

ARMED FORCES BILL

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

1. This supplementary memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Armed Forces Bill ("the Bill"). This memorandum relates to a single, additional delegated power which appears in an amendment in the name of Baroness Goldie as a new clause on the framework for establishment of a tri-service serious crime unit.

New clause: Framework for establishment of a tri-service serious crime unit

Power conferred on: the Secretary of State

Power exercised by: regulations

Parliamentary procedure: Negative

Context and purpose

2. This new clause appears in a series of government amendments to the Bill (mainly the new clause and a new Schedule) in order to make the changes to primary legislation on account of the establishment of a new tri-service serious crime unit, to be headed by a Provost Marshal for serious crime. These amendments relate to the way in which the service police are organised. There are currently three service police forces: the Royal Navy Police, the Royal Military Police and the Royal Air Force Police. Each is headed by a Provost Marshal who is responsible for ensuring the investigations of their service police forces are independent. Each service police force maintains a separate investigative capability in special investigation branches.
3. The government amendments implement recommendations from the Service Justice System Review and the recently published review by Sir Richard Henriques. In particular, the Henriques review recommended that there be a tri-service serious crime unit of the service police; that it be an operationally independent unit; that it should be commanded by a Provost Marshal for serious crime; and that the Provost Marshal for serious crime should have a duty of operational independence in investigative matters owed to the Defence Council, on the same terms as that owed by the existing provost marshals under section 115A of the Armed Forces Act 2006.
4. The purpose of the government amendments is to make all of the necessary changes to primary legislation in order to implement these reviews. In particular:
 - a. the new Provost Marshal for serious crime is subject to the same rules about appointment as the existing provost marshals (including appointment by Her Majesty);
 - b. the Provost Marshal for serious crime will be under a duty to ensure investigations by the tri-service serious crime unit are independent, mirroring the duty on existing provost marshals in relation to the single Service police forces; and

- c. the Provost Marshal for serious crime and the tri-service serious crime unit have the same statutory powers as, respectively, the existing provost marshals and service police forces.
- 5. The new Schedule is devoted in particular to the matters in paragraph 4.c and is a consequential Schedule to ensure that necessary changes are made to primary legislation, for example, to ensure the provisions in the statute book on investigatory powers which are available to the service police are updated for the new tri-service serious crime unit and new Provost Marshal.
- 6. The delegated power is contained in the new clause. It is designed to facilitate a consequential exercise for secondary legislation; along the lines of the consequential exercise for primary legislation that is already contained in particular in the new Schedule. The power is available for secondary legislation made before the passing of the Bill in consequence of any provision contained in the new clause or new Schedule inserted in the Bill by the amendments. Where, for example, there are references to an existing provost marshal for a service police force, this power would be available to add the Provost Marshal for serious crime.

Justification for taking the power

- 7. This power is considered necessary in order to facilitate the amendment of secondary legislation in consequence of these government amendments. It is the usual practice to tackle consequential amendments of secondary legislation during implementation of a Bill by way of secondary legislation rather than dealing with these matters on the face of the Bill. This approach is well-precedented and ensures parliamentary time is not overburdened by routine changes to secondary legislation. Although it would be possible to use existing powers to make the necessary consequential secondary legislation, providing a bespoke power means that this exercise can be tackled more efficiently by cutting down the number of powers that would need to be relied on. The new power is drafted in a very narrow way. It is only available to amend secondary legislation (as defined). It is available only for secondary legislation already in existence at the time the Bill becomes law. It may only make changes in consequence of the changes made in the new clause and new Schedule. We expect the amendments to secondary legislation to be similar in nature to the amendments in the new Schedule (inserting references to the tri-service serious crime unit and the Provost Marshal for serious crime).

Justification for the procedure

- 8. Given the narrowness of the power, described above, the negative procedure is appropriate. In particular, this power would not be available to amend primary legislation. The amendments must be in consequence of the changes in the Bill in the new clause and new Schedule.

Ministry of Defence

4 November 2021