFA 2006 sets out the circumstances in which service offences can be dealt with by a commanding officer or service courts. In summary:

² Service Justice System: Written Ministerial Statement (27 February 2020): <https://questions-statements.parliament.uk/written-statements/detail/2020-02-27/hlws125>

³ Service Justice System Update: Written Ministerial Statement (12 November 2020): <https://questions-statements.parliament.uk/written-statements/detail/2020-11-12/HCWSS77>

- a. Summary hearings: There is summary jurisdiction by which low level offending can be dealt with by a service person's commanding officer. The service offences which can be dealt with in this way are set out in sections 52 to 54 of, and Schedule 1 to, the AFA 2006. A service person has the right to elect trial by Court Martial instead of being tried summarily (section 129 of the AFA 2006) and has a right to appeal to the Summary Appeal Court (see below).
- b. The Court Martial: All service offences may also be investigated by the service police and prosecuted by the independent Service Prosecuting Authority before the Court Martial. The jurisdiction of the Court Martial is set out in section 50 of the AFA 2006. Commanding officers are obliged to ensure service police are aware of serious offending (see sections 113 and 114 of the AFA 2006). While capable of dealing with all service offences (even those that would be summary-only offences in England and Wales) the Court Martial has – in broad terms – similar powers and practices to the Crown Court in England and Wales. In trials, the Court Martial consists of a judge advocate (a civilian judge) and three to seven lay members (see section 155 of the AFA 2006). The lay members are usually officers/warrant officers who perform a similar function to the jury in Crown Court proceedings. The Court Martial has similar sentencing powers to the Crown Court.
- c. The Service Civilian Court: The Service Civilian Court consists of a judge advocate who tries civilians subject to service discipline for low level offences (Part 11 of the AFA 2006). Its purpose is to deal with service disciplinary offences (insofar as they are relevant to civilians) which would typically be handled by commanding officers if the person being tried was a service person and criminal conduct offences that would be dealt with by a magistrates' court in England and Wales.
- d. The Summary Appeal Court: This court hears appeals by service personnel against sentence or conviction in summary proceedings before their commanding officer (section 141 of the AFA 2006). It consists of a judge advocate and two lay members who will be serving officers or warrant officers (section 142 of the AFA 2006). Appeals are by way of a rehearing (see section 146 of the AFA 2006).
- e. The Court Martial Appeal Court: There is a right to appeal convictions or sentence in the Court Martial to the Court Martial Appeal Court, established by the Court Martial Appeals Act 1968. The Court Martial Appeal Court has similar functions and powers to the Criminal Division of the Court of Appeal in England and Wales, is staffed by the same judges and follows the same procedure. Appeals from the Court Martial Appeal Court are made to the Supreme Court.

Armed Forces Covenant

- 12 The AFA 2006 requires the Secretary of State to make an armed forces covenant report annually to Parliament (see section 343A of the AFA 2006). The report covers the effects of membership, or former membership, of the armed forces on service people in the fields of healthcare, education, housing, inquests and in such other fields as the Secretary of State decides. In preparing the report, the Secretary of State must have regard in particular to: (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 people from membership, or former membership, of the armed forces; and (c) the principle that special provision for service people may be justified by the effects on such people of membership, or former membership, of the armed forces (see section 343A(3)). Section 343B defines various terms in section 343A, including what is meant by "service people" and "relevant family member".

Reserve forces

- 13 The main provisions in primary legislation concerning the reserve forces are contained in the Reserve Forces Act 1996 (“RFA 1996”) which covers matters such as the organisation and membership of those forces, service in the reserve forces, and the powers to call out reservists and reserve associations. The RFA 1996 is supplemented by secondary legislation made under the Act. In particular, orders and regulations made under section 4 set out much of the detail on service in the reserve forces. The reserve forces are made up of:
 - a. The ex-regular reserve forces: the Royal Fleet Reserve, the Regular Reserve and the Air Force Reserve. These consist of former members of the regular forces who, on leaving those forces, are transferred to the reserve forces for a period of time.
 - b. The volunteer reserve forces: the Royal Naval Reserve, the Royal Marines Reserve, the Army Reserve and the Royal Auxiliary Air Force. These consist of civilians who enlist or engage in the reserve forces.
- 14 Reservists must undergo a period of training and are also liable to be called out for mandatory periods of permanent service. They can also volunteer to perform additional duties or undertake periods of full-time service. Under section 367 of the AFA 2006 reservists called out for permanent service or in full-time service are subject to service law at all times, otherwise they are only subject to service law when training or performing their duties. The main types of service in the reserve forces are set out below:
 - a. mandatory training for a set period each year (see sections 22 and 23 of the RFA 1996);
 - b. full-time service commitments, that is, a voluntary commitment to serve full-time for a set period on similar terms to members of the regular forces (see section 24 of the RFA 1996);
 - c. additional duties commitments, that is, a voluntary commitment to perform extra duties at set times (see section 25 of the RFA 1996);
 - d. voluntary training and other duties (see section 27 of the RFA 1996);
 - e. mandatory permanent service when called out under a call-out order or other powers in the RFA 1996 (see Parts 4 to 6 of the RFA 1996).

Service complaints

- 15 In addition to the service justice system, Part 14A of the AFA 2006 sets out the service complaints system for the armed forces. The current service complaints system has been in place since 2008 and was subject to amendment by the Armed Forces (Service Complaints and Financial Assistance) Act 2015. The system provides a means for persons subject to service law to obtain redress where they think themselves wronged in any matter relating to their service (see section 340A of the AFA 2006). The system is overseen by an independent officeholder, the Service Complaints Ombudsman, established under section 365B of the AFA 2006.
- 16 Part 14A mandates the Defence Council to make procedures for the operation of the service complaints system by way of regulations. In outline, the key features of the complaints procedure are as follows:
 - a. A service complaint is made by a service person submitting a statement of complaint to their commanding officer, who will decide whether all or part of a service complaint is admissible. The complainant has the right to apply to the Service Complaints Ombudsman to seek a review of the commanding officer’s admissibility decision.

- b. Once there has been a decision by either the commanding officer or the Service Complaints Ombudsman that a service complaint is admissible, the commanding officer will refer the complaint to a nominated Defence Council delegate to appoint a Decision Body. The Decision Body consists of one or more individuals, appointed to investigate and make a decision on a service complaint.
- c. If a complainant is dissatisfied with the decision of the Decision Body, they can submit an appeal to the nominated Defence Council delegate. This application must be made within six weeks beginning with the day on which the complainant received notification of that decision, unless the nominated Defence Council delegate considers it just and equitable to allow it after this period. Once the nominated Defence Council delegate (or, following a review, the Service Complaints Ombudsman) decides that an appeal can proceed, they must appoint an Appeal Body. The Appeal Body will determine whether the service complaint is well-founded.
- d. The complainant may apply to the Service Complaints Ombudsman against the final decision of the Appeal Body on substantive grounds or grounds of maladministration. An application to the Service Complaints Ombudsman on either ground must be made in writing within six weeks of the day on which the complainant received notification of the decision, unless the Service Complaints Ombudsman considers it is just and equitable to allow it after this period. A complainant may also apply to the Service Complaints Ombudsman in relation to an ongoing service complaint where undue delay is alleged.

Service Police: complaints, misconduct etc

- 17 There is a service police force for each of the services: the Royal Navy Police; the Royal Military Police and the Royal Air Force Police. Each is headed by a Provost Marshal. Members of the service police are not constables but have law enforcement powers that enable them to carry out criminal investigations. By section 115A of the AFA 2006, Provost Marshals are under a duty to ensure that all investigations carried out by the force are free from improper interference.
- 18 Her Majesty's Inspectors of Constabulary inspect and report to the Secretary of State on the independence and effectiveness of investigations carried out by each service police force under section 321A of the AFA 2006, and provide independent oversight of the forces, in a similar way to that provided to territorial and other civilian police forces across the United Kingdom (save in Scotland where Her Majesty's Inspectorate of Constabulary in Scotland is the responsible body).
- 19 The Provost Marshals have put in place complaints procedures to deal with complaints about members of their forces. These procedures allow complaints to be passed to another force to investigate in appropriate cases. However, there is no independent body that has oversight of these arrangements, or that can carry out investigations into serious matters.
- 20 The Bill creates a new office holder – the Service Police Complaints Commissioner – and creates a power to establish a complaints regime similar to the one applicable to those serving with civilian police forces in England and Wales, and to give the Commissioner functions similar to those conferred on the Director General of the Independent Office for Police Conduct. It also takes powers so that similar provision can also be made regarding matters of concern raised by whistle blowers as well as super complaints, which will allow designated organisations to raise issues about harmful patterns or trends in policing.

Posthumous pardons

- 21 Section 164 of the Policing and Crime Act 2017 ("PCA 2017") provides for posthumous pardons for those convicted of certain abolished sexual offences, for example, buggery. Specifically,

anyone who was convicted of, or cautioned for, such an abolished offence and has now died, is pardoned for that offence if two conditions are met. The conditions are that: (a) the other person involved in the conduct that constituted the offence consented to it and was aged 16 or over; and (b) the offence would not still be an offence under section 71 of the Sexual Offences Act 2003 (sexual activity in a public lavatory) (see section 164(2) of the PCA 2017).

- 22 Pardons apply to those convicted under the civilian criminal justice system under legislation dating back to 1533 (see section 164(3) of the PCA 2017). The equivalent service offences are listed in section 164(4) and (5) ensuring that those convicted under service law would be pardoned, just as if they had been convicted in the civilian system. The PCA 2017 currently captures all equivalent service offences in relation the Royal Navy from 1661 and all equivalent service offences for the Royal Air Force. It does not currently capture some older equivalent service offences for the Army or the Royal Marines, hence the amendments to section 164 included in the Bill.

Territorial extent and application

- 23 Clauses 24 and 25 of the Bill set out the territorial extent of the Bill, that is the jurisdictions in which the Bill forms part of the law. The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect.

Territorial application of the Bill in the UK

- 24 This Bill extends to the whole of the United Kingdom subject to the following:
- a. Clause 16(5) (removal of requirement to take into account offences in member States) only extends to England and Wales;
 - b. Clause 17 (rehabilitation periods: England and Wales) only extends to England and Wales;
 - c. Clause 18 (posthumous pardons in relation to certain abolished service offences) only extends to England and Wales;
 - d. Paragraphs 1 to 4 of Schedule 3 only extend to Northern Ireland and paragraph 5 only extends to England and Wales and Scotland;
 - e. Paragraph 1 of Schedule 4, so far as it inserts paragraph 1 of Schedule 14A to the AFA 2006 (status of Service Police Complaints Commissioner as a corporation sole), extends to England and Wales and Northern Ireland only. This reflects the fact that Scots law does not recognise the concept of a corporation sole. Paragraph 6 of Schedule 4 only extends to England and Wales and paragraph 7 only extends to England and Wales and Scotland.
- 25 In general, a provision of the Bill will apply (i.e. have effect) in the jurisdictions where it forms part of the law. However, Clauses 2 to 7 and 11 to 16 will apply worldwide as they relate to the service justice system which applies to service personnel wherever they are in the world. Clause 9 of the Bill also applies worldwide as it concerns service by members of the reserve forces, which can be undertaken anywhere in the world.
- 26 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly without the consent of the legislature concerned.
- 27 In the view of the Government, none of the matters to which the Bill relates are within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly.

- 28 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions.

Territorial application of the Bill outside the UK

- 29 The changes that this Bill makes to the AFA 2006 may be extended by Order in Council to the Channel Islands. If such an Order is made, it can modify those changes (so that the law of the Channel Islands is not the same as that of the United Kingdom).
- 30 The changes that this Bill makes to the AFA 2006 extend directly (i.e. without the need for an Order in Council) to the Isle of Man, and the British overseas territories (except Gibraltar), but an Order in Council may be made to modify the Act in its application to any of those territories.
- 31 The changes that this Bill makes to the RFA 1996 may be extended by Order in Council to the Channel Islands or the Isle of Man. If such an Order is made, it can modify those changes (so that the law of the Channel Islands and the Isle of Man is not the same as that of the United Kingdom).

Commentary on provisions of Bill

Clause 1: Duration of AFA 2006

- 32 Since the Bill of Rights 1688, the legislation making the provision necessary for the army to exist as a disciplined force (and, more recently, the legislation for the Royal Navy and the Royal Air Force) has required regular renewal by Act of Parliament.
- 33 As originally enacted, section 382 of the AFA 2006 provided that the Act would expire one year after it received Royal Assent (which it did on 8 November 2006), unless renewed by Order in Council approved by each House of Parliament. It provided that the AFA 2006 could be continued by such an Order for up to a year at a time, but not beyond the end of 2011. Section 1 of the Armed Forces Act 2011 substituted a new section 382 maintaining the pattern of renewal by annual Orders in Council, up until the end of 2016. Section 1 of the Armed Forces Act 2016 took the same approach to renew the AFA 2006 up until the end of 2021.
- 34 Clause 1 again substitutes a new section 382, which provides for the continuation of the AFA 2006. It also repeals section 1 of the Armed Forces Act 2016, which inserted the current section 382 into the AFA 2006.

New section 382 Duration of this Act

- 35 This new section provides that the AFA 2006 expires a year after the Armed Forces Act 2021 (this Bill) is passed, unless renewed by Order in Council approved by each House of Parliament. The AFA 2006 may be renewed by such an Order for up to a year at a time, but not beyond the end of 2026.

Clause 2: Constitution of the Court Martial

- 36 This Clause introduces Schedule 1.

Schedule 1: Constitution of the Court Martial

- 37 This Schedule amends the AFA 2006 to make changes to the constitution of the Court Martial. 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 jury in a Crown Court trial in England and Wales. They make findings on a charge by majority verdict; the judge advocate does not vote. The judge advocate and lay members together decide on sentence. The Schedule makes changes to the numbers of lay members in Court Martial proceedings, voting and qualification to be a lay member.
- 38 The Schedule makes a number of substantive changes to the AFA 2006 along with a number of linked minor and consequential amendments, the substantive changes are:
- a. Paragraph 1(2) amends section 155(1)(b) of the AFA 2006 to provide that, where the Court Martial sits with lay members, there will be three or six lay members. Currently, the Court Martial can sit with anywhere between three and seven lay members. Court Martial rules will set out the circumstances in which six lay members will be required for Court Martial proceedings.
 - b. Paragraph 1(4) and (7) amends subsection (3) of section 155 of the AFA 2006 and substitutes a new subsection (9) to expand the range of service personnel qualified to be a lay member to include those of OR-7 rank. OR-7 rank means anyone of the rank of chief petty officer, staff corporal, staff sergeant, Royal Marine colour sergeant, flight sergeant or chief technician.
 - c. Paragraph 1(5) inserts a new subsection (6A) in section 155 of the AFA 2006 so that if the Court Martial is constituted with six lay members, Court Martial rules may provide for the proceedings to continue with only five lay members on a direction from a judge advocate.

- d. Paragraph 2(4) inserts a new subsection (3A) in section 156 of the AFA 2006 which bars a person who is an acting chief petty officer, staff corporal, staff sergeant, Royal Marine colour sergeant, flight sergeant or chief technician from being a lay member of the Court Martial.
- e. Paragraph 2(5) amends subsection (4) of section 156 of the AFA 2006 to bar those of OR-7 rank from being lay members of the Court Martial, if they are members of the Military Court Service, Service Prosecuting Authority or a service police force, chaplains in the armed forces or lawyers. This prohibition currently applies to officers and warrant officers.
- f. Paragraph 3(3) to (5) amends section 157 of the AFA 2006 to bar those of OR-7 rank from being lay members of the Court Martial if they have been involved in an investigation or inquiry relating to the charge. This prohibition currently applies to officers and warrant officers.
- g. Paragraph 4(2) inserts a new subsection (A1) in section 160 of the AFA 2006 to introduce qualified majority verdicts for findings on a charge where the Court Martial consists of six or five lay members. Specifically, where there are six lay members, five must agree on the verdict. Where there are five lay members, four must agree. Where, as now, there are three, two of them must agree.

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

- 39 This Clause amends section 362(c) of the AFA 2006 to provide 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, section 362 only empowers the Lord Chief Justice to nominate a puisne judge of the High Court of England and Wales. This implements a recommendation of the Service Justice System Review (recommendation 7 of Part 1).

Clause 4: Summary hearings: power to rectify mistakes etc

- 40 Clause 4 enables rules made under section 153 of the AFA 2006 in respect of summary hearings or the activation of suspended sentences of service detention (“summary hearing rules”) to include a power for a commanding officer to vary or rescind punishments or activation orders that the commanding officer has awarded or made in error (this type of power is sometimes referred to as a “slip rule”). An activation order is an order under section 193 of AFA 2006 that makes a suspended sentence of service detention passed by a commanding officer or the Summary Appeal Court (“SAC”) take effect. At present, such errors can only be corrected by the SAC on appeal or when a case is referred to the court following a review under section 152 of the AFA 2006 (this gives the Defence Council or an officer appointed by the council the power to review commanding officers’ punishments and activation orders and refer them to the SAC). There are similar powers for the Court Martial to rectify errors under Part 15 of the Armed Forces (Court Martial) Rules 2009 (S.I. 2009/2041). In the civilian criminal justice system in England and Wales, the Crown Court and a magistrates’ court have comparable powers (see section 385 of the Sentencing Act 2020 and section 142 of the Magistrates’ Courts Act 1980). This Clause implements a recommendation of the Service Justice System Review (recommendation 43 of Part 2).
- 41 Subsection (2) inserts a new subsection (1A) in section 153 of the AFA 2006 to enable summary hearing rules to give a commanding officer the power to vary or rescind a punishment awarded by the commanding officer in cases where it appears to them that there was no power to award the punishment or make the order.
- 42 Subsection (3) inserts a new subsection (2A) in section 153 of the AFA 2006 to allow summary hearing rules to include rules on the commencement of punishments or activation orders varied by a commanding officer.

- 43 Subsection (4) amends section 153(3) of the AFA 2006 to allow the powers in the new subsection (1A) of that section to be used in relation to proceedings in respect of activation orders made by a commanding officer.
- 44 Subsection (5) inserts new subsections (2A) to (2C) in section 152 of the AFA 2006. Section 152 puts in place arrangements for punishments awarded by commanding officers to be reviewed by the Defence Council or an officer appointed by the council; if an error is identified the case can then be referred to the SAC. The new subsections (2A) and (2B) provide the option of referring the case back to the commanding officer instead for them to consider exercising their power to vary or rescind the punishment.

Clause 5: The Summary Appeal Court: power to rectify mistakes

- 45 This Clause introduces a similar power to Clause 4, allowing rules under section 151 of the AFA 2006 in respect of the Summary Appeal Court (“SAC rules”) to give that court powers to vary or rescind punishments or activation orders in cases where it appears to the court that it had no power to award the punishment or make the order or confirm the commanding officer’s decision to do so.
- 46 Subsection (2) inserts a new paragraph (ga) in section 151(3) of the AFA 2006 to enable the SAC rules to include these powers.
- 47 Subsection (3) inserts a new subsection (5A) in section 151 of the AFA 2006 to allow the SAC rules to include provisions on the commencement of punishments or orders varied by the court (this provision is to be read with section 195 of the AFA 2006 which deems activation orders to be a “punishment” for the purposes of section 195 and the rest of Chapters 2 and 3 of Part 6 of the AFA 2006).

Clause 6: The Service Civilian Court: power to rectify mistakes

- 48 This Clause introduces a similar power to Clauses 4 and 5, allowing rules under section 288 of the AFA 2006 in respect of the Service Civilian Court (“SCC rules”) to give the court powers to vary or rescind punishments or activation orders in cases where it appears to the court that it has no power to award the punishment or make the order.
- 49 Paragraph (a) inserts a new paragraph (ea) in section 288(3) of the AFA 2006 to enable the SCC rules to include these powers.
- 50 Paragraph (b) inserts a new subsection (6A) in section 288 of the AFA 2006 to allow the SCC rules to include provisions on the commencement of sentences or orders varied by the court.

Clause 7: Concurrent jurisdiction

- 51 This Clause amends the AFA 2006 to place a duty on the Director of Service Prosecutions and each of the heads of the civilian prosecution services across the United Kingdom to agree protocols on the handling of cases where there is 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 United Kingdom.

New section: 320A Guidance on exercise of criminal jurisdiction: England and Wales

- 52 New section 320A places a duty on the Director of Service Prosecutions and the Director of Public Prosecutions to agree a protocol where there is concurrent jurisdiction. Concurrent jurisdiction arises where alleged criminal conduct by a service person in England and Wales could be tried as a criminal conduct offence under section 42 of the AFA 2006 in the service justice system or as a criminal offence in the civilian criminal justice system.
- 53 Subsection (3) provides that the protocol must give guidance to relevant prosecutors to assist in the decision as to where a case should be prosecuted. The protocol may also give guidance

as to the process to be followed in making such decisions. In particular, the guidance may provide for the circumstances in which consultation may be needed between prosecutors in the service justice system and civilian criminal justice system. The guidance may provide, for example, that consultation between prosecutors in separate systems is only required in certain types of circumstances.

- 54 Subsection (5) provides that where the protocol applies, and prosecutors are unable to resolve a disagreement as to the appropriate jurisdiction for a case, the Director of Public Prosecutions will make the final decision.
- 55 Subsections (6) to (8) contain further provisions in respect of the protocol. To maintain currency of the protocol, subsection (6) provides that the Director of Service Prosecutions and the Director of Public Prosecutions may revise the protocol from time to time. Subsection (7) requires the Directors to consult the people listed there before agreeing the protocol or any revision. Subsection (8) requires the current version of the protocol to be published.

New section 320B Guidance on exercise of criminal jurisdiction: Scotland

- 56 New section 320B contains provision for Scotland which corresponds to that in new section 320A for England and Wales.
- 57 Subsection (1) provides that the Director of Service Prosecutions and Lord Advocate must agree a protocol for the handling of cases of concurrent jurisdiction in Scotland.
- 58 Subsections (2) and (3) identify when concurrent jurisdiction arises in Scotland, taking into account the fact that there are significant differences between the criminal law in Scotland and the criminal law in England and Wales on which section 42 of the AFA 2006 is based. In particular, concurrent jurisdiction arises where the alleged criminal conduct in Scotland also directly constitutes a criminal conduct offence under section 42 of the AFA 2006 or where it constitutes a criminal conduct offence which is broadly equivalent to an offence under the law of Scotland (for example, the criminal conduct offence which corresponds to the offence in England and Wales of manslaughter and, in Scotland, culpable homicide).
- 59 The remaining provisions correspond to the equivalent provisions in new section 320A. In particular, where the protocol applies, subsection (6) provides for the Lord Advocate to make the final decision where there is disagreement as to the appropriate jurisdiction for a case.

New section 320C Guidance on exercise of criminal jurisdiction: Northern Ireland

- 60 New section 320C contains provision for Northern Ireland which corresponds to that in new section 320A for England and Wales and new section 320B for Scotland.
- 61 Subsection (1) provides that the Director of Service Prosecutions and Director of Public Prosecutions for Northern Ireland must agree a protocol for the handling of cases of concurrent jurisdiction in Northern Ireland.
- 62 The remaining provisions correspond to the provisions in new section 320B. In particular, where the protocol applies, subsection (6) provides for the Director of Public Prosecutions for Northern Ireland to make the final decision where there is disagreement as to the appropriate jurisdiction for a case.

Clause 8: Armed Forces Covenant

- 63 Clause 8 amends Part 16A of the AFA 2006 to impose 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 people from membership, or former membership, of the armed forces; and (c) the principle that special provision for service people 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 (section 343A of the AFA 2006). The new duty will apply to specified persons or bodies when exercising certain housing, education or healthcare functions.

New sections 343AA, 343AB, 343AC, 343AD Duty to have due regard to principles: England, Wales, Scotland and Northern Ireland

64 New sections 343AA, 343AB, 343AC and 343AD set out the duty for England, Wales, Scotland and Northern Ireland respectively. Subsection (1) in each section defines the three principles of the Armed Forces Covenant. It places a duty on those persons or bodies specified in subsection (3) of each section to have due regard to these principles. These bodies are subject to the duty to have due regard to the principles only when exercising the functions listed in subsections (4), (5) and (6) of each section in relevant areas of housing, education and healthcare.

New section 343AE Sections 343AA to 343AD: guidance

65 New section 343AE provides that the Secretary of State may issue guidance in relation to the duties imposed by new sections 343AA(1), 343AB(1), 343AC(1) and 343AD(1). Subsection (2) provides that where such guidance is issued, the persons or bodies subject to the duty must have regard to it when exercising any of the listed functions. Under subsection (4), the Secretary of State must consult with relevant devolved administrations where the guidance relates to devolved functions, and with others considered appropriate, before issuing the guidance or making significant amendments to it. Subsection (6) provides that the current version of the guidance must be published.

New section 343AF Sections 343AA to 343AD: power to add bodies and functions

66 New section 343AF provides that the Secretary of State may widen the scope of the duties in sections 343AA(1), 343AB(1), 343AC(1) and 343AD(1) by specifying additional persons or bodies who will be subject to the duties, and by specifying additional functions in relation to which the duty will apply. Subsection (5) provides that these additional functions may be in areas other than housing, education or healthcare. Under subsection (7), the Secretary of State is required to consult relevant devolved administrations when exercising this power in devolved contexts and other appropriate stakeholders before exercising this power. The power is exercisable by way of regulations, subject to the affirmative procedure.

Clause 9: Reserve forces: flexibility of commitments

67 Clause 9 amends sections 24 and 25 of the RFA 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.

68 Subsection (4) inserts a new subsection (1A) and (1B) in section 24 of the RFA 1996. This allows a continuous service commitment to be a commitment to full-time or part-time service and include periods of both types of service. Orders or regulations to be made under section 4 of the RFA 1996 are to govern the type and period of service permitted under a continuous service commitment and enable periods of special or extended leave to be included in the commitment.

69 Subsection (14) inserts a new subsection (2A) into section 25 of the RFA 1996, which enables members of a reserve force to enter into a commitment to perform additional duties for a specified period or periods. The new subsection clarifies that a commitment under section 25

can enable a member of a reserve force to perform duties under a commitment on any basis, including on a full-time or part-time basis.

Schedule 2: Reserve forces: flexibility of commitments

- 70 Schedule 2 makes consequential amendments to the RFA 1996 and the AFA 2006 in consequence of the new continuous service commitment. It also deals with transitional issues.
- 71 Paragraphs 1 to 9 make the consequential amendments. One significant amendment made by paragraph 9 is to section 367 of the AFA 2006. Section 367 of the AFA 2006 sets out the circumstances in which a person is a person subject to service law. Being subject to service law means in particular that a service person is subject to the service justice system. The effect of paragraph 9 is that where a member of the reserve forces is in service under a continuous service commitment, they will be subject to service law for the entire time that they are in service under this commitment.
- 72 Paragraph 10 provides that regulations under Clause 23 of the Bill (transitional provision) on the new continuous service commitment may have an effect in relation to commitments made before those provisions come into force. These will permit transitional arrangements under Clause 23 to include arrangements (if needed) that affect those undertaking a period of service or performing duties under existing commitments under section 24 or 25 of the RFA 1996.

Clause 10: Service complaints appeals

- 73 This Clause amends section 340D of the AFA 2006 as part of wider reforms to increase efficiency and speed up the process within the statutory service complaints system. Section 340D deals with appeals to the Defence Council where a first instance decision was taken by a person or panel of persons appointed by the Defence Council. The amendments reduce the minimum time which can be set out in regulations for complainants to lodge appeals and permits the possibility of restricting the grounds upon which an appeal can be brought.
- 74 Subsection (3) will enable regulations on service complaints procedure to restrict the grounds on which an appeal against a first instance decision of the Decision Body can be brought, and require the Defence Council to decide any question relating to whether an appeal has been brought on valid grounds. This will not affect access to the Service Complaints Ombudsman, as a case with no right of appeal will be considered finally determined under section 340H(5) of the AFA 2006. This is expected to reduce the number of speculative appeals where currently complainants do not have to provide substantive reasons for asking for their case to be re-examined.
- 75 Subsection (4) changes the minimum period for an appeal that can be set out in regulations on service complaints procedure from six weeks to two weeks, commencing on the day the complainant receives notification of the decision which they wish to appeal. Subsection (8) similarly reduces the minimum time which can be set out in regulations for an application to the Service Complaints Ombudsman in respect of a complaint that has been finally determined. It is expected that the regulations will continue to set out exemptions to this time limit, such as that a person may bring an appeal outside this time limit where the Defence Council (or, upon review, the Service Complaints Ombudsman) considers that it is just and equitable to allow it, for example, where the requirements of the service person's service has reasonably prevented them from meeting the two-week deadline.
- 76 Subsection (5) provides that regulations must make provision to enable a complainant to apply to the Service Complaints Ombudsman for a review of a decision by the Defence Council that an appeal was not brought on a valid ground.
- 77 Subsections (6) – (9) amend the date from which the period to apply to the Service Complaints Ombudsman for an investigation will run. Where a complainant has received a decision that

their appeal is inadmissible on the basis that it does not meet the prescribed grounds of appeal, the time-limit to apply to the Service Complaints Ombudsman for an investigation will now run from the “relevant date”. The “relevant date” is the latest admissibility decision on the appeal. This will be either the decision of the Defence Council that the appeal is inadmissible, or the decision of the Service Complaints Ombudsman where the complainant has sought a review of the Defence Council’s decision.

Schedule 3: Service complaints appeals

- 78 This Schedule makes amendments to legislation in consequence of Clause 10, which enables the Defence Council to restrict the grounds upon which an appeal can be brought. The provisions which are being amended relate to when a service complaint is deemed to be withdrawn for the purposes of accessing the employment tribunal under the parent legislation. The consequential amendments made in this Schedule set out how these deemed withdrawal provisions will operate for service complaints with no grounds for appeal under regulations made under amended section 340D. Where the person bringing the complaint is aware of grounds to bring an appeal and fails to do so, either within the prescribed time limit or out of time, the service complaint will be considered to have been withdrawn. A case will not be deemed to have been withdrawn where there are no grounds of appeal, or where the person bringing the complaint could not reasonably have been aware of facts which might have constituted a ground of appeal.

Clause 11: Service police: complaints, misconduct etc

- 79 This Clause amends the AFA 2006 to create a new regime for complaints against the service police and related matters. It does so by establishing the Service Police Complaints Commissioner (“the SPCC”) and enabling the creation of a regime for complaints, conduct matters and death or serious injury matters which is modelled on the regime for the civilian police in England and Wales. The civilian regime is overseen by the Director General of the Independent Office for Police Conduct (“DG IOPC”). This issue was considered in the Service Justice System Review (recommendation 44 of Part 2).
- 80 Subsection (2) inserts a new section 365BA and 365BB in Part 18 of the AFA 2006.

New section 365BA Service Police Complaints Commissioner

- 81 This new section of the AFA 2006 establishes the SPCC. It also introduces new Schedule 14A to the AFA 2006 which makes further provision in respect of the new SPCC.

New section 365BB Investigating officers

- 82 This new section enables the SPCC to appoint investigating officers to carry out functions of the SPCC. In particular, the SPCC will be able to appoint an officer to carry out an investigation where the SPCC has decided that one is required under regulations made under new Part 14B of the AFA 2006.
- 83 Subsection (3) inserts a new Part 14B in the AFA 2006.

New Part 14B of AFA 2006

- 84 New Part 14B contains new sections 340P, 340Q and 340R. Section 340P contains a power to make provision corresponding to any that is made in or under Part 2 of the Police Reform Act 2002 (complaints and misconduct). This will enable the Secretary of State to confer functions on the new SPCC that are similar to those conferred on the DG IOPC and to set up procedures to deal with complaints, misconduct and death and serious injury matters. Section 340Q contains a power that will enable the Secretary of State to make similar provision to that made in or under Part 2B of the Police Reform Act 2002 in relation to whistle-blowers. Section 340R contains a power that will enable the Secretary of State to make similar provision to that made in or under Part 2A of the Police Reform Act 2002 in relation to super-complaints.

- 85 The overall effect of new Part 14B is to enable the Secretary of State to create a statutory system for dealing with complaints and other concerns about the service police which is similar to the statutory system that covers those serving in civilian police forces in England and Wales.

Schedule 4: Service police: complaints, misconduct etc

- 86 This Schedule makes further provision about the new SPCC and consequential amendments relating to the new service police complaints regime.

New Schedule 14A to AFA 2006

- 87 Paragraph 1 of Schedule 4 inserts new Schedule 14A into the AFA 2006.
- 88 Paragraph 1 of new Schedule 14A sets out the status of the SPCC as a “corporation sole”. This means that it is a single incorporated office occupied by a single natural person. By paragraph 2, the SPCC is neither a servant or agent of the Crown nor enjoys any Crown status, immunity or privileges.
- 89 Under paragraph 3, the SPCC is appointed by Her Majesty on the recommendation of the Secretary of the State.
- 90 Under paragraph 4, certain persons are disqualified from being appointed as the SPCC: if they are a member of the regular or reserve forces (this includes serving members of the service police forces who are all members of one of the regular or reserve forces), are a former service police officer or are employed in the civil service.
- 91 Paragraph 5 deals with vacancy or incapacity and enables the Secretary of State to appoint a person to act as the SPCC during a period in which the office is vacant or the SPCC is seriously ill.
- 92 Paragraph 6 covers terms of office and paragraph 7 allows the new SPCC to delegate functions to persons working for the SPCC, who will all be seconded to work for the SPCC. Paragraph 8 deals with liability of the SPCC in respect of any unlawful conduct of seconded staff in carrying out their functions as a member of the SPCC’s staff.

Other provision in Schedule 4

- 93 Paragraph 2 of Schedule 4 amends sections 58, 106, 107, 133 of, and Schedules 4 and 6 to, the Investigatory Powers Act 2016. These sections and Schedule cover the meaning of “excepted disclosure”, the power and restriction on issuing warrants for the SPCC, providing the officeholder with powers that closely mirror the DG IOPC.
- 94 Paragraph 3 amends the House of Commons Disqualification Act 1975 to disqualify the SPCC from being a member of the House of Commons. Paragraph 4 similarly amends the Northern Ireland Assembly Disqualification Act 1975 to disqualify the SPCC from being a member of the Northern Ireland Assembly.
- 95 Paragraphs 5 and 7 amend the Freedom of Information Act 2000 and the Equality Act 2010 to make the SPCC a public authority for the purposes of those Acts. Paragraph 6 amends the Coroners and Justice Act 2009 to make the SPCC an interested person for the purposes of that Act and paragraph 8 amends the Data Protection Act 2018 to make the SPCC a competent authority for the purposes of that Act.

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

- 96 Clause 12 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.

Subsection (2) amends the table of punishments available to commanding officers in section 132 of the AFA 2006 and inserts a new subsection (1A) to make this change. Subsections (3) to (6) make consequential amendments to section 133 of the AFA 2006 which sets out the limits on commanding officers' powers to award service detention.

Clause 13: Deprivation orders

97 Clause 13 inserts new sections 94A and 177B to 177F into the AFA 2006 to introduce the punishment of a deprivation order. Such orders will be available for commanding officers, the Court Martial and the Service Civilian Court. Deprivation orders deprive offenders of any rights they had in the property. The provisions are modelled on the provision for deprivation orders which are available in the civilian context in England and Wales under section 152 of the Sentencing Act 2020.

98 Subsection (4) inserts the new sections 177B to 177F of the AFA 2006 and subsection (5) inserts the new section 94A into the Act. The rest of Clause 13 makes consequential amendments in respect of these new sections. The new sections are as follows.

New section 177B Deprivation orders: interpretation

99 This new section provides that a deprivation order is an order which deprives an offender of any rights in the property to which the order relates. A deprivation order can be made by the Court Martial, the Service Civilian Court or a commanding officer at summary hearing when the charge has been proved.

New section 177C Deprivation order: availability

100 This new section sets out the circumstances in which a deprivation order will be available.

101 Subsections (2) to (5) set out the property that may be subject to such an order. Under subsection (2) the property must have either been lawfully seized from the offender or in the offender's possession when apprehended. In addition, the property must have been connected to the offence(s). It must have either been used (or intended to be used) for the purpose of committing or facilitating the offence or the offence is of unlawful possession of that property.

102 Subsections (6) and (7) provide that the property which is the subject of the deprivation order must be handed over to the service police or the offender's commanding officer.

New section 177D Vehicle to be treated as used for purposes of certain offences

103 This new section provides that where a vehicle is used in the commission of certain service offences, the vehicle is to be regarded for the purpose of new section 177C(3) as being used for the purpose of committing the offence.

New section 177E Exercise of power to make deprivation order

104 This new section requires the Court Martial, the Service Civilian Court or commanding officer to have regard to the property's value and the likely financial impact on the offender when making a deprivation order.

New section 177F Application of proceeds of property subject to deprivation order

105 This new section applies where either the Court Martial or the Service Civilian Court makes a deprivation order and a victim suffered personal injury, loss or damage.

106 Subsection (2) allows the court, in addition to making the deprivation order, to make an order that any proceeds arising out of the disposal of the property are to be paid to the victim.

107 Subsection (3) provides that, in order to make such an additional order, the court must be satisfied that it would have made a service compensation order but for the inadequacy of the offender's means.

New section 94A property subject to deprivation order: modification of section 94

108 This new section modifies the existing regulation-making power contained in section 94 of the AFA 2006. Section 94 enables the Secretary of State to make provision with respect to disposal of property which has come into the possession of the service police or a commanding officer. This new section enables regulations to be made to deal with property held by the service police or a commanding officer in consequence of a deprivation order.

109 Subsections (2) and (3) require the regulations to give the legitimate owner of the property 6 months from the date of the deprivation order to make a claim for the property.

110 Subsections (4) to (6) allow the regulations to provide that, after the 6-month period, the property may be otherwise disposed of, including by transferring it to the Secretary of State.

Clause 14: Driving disqualification

111 This Clause amends the AFA 2006 to introduce the punishment of a driving disqualification order. Driving offences under the law of England and Wales are also service offences under section 42 of the AFA 2006. An offender convicted by the Court Martial of a service offence under the AFA 2006 which is connected to driving is liable to any punishment listed in section 164 of the AFA 2006, though at present this does not include disqualification from driving. This Clause extends the punishments available to the Court Martial to enable the court to disqualify a person from driving. The provisions are modelled on the provision for driving disqualification orders which are available in the civilian context in England and Wales under section 162 of the Sentencing Act 2020.

New section 177G Driving disqualification orders

112 This new section defines a driving disqualification order as an order which disqualifies an offender from holding or obtaining a driving licence anywhere in the United Kingdom. The period for disqualification is the period specified in the order.

New section 177I Disqualification period

113 This new section provides that the disqualification period is such period as the Court Martial considers appropriate, but this is subject to new sections 177J and 177K.

New section 177J Extension of disqualification where custodial sentence or service detention also imposed

114 This new section extends the disqualification period where a custodial sentence or a sentence of service detention is imposed on the offender. This new section is designed to extend the period of disqualification by a period relating to the period that the offender is expected to spend in custody or detention; known as the appropriate extension period. The appropriate extension period is set out in subsection (5). This provision is designed to ensure that offenders still feel the impact of the disqualification order punishment once they leave custody or detention.

New section 177M Driving disqualification: power to make equivalent provision to Road Traffic Offenders Act 1988

115 This new section enables the Secretary of State by regulations to make provision in relation to driving disqualification orders which is equivalent to that made by the relevant provision in the Road Traffic Offenders Act 1988.

Clause 15 and Schedule 5: Deprivation and driving disqualification orders: minor and consequential amendments

116 Clause 15 introduces Schedule 5 which contains minor and consequential amendments relating to Clauses 13 and 14.

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

117 Subsections (2) to (4) remove the requirements in sections 238, 263 and 270A of the AFA 2006 for service courts to take account of EU Member State convictions in the same way as UK convictions when deciding, respectively, how serious an offence is, whether to give an unrepresented defendant a custodial sentence and whether to impose a community punishment. These requirements were introduced by the Coroners and Justice Act 2009 in order to implement European Union Framework Decision 2008/675/JHA (on taking into account convictions in other EU member States). The decision to remove these requirements reflects the approach being taken in relation to civilian sentencing law in England and Wales. 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.

118 Subsection (5) addresses a related issue to do with the instrument which implements this policy in the civilian sentencing context in England and Wales: the Taking Account of Convictions (EU Exit) (Amendment) Regulations 2020 (S.I. 2020/1520). That instrument made consequential changes to the AFA 2006 in light of changes to civilian sentencing law (regulation 6). The powers to make that instrument did not permit those consequential changes to extend beyond the United Kingdom because of the extent of the European Union (Withdrawal) Act 2018. This Clause therefore ensures that these consequential changes have the usual extent for armed forces provisions (see the description of the extent described below).

Clause 17: Rehabilitation periods: England and Wales

119 Clause 17 inserts a new entry in the table in paragraph (b) of subsection (2) of section 5 of the Rehabilitation of Offenders Acts 1974. The new entry restores rehabilitation periods to the service punishments of reprimand and severe reprimand by amending the Rehabilitation of Offenders Act 1974. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 amended that Act for England and Wales and, in doing so, gave those punishments a rehabilitation period of “nil”. The result of this is that these punishments are immediately “spent”, and it means that they cannot be taken into account, for example by promotion boards. The result of this amendment is these punishments will receive a rehabilitation period of 12 months for adults and 6 months for young offenders.

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

120 Clause 18 amends section 164 of the PCA 2017 to extend posthumous pardons for very old, abolished service offences. 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 if specified conditions are met. The conditions are that: (a) the other person involved in the conduct that constituted the offence consented to it and was aged 16 or over; and (b) the offence would not still be an offence under section 71 of the Sexual Offences Act 2003 (sexual activity in a public lavatory): see section 164(2) of the PCA 2017.

121 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).

122 Clause 18(2), (3) and (4) amends subsections (5) and (8) of section 164 of PCA 2017 and adds a new subsection (10). These changes will mean section 164 of that Act will now also refer to historical service offences under:

- section 41 of the Army Discipline and Regulation Act 1879;
- Article 2 of Section 20 of the Articles of War of 1749 (offences triable by courts martial outside Great Britain);

- Article 93 of Section 2 of the Articles of War of 1876 (offences not specified in Marine Mutiny Act or Articles of War);
- any provision corresponding to those specified articles, contained in other Articles of War made under the Mutiny Act 1878, the Marine Mutiny Act 1878 or any Act previously in force corresponding to either of those Acts.

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

123 This Clause amends section 357 of the AFA 2006. Section 357 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. In doing so, it enables a British overseas territory force to make use of the United Kingdom's service justice system contained in the AFA 2006. This Clause clarifies that section 357 of the AFA 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 Clause confirms that Gibraltar legislation can apply the AFA 2006 (with or without modification) to bring the Royal Gibraltar Regiment into the United Kingdom's service justice system despite the extent provisions of the AFA 2006.

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

124 This Clause substitutes a new subsection (5) and (6) for subsection (5) of section 8 (time limit for appeals) of the Pensions Appeal Tribunals Act 1943. This will enable an amendment to align the late appeal rules in Scotland and Northern Ireland, made under the 1943 Act, with those for England and Wales, which are contained in the separate Tribunal Procedure (First-tier Tribunal) (War Pensions and Armed Forces Compensation Chamber) Rules 2008 (S.I. 2008/2686). At present, subsection (5) provides that a late appeal may only be brought in Scotland and Northern Ireland in certain prescribed circumstances, set out in regulations made under the Act.

125 The new subsection (5) will enable the Minister to make provision for cases where an appeal is made within twelve months of the time limit specified in section 8(1) or 8(3), which is currently twelve months.

126 New subsection (6)(a) in section 8 provides that regulations may stipulate that a notice submitted in this extended 12-month period will be treated as if it was in time providing the conditions in the regulations are met. New subsection (6)(b) in section 8 also provides that regulations may confer a power on a Pensions Appeal Tribunal for Scotland or Northern Ireland to allow an appeal to be brought if a notice of appeal is submitted in this extended 12-month period, but the conditions are not met.

Clause 21: Minor amendments

127 This Clause contains two minor amendments to the AFA 2006.

128 Subsection (2) amends section 61(1) of the AFA 2006 to provide that the time limits contained in sections 55 to 60 of the AFA 2006 (time limits on charging service offences) apply to the Director of Service Prosecutions in relation to a charge under section 121 of the AFA 2006 (power of Director of Service Prosecutions to charge or direct the bringing of charge etc).

129 Subsection (3) amends section 373(3) of the AFA 2006 which deals with the circumstances in which orders, regulations and rules under the AFA 2006 are approved by the affirmative procedure. It provides that a statutory instrument made under the powers listed in that subsection (which are approved by the affirmative procedure) may also be combined with

instruments made under other provision. This clarifies that such instruments may also deal with matters that would otherwise be subject to the negative procedure.

Clause 22: Meaning of “AFA 2006”

130 This Clause provides that the Armed Forces Act 2006 can be abbreviated to the AFA 2006 wherever it is used in the Bill.

Clause 23: Commencement and transitional provision

131 There are provisions which come into force on the passing of the Act, but these are technical provisions relating to the duration of the AFA 2006, combining procedures for statutory instruments made under the AFA 2006, definitions, commencement, extent (including the provision about extent in Clause 16(5)) and the short title. In addition, the provision on the power of the British overseas territories to apply the AFA 2006 will also come into force on Royal Assent. The other provisions come into force either two months after Royal Assent or are brought into force by commencement regulations.

132 Under subsection (4), the Secretary of State may make transitional, transitory or saving provision by regulations in connection with the coming into force of provisions of the Act.

Clause 24: Extent in the United Kingdom

133 This Act extends to the whole of the United Kingdom subject to the following:

134 Paragraph 1 of Schedule 4, so far as it inserts paragraph 1 of Schedule 14A to the AFA 2006 (status of SPCC as a corporation sole), extends to England and Wales and Northern Ireland only.

135 Amendments made by the following have the same extent in the United Kingdom as the provisions to which they relate:

- a. Clause 9(1) to (14);
- b. Clause 10(6) and Schedule 3;
- c. Clause 16(5);
- d. Clause 18;
- e. Clause 20;
- f. paragraphs 1 to 6 of Schedule 2;
- g. paragraphs 2 to 8 of Schedule 4;
- h. paragraphs 4 to 6 of Schedule 5.

136 Clause 17 extends to England and Wales only.

Clause 25: Extent in the Channel Islands, Isle of Man and British overseas territories

137 The changes that this Act makes to the AFA 2006 may be extended to the Channel Islands by Order in Council under section 384(1) of the AFA 2006. If such an Order is made, it can modify those changes (so that the law of the Channel Islands is not the same as that of the United Kingdom).

138 The changes that this Act makes to the AFA 2006 extend directly (i.e. without the need for an Order in Council) to the Isle of Man, and the British overseas territories (excluding Gibraltar), but an Order in Council may be made under section 384(2) of the AFA 2006 to modify the Act in its application to any of those territories.

139 The changes that this Bill makes to the RFA 1996 may be extended by Order in Council to the Channel Islands or the Isle of Man. If such an Order is made, it can modify those changes (so that the law of the Channel Islands and the Isle of Man is not the same as that of the United Kingdom).

Commencement

140 Clauses 1, 16(5), 19, 21(3) and 22 to 26 will come into force on Royal Assent. Clauses 18 and 21(2) will come into force two months after Royal Assent. The remaining provisions of the Act will come into force on a day (or days) to be appointed by the Secretary of State in regulations.

Financial implications of the Bill

141 The provisions of the Bill will have an impact on public expenditure. The financial implications from Clause 11, establishing the Service Police Complaints Commissioner, are estimated to be setting up cost enacted once and for all in the range of £50,000 to £70,000 and between £50,000 and £1.4m annual running costs by means of annual votes in the Defence budget.

Parliamentary approval for financial costs or for charges imposed

142 The money resolution passed by the Commons on 8 February 2021 continues to apply to the Bill.

Compatibility with the European Convention on Human Rights

143 The Minister for State at the Ministry of Defence, Baroness Goldie DL has made a statement under section 19(1)(a) of the Human Rights Act 1998 that, in her view, the provisions of the Bill are compatible with the Convention rights. The Government has published a separate memorandum on the compatibility of the Bill with the Convention rights.

Related documents

144 The following documents are relevant to the Bill and can be read at the stated locations:

- Armed Forces Act 2006 <https://www.legislation.gov.uk/ukpga/2006/52>
- Armed Forces Act 2011 <https://www.legislation.gov.uk/ukpga/2011/18>
- Armed Forces Act 2016 <https://www.legislation.gov.uk/ukpga/2016/21>
- The Delegated Powers and Regulatory Reform Committee Memorandum is available at <https://bills.parliament.uk/Publications/42240/Documents/553>
- The European Convention on Human Rights memorandum is available at <https://publications.parliament.uk/pa/bills/cbill/58-02/0132/amend/ArmedForcesBillECHRmemorandumFINAL.pdf>

Annex A – Territorial extent and application in the United Kingdom

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clause 1	Yes	Yes	No	Yes	No	Yes	No
Clause 2	Yes	Yes	No	Yes	No	Yes	No
Clause 3	Yes	Yes	No	Yes	No	Yes	No
Clause 4	Yes	Yes	No	Yes	No	Yes	No
Clause 5	Yes	Yes	No	Yes	No	Yes	No
Clause 6	Yes	Yes	No	Yes	No	Yes	No
Clause 7	Yes	Yes	No	Yes	No	Yes	No
Clause 8	Yes	Yes	No ⁴	Yes	No	Yes	No
Clause 9	Yes	Yes	No	Yes	No	Yes	No
Clause 10	Yes	Yes	No	Yes	No	Yes	No
Clause 11	Yes	Yes	No	Yes	No	Yes	No
Clause 12	Yes	Yes	No	Yes	No	Yes	No
Clause 13	Yes	Yes	No	Yes	No	Yes	No
Clause 14	Yes	Yes	No	Yes	No	Yes	No
Clause 15	Yes	Yes	No	Yes	No	Yes	No
Clause 16	Yes	Yes	No	In part	No	In part	No
Clause 17	Yes	Yes	No	No	No	No	No
Clause 18	Yes	Yes	No	No	No	No	No
Clause 19	Yes	Yes	No	Yes	No	Yes	No
Clause 20	No	No	No	Yes	No	Yes	No
Clause 21	Yes	Yes	No	Yes	No	Yes	No
Clause 22	Yes	Yes	No	Yes	No	Yes	No
Clause 23	Yes	Yes	No	Yes	No	Yes	No
Clause 24	Yes	Yes	No	Yes	No	Yes	No
Clause 25	Yes	Yes	No	Yes	No	Yes	No
Clause 26	Yes	Yes	No	Yes	No	Yes	No
Schedule 1	Yes	Yes	No	Yes	No	Yes	No

⁴ This is an updated version of the table provided in the Explanatory Notes to the Bill as introduced in the House of Commons.

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Schedule 2	Yes	Yes	No	Yes	No	Yes	No
Schedule 3	In part	In part	No	In part	No	In part	No
Schedule 4	Yes	Yes	No	In part	No	Yes	No
Schedule 5	Yes	Yes	No	Yes	No	Yes	No

ARMED FORCES BILL

EXPLANATORY NOTES

These Explanatory Notes relate to the Armed Forces Bill as brought from the House of Commons on 14 July 2021 (HL Bill 42).

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