

Armed Forces Bill

MARSHALLED LIST OF AMENDMENTS TO BE MOVED ON REPORT

The amendments have been marshalled in accordance with the Order of 17th November 2021, as follows –

Clauses 1 and 2	Schedule 4
Schedule 1	Clause 12
Clauses 3 to 9	Schedule 5
Schedule 2	Clauses 13 to 16
Clause 10	Schedule 6
Schedule 3	Clauses 17 to 27
Clause 11	Title.

[Amendments marked ★ are new or have been altered]

**Amendment
No.**

Clause 3

LORD MORRIS OF ABERAVON

- 1** Page 2, line 6, after “judge” insert “licensed by the Lord Chief Justice to try murder, manslaughter and rape offences”

Clause 7

LORD THOMAS OF GRESFORD

LORD COAKER

LORD THOMAS OF CWMGIEDD

BARONESS BENNETT OF MANOR CASTLE

- 2** Page 4, line 27, at end insert –
- “(4A) Guidance under subsection (3)(a) must provide that where offences of murder, manslaughter, domestic violence, child abuse, rape or sexual assault with penetration are alleged to have been committed in the United Kingdom, any charges brought against a person subject to service law shall normally be tried in a civilian court unless, by reason of specific naval or military complexity involving the service, the Attorney General consents to trial by court martial.”

Member's explanatory statement

This amendment would ensure the most serious crimes – murder, manslaughter, domestic violence, child abuse, rape and sexual assault with penetration – are tried in civilian courts when committed in the UK unless the Attorney General has specifically consented for such crimes to be tried by court martial by reason of complexity involving the service.

Clause 8

LORD COAKER
BARONESS BRINTON

- 3 Page 9, line 17, at end insert –
- “(d) a relevant employment function,
 - (e) a relevant pensions function,
 - (f) a relevant compensation function,
 - (g) a relevant social care function,
 - (h) a relevant criminal justice function, or
 - (i) a relevant immigration function.”

LORD MACKAY OF CLASHFERN
LORD CRAIG OF RADLEY
LORD COAKER
BARONESS SMITH OF NEWNHAM

- 4 Page 9, line 18, at end insert –
- “(za) the Secretary of State;”

Member's explanatory statement

This amendment would place the same legal responsibility to have “due regard” to the Armed Forces Covenant on central government as the Bill currently requires of local authorities and other public bodies.

LORD COAKER
BARONESS BRINTON

- 5 Page 11, line 16, at end insert –
- “(d) a relevant employment function,
 - (e) a relevant pensions function,
 - (f) a relevant compensation function,
 - (g) a relevant social care function,
 - (h) a relevant criminal justice function, or
 - (i) a relevant immigration function.”
- 6 Page 12, line 40, at end insert –
- “(d) a relevant employment function,
 - (e) a relevant pensions function,
 - (f) a relevant compensation function,
 - (g) a relevant social care function,
 - (h) a relevant criminal justice function, or
 - (i) a relevant immigration function.”
- 7 Page 14, line 13, at end insert –
- “(d) a relevant employment function,
 - (e) a relevant pensions function,

Clause 8 - continued

- (f) a relevant compensation function,
- (g) a relevant social care function,
- (h) a relevant criminal justice function, or
- (i) a relevant immigration function.”

BARONESS GOLDIE

8 Page 15, line 35, at end insert —

“(3A) Guidance under this section —

- (a) may not be issued unless a draft has been laid before Parliament, and
- (b) comes into force on whatever day the Secretary of State may appoint by regulations.”

Member’s explanatory statement

This amendment would provide for guidance under new section 343AE to be laid in draft before Parliament and for the coming into force of the guidance to be governed by regulations (and is to be read with Baroness Goldie’s amendments at lines 36 and 43 of page 15 and page 18, line 39).

9 Page 15, line 36, leave out “issuing guidance under subsection (1)” and insert “laying draft guidance under this section before Parliament”

Member’s explanatory statement

This amendment is supplementary to Baroness Goldie’s amendment at page 15, line 35.

10 Page 15, line 42, after “department” insert “so far as the guidance relates to devolved Northern Ireland functions”

Member’s explanatory statement

This amendment corrects an omission in provisions setting out the Secretary of State’s duty to consult before issuing guidance.

11 Page 15, line 43, at end insert —

“(4A) Subsection (3A) has effect in relation to any revised guidance.”

Member’s explanatory statement

This amendment is supplementary to Baroness Goldie’s amendment at page 15, line 35.

12 Page 16, line 4, leave out “current version” and insert “version currently in force”

Member’s explanatory statement

This amendment is consequential on Baroness Goldie’s amendment at page 15, line 35.

13 Page 17, line 39, after “department” insert “so far as the regulations contain provision that is within Northern Ireland devolved competence”

Member's explanatory statement

This amendment corrects an omission in provisions setting out the Secretary of State's duty to consult before making regulations.

14 Page 18, leave out lines 17 to 21

Member's explanatory statement

This amendment corrects the definition of "Northern Ireland devolved competence" by removing a redundant limb.

LORD LANCASTER OF KIMBOLTON

15 Page 18, line 28, at end insert —

"343AG Regional committees

- (1) The Secretary of State may by regulations make provision to give committees established under section 25 of the Social Security Act 1989, known as Veterans Advisory and Pensions Committees, additional functions specified in the regulations relating to all former members of Her Majesty's forces and their relevant family members, and a new name.
- (2) The regulations may in particular provide that it is a function of the committees —
 - (a) to report and make recommendations to the Secretary of State on matters that are or may be relevant to —
 - (i) their armed forces covenant report, and
 - (ii) sections 343AA to 343AD and guidance issued under section 343AE;
 - (b) to provide a distinct, identifiable, and independent point of reference in their region for both the veteran community and all those supporting it;
 - (c) to raise awareness of, and support the implementation of —
 - (i) services provided to the veteran community alone or with others,
 - (ii) the Government's strategy for veterans, and
 - (iii) the terms of armed forces covenant;
 - (d) to act as an advocate, promoter, facilitator, or communicator of services that are relevant to the veteran community;
 - (e) to report and make representations and recommendations on existing or proposed services that are relevant to the veteran community."

Member's explanatory statement

This amendment seeks to extend the statutory functions of Veterans Advisory and Pensions Committees (VAPCs), currently limited to functions relating to compensation schemes for veterans and their families (the War Pensions and the Armed Forces Compensation Schemes) to all aspects of veteran life.

BARONESS GOLDIE

16 Page 18, leave out line 32 and insert —

"(b) subsection (4) is amended as follows —

Clause 8 - continued

- (i) in the definition of “relevant family members”, after “means” insert “such persons as may be prescribed, and for the purposes of section 343A also includes”;
- (ii) at the appropriate place insert –

Member’s explanatory statement

This amendment and Baroness Goldie’s amendment at page 18, line 37 would provide for “relevant family members” to be defined in regulations.

LORD MACKAY OF CLASHFERN

- 17** Page 18, line 32, at end insert –
- ““armed forces covenant” means an agreement between the Secretary of State, on behalf of the people of the United Kingdom, and service people;”

BARONESS GOLDIE

- 18** Page 18, line 37, at end insert –
- “(c) after subsection (4) insert –
- “(4A) In subsection (4) “prescribed” means prescribed by regulations made by the Secretary of State under this subsection.
- (4B) Before making regulations under subsection (4A) the Secretary of State must consult –
- (a) the Welsh Ministers so far as the regulations contain provision that is within Welsh devolved competence,
 - (b) the Scottish Ministers so far as the regulations contain provision that is within Scottish devolved competence,
 - (c) the relevant Northern Ireland department so far as the regulations contain provision that is within Northern Ireland devolved competence, and
 - (d) any other persons the Secretary of State considers appropriate.
- (4C) Subsections (8) to (10) of section 343AF apply for the purposes of subsection (4B) as they apply for the purposes of that section.””

Member’s explanatory statement

This amendment and Baroness Goldie’s amendment at page 18, line 32 would provide for “relevant family members” to be defined in regulations. This amendment also imposes requirements with regard to consultation.

- 19** Page 18, line 39, at end insert –
- “(eda) regulations under section 343AE(3A),”

Member’s explanatory statement

This amendment supplements Baroness Goldie’s amendment at page 15, line 35 and would apply affirmative resolution procedure to regulations bringing guidance into force.

- 20** Page 18, line 40, at end insert –
- “(ef) regulations under section 343B(4A),””

Member's explanatory statement

This amendment supplements Baroness Goldie's amendment at page 18, line 32 and would apply affirmative resolution procedure to regulations prescribing persons as "relevant family members".

Clause 11

BARONESS GOLDIE

21 Page 23, line 6, at end insert –

“(2A) If regulations under subsection (1) include provision corresponding (with or without modifications) to section 10(5) of the Police Reform Act 2002 (general functions of Director General), the regulations may also provide for subsection (2D) of section 54 of the Police Act 1996 (functions of inspectors of constabulary) to apply (with or without modifications) in relation to the Service Police Complaints Commissioner as that subsection applies in relation to the Director General of the Independent Office for Police Conduct.”

Member's explanatory statement

This amendment would enable regulations to impose on the chief inspector of constabulary duties which would be reciprocal to duties imposed on the Service Police Complaints Commissioner by the same regulations.

Schedule 4

BARONESS GOLDIE

22 Page 52, line 23, at end insert –

“2A In Part 2 of the Table in paragraph 3 of Schedule 1 to the Public Records Act 1958 (definition of public records), at the appropriate place insert –
“Service Police Complaints Commissioner.””

Member's explanatory statement

This amendment would provide for records of the Service Police Complaints Commissioner to be public records for the purposes of the Public Records Act 1958.

Clause 12

LORD THOMAS OF CWMGIEDD

LORD COAKER

LORD ROBERTSON OF PORT ELLEN

LORD THOMAS OF GRESFORD

23 Page 24, line 20, at end insert –

“(3A) After section 115A insert –

“Further provision in relation to independence of investigations

115B Further provision in relation to independence of investigations

- (1) The tri-service serious crime unit must contain a victim and witness care unit, funding for which is to be made available by the Secretary of State.

Clause 12 - continued

- (2) The Deputy Provost Marshal for serious crime must be a civilian appointment.
- (3) The tri-service serious crime unit must carry out its investigations in a manner that is operationally independent of the military chain of command.
- (4) The Provost Marshal for serious crime must produce a report annually to the Minister chairing the Service Justice Board, who must arrange for the report to be laid before Parliament.
- (5) Before the tri-service serious crime unit is established, a Strategic Policing Board, consisting of a non-executive director (who is also a member of the Service Justice Executive Group), a retired chief constable, a recently retired senior military officer, and a retired judge, must be established to provide assurance and governance of the Provost Marshal for serious crime and the Defence Serious Crime Unit.
- (6) The tri-service serious crime unit must be established by 1 April 2022.
- (7) By 1 July 2022, the Provost Marshal for serious crime, Director of Service Prosecutions and Judge Advocate General must agree protocols on fatalities and ill-treatment cases.””

Member’s explanatory statement

The amendment is intended to strengthen the independence of the tri-service serious crime unit in accordance with the recommendations of the Henriques Report.

After Clause 19

LORD COAKER
BARONESS SMITH OF NEWNHAM
BARONESS BENNETT OF MANOR CASTLE

24

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 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 –

After Clause 19 - continued

- (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”.

LORD MORRIS OF ABERAVON

25 Insert the following new Clause—

“Murder, manslaughter, rape and serious injury offences: publication of figures

The Secretary of State must—

- (a) annually publish the rates of conviction in the Court Martial for—
 - (i) murder,
 - (ii) manslaughter,
 - (iii) rape, and
 - (iv) other offences that have caused serious injury, and
- (b) consider methods of improving rates of conviction for such offences.”

LORD COAKER

LORD DANNATT

LORD CRAIG OF RADLEY

BARONESS SMITH OF NEWNHAM

26 Insert the following new Clause—

“Indefinite leave to remain payments by Commonwealth, Hong Kong 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) who has served at least four years in the armed forces of the United Kingdom, or any person who has served at least four years in the Royal Navy Hong Kong Squadron, the Hong Kong Military Service Corps or 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 and Gurkha veterans applying for Indefinite Leave to Remain following four years of service will only pay the unit cost of an application.

LORD ROBERTSON OF PORT ELLEN
 LORD THOMAS OF CWMGIEDD
 LORD COAKER
 LORD THOMAS OF GRESFORD

27 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 requires 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).”

LORD RUSSELL OF LIVERPOOL
 LORD BROWNE OF LADYTON
 BARONESS LISTER OF BURTERSETT
 LORD THOMAS OF GRESFORD

28 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 BROWNE OF LADYTON
LORD CRAIG OF RADLEY
LORD CLEMENT-JONES

29★

Insert the following new Clause—

“Use of novel technologies by the UK Armed Forces: 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 military operations, and produce recommendations for favourable legal environments for the United Kingdom’s armed forces, including instilling domestic processes and engaging in the shaping of international agreements and institutions.
- (2) The review must consider—
 - (a) 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 military operations,
 - (b) how international and domestic legal frameworks governing conflict need to be updated in response to novel technologies,
 - (c) the United Kingdom’s engagement with current and new routes of international efforts to secure a new legally binding instrument governing the use of novel technologies in conflict, and
 - (d) what protection and guidance armed forces personnel need to minimise the risk of legal proceedings being brought against them which relate to military operations in response to novel technologies.
- (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.”

Member’s explanatory statement

The amendment mandates a review within three months of the passing of the Act of implications of increasing autonomy associated with the use of AI and machine learning in weapon systems. The review must focus on the protection and guidance that Armed Forces personnel need to ensure that they comply with the law, including international humanitarian law, and how international and domestic legal frameworks need to be updated.

Armed Forces Bill

MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
ON REPORT

19 November 2021
