

Armed Forces Bill

THIRD
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN GRAND COMMITTEE

The amendments have been marshalled in accordance with the Instruction of 20th October 2021, as follows –

Clauses 1 and 2	Clause 11
Schedule 1	Schedule 4
Clauses 3 to 9	Clauses 12 to 15
Schedule 2	Schedule 5
Clause 10	Clauses 16 to 26
Schedule 3	Title.

[Amendments marked ★ are new or have been altered]

**Amendment
No.**

After Clause 18

LORD COAKER

51 Insert the following new Clause –

“Armed Forces Federation

- (1) The Armed Forces Act 2006 is amended as follows.
- (2) After section 333, insert –

“333A Armed Forces Federation

- (1) There shall be an Armed Forces Federation for the United Kingdom for the purpose of representing members of the Armed Forces in the United Kingdom in all matters affecting their welfare, remuneration and efficiency, except for –
 - (a) questions of promotion affecting individuals, and
 - (b) (subject to subsection (2)) questions of discipline affecting individuals.
- (2) The Armed Forces Federation may represent a member of the armed forces at any proceedings or on an appeal from any such proceedings.
- (3) The Armed Forces Federation must act through local and central representative bodies.

After Clause 18 - continued

- (4) This section applies to reservists of the Armed Forces as it applies to members of the Armed Forces, and references to the Armed Forces are to be construed accordingly.

333B Regulations for the Armed Forces Federation

- (1) The Secretary of State may by regulations –
- (a) prescribe the constitution and proceedings of the Armed Forces Federation, or
 - (b) authorise the Federation to make rules concerning such matters relating to their constitution and proceedings as may be specified in the regulations.
- (2) Without prejudice to the generality of subsection (1), regulations under this section may make provision –
- (a) with respect to the membership of the Federation;
 - (b) with respect to the raising of funds by the Federation by voluntary subscription and the use and management of funds derived from such subscriptions;
 - (c) with respect to the manner in which representations may be made by committees or bodies of the Federation to officers of the Armed Forces and the Secretary of State; and
 - (d) for the payment by the Secretary of State of expenses incurred in connection with the Federation and for the use by the Federation of premises provided by local Armed Forces bodies for Armed Forces purposes.
- (3) Regulations under this section may contain such supplementary and transitional provisions as appear to the Secretary of State to be appropriate, including provisions adapting references in any enactment (including this Act) to committees or other bodies of the Federation.
- (4) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) This section applies to reservists of the Armed Forces as it applies to members of the Armed Forces.”

Member’s explanatory statement

This new Clause would create a representative body for the Armed Forces, akin to the Police Federation, which would represent their members in matters such as welfare, pay and efficiency.

52

Insert the following new Clause –

“Universal Credit

- (1) The Government must publish annual statistics on the number of veterans who are receiving universal credit.
- (2) These statistics should be included in the annual Armed Forces covenant report.”

Member's explanatory statement

This amendment would require the Government to publish statistics on the number of veterans in receipt of universal credit.

LORD COAKER
BARONESS SMITH OF NEWNHAM

53 Insert the following new Clause—

“Flexible Service scheme report

A Minister of the Crown must make provision to improve the uptake and use of the Flexible Service scheme, for both women and men, and report its progress by the end of 2022.”

Member's explanatory statement

This amendment is based on recommendations in the House of Commons Defence Sub-Committee Women in the Armed Forces report, “Protecting Those Who Protect Us: Women in the Armed Forces from Recruitment to Civilian Life”.

54 Insert the following new Clause—

“Recommendations of the Service Complaints Ombudsman

Within three months of the passing of this Act, the Secretary of State must make the recommendations of the Service Complaints Ombudsman binding on the Armed Forces and the Ministry of Defence, including a clear timescale and action plan for implementation of changes where they are recommended.”

Member's explanatory statement

This amendment is based on recommendations in the House of Commons Defence Sub-Committee Women in the Armed Forces report, “Protecting Those Who Protect Us: Women in the Armed Forces from Recruitment to Civilian Life”.

55 Insert the following new Clause—

“Experiences of veterans by sex, gender or other protected characteristics

The annual report of the Armed Forces Covenant must include a metric to monitor the experiences of veterans by sex or gender and by other protected characteristics.”

Member's explanatory statement

This amendment is based on recommendations in the House of Commons Defence Sub-Committee Women in the Armed Forces report, “Protecting Those Who Protect Us: Women in the Armed Forces from Recruitment to Civilian Life”.

LORD COAKER

56 Insert the following new Clause—

“Armed Forces Champions

- (1) A Minister of the Crown must make provision for 100 Armed Forces Champions to be employed throughout the Jobcentre Plus network for purposes of fulfilling the Government's commitment to the Armed Forces Covenant.

After Clause 18 - continued

- (2) An “Armed Forces Champion” is an employee of Jobcentre Plus who has responsibility for giving employment support and benefits advice to veterans, and for raising awareness of particular issues faced by veterans and their families within the Jobcentre Plus network.
- (3) An evaluation of this support, statistics on how many veterans have been supported by champions, and whether more champions are needed should be included in the annual Armed Forces Covenant Report.”

Member’s explanatory statement

This amendment would ensure 100 Armed Forces Champions across the Jobcentre network.

LORD CASHMAN

LORD LEXDEN

57

Insert the following new Clause –

“Disregards and pardons for convictions of certain service offences

- (1) The Protection of Freedoms Act 2012 is amended as follows.
- (2) In section 92 (power of Secretary of State to disregard convictions or cautions) –
 - (a) in subsection (1)(b), omit “or”,
 - (b) in subsection (1)(c), at the end insert “or”,
 - (c) after subsection (1)(c), insert –
 - “(d) any other offence which falls within subsection (1A),”
 - (d) after subsection (1), insert –
 - “(1A) An offence falls within this subsection if the offence –
 - (a) is contained in any provision in the following enactments –
 - (i) the Naval Discipline Act 1866;
 - (ii) the Army Act 1881;
 - (iii) the Air Force Act 1917;
 - (iv) the Army Act 1955;
 - (v) the Air Force Act 1955;
 - (vi) the Naval Discipline Act 1957; and
 - (b) regulated, or was used in practice to regulate, sexual activity between persons of the same sex.
 - (1B) Where an offence once covered activity other than sexual activity between persons of the same sex, the offence falls within subsection (1A) only to the extent that it once covered sexual activity between persons of the same sex.
 - (1C) In this section, “sexual activity between persons of the same sex” includes –
 - (a) any physical or affectionate activity between persons of the same sex which is of a type which is characteristic of persons involved in an intimate personal relationship,
 - (b) conduct intended to introduce or procure such activity.”
- (e) in subsection (3)(a), before the words “the other person” insert “in respect of an offence mentioned in subsection (1)(a) to (c)”,
- (f) in subsection (3)(b), substitute the full stop with “; or”,

After Clause 18 - continued

(g) after subsection (3)(b), insert –

“(c) in respect of an offence that falls within subsection (1A) the conduct constituting the offence, if occurring in the same circumstances, would not be an offence on the day on which this subsection comes into force.”

Member’s explanatory statement

The purpose of this new Clause is to enable armed forces personnel who were convicted of service discipline offences as a consequence of engaging in same-sex sexual acts, of a kind that would be lawful today, to apply to have a conviction disregarded and, if successful, be pardoned.

58

Insert the following new Clause –

“Posthumous pardons for convictions of certain service offences

- (1) A person who has been convicted of an offence which falls within section 92(1A) of the Protection of Freedoms Act 2012 (“the 2012 Act”) and who has died before this section comes into force, or dies during the period of 6 months beginning with the day on which this section comes into force, is pardoned for the offence if the conduct constituting the offence, if occurring in the same circumstances, would not be an offence on the day on which this section comes into force.
- (2) For the purposes of this section, section 92(1A)(a) of the 2012 Act is to be read as including offences contained in any provision in the following enactments –
 - (a) 13 Chas. 2 c. 9 (1661) (An Act for the regulation and better government of the navy),
 - (b) 22 Geo. 2 c. 33 (1749) (An Act for amending and consolidating the laws relating to the navy),
 - (c) the Naval Discipline Act 1860,
 - (d) the Naval Discipline Act 1861,
 - (e) the Naval Discipline Act 1864,
 - (f) the Army Discipline and Regulation Act 1879,
 and in any provision in relevant Articles of War.
- (3) A pardon under this section does not –
 - (a) affect any conviction or sentence, or
 - (b) give rise to any right, entitlement or liability.
- (4) Nothing in this section affects the prerogative of mercy.
- (5) Subject to subsection (6), the following provisions of section 101 of the 2012 Act apply for the purposes of this section as they apply for the purposes of Chapter 4 of Part 5 of that Act –
 - (a) in subsection (1), the definition of “conviction” and “sentence” (and the related definition of “service disciplinary proceedings”),
 - (b) subsections (2), (5) and (6).

After Clause 18 - continued

- (6) The definition of “service disciplinary proceedings” in section 101(1) of the 2012 Act applies in accordance with subsection (5) with the modification that it also includes any proceedings (whether in England and Wales or elsewhere) under any provision mentioned in subsection (2) of this section.
- (7) In this section—
- “relevant Articles of War” means Articles of War made under—
- (a) the Mutiny Act 1878,
 - (b) the Marine Mutiny Act 1878, or
 - (c) any Act previously in force corresponding to either of those Acts.”

Member’s explanatory statement

The purpose of this new Clause is to provide posthumous pardons to armed forces personnel who were convicted of service discipline offences as a consequence of engaging in same-sex sexual acts, of a kind that would be lawful today, and who have since died or die within six months of these provisions coming into force.

LORD BROWNE OF LADYTON
LORD CLEMENT-JONES
LORD HOUGHTON OF RICHMOND
LORD CRAIG OF RADLEY

59 Insert the following new Clause—

“Liability for using novel technologies: review

- (1) Within three months of this Act being passed, the Secretary of State must commission a review of the implications of increasing autonomy associated with the use of artificial intelligence and machine learning, including in weapons systems, for legal proceedings against armed forces personnel that arise from overseas operations, and produce recommendations for favourable legal environments for the United Kingdom’s armed forces operating overseas, including instilling domestic processes and engaging in the shaping of international agreements and institutions.
- (2) The review must consider—
- (a) what protection and guidance armed forces personnel need to minimise the risk of legal proceedings being brought against them which relate to overseas operations in response to novel technologies,
 - (b) how international and domestic legal frameworks governing overseas operations need to be updated in response to novel technologies, and
 - (c) what novel technologies could emerge from the Ministry of Defence and the United Kingdom’s allies, and from the private sector, which could be used in overseas operations.
- (3) Within the period of one year beginning on the day on which the review is commissioned, the Secretary of State must lay a report before Parliament of its findings and recommendations.”

After Clause 18 - continued

THE LORD BISHOP OF ST ALBANS
LORD BROWNE OF LADYTON
LORD FOSTER OF BATH

60 Insert the following new Clause—

“Gambling disorder among service people

- (1) The Secretary of State must conduct annual research on the prevalence of gambling disorder among service people.
- (2) The Secretary of State must annually publish the research gathered under subsection (1).
- (3) The Secretary of State must make reference to the findings of the research gathered under subsection (1) in any annual report reviewing the mental health of the armed forces.”

BARONESS MASSEY OF DARWEN
THE LORD BISHOP OF ST ALBANS
BARONESS LISTER OF BURTERSETT
LORD RUSSELL OF LIVERPOOL

61 Insert the following new Clause—

“Age of recruitment

In section 328 of the AFA 2006 (enlistment), in subsection (2)(c), omit “without the consent of prescribed persons.””

Member’s explanatory statement

This amendment establishes 18 as the minimum age for recruitment into the UK armed forces.

BARONESS MASSEY OF DARWEN
BARONESS LISTER OF BURTERSETT
LORD RUSSELL OF LIVERPOOL

62 Insert the following new Clause—

“The minimum term for service

In section 329 of the AFA 2006 (terms and conditions of enlistment and service), after subsection (2) insert—

“(2A) Where time is prescribed under subsection (2)(c) by reference to number of years from the date of enlistment, the age of the person on that date may not be taken into account.””

Member’s explanatory statement

This amendment ensures that soldiers aged under 18 are not required to serve for a longer period than adult personnel.

LORD COAKER
LORD CRAIG OF RADLEY
LORD DANNATT

63 Insert the following new Clause—

“Indefinite leave to remain payments by Commonwealth, Hong Kong Military Service Corps and Gurkha members of armed forces

- (1) The Immigration Act 2014 is amended as follows.
- (2) In section 68(10), after “regulations” insert “must make exceptions in respect of any person with citizenship of a Commonwealth country (other than the United Kingdom, or a veteran of the Hong Kong Military Service Corps who has served at least four years in the armed forces of the United Kingdom, or in respect of any person who has served at least four years in the Brigade of Gurkhas, such exceptions to include capping the fee for any such person applying for indefinite leave to remain at no more than the actual administrative cost of processing that application, and”.

Member’s explanatory statement

This new Clause will ensure that Commonwealth, Hong Kong Military Service Corps and Gurkha veterans applying for Indefinite Leave to Remain following four years of service will only pay the unit cost of an application.

BARONESS BRINTON
BARONESS SMITH OF NEWNHAM

64 Insert the following new Clause—

“Review of Armed Forces Covenant

- (1) Within six months of the passing of this Act the Secretary of State must commission a review of the coverage of the Armed Forces Covenant.
- (2) The review must consider whether the Covenant should be extended to cover civilians subject to service discipline who have been employed by the UK Armed Forces while on deployment.
- (3) The review must conclude, and the Secretary of State must lay the report of the review before both Houses of Parliament, within 12 months of the passing of this Act.”

Member’s explanatory statement

This amendment would require the Secretary of State to commission a review of whether the Armed Forces Covenant should be extended to cover civilians subject to service discipline who have been employed by the UK Armed Forces while on deployment.

BARONESS SMITH OF NEWNHAM

65 Insert the following new Clause—

“Review of the impact of this Act on the finances of local authorities and health providers

- (1) Within six months of the day on which this Act is passed, the Secretary of State must lay before Parliament a review of the impact of this Act on the finances of local authorities and all health trusts and providers (health providers).
- (2) The review under subsection (1) must make reference to—

After Clause 18 - continued

- (a) the impact of the Act and the duties placed on local authorities and health providers to have due regard to the principles of the Armed Forces covenant on their finances; and
 - (b) whether local authorities and health providers are able to effectively undertake their duties under this Act.
- (3) The review under subsection (1) must make a recommendation as to whether further funding should be made available to Local Authorities and health providers in order to undertake their duties under this Act.”

Member’s explanatory statement

This amendment would require the Government to report on the impact of this Act on the finances of Local Authorities and health trusts and providers, and whether funding should be made available to allow them to undertake their duties under this Act.

LORD COAKER

LORD ROBERTSON OF PORT ELLEN

LORD THOMAS OF CWMGIEDD

LORD THOMAS OF GRESFORD

66

Insert the following new Clause –

“Review of service justice

- (1) Within one month of the passing of this Act, a Minister of the Crown must make a statement to both Houses of Parliament on whether the Government has accepted or rejected the recommendation in the report of the Henriques Review into the framework, processes and skills that the service justice system required for overseas operations on establishing a Defence Representation Unit to provide a triage service to Service personnel and veterans under investigation for criminal conduct.
- (2) If the recommendation has been accepted, the Minister must lay before both Houses of Parliament a report containing a plan and timeline for establishing the Unit.
- (3) The report under subsection (2) must include, but is not limited to, a plan for implementing the following requirements –
 - (a) that the Unit should be headed by a Director of Defence Counsel Services;
 - (b) that the Director and the Unit must be fully independent of the military chain of command and act under the general supervision of the Attorney General;
 - (c) that any guidelines or instructions issued by the Attorney General must be published;
 - (d) that advice given by the Unit may be given remotely or by telephone and should not justify any unwarranted delay in investigations or in any judicial process;
 - (e) that the Unit must be contacted at the earliest opportunity by those seeking advice;
 - (f) that the Unit will be established within six months of the statement under subsection (1).”

After Clause 18 - *continued*

LORD DANNATT
LORD STIRRUP
LORD BOYCE
LORD COAKER

66A Insert the following new Clause—

“Duty of care to service personnel

- (1) The Secretary of State must establish a duty of care standard in relation to legal, pastoral and mental health support provided to service personnel.
- (2) This duty of care standard must provide support to, but is not limited to—
 - (a) service personnel who have been affected by the United Kingdom’s withdrawal from Afghanistan in 2021;
 - (b) service personnel involved in investigations or litigation arising from overseas operations.
- (3) The Secretary of State must lay a copy of this standard before Parliament within three months of the date on which this Act is passed.
- (4) The Secretary of State must thereafter in each calendar year—
 - (a) prepare a duty of care update, and
 - (b) include the update in the Armed Forces Covenant annual report when it is laid before Parliament.
- (5) The duty of care update is a review about the continuous process of improvement to meet the duty of care standard established under subsection (1), in particular in relation to incidents arising from—
 - (a) litigation and investigations brought against service personnel for allegations of criminal misconduct and wrongdoing;
 - (b) civil litigation brought by service personnel against the Ministry of Defence for negligence and personal injury;
 - (c) judicial reviews and inquiries into allegations of misconduct by service personnel;
 - (d) retention, morale, and performance of duties affected by the United Kingdom’s withdrawal from Afghanistan in 2021;
 - (e) such other related fields as the Secretary of State may determine.
- (6) In preparing a duty of care update the Secretary of State must have regard to, and publish relevant data in relation to—
 - (a) the adequacy of legal, welfare and mental health support services provided to service personnel;
 - (b) complaints made by service personnel or their legal representation when in the process of bringing or attempting to bring civil claims against the Ministry of Defence for negligence and personal injury;
 - (c) complaints made by service personnel or their legal representation when in the process of investigation or litigation for an accusation of misconduct;
 - (d) meeting national standards of care and safeguarding for families of service personnel, where relevant.

After Clause 18 - continued

- (7) In this section—
- “service personnel” means—
- (a) members of the regular forces and the reserve forces;
 - (b) members of British overseas territory forces who are subject to service law;
 - (c) former members of any of Her Majesty’s forces who are ordinarily resident in the United Kingdom;
 - (d) where relevant, family members of any person meeting the definition within paragraph (a), (b) or (c);
- “duty of care” means both the legal and moral obligation of the Ministry of Defence to ensure the wellbeing of service personnel.
- (8) Nothing in this section may be used to alter the principle of combat immunity.”

Member’s explanatory statement

This new Clause will require the Ministry of Defence to identify a new duty of care to create a new standard for policy, services and training in relation to legal, pastoral and mental health support provided to service personnel, and to include a duty of care update in the Armed Forces Covenant Annual Report.

LORD COAKER
BARONESS SMITH OF NEWNHAM

66B

Insert the following new Clause—

“Independent defence authority

- (1) The Secretary of State must review whether it is desirable to establish an independent defence authority which is responsible for interpersonal conduct within the armed forces and which has a remit, in particular—
 - (a) to assess cultures of behaviour and to identify where inappropriate behaviour is systemic,
 - (b) to promote good behaviour and, where necessary, cultural change,
 - (c) to investigate specific instances of inappropriate behaviour,
 - (d) to mediate employment-related grievances, and
 - (e) to advise service members about their rights in relation to service discipline.
- (2) Within the period of the one year beginning with the day on which this Act is passed, the Secretary of State must conclude the review and lay a report before Parliament.
- (3) If the Secretary of State recommends that it is desirable to establish an independent authority, the report must—
 - (a) set out details of a reporting and investigation system which is outside of the chain of command and outside the single services, and
 - (b) explain how the authority is to have properly trained staff and a properly resourced budget.”

Member's explanatory statement

This amendment is based on recommendations in the report of the House of Commons Defence Sub-Committee on Women in the Armed Forces, "Protecting Those Who Protect Us: Women in the Armed Forces from Recruitment to Civilian Life".

Clause 24

BARONESS GOLDIE

67 Page 38, line 21, at end insert –

“(ga) paragraphs 1 to 23 and 33 to 52 of Schedule (*Tri-service serious crime unit*) (and section (*Framework for establishment of tri-service serious crime unit*) (5), so far as it relates to those paragraphs);”

Member's explanatory statement

This amendment is about the territorial extent of the new Schedule proposed by Baroness Goldie to be inserted after Schedule 4.

Clause 25

BARONESS GOLDIE

68 Page 39, line 4, leave out “and” and insert –

“(ha) paragraphs 1 to 23 and 33 to 52 of Schedule (*Tri-service serious crime unit*) (and section (*Framework for establishment of tri-service serious crime unit*) (5), so far as it relates to those paragraphs), and”

Member's explanatory statement

This amendment is about the territorial extent of the new Schedule proposed by Baroness Goldie to be inserted after Schedule 4.

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4 November 2021
