

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 23 June 2026 (HL Bill 36).

- These Explanatory Notes have been prepared by the Ministry of Defence in order to assist the reader of the Bill and to help inform the 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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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 includes measures to improve the effectiveness and efficiency of the service justice system so that it continues to meet the needs of the Armed Forces, and to put the Armed Forces Covenant fully into law.
- 2 The Act addresses the following matters:
 - Duration of the Armed Forces Act 2006
 - Armed Forces Covenant
 - Defence housing and other property
 - Prevention etc of drones and similar devices
 - Protection from sexual and violent behaviour, domestic abuse, stalking and harassment
 - Support for victims of service offences
 - Investigation, arrest and charging
 - Duties and powers of commanding officers
 - Service courts
 - Driving disqualification
 - Rehabilitation of offenders
 - Armed Forces Commissioner
 - Reserve forces
 - Parliamentary control of Armed Forces numbers and commitments
 - Visiting forces
 - Ministry of Defence Police, and
 - Miscellaneous provisions.
- 3 The Bill was brought from the House of Commons to the House of Lords on 23 June 2026. The Bill was introduced in the House of Commons on 15 January 2026 and carried over from the previous parliamentary session. The Bill was then re-introduced in the House of Commons in this parliamentary session on 14 May 2026 and completed its remaining stages in the House of Commons with Report and Third Reading on 22 June 2026.

Policy background

Service justice system

- 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 AFA 2006.
- 5 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 civilians in circumstances closely connected with the Armed Forces. 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 The service justice system measures in the Bill reflect the strategic direction and priorities set by the Service Justice Board, which is chaired by the Minister for Veterans and People, and has Ministers from the Attorney General's Office and the Ministry of Justice as members (along with representatives from each of the services, the Director of Service Prosecutions, the Victims' Commissioner for England & Wales and Non-Executive Directors and, while not a Board member, the Judge Advocate General also attends as an observer). The measures reflect the three priority themes:
 - a. **To modernise and improve victim support:** These measures will improve victims' experiences of the service justice system. They improve the guidance and support available to victims and provide a more efficient way for them to submit a complaint if they are not happy with the service they receive.
 - b. **To ensure the service justice system is able to protect victims of the most serious offences from further harm:** This suite of protections and orders will ensure that victims in the service justice system are better protected, and the risks of further harm are reduced, by taking swift action against perpetrators. The measures support the Government manifesto commitment of halving Violence Against Women and Girls ("VAWG") in a decade.
 - c. **To improve the effectiveness and efficiency of the service justice system:** These measures will improve how the service justice system works so it can be a flexible, modern, efficient jurisdiction capable of operating in any environment.
- 7 The measures within the three priority themes include:
 - a. Aligning the powers available to the service police and service courts with those in the criminal justice system for the issuing of Sexual Harm Prevention Orders ("SHPO") and Sexual Risk Orders ("SRO").
 - b. Aligning the powers available to the service police and service courts with those in the criminal justice system for the issuing of service image deletion orders ("SIDOs").
 - c. Aligning the powers available to the service police and service courts with those in the criminal justice system for the issuing of service domestic abuse protection notices ("SDAPNs"), and service domestic abuse protection orders ("SDAPOs").

- d. Aligning the powers available to the service police and service courts with those in the criminal justice system for the issuing of service stalking protection orders (“SSPOs”).
 - e. Enabling a service restraining order to be applicable in the criminal justice system, thereby ensuring the order is still enforceable once an offender has left service.
 - f. Ensuring those offenders sentenced by the service courts for certain serious offences are, upon their release, automatically managed under the Multi-Agency Public Protection Arrangements (“MAPPA”). Currently, management by MAPPA for such offenders is on a discretionary basis.
 - g. Making the complaint process more streamlined for victims in the service justice system by removing the need to raise a complaint via an MP before it can be escalated to the Parliamentary Commissioner for Administration, where the complaint relates to the complainant’s experiences as a victim of a service offence.
 - h. Creating a statutory duty for a Victims’ Code for those who are victims of criminal conduct within the service justice system; and,
 - i. Providing statutory guidance about specified victim support roles in the service justice system.
- 8 Other service justice system provisions include a time limit for charging certain summary only offences, a corrective amendment for qualification to sit on a Court Martial Board, creation of a suite of measures replicating the Mental Health Act 1983, dealing with remands for treatment and reports and hospital orders, the option to reduce a period of driving disqualification through attendance on a course, and an exemption to the Rehabilitation of Offenders Act 1974 (“ROA 1974”).

The Armed Forces Covenant

- 9 In common with other five-yearly Armed Forces Acts, this Bill contains measures which fall outside the ambit of the service justice system. The Bill puts the Armed Forces Covenant fully into law.¹
- 10 This provision will ensure that the needs of the Armed Forces community are considered by relevant policymakers and decision makers in central government, local authorities, education and health bodies and the Devolved Governments.

Defence Housing

- 11 In November 2025, the Ministry of Defence (“MoD”) announced its Defence Housing Strategy² The new Defence Housing Strategy is divided into three pillars. The first pillar concerns a ten-year plan to deliver a renewal of defence family housing. The second pillar is for the establishment of a new independent body for defence housing which has the needs of service personnel and their families at its heart and takes a “Forces First” approach to its work. The third pillar is to ensure defence housing and defence land delivers for the nation.
- 12 This Bill enables the delivery of the second pillar of the Defence Housing Strategy by providing the legislative framework for the establishment of a new corporate body, the Defence Housing Service. The function of the new body will include improving the supply and quality of defence housing for service persons and their families as well as the development of land used or formerly used for defence purposes, and it will have powers conferred upon it to fulfil this purpose.

¹ <https://www.gov.uk/government/news/pledge-to-protect-armed-forces-community-as-government-delivers-on-manifesto-commitment>; <https://questions-statements.parliament.uk/written-statements/detail/2025-06-30/hcws747>

² https://assets.publishing.service.gov.uk/media/690878cdef26c341988b2558/The_Defence_Housing_Strategy_2025.pdf

Prevention etc of drones and similar devices

- 13 Under Part 2 of the Police Act 1997, only police constabularies, HM Prison Services, and certain other named bodies have the authority to use authorised equipment to detect and prevent threats posed by uncrewed devices (also commonly referred to as drones). As defence personnel are not covered by this Act, only civilian police have the power to protect defence property and activities. Service police can only routinely authorise actions in response to persons subject to service law.
- 14 The provisions in the Bill therefore provide the necessary authorisation for defence personnel within the UK only (including in, above or below territorial sea adjacent to the UK) to employ approved equipment to detect and prevent relevant offences being committed by uncrewed devices against defence property and activities, and to provide a legislative framework that is sufficiently flexible to address emerging threats from adversaries.

Reserve Forces

- 15 In recent years, the MoD has conducted a number of synthetic exercises under several scenarios where the UK is involved in conflict with a peer adversary. In all cases there have been significant pressures and demands on the number of service personnel available for both warfighting and homeland defence. From this work, the MoD concluded that there was a need to maximise the number of personnel available to defence, increasing usage of reservists as part of a whole force approach. Defence is already empowered to recall reservists at times of national need. However, the legislation in the Reserve Forces Act 1996 (“RFA 1996”) reflects a post-Cold War, peace-time stance in which the threat to the home territory and people of United Kingdom itself was minimal. Given the increasingly uncertain geopolitical world, the MoD is seeking to modernise RFA 1996, which is aligned to the direction provided by the Strategic Defence Review for: a “whole defence” approach; to re-energise the relationship with the Strategic Reserve; and to increase the Active Reserve by 20% when funding allows.
- 16 The Strategic Defence Review was published in June 2025:
https://assets.publishing.service.gov.uk/media/683d89f181deb72cce2680a5/The_Strategic_Defence_Review_2025_-_Making_Britain_Safer_-_secure_at_home_strong_abroad.pdf

Background to Clause 32 – Transfer between regular and Reserve Forces

- 17 Currently members of the Regular Forces who wish to transfer into the Volunteer Reserve (the Royal Naval Reserve, the Royal Marine Reserve, the Army Reserve and the Royal Auxiliary Airforce) have to formally leave the regulars and rejoin the reserve. Any service person who wishes to join the regulars from any of the Reserve Forces as set out in Section 1 of RFA 1996 will also have to leave that force to join the regulars.
- 18 Although in practice the services try to make the process as smooth as possible, the fact that service personnel have to leave and rejoin can lead to some undesirable outcomes (people being asked to re-take medicals, re-attest etc). The MoD is examining the creation of a more flexible framework that would allow a service person to serve in different types of service (e.g. regular and reserve) multiple times over their career. Clause 32 seeks to help facilitate this by removing any friction caused by having to leave and rejoin, and provide service personnel more career flexibility and choice.
- 19 Clause 32 will only apply to service personnel wanting to leave the Regular Forces and join the Volunteer Reserve Forces and those in the Reserve Forces who wish to join (or rejoin) the Regular Forces. Movement between these forces will remain entirely voluntary and subject to the needs of the service. The current law that permits the MoD to transfer service people at the end of their regular service to serve a call out liability in either the Regular Reserve (the Royal

Fleet Reserve, the Regular Reserve and the Air Force Reserve) or under the provisions of Part VII of RFA 1996 is unchanged.

Background to Clause 33 – Call out for permanent service

- 20 Currently the maximum duration of service on call-out under subsections 52, and 54 of RFA 1996 is limited to 3 years and 12 months respectively. This includes a person's "*current service under the order and any relevant service in aggregate*". Relevant service means any permanent service in the 6 years and 3 years (respectively) preceding the current service. The measures in clause 33 will enable the Secretary of State to disapply aggregated service such that the maximum duration of service on call-out only includes current service under the relevant call out order. This will only be possible for call-out or recall for warlike operations being in preparation or in progress or national danger, great emergency or attack on the UK, and would be enacted via order signed by the Secretary of State, which is reported to Parliament without delay.
- 21 Clause 33 primarily makes amendments to RFA 1996 in relation to the disapplication of aggregate service under sections 53 (maximum duration of service on call out under section 52), and 55 (maximum duration of service on call out under section 54).

Background to Clause 34 – Recall for service

- 22 Currently, only part time volunteer reservists ("PTVR") officers and ex-regulars of all ranks have a recall liability. Accordingly, defence proposes to change this to include PTVR (Other Ranks), to enable it to utilise a source of latent capability and secure a better return of service on the investment defence makes in this cohort of personnel. It should significantly increase the quantity and quality of the personnel who comprise the Strategic Reserve³ and enhance national resilience accordingly. This measure would bring the UK in step with the US Army Reserve and National Guard approach.
- 23 Currently, the list of recall criteria detailed in RFA 1996 does not include a 'transition to war' or 'sub-threshold' scenario. Recall is only possible in the event of imminent danger, grave emergency or actual attack on the UK, by which time the means to mobilise them may have been deliberately degraded by the enemy. Furthermore, the length of the retraining period now required to bring recalled personnel into line with the digitised warfighting environment means that being unable to mobilise them until war has almost started presents undue risk.
- 24 Defence has extant powers to call out serving reserve personnel for warlike operations, but RFA 1996 as currently written does not permit defence to recall former service personnel to full time service for the same purpose. In the event of a national crisis, this could result in defence being unable to generate the mass it requires at pace to deliver warfighting and home defence capabilities.
- 25 Accordingly, the Bill adds a new provision into RFA 1996, to enable recall for "warlike operations". This would mirror the current power that enables the Secretary of State to call-out members of the Reserve Forces if it appears to them that warlike operations are in preparation or progress.
- 26 Currently, non-officers who may previously have had a recall liability will no longer have such a liability after the age of 55 or after 6 years from the Royal Navy or Royal Marines. By

³ The 'Strategic Reserve' comprises of members of the ex-regular Reserve Forces who retain a liability under RFA 1996 to train for up to 16 days a year and be called out for military tasks ("mobilised"); and officers and former Other Ranks of the Regular Services who are not members of the Volunteer Reserve Force or the ex-regular Reserve Force, but retain a liability to be recalled into the Armed Forces in certain circumstances.

comparison, Army and RAF personnel both retain a recall liability for 18 years following discharge, which clearly differs to the approach taken for Royal Navy and Royal Marines personnel. Research and analysis have found no reason for this anomaly.

- 27 Accordingly, the policy objective of this measure is to change the upper age limit to 65 and to increase the recall liability for Royal Navy and Royal Marines personnel from 6 to 18 years to ensure consistency with the Army and the RAF.
- 28 The Bill amends RFA 1996 to enable the Secretary of State to disapply aggregate service for those who have been recalled to permanent service. This approach is mirrored by the proposal to amend RFA 1996 to disapply aggregate service for members of the Reserve Force when called out into permanent service. This will only be possible for call-out or recall for warlike operations being in preparation or in progress or national danger, great emergency or attack on the UK, and would be enacted via order signed by the Secretary of State which is reported to Parliament without delay.

Background to Clause 36 and Schedule 5 – Call out and recall of reserve force members: transitional classes

- 29 To further ensure that defence will be able to call out and/or recall personnel at pace and scale, the Department is introducing the measures via an opt-out model to the following cohorts:
 - a. Current members of the Regular Forces;
 - b. Current members of the Volunteer Reserve Forces.
- 30 Those members of the following personnel will not be included, but can opt-in, should they so wish:
 - a. Current members of the ex-regular Reserve Forces; and
 - b. Those still subject to recall under Part 7 of RFA 1996.
- 31 The policy intent is that individuals who fall into the opt-out cohort will be provided with 6 months (minimum) to opt-out. However, in order to ensure that there is sufficient flexibility to allow for different provision to be made in different cases (e.g. if someone never received notice of the requirement to opt-out and therefore it may be appropriate to provide them with a different length of time), this detail will be set out in secondary legislation. Schemes to apply for exemption and financial assistance under Part 8 RFA 1996, as well as defined limits on duration and scope, will continue to apply to impacted individuals which will ensure that those unsuitable for service are not mobilised, i.e. an 'opt-out' model would not necessarily equate to a guaranteed return to service.

Background to Clause 38 – Reserve Forces and Cadets Association

- 32 Originally established in 1908, the Reserve Forces and Cadets Associations ("RFCAs") play a crucial role in supporting the UK's Armed Forces. The effect of clause 38 is to replace the existing thirteen regional Reserve Forces and Cadets Associations, and the Council of RFCAs, with a single Reserve Forces and Cadets Association, constituted as a non-departmental public body. This provides a unified statutory framework for governance, accountability and assurance, while preserving the functions currently exercised by the RFCAs in support of the Reserve Forces and cadet forces. The duties of the RFCAs include:
 - a. Advising the Government's Defence Council and the single services on reserve and cadet matters.
 - b. Managing and maintaining the 'VE', a network of reserve sites and cadet centres where the reserves and cadets train.

- c. Engaging with employers and wider society to promote the interests of the reserves and cadets.
 - d. Supporting the development and running of cadet forces.
- 33 RFCAs are not a direct part of the MoD. They are funded and tasked by the Department but operate as unclassified arms'-length bodies with Crown status. RFA 1996 granted the RFCAs the power to create a joint committee of two or more of the RFCAs as they deemed necessary. Using this power, they created the Council of RFCAs ("CRFCA") to provide central internal coordination and a focus to enable the associations to fulfil the requirements of their customers within resources. The RFCAs work through, but are not legally accountable to, the CRFCA under the current construct. Additionally, each RFCA is an independent, community-based organisation, governed by representatives of the Reserve Forces, Cadet Forces, regular services, local authorities, employers and civil society.
- 34 In 2019, the MoD published a review into the RFCAs:
https://data.parliament.uk/DepositedPapers/Files/DEP2021-0871/RFCA_Review_2019.pdf .
 The review put forward 80 recommendations for change. This included the regularising and streamlining of the CRFCA and, as per recommendation 2.10a, its consolidation along with the 13 regional RFCAs into a single, non-departmental public body ("NDPB"), to improve and give clearer governance and efficiency, and to address the financial, legal, safeguarding and estate safety risks being carried by the MoD and the RFCAs. Improvements have been made, but the Department continues to carry some of these risks. The consolidation of the RFCAs into a single statutory non-departmental public body is intended to address identified financial, legal, safeguarding and estate management risks, and to place responsibility for these matters onto a clearer statutory footing. This responds directly to the 2019 review of the RFCAs and subsequent scrutiny by the National Audit Office and the Public Accounts Committee.

Background to Clauses 39 and 40: Parliamentary control of Armed Forces numbers and commitments

- 35 Removing the statutory requirements to report certain details in respect of the reserves and RAF regulars will enable defence to provide a single global figure per single service which will enable far more flexible use of the Armed Forces. It will ensure that defence can maximise the use of the skills in the force. Recognising that control of the size of the Army goes back to the Bill of Rights in 1688, the Government will maintain a simplified VOTES A process requesting the maximum size of the active force (mainly combining regular force and volunteer reserve numbers) of each service (Royal Navy, Army and Royal Air Force). The Government also continues to publish the quarterly personnel statistics to report on the size of the Armed Forces Reserves.

Legal background

Legal background to the service justice system

- 36 AFA 2006 contains most of the primary legislation for the service justice system. The service justice system is the disciplinary regime for the UK Armed Forces. It applies to UK 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 UK bases overseas. They are referred to in AFA 2006 as “civilians subject to service discipline”.
- 37 The service justice system in AFA 2006 creates a system for dealing with “service offences”; defined in section 50 of AFA 2006. These are mainly set out in Part 1 of AFA 2006. There are specific service offences relating to Armed Forces discipline. 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 AFA 2006. Such offences are known as “criminal conduct offences”.
- 38 AFA 2006 sets out the circumstances in which service offences can be dealt with by a commanding officer or service courts. In summary:
- 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, AFA 2006. A service person has the right to elect trial by Court Martial instead of being tried summarily (section 129 of 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 AFA 2006. Commanding officers are obliged to ensure service police are aware of serious offending; see sections 113 and 114 of 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 or six lay members (section 155 of AFA 2006). The lay members 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 AFA 2006). Its purpose is to deal with service offences 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 AFA 2006). It consists of a judge advocate and two lay members who will be serving officers or warrant officers (section 142 of AFA 2006). Appeals are by way of a rehearing (section 146 of 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 Court of Appeal in England and Wales, is staffed by the same judges and follows the same procedure.

Legal background for other bill provisions

Armed Forces Covenant

- 39 AFA 2006 requires the Secretary of State to make an Armed Forces Covenant report annually to Parliament (see section 343A of AFA 2006), with the latest report published on 16 December 2025: [The Armed Forces Covenant Annual Report](#). 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 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. Section 343B defines various terms in section 343A, including what is meant by “service people” and “relevant family member”.
- 40 The Armed Forces Act 2021 amended Part 16A of AFA 2006 to “further incorporate the Armed Forces Covenant into law”. Sections 343AA to 343AD impose a duty on specified persons and bodies to have due regard to the principles of the Armed Forces Covenant when exercising specified functions in the areas of housing, education, and healthcare across England, Wales, Scotland, and Northern Ireland. Section 343AE provides that the Secretary of State may issue guidance in relation to the duties imposed by sections 343AA to 343AD, which the persons or bodies subject to the duty must have regard to when exercising any of the listed functions. Section 343AF provides that the Secretary of State may by way of regulations widen the scope of the duty in sections 343AA to 343AD by specifying additional persons or bodies who are subject to the duty, and by specifying additional functions in relation to which the duty applies. This Bill introduces new section 343AZA and 343AZB, which will replace the current duty as set out in section 343AA to 343AD. Section 343AZA will impose a duty to have due regard to the Covenant principles onto national authorities including the devolved governments, health bodies, education bodies and local authorities when exercising public functions in relation to specified matters.

Reserve Forces

- 41 The main provisions in primary legislation concerning the Reserve Forces are contained in RFA 1996 which cover matters such as the organisation and membership of those forces, service in the Reserve Forces, the powers to call out reservists and reserve associations.
- 42 RFA 1996 makes provision with respect to matters including enlistment into, and discharge from, the Reserve Forces and service in the Reserve Forces, including voluntary training (e.g. training weekends and training courses), voluntary duties (e.g. ceremonial duties), full-time service commitments, additional duties commitments and call out for permanent service (often referred to as ‘mobilisation’). It also makes provision with respect to ‘recall’ as (a process under which former members of the Armed Forces who are not members of a Reserve Force may be brought into permanent (i.e. full-time) Service.

- 43 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.

Territorial extent and application

- 44 Clauses 53 and 54 of the Bill set out the territorial extent and application of the Bill, that is the jurisdictions which the Bill forms part of the law of. The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect.
- 45 The provisions in this Bill will extend to the whole of the United Kingdom though subject to the following:
- a. Extend to England and Wales only —
 - i. Clause 3 and Schedule 1, so far as it inserts Chapter 2 of Part 16C of, and Part 4 of Schedule 11A to, AFA 2006.
 - ii. Clause 5 and Schedule 2.
 - iii. Clause 8(2) and (3).
 - iv. Clause 10.
 - v. Clause 29(2).
 - vi. Clause 50.
 - vii. Parts 6 and 7 of Schedule 3.
 - b. Extends to Scotland only.
 - i. Clause 3 and Schedule 1, so far as it inserts Part 5 of Schedule 11A to AFA 2006.
 - ii. Clause 8(4) and (5).
 - iii. Clause 29(3) and (4) (Rehabilitation Periods).
 - c. Extend to Northern Ireland only —
 - i. Clause 3 and Schedule 1, so far as it inserts Parts 6 and 7 of Schedule 11A to AFA 2006.
 - ii. Clause 8 (6).
 - iii. Clause 49 (Police and Criminal Evidence (Northern Ireland) Order 1989).
- 46 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Territorial application of the Bill outside of the UK

- 47 The changes that this Bill will make to 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).
- 48 The changes that this Bill will make to AFA 2006 (save for those made by clause 31 and Schedule 4 of the Bill) 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 provisions within this Bill in its application to any of those territories.
- 49 The changes made to AFA 2006 by clause 31 and Schedule 4 of this Bill may be extended by Order in Council, with or without modifications, to the Isle of Man or the British Overseas Territories, except Gibraltar.
- 50 The changes that this Bill will make to the International Headquarters and Defence Organisations Act 1964 (“IHDOA 1964”), RFA 1996, and the Visiting Forces Act 1952 (“VFA 1952”) 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 the Armed Forces Act 2006

- 51 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.
- 52 As originally enacted, section 382 of AFA 2006 provided that the 2006 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 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 in each of the Armed Forces Act 2016 and Armed Forces Act 2021 then took the same approach, and renewed AFA 2006 up until the end of 2021 and 2026 respectively.
- 53 Clause 1 again substitutes a new section 382, which provides for the continuation of AFA 2006. It also repeals section 1 of the Armed Forces Act 2021, which inserted the current section 382 into AFA 2006.

New section 382: Duration of this Act

- 54 This new section provides that AFA 2006 expires a year after the Armed Forces Act 2026 is passed, unless renewed by Order in Council approved by each House of Parliament. AFA 2006 may be renewed by such an Order for not more than a year at a time, up to but not beyond the end of 2031.

Clause 2: Armed Forces Covenant

- 55 Clause 2 amends Part 16A of AFA 2006 to impose a new duty to have due regard to the principles of the Armed Forces Covenant. Subsection (2) inserts new sections 343AZA and 343AZB in Part 16A, which places a duty to have due regard to the Covenant principles onto national authorities, health bodies, education bodies and local authorities when exercising public functions in relation to specified matters.
- 56 Subsection (4) amends section 343AE of AFA 2006 to allow the Secretary of State to issue guidance in relation to the duties imposed by new section 343AZA, which the persons listed in new section 343AZB must have regard to when exercising their functions. Subsection (7) further amends section 373 of AFA 2006, so that the regulations which bring into force the guidance are subject to the negative procedure.
- 57 Subsection (5) amends section 343AF of AFA 2006 to allow the Secretary of State by way of regulations to amend new sections 343AZA and 343AZB by adding, removing or modifying the description of persons and matters in relation to which the duty in new section 343AZA applies.

New section 343AZA: Duty to have due regard to the Covenant principles

- 58 New section 343AZA imposes a duty on specified national authorities, local authorities, health bodies and education bodies to have due regard 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. The duty applies when exercising a public function which relates to a matter specified in subsection (5) and which is a relevant matter in relation to that person or body, as set out in subsection (6). The

specified matters are: (a) childcare; (b) education and training; (c) employment; (d) health and social care; (e) housing; (f) social security benefits; (g) personal taxation; (h) criminal justice; (i) transport; (j) pensions; (k) immigration and citizenship; (l) Armed Forces compensation.

New section 343AZB: Meaning of “national authority” etc

- 59 New section 343AZB sets out definitions of key terms in section 343AZA. In particular, it defines the terms “national authority”, “local authority”, “education body” and “health body”, in respect of England, Wales, Scotland and Northern Ireland.

Clause 3: Defence housing and other property

- 60 Clause 3 inserts new Part 16C into AFA 2006, which establishes the Defence Housing Service (‘DHS’).

Chapter 1: Defence Housing Service

New Section 343D: Establishment

- 61 New section 343D establishes the DHS as a body corporate, with the functions and powers set out in sections 343E and 343F, with further detail about its form, structure and operation set out in Part 1 of new Schedule 11A.

New Section 343E: Functions

- 62 Subsection (1) of new section 343E sets out the general functions of the DHS. These include improving the supply and quality of defence housing (subsection (1)(a)). “Defence housing” is defined in subsection (8) and includes housing that is occupied by military personnel and their families (service family accommodation) as well as other premises that are used as living accommodation for defence purposes or premises used for the provision of services to persons in such accommodation. “Defence purposes” includes the purposes of any of HM forces, visiting forces or any other purposes of the Secretary of State for Defence (subsection (8)).
- 63 The DHS’s functions will also include managing land or other property used, or formerly used, for defence purposes (subsection (1)(b)). This could involve the DHS acting as landlord for military housing, responsible for activities such as issuing licenses to occupy, facilitating moves and maintaining homes.
- 64 Subsection (1)(c) provides for the function of securing the regeneration or development of land or other property, which is currently being used, or was formerly used, for defence purposes. It is anticipated that the development activities of the DHS may include development for military or civilian use, or both.
- 65 The DHS will also have the function of supporting the creation, regeneration or development of service communities and the wellbeing of those communities (subsection (1)(d)). “Service communities”, for these purposes, are defined in subsection (8) to include communities which include service families or others who live in defence housing. The scope of “service family” is described in subsection (8) and includes both current and formerly serving personnel and their families, as well as civilians subject to service discipline and their families. The definition also captures former family members.
- 66 Subsection (2) allows further functions to be conferred on the DHS by way of legislation or, in the case of functions exercisable by a Minister of the Crown, by a direction in writing given by the Secretary of State (subsection (2)(b)). The content of such a direction may relate to the DHS’s general functions or any other of its functions (subsection (4)) and must be published in accordance with subsection (7).

- 67 Subsections (3), (5) and (6) relate to the DHS's exercise of its functions, which may include but are not limited to the generation of income from land (for example, collecting rents) or the management of land on behalf of the Secretary of State or others. The Secretary of State will exercise oversight over the DHS by way of a framework agreement between the MoD and the DHS and through guidance to which the DHS must have regard. In particular, any framework agreement must include provision as to the required standards for service family accommodation that is to be provided by the DHS.

New Section 343F: Powers

- 68 New section 343F, at subsection (1), empowers the DHS to do anything it thinks appropriate for the purposes of, or in connection with, the exercise of its functions in section 343E.
- 69 Subsection (2) sets out, non-exhaustively, examples of how the DHS may go about exercising its functions. These include entering into contracts (for example, contracts for the management and maintenance of service family accommodation, or for the development of land), buying and selling property (for example, where new service family accommodation is required, or where land is being sold for the purposes of development) and forming or investing in companies or partnerships (for example, to further its development objectives).

New Section 343G: Transfer of property and staff

- 70 New section 343G enables the Secretary of State to transfer property, rights or liabilities from the MoD to the DHS, or a company formed by the DHS, by way of a transfer scheme. This may include properties such as service family accommodation, land which has been identified for development for civilian or military use, staff and contracts for the supply of goods, services and works. There is further detail provided on transfer schemes in part 2 of Schedule 11A, and on provision for their tax treatment in part 3 of Schedule 11A.

Chapter 2: Compulsory purchase for defence housing and other purposes

New Section 343H: Compulsory purchase powers of the DHS

- 71 Under new section 343H, the Secretary of State may authorise the DHS to compulsorily purchase land, and rights over land, in England, Scotland Wales or Northern Ireland where required for purposes connected with the DHS's functions (subsections (1)-(5)).
- 72 Subsections (6) and (7) provide that the compulsory purchase power may be used to acquire land or new rights over land, to be given as replacement for land compulsorily purchased, where such land is owned by statutory undertakers for the purpose of their statutory undertaking.
- 73 Subsections (8) and (9) provide that the compulsory purchase power may be used to acquire land or new rights over land, to be used in exchange for land compulsorily purchased in England, Wales or Scotland, where such land is a common, open space, or (in relation to England and Wales) fuel or field garden allotment. Each of the terms "common", "open space" and "fuel or field garden allotment" is defined in subsection (12).
- 74 Further provision about compulsory purchase by the DHS is made in Parts 4, 5 and 6 of new Schedule 11A.

New Section 343I: Compulsory purchase powers of the Secretary of State

- 75 New section 343I enables the Secretary of State to compulsorily purchase land and rights over land in England, Wales, Scotland or Northern Ireland where this is required for defence purposes (as defined in new section 343E(8)).
- 76 Subsection (2) provides that the provisions of section 343H(5) to (12) and Parts 4 and 5 of Schedule 11A apply in relation to (or to matters connected with) the compulsory acquisition of land by the Secretary of State under this section in England, Wales or Scotland as they apply in relation to (or to matters connected with) the compulsory acquisition of land by the DHS. Subsection (4) provides that the provisions of section 343H(3) to (10) and Part 7 of Schedule 11A apply in relation to (or to matters connected with) the compulsory acquisition of land by the Secretary of State under this section in Northern Ireland as they apply to (or to matters connected with) the compulsory acquisition of land by the DHS.

Schedule 1: Defence housing and other property

- 77 Schedule 1 inserts into AFA 2006 new Schedule 11A, which makes provision for the constitution of the DHS, transfer schemes and tax treatment of the same, compulsory purchase and consequential and related amendments.

Part 1 of Schedule 1 – New Schedule 11A, Part 1 – DHS Constitution

- 78 The provision of military housing is currently provided by the MoD as a Crown function. This supports the operational effectiveness of the Armed Forces. For example, service personnel occupy service living accommodation under a form of occupation licence that is outside the scope of certain housing and tenancy legislation that would otherwise apply were military housing not to be treated as Crown property. This allows for the rapid and efficient movement of military personnel to different locations to meet operational needs.
- 79 Subparagraph (1) provides that the DHS is not to be a Crown body, nor to enjoy any status, immunity or privilege of the Crown save as provided for under subparagraph (3).
- 80 Under subparagraph (3), where the DHS is carrying out a function of a Minister of the Crown pursuant to a direction given under section 343E(2)(b), it shall have the same immunities, privileges and exemptions as would apply to the Minister of the Crown in relation to the carrying out of that function, if or to the extent specified in the direction.
- 81 Subparagraphs (4) to (9) relate to the Crown status of the DHS's property.
- 82 Subparagraph (4) provides that, subject to subparagraphs (5), (6) and (7), the property of the DHS is not Crown property.
- 83 Subparagraph (5) provides that property held by the Defence Housing Service for defence purposes (as defined in Section 343E(8)) is to be treated as property of the Crown.
- 84 Subparagraph (6) permits property transferred from the Secretary of State to the DHS under a transfer scheme under new section 343G to be treated as if it were Crown property after its transfer.
- 85 Subparagraph (7) creates a new power for the Secretary of State, by way of regulations, to provide for any other property held by the DHS to be treated as Crown property for the purpose of the application of a specific piece of legislation.
- 86 Subparagraph (9) makes clear that where property held by the Defence Housing Service is to be treated as property of, or held on behalf of, the Crown then it has the same immunities, privileges and exemptions in respect of its holding of that property as would apply if it were property held by or on behalf of the Crown. These provisions are intended to replicate the

current Crown property provision for defence property where required. and will include exemptions from property-based taxes and levies.

Membership, terms of employment, payment of members, employees and other members of staff, – Paragraphs 2 to 8

- 87 Paragraphs 2 to 5 set out the basis on which the DHS will operate. This includes provision for its chief executive, chair and other members, who will act as the governing body of the organisation, together with such employees employed on such terms as decided by it. There are currently military personnel who work in the relevant functions that will become functions of the DHS. Provision is therefore made for the secondment of military personnel, as well as civil servants, where such civil servants are not employed or transferred into the service of the new organisation. The status of employees of the DHS is that of a public servant but not a civil servant. Further details on the transfer of staff are set out in Part 2.
- 88 Paragraph 2 provides for the DHS to have a chief executive and at least 6 other Members, one of whom shall be the Chair.
- 89 Paragraph 3 provides for the terms of appointment of Members of the DHS. This includes the ability of the Secretary of State to set the terms of appointment, remove and suspend members.
- 90 Paragraph 4 provides for the remuneration, including by allowances, pensions and gratuities to members.
- 91 Paragraph 5 provides for the employment, remuneration, including by allowances, pensions and gratuities, to employees. The terms and conditions of employees of the DHS may be determined by it. The chief executive's appointment is subject to the approval of the Secretary of State (other than in relation to the first appointment and terms of appointment, which shall be made by the Secretary of State under transitional provision in paragraph 20).
- 92 Paragraph 6 provides for secondments to be made to the DHS, including (under subparagraph 7(2)) civil service secondees, as well as military secondees.
- 93 Paragraph 7(1) sets out the status of employees, which will not be as civil servants.

Committees, delegation, procedure – paragraphs 9 to 13

- 94 Paragraph 9 provides for the establishment of committees and subcommittees, subject to the continuing power to exercise a function reserved to the DHS (under paragraph 12).
- 95 Paragraph 10 provides for delegation of the DHS functions to members, staff, committees, subcommittees, or a company formed by the DHS, subject to the continuing power to exercise a function reserved to the DHS (under paragraph 12).
- 96 Paragraph 11 provides for further delegation of the functions of committees to committee members or sub committees.
- 97 Paragraph 13 provides for procedures, quorum and validity of proceedings.

Financial assistance, accounts and audit, annual report, meaning of “financial year”, provision of information, seal and evidence, transitional provision – paragraphs 14 to 20

- 98 Paragraphs 14 to 20 make provision for financial assistance, accounts and auditing by the National Audit Office. An annual report by the DHS must be made to the Secretary of State and laid before Parliament. These paragraphs also make provision for attaching the seal,

validity of documentary execution and transitional provisions relating to the first appointment of the chief executive officer.

- 99 Paragraph 14 provides that financial assistance may be given to the DHS by the Secretary of State.
- 100 Paragraph 15 makes provision for accounts and audit requirements, in such form of accounts as directed by the Secretary of State (sub paragraph 15(2)), which must be sent by the DHS to the Comptroller and Auditor General, and subject to the National Audit Office (subparagraph 15(5)). The financial year to be applied is defined in Paragraph 17.
- 101 Paragraph 16 makes provision for annual reporting by the DHS, and for that to be laid before Parliament. Under paragraph 18, the DHS is required to provide such information as relates to its function as the Secretary of State requests.
- 102 Paragraph 19 provides for documentary sealing, though this paragraph does not apply in relation to any document which is, or is to be, signed in accordance with the law of Scotland.
- 103 Paragraph 20 make transitional provision for the first appointment of the chief executive officer.

Part 2 of Schedule 11A – Transfer schemes

- 104 Part 2 of Schedule 11A gives the Secretary of State powers to make property transfer schemes and staff transfer schemes to the DHS. Such a scheme may be made at any time.
- 105 A staff transfer scheme may make provision which is the same as or similar to TUPE.

Part 3 of Schedule 11A – Defence Housing Service: tax treatment of transfer schemes

- 106 This Part provides for the modification or exemption of any of the specified taxes in respect of anything transferred (paragraph 22(1)(a) or (paragraph 22(1)(b)) done for the purposes of or relating to a transfer scheme.
- 107 The specified taxes at paragraph (22)(5) are income tax, corporation tax, capital gains tax, value added tax, stamp duty, stamp duty land tax, or stamp duty reserve tax.
- 108 The exercise of these provisions is set out in Part 2/5 – consequential and related amendments.

Part 4 of Schedule 11A – Compulsory purchase by Defence Housing Service or Secretary of State: England and Wales

- 109 Part 4 of this schedule makes certain amendments to the Acquisition of Land Act 1981 to accommodate the compulsory acquisition of land by the DHS or the Secretary of State under sections 343H and 343I, when required. (In relation to s343H land must be connected with the functions of the DHS and is subject to authorisation by the Secretary of State; under s 343I the Secretary of State may make acquisitions for defence purposes.)
- 110 Paragraph 25 sets out that on completion of a compulsory acquisition, certain private rights are extinguished.
- 111 The territorial extent of this part of the Schedule is England and Wales.

Part 5 of Schedule 11A- Compulsory purchase by Defence Housing Service or Secretary of State: Scotland

- 112 Part 5 of this Schedule provides that the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 applies to compulsory purchase orders by the Secretary of State or DHS as if they were a local authority within the meaning of that Act.

113 Where land is acquired compulsorily in Scotland, the benefit of certain provisions in the Town and Country Planning (Scotland) Act 1997 applies to the DHS and to the Secretary of State.

114 The territorial extent of this part of the Schedule is Scotland.

Part 6 and Part 7 of Schedule 11A- Compulsory purchase by Defence Housing Service or Secretary of State: Northern Ireland

115 Parts 6 and 7 provide that DHS and the Secretary of State must follow the procedures laid down in Schedule 6 to the Local Government Act (Northern Ireland) 1972 as modified by the provisions of Parts 6 and 7 which apply to accommodate the compulsory acquisition of land by the DHS or the Secretary of State.

116 The territorial extent of this part of the Schedule is Northern Ireland.

Part 2 of Schedule 1 – Consequential and related amendments

117 This Part sets out consequential and related amendments relating to the establishment of the DHS and the exercise of its functions and powers, including provision to make tax regulations and to maintain the treatment of council tax for military housing.

118 Paragraphs 2 to 4 ensure that exemptions from the application of council tax that currently apply to defence housing is maintained with regard to the DHS.

119 Paragraph 5 relates to the exercise of tax treatment for transfer schemes (modification or exemption of specified taxes) under Part 3, and it provides for these matters to be determined pursuant to AFA 2006 by regulation of HM Treasury under the affirmative Parliamentary procedure.

120 Relating to its status as a public body, paragraphs 6 to 9 provide for the DHS is to be included in legislation relating to requirements around public records, to be made subject to the Parliamentary Commissioner as well as to be subject to the relevant Acts of Parliament.

Clause 4: Interference with uncrewed devices

121 Subsection (1) amends AFA 2006 to insert a new Part 16D which creates a new defence authorisation regime to permit personnel to use approved equipment to prevent or detect offences being committed using uncrewed devices (“drones”) in relation to defence areas and defence property. It is modelled on the regime set out in Part 3 of the Police Act 1997.

New Section 343J: Authorisations to interfere with uncrewed devices

122 Subsection (1) gives an authorising officer the power to authorise the use of approved equipment for the purpose of preventing, detecting or mitigating the risk of an uncrewed device (a drone) being used to commit a relevant offence in relation to a defence area or defence property if they believe that the requirements set out in subsection (2) are met – that a drone has been, is being, or is likely to be used to commit a relevant offence, or action is needed to mitigate a risk of an uncrewed device being so used.

123 The definitions of ‘approved equipment’, ‘authorising officer’ and ‘uncrewed device’ are set out in subsection (7). Section 343P defines ‘defence area’ and ‘defence property’ and section 343Q defines relevant offence.

124 Authorising officers are senior Armed Forces or MoD civilian personnel who hold a rank or position equivalent to that of a Chief Constable.

125 Subsection (3) sets out certain requirements: an authorisation must be given in writing, set out the area or property (or description of property) that it relates to, specify how long they have effect and the seniority of the ‘responsible person’ (see section 343M) for the defence area or

property to which it relates. An authorisation can authorise the use of any approved equipment or can be limited to specified equipment.

126 Subsection (4) sets out the lowest possible seniority of a ‘responsible person’.

127 Subsection (5) limits the duration of an authorisation to no more than 12 months.

128 Subsection (6) sets out who can apply for an authorisation. These are members of HM Armed Forces and civilians working for HM Armed Forces, or MoD civil servants.

New Section 343K: Testing or training activities

129 Subsection (1) permits an authorisation to be given for the purposes of testing or training. An authorisation can be given for both testing/training as well as for the purposes in s.343J(1) or just for testing/training purposes. Subsection (2) defines “testing activities” and subsection (3) defines “training activities”. Subsection (4) disapplies the requirements in s.343J(2).

New Section 343L: Effect of authorisation

130 Subsection (1) sets out the legal effect of any action taken that has been authorised under an authorisation given for the purposes set out in s.343J(1). Such action is lawful for all purposes except action that is prohibited under certain Parts of the Investigatory Powers Act 2016 (see – subsection (7)). Subsection (2) provides that the action that is covered by subsection (1) includes interference with a drone in any place in the UK, and subsection (3) makes clear that interference includes the seizure and retention of a drone.

131 The effect of a testing/training authorisation is set out in subsection (6). It is more limited and provides that no criminal liability is incurred where action is taken for these purposes.

132 If a drone is seized and retained, subsection (4) requires that if it is not returned to the owner or other appropriate person (e.g. the person who was using it), it must be handed to a police constable within a specified time.

133 Subsection (5) makes provision so that certain legislation (relating to the disposal of property) applies where a drone is handed to a police constable under subsection (4).

New Section 343M: responsible person

134 Where an authorisation is given, equipment can only be used if the responsible person is satisfied that it is necessary and proportionate for the equipment to be used for the purposes the authorisation was given, and that it will be used in accordance with that authorisation.

New Section 343N: Authorisation in the absence of authorising officer

135 This new section enables an authorisation to be given under s.343J in urgent cases. In such a case it can only be given by a designated person and subsection (3) sets out the lowest seniority permitted for a designated person. Such an authorisation may be given orally and only lasts for 72 hours.

New Section 343O: Renewal etc authorisations

136 This new section enables authorisations to be renewed, varied or revoked. An authorisation can be renewed for a period of 12 months by an authorising officer. Where an authorisation was given by a designated person under s.343N, it can only be renewed once by such a person for a further 72 hours. Authorising officers can also vary or revoke authorisations. The same requirements apply when renewing or varying authorisations that applied when they were first given.

New Section 343P: “Defence area” and “defence property”

- 137 This new section defines “defence area” and “defence property”.
- 138 A “defence area” is an area in the UK used for UK defence purposes or for the purposes of the defence of a foreign country or territory. It is modelled on section 7 of the National Security Act 2023 but also covers areas of water used for defence purposes that are regulated by either Dockyard Port Orders or military byelaws.
- 139 “Defence property” is property in the UK used for UK defence purposes, or for the purposes of the defence of a foreign country or territory.
- 140 Subsection (4) defines “used” for UK defence purposes, and subsection (5) defines “used” for the purposes of the defence of a foreign country or territory.

New Section 343Q: Relevant offences

- 141 This new section defines “relevant offence”. Subsection (1) sets out specified offences in (a) the National Security Act 2023, (b) the Terrorism Act 2000, (c) the Merchant Shipping Act 1995, (d) the Aviation and Maritime Security Act 1990, (e) the Air Navigation Order 2016 (SI 1926/765, (f) byelaws made under the Military Lands Act 1892 (this includes where byelaws are made relying on the Military Lands Act 1900 or the Land Powers (Defence) Act 1958), and (g) Dockyard Port Orders made under the Dockyard Ports Regulation Act 1865.
- 142 Subsection (2) gives the Secretary of State the power to add or remove offences from the list in subsection (1).
- 143 Clause 4 (2) amends section 373 of AFA 2006 which sets out the procedure for making orders, regulations and rules, so that regulations made under clause 343Q(2) to add or remove a specified offence under clause 343Q(2) must follow the draft affirmative parliamentary procedure.

Clause 5: Sexual harm prevention orders and sexual risk orders

- 144 Clause 5 gives effect to Schedule 2, which amends section 137 of the Sexual Offences Act 2003 (application of that Act to service courts) to enable service courts to make sexual harm prevention orders (SHPOs) and sexual risk orders (SROs) on application by a Provost Marshal.

Schedule 2: Sexual harm prevention orders and sexual risk orders

- 145 Paragraph 1(2) provides for applications to be made to the service courts for SHPOs and SROs.
- 146 Paragraph 1(3) makes provision to enable Provost Marshals to apply to service courts for SHPOs and interim SHPOs in respect of a person subject to service law or a civilian subject to service discipline. Where a list has been published under section 172 of the Police, Crime and Sentencing Courts Act 2022, Provost Marshals will be required to have regard to that section in considering whether a person’s behaviour gives reasonable cause to believe that it is necessary for an SHPO, or an interim SHPO, to be made for the purpose of protecting children from sexual harm, and whether to apply for a prohibition on foreign travel. Appeals against SHPOs or interim SHPOs made by a service court are to be made to the Court Martial Appeal Court.
- 147 Paragraph 1(4) inserts new subsection 3A into section 137 of the Sexual Offences Act 2003 which enables SROs to be made by service courts on application by a Provost Marshal. It does this by applying sections 122A-122I of the Sexual Offences Act 2003 with certain modifications.

- 148 New subsection 3A(c) provides for applications for SROs to be made by a Provost Marshal to a service court, in respect of a defendant who at the time of the application is a person subject to service law or a civilian subject to service discipline. Appeals against SROs made by service courts must be made to the Court Martial Appeal Court.
- 149 New subsection 3A(d) provides that the person responsible for supervising compliance with a requirement in an SRO must inform a Provost Marshal where they consider a defendant, who at the time is a person subject to service law or a civilian subject to service discipline, has complied or failed to comply with the relevant requirements.
- 150 New subsection 3A(e) provides for applications for variations, renewals and discharges of an SRO under section 122D of the Sexual Offences Act 2003 to be made to the Court Martial. Applications may be made by the defendant or a Provost Marshal. The Court Martial must obtain consent of both the defendant and the Provost Marshal before it can discharge an order within 2 years of it being made. Appeals against either the making of an order, or refusal to make an order, under that section must be made to the Court Martial Appeal Court.
- 151 New subsection 3A(f) makes provision for applications for the variation, renewal and discharge of an SRO in respect of a defendant who at the time of the application is neither a person subject to service law nor a civilian subject to service discipline to be made to the Crown Court in England and Wales. Appeals against the making of an order for variation, renewal or discharge of an order, or the refusal to make such an order, must be made to the Court of Appeal in England and Wales.
- 152 New subsection 3A(g) provides for appeals against the making of an interim SRO to be made to the Court Martial Appeal Court in respect of a defendant who at the time of the application is a person subject to service law or a civilian subject to service discipline.
- 153 New subsection 3A(h) provides that, where notification requirements apply under section 122F(1) or (3) to a defendant that is a person subject to service law or a civilian subject to service discipline, notification should be made to the service police.
- 154 Section 122F(4) does not apply for the purposes of a notification to a service police force.
- 155 Paragraph 1(5) amends subsection (4) of s.137 of the Sexual Offences Act 2003, defining the service police as having the same meaning as s.375 of AFA 2006.

Clause 6: Service image deletion orders

- 156 Clause 6 inserts sections 232H to 232L into the AFA 2006 to provide for service image deletion orders and a related offence of non-compliance.

New section 232H: Service image deletion orders

- 157 Subsection (1) of section 232H defines a service image deletion order as an order made in respect of an offender, relating to a photograph or film in the offender's possession or control, which requires the offender to take specified steps to ensure, so far as reasonably practicable that the material is put "beyond use".
- 158 Subsection (2) sets out when a photograph or film is to be regarded as put beyond use. This includes where a physical item is destroyed, electronically stored material is deleted so that it is irrecoverable, or content on an internet service is removed or permanently hidden.
- 159 Subsection (3) clarifies the meaning of key terms for the purposes of this section, including providing that "deleted" means irrecoverable and providing definitions of "content" and "internet service" from the Online Safety Act 2023.

New Section 232I: Service image deletion orders: availability

- 160 Subsection (1) of section 232I sets out the circumstances in which a service image deletion order may be made. It applies where a person commits an offence under section 42 AFA 2006 which corresponds to specified offences under the Sexual Offences Act 2003 relating to intimate photographs or films. This includes offences such as taking or recording an intimate image without consent, sharing or threatening to share such images, and creating or requesting purported intimate images.
- 161 Subsection (2) extends the availability of service image deletion orders to inchoate forms of the offences listed in section (1), including attempts and assisting or encouraging their commission.
- 162 Subsection (3) provides that the Court Martial or the Service Civilian Court may make a service image deletion order in respect of a photograph or film connected with the offence. It also requires the court to give reasons where it decides not to make an order in respect of such an image.
- 163 Subsection (4) enables the court to make a service image deletion order in relation to other photographs or films connected to the same victim, including images showing the subject in an intimate state, semen-defaced images, or images showing the subject breast-feeding a child.
- 164 Subsection (5) sets out relevant definitions from the Sexual Offences Act 2003 for the purpose of subsection (4), including the meanings of “semen-defaced image” and an image showing a person in an intimate state.
- 165 Subsection (6) makes specific provision for offences involving a request for the creation of an intimate image of an adult (as per section 66F of the Sexual Offences Act 2003). It clarifies that an image produced as a result of such a request may be treated as connected to the offence, even where the image differs from what the offender originally requested.
- 166 Subsection (7) provides that a service image deletion order is not available in respect of offences committed before the Armed Forces Act 2026 comes into force.

New section 232J: Period for complying with requirements

- 167 Subsection (1) of section 232J requires a service image deletion order to specify the steps the offender must take and the date by which each step must be completed. Different time limits may be set for different steps.
- 168 Subsection (2) provides that, where compliance with an order would result in an image becoming irrecoverable, the order must not require the relevant step to be taken until the end of the relevant appeal period. Where an appeal is brought, compliance is not required until the appeal is finally determined, withdrawn or refused.
- 169 Subsection (3) defines the “relevant appeal period” for these purposes, distinguishing between appeals from the Court Martial and the Service Civilian Court.

New section 232K: Offence of failing to comply with a service image deletion order

- 170 Subsection (1) of new section 232K provides that a person commits an offence if without reasonable excuse, they fail to comply with a requirement of a service image deletion order.
- 171 Subsection (2) provides that a person subject to service law or service discipline who is guilty of this offence is liable to any punishment available under section 164 of the AFA 2006, subject to a maximum term of imprisonment of five years.

172 Subsection (3) makes provision for cases where the offender is no longer subject to service law or discipline, conferring jurisdiction on the appropriate civilian court and setting out the applicable penalties on summary conviction and conviction on indictment.

173 Subsection (4) defines “appropriate civilian court” for the purposes of section (3), covering courts in England and Wales, Scotland and Northern Ireland.

New section 232L: Interpretation

174 Subsection (1) of section 232L provides that the section applies for the purposes of sections 232H to 232K.

175 Subsections (2) to (4) set out definitions for key terms, including clarifying that “photograph” include negatives, “film” means a moving image, and that references to photographs or films include altered or computer-generated images, copies, and data capable of being converted into such material.

Consequential amendment

176 Clause 6 also makes a consequential amendment to section 50 of the AFA 2006 to ensure that the Court Martial has jurisdiction over the new offence of failing to comply with a service image deletion order.

Clause 7: Protection from domestic abuse and stalking

177 Clause 7 specifies that new Schedule 3 amends AFA 2006 and other legislation to make the following provision for:

- a. the service police and service courts to give service domestic abuse protection notices;
- b. the service police and service courts to make service domestic abuse protection orders;
- c. the service police and service courts to make service stalking protection orders;
- d. notification requirements in connection with service domestic abuse protection orders and service stalking protection orders;
- e. guidance for Provost Marshals about the exercise of their powers in connection with the notices and orders mentioned above;
- f. enforcement and variation of requirements in a service domestic abuse protection order, when the person in respect of whom the order was made is no longer subject to service law or a civilian subject to service discipline;
- g. enforcement and variation of requirements in a service stalking protection order, when the person in respect of whom the order was made is no longer subject to service law or a civilian subject to service discipline;
- h. consequential amendments.

Schedule 3 Part 1: Service domestic abuse protection notices

178 Schedule 3 Part 1 amends AFA 2006 inserting a new Chapter 1A – Service Domestic Abuse Protection Notices.

New Section 74A: Power to give a service domestic abuse protection notice

179 New section 74A creates a power for a service police officer to issue a service domestic abuse protection notice (“SDAPN”) and sets out the conditions and considerations that must be met in order for the service police to issue a SDAPN. The purpose of a SDAPN is to secure the

immediate protection of a victim of domestic abuse from future domestic abuse carried out by a suspected perpetrator. A SDAPN prohibits the perpetrator from abusing the victim and, where they cohabit, may require the perpetrator to leave those premises. It may also prohibit the perpetrator from coming within a specified distance of the premises where the victim lives.

180 Subsection (1) of new section 74A sets out the test for issuing a SDAPN. A SDAPN may be issued where the service police officer has reasonable grounds for believing that, firstly, the perpetrator has been abusive towards a person aged 16 or over to whom the perpetrator is personally connected and that, secondly, the issue of a notice is necessary in order to secure the protection of the victim from domestic abuse or the risk of domestic abuse. It also sets out that the notice may not be given to a person who is under the age of 18.

181 Subsection (2) sets out that this subsection applies to those over 18 and who are subject to service law or a civilian subject to service discipline.

182 Subsection (3) sets out that a notice will be used to protect the victim from domestic abuse committed against them by the perpetrator.

183 Subsections (4) and (5) set out a list of the type of provision that a SDAPN may contain. Such provision may include a prohibition on the perpetrator contacting the victim or prohibit the perpetrator from coming within a certain distance (as specified in the SDAPN) of the premises lived in by the victim for the duration of the SDAPN. Where the perpetrator lives with the victim, provision may be made to prohibit the perpetrator from evicting or excluding the victim from the premises in question; prohibit the perpetrator from entering the premises; or require the perpetrator to leave the premises.

184 “Authorised” in relation to a service police officer, “domestic abuse” and “service police officer” are defined in subsection (7).

New Section 74B: Matters to be considered before giving a notice

185 This section sets out particular matters that the authorised service police officer must take into consideration before issuing a SDAPN. The service police officer must consider the welfare of any child whose interests the officer considers relevant. The service police officer must take reasonable steps to find out the opinion of the victim as to whether the SDAPN should be issued. Consideration must also be given to any representation the perpetrator makes in relation to the issuing of the SDAPN. Where the SDAPN is to include conditions in relation to the occupation of premises lived in by the victim, reasonable steps must also be taken to find out the opinion of any other person who lives in the premises and is personally connected to the perpetrator (if the perpetrator also lives in the premises) or the victim.

186 While the service police officer must take reasonable steps to discover the victim’s opinion, and must take this into consideration, the issue of the notice is not dependent upon the victim’s consent (subsection (4)), as the service police officer may nevertheless have reason to believe that the victim requires protection from the perpetrator and the issue of the notice is necessary to secure that protection.

New Section 74C: Further requirements in relation to notices

187 Subsection (2) sets out the details that must be specified in a SDAPN, which include the grounds for issuing the SDAPN; the fact that a power of arrest attaches to the SDAPN; the fact that the service police will make an application for a SDAPO which will be heard within a 48-hour period (excluding Sundays and bank holidays); the fact that the SDAPN will continue to be in effect until the SDAPO application is determined; and the provisions that may be included in a subsequent SDAPO.

188 A SDAPN must be in writing and served on a perpetrator personally by a service police officer (subsections (1) and (3)).

189 Subsection (4) requires the service police officer serving a SDAPN to ask the perpetrator to supply an address in order to enable the perpetrator to be given notice of the hearing for the SDAPO application.

190 The service police officer giving the notice must make reasonable efforts to inform the perpetrator's commanding officer that the SDAPN has been issued (subsection (5)).

New Section 74D: Breach of notice

191 Should the subject of a SDAPN breach the conditions of the notice, then they may be arrested without warrant.

192 Subsection (3) requires that if the perpetrator is arrested, they must be held in service custody and brought before the court martial or service civilian court that will hear the application for the SDAPO. The perpetrator must be brought before this court at the latest within a period of 24 hours (excluding Sundays and bank holidays – see subsection (4)) beginning with the time of arrest (subsection (3)(a)). If the SDAPO hearing has already been arranged to take place within that 24-hour period, then the perpetrator is to be brought before the court for that hearing (subsection (3)(b)).

193 The court may remand the person either in service custody or on direct their release from service custody (subsection (5)). When releasing the perpetrator from service custody, the court may impose requirements which appear to the court as necessary to ensure that the person does not interfere with witnesses or otherwise obstruct the course of justice (subsection (6)).

Schedule 3 Part 2: Service domestic abuse protection orders

194 Schedule 3 Part 2 amends AFA 2006 inserting a new Chapter 8 – Orders for Protection from Domestic Abuse and Stalking.

New Section 236C: Power to make orders

195 New section 236C creates a power for the Court Martial or Service Civilian Court to make a SDAPO in respect of a person aged 18 or over who is before a service court in respect of a service offence, even if they have since left the Armed Forces. The courts will be able to make a SDAPO on application by a Provost Marshal, where the person is aged 18 or over and who is subject to service law or a civilian subject to service discipline.

196 Subsection (2) of new section 236C sets out that subsection 1(b) applies to those over 18 and who are subject to service law or a civilian subject to service discipline.

197 Subsection (3) describes a SDAPO for the purposes of this clause, namely an order containing prohibitions or requirements for the purpose of preventing the perpetrator from being abusive towards his or her victim (who must be aged 16 or over and personally connected to the perpetrator).

198 Subsections (4) (a) and (b) set out the conditions for making a SDAPO. Two conditions must be met, namely that the court is satisfied, on the balance of probabilities (that is, the civil standard of proof), that the perpetrator has been abusive towards the person (aged 16 or over) to be protected by the SDAPO (the victim) and that the court considers that the making of a SDAPO is necessary and proportionate to protect the victim from domestic abuse or the risk of domestic abuse carried out by the perpetrator. An order may be made where domestic abuse has already occurred, and the victim needs protecting from continuing abuse or the threat of abuse or where such abuse occurred outside England and Wales (subsection (5)).

- 199 Subsections (6) and (7) permit the Court Martial Appeal Court (or Supreme Court) to remit a case back to the Court Martial, where conviction has been successfully appealed, to consider imposition of a SDAPO.

New Section 236D: Applications where service domestic abuse protection notice given

- 200 Subsections (1) to (3) set out that where a person is given a service domestic abuse protection notice under section 308A, a Provost Marshal will make an application for a SDAPO which will be heard by the court within a 48-hour period after receiving a SDAPN (excluding Sundays and bank holidays).
- 201 Subsections (4) to (6) cover the steps to be taken to give the perpetrator notice of the SDAPO hearing. Under subsection (4), notice of the hearing must be given to the perpetrator. If the perpetrator gave an address for the purposes of service at the point of issue of the SDAPN, then the notice is deemed given if it is left at that address. Where no address has been given by the perpetrator, then under subsection (6) the court may still hear the application if satisfied that reasonable efforts have been made to give the perpetrator notice of the hearing.
- 202 Where a court adjourns the hearing of an application for a SDAPO, the SDAPN is to continue to have effect until the application for a SDAPO is determined by the court or is withdrawn (subsection (7)). Where the perpetrator has been arrested for breach of a SDAPN and is brought before a court, subsection (8) enables the court to remand the perpetrator in service custody or direct that the person is released from service custody.

New Section 236E: Matters to be considered before making an order

- 203 This section specifies the particular matters the court must consider prior to making a SDAPO. These are: the welfare of any child whose interests the court considers relevant to the SDAPO; the opinion of the victim; and, where the SDAPO is to include conditions in relation to the occupation of premises lived in by the victim, the opinion of any other person who lives in the premises and is personally connected to the victim or the perpetrator (if the perpetrator also lives in the premises).
- 204 It is not necessary that the victim consents to the order. Subsection (3) specifies that a court may make a SDAPO regardless of whether or not the victim consents.

New Section 236F: Making of orders without notice

- 205 Before making a SDAPO the Court Martial or Service Civilian court would normally give notice to the perpetrator to inform them of the proceedings and of the hearing at which the application for a SDAPO will be considered. However, this section allows a court to make a SDAPO without notice where it would be just and convenient to do so. The section does not apply in the case where a perpetrator has been given a SDAPN as section 236D(6) makes separate provision for the making of a SDAPO without notice in such cases. Without notice applications would, in practice, only be made in exceptional or urgent circumstances and the applicant would need to produce evidence to the court as to why a without notice hearing was necessary.
- 206 It may, for example, be appropriate to make a SDAPO without giving notice of the application or hearing to the perpetrator where there is reason to believe that the perpetrator may seek to cause significant harm to the victim, or where it is likely that the Provost Marshal making the application will be deterred or prevented from pursuing the application if an order is not made immediately, or may deliberately seek to evade service of notice of the proceedings. If an order is made without notice, the perpetrator must be given an opportunity, as soon as just and convenient, to make representations about the order at a return hearing on notice (subsection (4)).

New Section 236G: Requirements

207 The requirements attached to a SDAPO should only be imposed if the Court Martial or Service Civilian court is satisfied that they are necessary to protect the person for whose protection the order is being made. They must not, so far as practicable, conflict with the perpetrator's religious beliefs, interfere with the perpetrator's work or attendance at an educational establishment (so, for example, a prohibition on the perpetrator entering a defined area should not normally cover his or her place of work), or conflict with another court order (subsection (3)). If it is not practicable to avoid the conflict, given the necessity to protect the victim, then the court may still impose the requirement. Subsections (5) and (6) contain examples of the type of provision that may be made under subsection (1), but they do not limit the type of provision that may be so made. Subsections (7) and (8) allow for an assessment to be undertaken to establish if the perpetrator should participate in a programme of activities, and if so, requiring the perpetrator to participate in said programme.

New Section 236H: Duration of orders

208 Subsections (1) and (2) provide that a SDAPO has effect from the day it is made, unless the perpetrator is already subject to an existing SDAPO in which case the new order may take effect when the existing order ceases to have effect.

209 Subsection (3) allows the court to make an order for a period specified in the order, until an event specified in the order or until a further order is made. Different periods or events may be specified in relation to different requirements (subsection (4)).

New Section: 236I Breach of order

210 This section provides that it is an offence to breach any requirement of a SDAPO without reasonable excuse (subsection (1)). In the case of a SDAPO made against a perpetrator who was not given notice of the proceedings, the offence only operates from the time he or she was made aware of the existence of the order (subsection (2)).

211 The penalty for an offence under this section is any punishment mentioned in the table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed five years (subsection (3)). Subsection (4) provides that absolute or conditional discharge is not an option open to the Service Civilian Court in respect of the offence.

New Section 236J: Variation and discharge of orders

212 This section sets out how a SDAPO may be varied or discharged. Subsection (2) provides that the Court Martial or Service Civilian court may vary or discharge an order either on application by the defendant, the person for whose protection the order was made or by a Provost Marshal. It may also be made where the court convicts or acquits the defendant of any offence, or of its own motion.

213 The court must hear from specified interested parties before making a decision to vary or discharge an order (subsection (3)). The court must hear from any Provost Marshal who wishes to be heard (subsection (3)(a)) and, in cases where the victim is applying to have the order discharged or made less onerous, the court must also hear from the victim (subsection (3)(b)). This is to help the court to assess whether the victim is being coerced or intimidated.

214 The court in determining an application under this section, or determining of its own volition to vary or discharge a SDAPO, may make such an order as it considers appropriate (subsection (6)), but before making a decision to vary a SDAPO (by removing a requirement imposed by it or by making such requirement less onerous) or discharge a SDAPO, the court must consider and be satisfied that doing so would not compromise the safety of the victim from abuse by the perpetrator (subsections (8) and (10)).

215 Subsections (11) and (12) provides that where a SDAPO is varied and the perpetrator is not given notice of the variation, the defendant can only breach the order in relation to non-compliance with any new requirement from the time when they are aware of the making of the variation.

New Section 236K: Appeals

216 This section sets out the circumstances in which an appeal may be made against a decision of the Court Martial or Service Civilian court in respect of a SDAPO. Subsection (5) provides that the person in respect of whom the order was made (where the order was made); the person for whose protection the order was sought; or a Provost Marshal, may appeal against a decision of the court on an application to vary or discharge a SDAPO. The appeal court must hear from any Provost Marshal who wishes to be heard before determining an appeal (subsection (6)). The practical effect of subsection (8) is that where an appellate court confirms or varies a DAPO on appeal, or makes a DAPO on appeal, subsequent proceedings in relation to a further variation or discharge of the order should be issued in the lower court. Subsection (9) sets out that for the purposes of this section “relevant appeal court” means where the appeal is against a decision of the Court Martial, the Court Martial Appeal Court; or where the appeal is against a decision of the Service Civilian Court, the Court Martial. Subsections (10) and (11) set out the sections of the Court Martial Appeals Act 1968, which apply for the purposes of an appeal under this section.

New Section 236L: Interpretation

217 This section, for the purposes of sections 236C to 236L, sets out the definition of “defendant”, “domestic abuse”, “personally connected”, “requirement”, “service domestic abuse protection order” and “service police officer”. It also sets out that the tri-service serious crime unit is to be regarded as a service police force.

Schedule 3 Part 3: Service stalking protection orders

New Section 236N: Service stalking protection orders

218 New subsection (1)(a) empowers the Court Martial and Service Civilian Court to make service stalking protection orders (“SSPOs”) in respect of persons subject to service law, civilians subject to service discipline and individuals who are before the courts in respect of an offence, even if they have left the Armed Forces.

219 Subsections (1) (b) to (d) allow for an order to be made on application by a Provost Marshal; following conviction, acquittal, or appeal in respect of any offence; and where the court makes findings of insanity or disability.

220 Subsection (2) defines a SSPO as a preventive measure imposed by a service court to protect individuals from stalking-related harm. It enables the court to restrict or manage the behaviour of a person subject to service law or a civilian subject to service discipline, by either prohibiting specified actions or requiring compliance with certain conditions. These provisions allow tailored interventions to prevent acts associated with stalking and safeguard victims from physical or psychological harm.

221 Subsections (3) and (4) specify the conditions that must be fulfilled before the Provost Marshal can make an application for an order, and the service court is empowered to issue one. Both the Provost Marshal and the court may only apply for an order/make an order (respectively) if they are satisfied on the balance of probability that the defendant has engaged in conduct related to stalking or presents a risk associated with stalking, and they consider that issuing the order is necessary to safeguard another individual.

- 222 Subsection (5) clarifies that, when determining whether acts associated with stalking have occurred for the purposes of making a SSPO, it is irrelevant where or when those acts occurred. The acts may have taken place anywhere in the world and either before or after the commencement of this section.
- 223 Subsection (6) states that reference should be made to section 2A of the Protection from Harassment Act 1997 for illustrative examples of behaviour that may constitute acts associated with stalking.
- 224 Subsections (7) (a) and (b) clarifies the scope of what constitutes a risk associated with stalking. The risk may relate to either physical or psychological harm to the victim. It also makes clear that such risk can arise from behaviour the defendant knows, or ought to know, is unwelcome—even if the acts appear harmless in other contexts.
- 225 Subsection (8) provides that where the Court Martial Appeal Court, or the Supreme Court on further appeal, allows an appeal against conviction, it may remit the case to the Court Martial to consider whether to proceed under this section. It also clarifies, that in such cases, subsection (1) applies with modifications so that paragraphs (a) to (d) do not apply. This gives the Court Martial flexibility to decide whether to proceed following the appeal.
- 226 Subsection (9) states that reference should be made to section 2A of the protection from Harassment Act 1997 for examples of behaviour associated with stalking. It also clarifies the meaning of a risk associated with stalking.

New Section 236O: Requirements

- 227 Subsection (1) states that a service court may only include a requirement in a SSPO if it is satisfied that the requirement is necessary to protect a person from a risk associated with stalking.
- 228 Subsection (2) sets out that the courts should, as far as practicable, avoid imposing conditions which conflict with the defendant's religious beliefs, their work or education, or conflict with the requirements of any other court order or injunction that the defendant is subject to.

New Section 236P: Duration of service stalking protection orders

- 229 Subsections (1) to (3) set out the rules on the duration of a SSPO. The court may specify that the order last for a fixed period or continues until a further order is made. If a fixed period is chosen, it must be at least two years from the date the order is made. The court also has discretion to tailor an order by applying different time periods to individual requirements allowing flexibility to address varying protective needs.

New Section 236Q: Variations, renewals and discharges

- 230 New Section 236Q sets out the statutory framework enabling a SSPO to be varied, renewed or discharged once it has been made. The provision applies where a person – whether subject to service law or a civilian subject to service discipline – is already subject to an SSPO.
- 231 Subsection (2) provides for the defendant or Provost Marshal to apply to the service courts to vary, renew or discharge an order.
- 232 Subsection (3) requires the court to hear the defendant and any Provost Marshal who wants to be heard.
- 233 Subsection (4) provides the service courts with the powers to vary, renew or discharge an order upon receipt of an application and where the court considers it appropriate.

234 Subsection (5) (a) and (b) sets limits on the courts powers by ensuring that any additional requirement can only be imposed if it is necessary to protect a person from a stalking-related risk. It also prevents an order from being discharged within two years of its making, apart from when the defendant and Provost Marshal have given consent to do so.

New Section 236R: Interim service stalking protection orders

235 Section 236R (1) to (7) provides for interim SSPOs to be made where a full order application is still pending. It allows the court to impose temporary protective measures on the defendant before the main application is determined by the service court. An interim order can be made on application by the same Provost Marshal who submitted the main application, either at the same time or subsequently. This ensures that urgent protection can be granted without waiting for the final decisions on the substantive order.

New Section 236S: Content of orders

236 Section 236S (a) to (e) sets out the mandatory content of both a SSPO and an interim order. Each order must clearly state the date it was made, whether it applies for a fixed period and, if so, its length. To ensure clarity, and transparency it must also list all requirements imposed on the defendant, indicate any locality restrictions and specify any individual requirement which have a different duration from the overall order.

New Section 236T: Appeals

237 Subsection (1) explains the circumstances in which special appeal rules apply to an order. Where the Court Martial or Service Civilian Court makes an order after acquitting the defendant of an offence, or following a finding of insanity or disability under section 236N(1)(d), or where it varies an order in such cases, the order is treated as if it were a sentence for appeal purposes.

238 Subsection (2) ensures that, for appeal purposes, a SSPO (or a variation of it) is treated as if it were a sentence imposed on the defendant. It also provides that the defendant is regarded as having been convicted of the offence, even if they were acquitted or found not guilty by reason of insanity.

239 Subsection (3) clarifies that, for the purposes of any appeal against a SSPO, references in section 16A of the Court Martial Appeals Act 1968 to “passing a sentence” are to be interpreted as including the act of making an order.

240 Subsection (4) identifies the types of decisions that trigger the operation of subsection (5). These relate to the circumstances in which the service courts make a determination concerning either; an application for an interim or full SSPO, or an application to vary, renew or discharge an interim or full SSPO.

241 Subsections (5) to (8) set out the appeal rights and process for decisions relating to SSPOs and interim orders. It provides that both the defendant and the Provost Marshal may appeal against specified decisions, including the making, variation, renewal or refusal to vary or discharge an order. Appeals are directed to the Court Martial Appeal Court if the original decision was made by the Court Martial, and otherwise to the Court Martial. On appeal, the court may make any orders necessary to give effect to its decision, including incidental or consequential orders. It also clarifies that an order confirmed, varied or renewed on appeal remains an order of the original court, and any order made on appeal is treated as if made by the court whose decision was appealed.

242 Subsection (9) provides that section 9 of the Court Martial Appeals Act 1968, which governs application for leave to appeal, applies to appeals made under subsection (5) where the decision was made by the Court Martial.

243 Subsection (10) applies to decisions made by the Service Civilian Court, specifying that subsections (3) to (5) of section 285 of AFA 2006 apply to appeals under section (5).

New Section 236U: Offence of breaching service stalking protection order etc

244 Section 236U (1) to (4) creates an offence for breaching a SSPO or an interim order without reasonable excuse. A person found guilty is liable to any punishment listed in section 164 of AFA 2006, with a maximum sentence of five years' imprisonment. The court cannot impose a conditional discharge for this offence. It also provides that a certified copy of the original order is admissible as evidence of its making and contents, ensuring straightforward proof in enforcement proceedings.

New Section 236V: Sections 236N to 236U: interpretation

245 This section for the purpose of sections 236N to 236U, set out the definition of "defendant", "interim service stalking protection order", "requirement", and "risk associated with stalking". It also sets out that the tri-service serious crime unit is to be regarded as a service police force.

Schedule 3 Part 4: Notification requirements

246 Schedule 3 Part 4 paragraph 4 amends AFA 2006 by inserting a new section 236W. This section applies where a person who is subject to service law or a civilian subject to service discipline is subject to a SDAPO, a SSPO or an interim SSPO which has not been replaced by a SSPO.

New Section 236W: Notification requirements

247 This section applies where a person who is subject to service law or a civilian subject to service discipline is subject to a SDAPO, a SSPO or an interim SSPO which has not been replaced by a SSPO.

248 This section requires the perpetrator to notify the police of their name, including any aliases, and home address within three days beginning with the date of the making of any order specified in subsection (1). Any change of name or home address, or any adoption of a new name, must also be notified to the police within three days of the event. Such information will assist the police in monitoring compliance with the orders and in managing the risk posed by the perpetrator. Subsection (6) requires a person to notify the police if they cease to have a home address.

249 Subsection (7) enables the Secretary of State, by regulations, to specify further notification requirements which a court may impose, on a case by-case basis, when making or varying an order of a type mentioned in subsection (1). Where additional notification requirements are imposed by a court, the perpetrator must supply the required information to the police.

250 Where persons are already subject to notification requirements by virtue of provisions in the Sexual Offences Act 2003, the Stalking Protection Act 2019 or Domestic Abuse Act 2021, or the subject of a different order of a type mentioned in subsection (1), the provisions in this section do not apply to avoid unnecessary duplication (subsection (8)). Once these existing notification requirements expire, then this section will apply to the subject of an order of a type mentioned in subsection (1). In such a case, the perpetrator would need to notify the police of their name(s) and home address within three days of the notification requirements under the Sexual Offences Act, Stalking Protection Act, Domestic Abuse Act 2021 or other order, as the case may be, ceasing to apply (subsection (9)).

251 Subsection (10) defines "home address" for the purposes of this section.

New Section 236X: Offences relating to notification

252 Section 236X (1) to (5) gives effect to offences relating to the notification requirements imposed by a SDAPO, SSPO or interim order. A person subject to service law or a civilian subject to service discipline commits an offence if they fail, without reasonable excuse, to comply with the notification obligations under sections 236W, or if they knowingly provide false information when notifying. The offence continues for as long as the failure persists, although only one prosecution may be brought for the same failure. A person convicted is liable to any punishment listed in the table in section 164 of AFA 2006, with a maximum sentence of five years' imprisonment.

Schedule 3 Part 5: Guidance

253 Schedule 3 Part 5 paragraph 5 inserts new section 236Y into AFA 2006 which requires the Secretary of State to issue guidance to Provost Marshals in relation to the exercise of their functions under this Chapter and under Chapter 1A of Part 3 (Service domestic abuse protection notices) (subsection (1)). Subsection (2) allows for the Secretary of State to revise the guidance issued under subsection (1). Any guidance under this section must be published appropriately (subsection (3)).

Schedule 3 Part 6: Enforcement etc of service domestic abuse protection orders by civilian courts

254 Schedule 3 Part 6 paragraph 6 inserts a new section 49ZA into the Domestic Abuse Act 2021, which applies where a person is subject to an order made by the Court Martial or the Service Civilian Court under section 236C of AFA 2006 (a "service domestic abuse protection order"), and is no longer subject to service law or a civilian subject to service discipline.

New Section 49ZA: Service domestic abuse protection orders

255 Subsection (2) provides for service domestic abuse protection orders to be treated as domestic abuse protection orders made by the Crown Court for the purposes of the Domestic Abuse Act 2021.

256 Subsection (3) provides for arrests for breaches of an order to apply to those orders made by the Court Martial or Service Civilian Court.

257 Subsection (4) requires the perpetrator to notify the civilian police of their name, including any aliases, and home address within three days from when the person ceased to be a person subject to service law or a civilian subject to service discipline.

258 Subsection (5) provides for notification to the appropriate police area within the United Kingdom (including Scotland and Northern Ireland), when a person is subject to an order made by the Court Martial or Service Civilian Court.

259 Subsection (6) provides for minor modifications in procedure for the variation or discharge of SDAPO when dealt with in the civilian criminal justice system once someone has left the services to reflect the circumstances in the service justice system when they were made.

260 Subsection (7) provides for applications to vary or discharge service orders to be made to a Crown Court. It provides for an order that has been varied to become an order of the Crown Court.

261 Subsection (8) makes the necessary modifications relating to appeal of orders made in the service courts.

262 Subsection (9) provides for minor modifications relating to appeal of the orders when treated as if made by the Crown Court for the purposes of this section 47 of the Domestic Abuse Act 2021.

263 Subsection (10) defines “civilian subject to service discipline” and “subject to service law” as having the same meaning as in the sections 370 and 375 of AFA 2006.

Schedule 3 Part 7: Enforcement etc of Service Stalking Protection Orders by civilian courts

264 Part 7 inserts a new section after section 11 of the Stalking Protection Act 2019 to address the enforcement of SSPOs by civilian courts.

265 New section 11A(1) to (8) set out the transition of an interim or full SSPO when the individual subject to the order is no longer subject to service law or service discipline. This section ensures that when the subject of an order leaves the Armed Forces or ceases to fall within service jurisdiction, the SSPO is treated as a civilian stalking protection order made by the Crown Court under the Stalking Protection Act 2019, with certain modifications to ensure compatibility with the civilian regime. These include adjustments to provisions on variation, renewal, discharge, appeals, and notification requirements, so that the order continues to operate effectively after the person leaves service. This ensures continuity of protection for victims and maintains enforceability of the order across both service and civilian jurisdictions.

266 Schedule 3 Paragraph 8 inserts new section 364I after section 364H of the Sentencing Code. This amendment governs how SSPOs operate when imposed upon conviction and the subject of the order later ceases to be subject to service law or a civilian subject to service discipline.

New Section 364I: Service stalking protection orders

267 Section 364I addresses the continuity of a SSPO when the person subject to the order was convicted of an offence under section 236 of AFA 2006 but later ceases to be under service law or service discipline. In such cases, the SSPO is treated as a civilian stalking protection order which mirrors the approach taken in section 11A of the Stalking Protection Act 2019 for non-conviction SSPOs, but operates instead within section 364B of the Sentencing Code, which governs conviction-based stalking protection orders in the civilian jurisdiction. These include adjustments to variation, renewal, discharge, appeal rights, and notification requirements, with the Crown Court designated as the appropriate forum. The protective measure remains enforceable after a person leaves service, maintaining victim safety and legal consistency across jurisdictions.

New section 16A: Service stalking protection orders

268 Section 8A inserts new section 16A into the Protection from Stalking Act (Northern Ireland) 2022 (PSA 2022) to provide for the treatment of full and interim SSPOs where an individual is no longer subject to service jurisdiction and resides in Northern Ireland.

269 New section 16A (1) to (4) sets out how full and interim SSPOs continue to have effect once a person is no longer subject to service law or a civilian subject to service discipline. The section ensures that, where such individuals reside in Northern Ireland, these orders are treated as an equivalent order to the civilian stalking protection orders under the PSA 2022 (Northern Ireland).

270 Subsections (2) and (3) apply relevant provisions of the PSA 2022 (Northern Ireland) to full and interim SSPOs, with modifications to ensure compatibility and effective operation with the Northern Ireland regime from the point the individual begins residing there.

271 Subsection (4) confirms that key terms, including “subject to service law” and civilian subject to service discipline” have the same meaning as in the AFA 2006.

Schedule 3 Part 8: Consequential and related amendments

272 Part 8 paragraph 10 amends section 50(2) of AFA 2006 so that breaches of a service Sexual Offences Prevention Order or extended prohibition order, breach of a SDAPO, breach of an SSPO or interim SSPO and service domestic abuse and stalking protection orders: offences in relation to notification become service offences under the relevant sections.

273 Paragraph 11 makes provision for a person arrested on suspicion of being in breach of a SDAPN to be kept in custody without charge.

274 Paragraph 12 amends section 112 of the custody proceedings rules to capture provision made at new section 74D for a person arrested on suspicion of being in breach of a SDAPN to be kept in custody without charge.

Clause 8: Service restraining orders: enforcement etc by civilian courts

275 The overall effect of clause 7 ensures that a service restraining order (“SRO”) made by the Court Martial or the Service Civilian Court under section 229 of AFA 2006, is still valid in the criminal justice system, after the service person in receipt of the order, has left the Armed Forces. This will ensure that victims remain protected.

276 Subsection (1) inserts new section 5B into the Protection from Harassment Act 1997, which ensures an SRO can be treated as though it is a civilian restraining order made on acquittal under section 5A of the 1997 Act.

277 New section 5B(3) enables section 5A of the 1997 Act to be read with modified language for the purposes of new section 5B, while subsection 5B(4) provides for definitions to accompany the modified language. This will allow the person who is no longer subject to service law or a civilian subject to service discipline, any person named in the order, or for a relevant chief officer of police, to apply to the Crown Court to vary or discharge the order. The offence of breaching a requirement of an order without reasonable excuse is now extended to SROs by virtue of section 5B applying the offence at section 5A(2D) to such orders.

278 New section 5B(3)(d) means that subsections 5A(3) and (4) of the 1997 Act are to be treated as having no effect, because they relate to procedural steps that are only relevant to an order that originated in the Criminal Justice System.

279 Subsection (2) inserts new section 363A into the Sentencing Code 2020, which enables an SRO to be treated as an order made under section 360 of the Code. This includes extending the offence of breaching a requirement without a reasonable excuse to an SRO for a person in receipt of such an order who is no longer subject to service law or a civilian subject to service discipline.

280 New subsections 363A(3) enables section 361(1) of the Code to be read with modified language for the purposes of varying or discharging the SRO by the Crown Court, while subsection 363A(4) provides for definitions to accompany the modified language.

Clause 9: Guidance issued to civilian police

281 Clause 8(1) inserts a new Chapter 3B and new section 320E into AFA 2006 to require the Provost Marshal to have regard to relevant guidance issued to civilian police forces.

282 Clause 8(2)(a) amends section 77 of the Domestic Abuse Act 2021 to include the chief constable of the Ministry of Defence Police (MDP) within the definition of “chief officer of police” to whom the Secretary of State must issue guidance about the disclosure of police

information by police forces for the purposes of preventing domestic abuse. As a chief officer of police, the chief constable of the MDP must have regard to that guidance. Clause 8(2)(b) includes the MDP within the definition of “police force”.

New Section 320E: Provost Marshal’s duty to have regard to guidance

283 Subsection (1) requires the Provost Marshal to have regard to relevant guidance issued by the Secretary of State.

284 Subsection (2) sets out that “relevant guidance” for the purposes of subsection (1) means:

- a. guidance issued under section 103J of the Sexual Offences Act 2003 (guidance about sexual harm prevention orders and interim sexual harm prevention orders);
- b. guidance issued under section 122J of that Act (guidance about sexual risk orders and interim sexual risk orders);
- c. guidance issued under section 12A of the Stalking Protection Act 2019 (guidance about disclosure of police information for purpose of protecting persons from risks associated with stalking);
- d. guidance issued under section 77 of the Domestic Abuse Act 2012 (guidance about disclosure of police information for purposes of preventing domestic abuse); and,
- e. guidance issued under section 83 of the Crime and Policing Act 2026 (guidance about disclosure of police information for purpose of preventing sex offending).

285 Subsection (3) provides that for the purposes of complying with the duty in subsection (1), relevant guidance is to be read as if it were issued by the Secretary of State to the Provost Marshal; and as if it related to the disclosure of information held by the service police force for which the Provost Marshal is responsible.

286 Subsection (4) provides that for the purposes of this section, the tri-service serious crime unit is to be regarded as a service police force.

Clause 10: Assessment etc of risks posed by certain offenders

287 Clause 10 ensures that offenders who have committed certain serious violent, sexual or specified offences and meet the sentencing criteria under section 327(3)(b) of the Criminal Justice Act 2003 when sentenced by the service courts are automatically supervised under the multi-agency public protection arrangements (“MAPPA”) regime set out in sections 325 to 327 of that Act. This will bring the position on eligibility for MAPPA for such offenders sentenced by the service courts into line with the position in the Criminal Justice System in England and Wales. Subsection (2) amends section 325 of the Criminal Justice Act 2003 to make it clearer that the MoD is a “duty to cooperate” agency for the purpose of MAPPA.

288 Subsection (3) amends section 327 so that, for the purposes of identifying offenders who would automatically qualify for MAPPA, a corresponding service offence is to be treated as equivalent to one of the following: an offence of murder; one listed in subsection (4A); or an offence listed in Parts 1 or 2 of Schedule 15 to the Criminal Justice Act 2003. This includes inchoate offences such as attempted murder.

Clause 11: Victims of service offences

289 Clause 11 inserts new Part 13A sections 327A to 327F into AFA 2006.

New Section 327A: Meaning of “victim of a service offence”

290 Subsection (1) describes a victim as somebody who has been harmed by conduct which constitutes a service offence and is the person against whom the service offence is committed

or somebody who fits into one or more of the categories in subsection (2). A service offence includes any offence which is also an act punishable under the law of England and Wales (as set out in Section 42 of AFA 2006), in addition to service discipline offences specific to the Armed Forces (as set out in Part 1 of AFA 2006).

291 Subsection (2) captures other individuals who can be a victim for the purposes of this Part of the Bill, if they have suffered harm, in addition to the person against whom the service offence is committed. It includes:

- a. Those harmed as a result of witnessing a service offence, meaning those who see, hear, or directly experience the crime in live time.
- b. Where the person's birth was the direct result of conduct which constitutes a service offence.
- c. Close family members of individuals killed by conduct which constitutes a service offence.
- d. A child under 18 years of age who sees, hears, or experiences the effects of domestic abuse which constitutes a service offence between adults (aged 16 and older). This is to be read in accordance with the definition of a victim of domestic abuse in Part 1 of the Domestic Abuse Act 2021.

292 Subsection (4) defines "harm" as including physical, mental or emotional harm (which captures both diagnosed and undiagnosed psychological condition or impacts on the person) and economic loss.

293 Subsection (4)(b) clarifies that a person can be a victim of a service offence for the purposes of this clause, irrespective of whether or not an offender is charged or convicted, including where the offence has not been reported. This ensures that the provisions of the Code issued under Clause 11 can require the provision of services to victims at all stages of the service justice process and to victims of offences in respect of which no criminal proceedings are eventually brought or where criminal proceedings result in a not-guilty verdict.

New Section 327B: Code for victims in the service justice system

294 New section 327B places a duty on the Secretary of State to issue a Code of Practice (subsection (1)) in respect of the services to be provided to victims by persons who have functions relating to victims of service offences or the service justice system as a whole.

295 Subsection (3) states the key principles that must be reflected in the services provided under the Victims' Code.

296 These principles are that victims of criminal conduct:

- a. should be provided with information to help them understand the service justice process;
- b. should be able to access services which support them (including, where appropriate, specialist services);
- c. should have the opportunity to make their views heard in the service justice process; and,
- d. should be able to challenge decisions which have a direct impact on them.

297 Subsection (4) gives the Secretary of State a power to make regulations making further provision about the Victims' Code, including matters that the Code must include, subject to the restriction in subsection (5).

298 Subsection (6) provides that the Code may not require anything to be done by a person acting in a judicial capacity (or someone acting on their behalf in that capacity) or by a person acting in the discharge of a function of a relevant prosecutor if that function involves exercising a discretion.

New Section 327C: Code for victims in the service justice system: further provision

299 New section 327C (1) to (6) allows the Code, amongst other things to:

- a. differentiate between different types of victims, for example so that particularly vulnerable victims might receive a faster service, or a service tailored to their needs;
- b. benefit persons other than the victim, such as those who might represent the victim like parents of victims who are children; and,
- c. allow for regional variations in the way that services are provided to victims so that the Code can reflect local practices.

New Section 327D: Code for victims in the service justice system: procedure

300 New section 327D states the procedure for issuing and amending the Code, and confirms that the procedure set out in subsection (1) must be followed when revising the Victims' Code once it has been brought into operation. It also creates a new secondary procedure for making amendments to the Victims' Code, which can be used where the Secretary of State considers the revisions to be minor. Such amendments can be made without a public consultation and include corrections, clarifications and revisions which reflect changes to the law or practice or procedure of the service justice system.

New Section 327E: Code for victims in the service justice system: compliance

301 New section 327E provides that a failure to comply with the Code does not, in itself, give rise to any liability to criminal or civil proceedings.

New Section 327F: Guidance about specified victim support roles

302 Subsection (1) creates a duty on the Secretary of State to issue guidance about specified victim support roles.

303 Subsection (2) explains that the Secretary of State has the power to specify these victim support roles in regulations. For the purpose of this clause, "victim support role" is defined as a role performed by individuals which provides support to victims of service offences (where the support relates to that conduct).

304 Subsection (3) sets out how victim support roles could be described in regulations. The victim support roles named in regulations may be specified by reference to (amongst other matters):

- a. the circumstances in which the role is performed. For example, a victim support role which provides specialist support for victims of a specific crime type or provides a specific type of support;

- b. the type of support provided in connection with the role. For example, a victim support role which provides advocacy support to victims to engage with the service justice system; and,
- c. the type of criminal conduct in relation to which such support is provided. For example, domestic abuse.

305 Subsection (4) sets out that this guidance must cover the key functions of the role alongside recommended minimum expectations and best practice, including training and qualifications. It must also set out best practice for collaboration between the role and those who have functions relating to victims of service offences or any other aspect of the service justice system in order to effectively work together to meet the needs of victims.

306 Subsection (5) specifies that, where relevant, the guidance must include provision about victims who are under the age of 18 and those with protected characteristics.

307 Subsection (6) creates a duty on any person who has a function of a public nature which is related to victims or any aspect of the criminal justice system to have regard to the guidance. This duty will have effect where such a function is being exercised, and the guidance is relevant to the exercise of that function.

308 Subsection (7) specifies that the duty to have regard to the guidance – outlined in subsection (6) – does not apply to those acting in a judicial capacity, or on the instructions of or on behalf of such a person. This is designed to protect judicial independence.

309 Clause 11(2) provides for revocation of Armed Forces Code of Practice for Victims of Crime Regulations 2015.

Clause 12: Parliamentary Commissioner for Administration

310 Clause 12 amends section 5 of the Parliamentary Commissioner Act 1967.

311 Subsection (2) provides for complainants who claim that a duty under the code of practice issued under new section 327B of AFA 2006 has been breached to go directly to the Commissioner, rather than going through a member of the House of Commons, where the complaint relates to their experience as a victim.

312 Subsection (3) provides that where a complaint relates to the complainant's experience as a victim of a service offence, "victim" means a victim of a service offence as defined in new section 327A of AFA 2006.

Clause 13: Service policing protocol

313 Clause 13 inserts new section 115B which creates a new duty for the Secretary of State to issue a service policing protocol (subsection (1)) and makes a consequential amendment to the title prior to section 115A, Chapter 1 of Part 5 (investigations).

New Section 115B: Service policing protocol

314 The service policing protocol will make provision concerning the carrying out of functions by those within defence to ensure the independence of investigations conducted by the service police (being the three single service police forces (the Royal Navy Police, the Royal Military Police and the Royal Air Force Police) and the tri-service serious crime unit known as Defence Serious Crime Command, support smooth working relationships between relevant persons and limit or prevent the overlapping or conflicting exercise of the functions of those persons (subsection (2)).

315 Subsection (3) defines “relevant persons” as the Secretary of State, the Defence Council, and service police. This covers all civil servants working on behalf of the Secretary of State and those within the military chain of command. All such persons must have due regard to the service policing protocol in exercising their functions (subsection (4)).

316 Subsection (5) permits the Secretary of State to vary or replace the protocol at any time.

317 Subsection (6) requires the Secretary of State to have regard to the efficiency and effectiveness of the service police and overall operational effectiveness of His Majesty’s Forces when issuing, replacing or varying the protocol.

318 Subsection (7) sets out a requirement for the Secretary of State to consult the service police and any other relevant stakeholders before issuing, varying or replacing the protocol.

Clause 14: Entry for purposes of obtaining evidence etc

319 Clause 14 amends Chapter 3 of Part 3 of AFA 2006 to enable judge advocates to issue warrants authorising service police to enter and search ‘relevant premises’. It also enables a service policeman to authorise a warrantless search for electronically tracked stolen goods on ‘relevant premises’.

320 ‘Relevant premises’ is defined to include service living accommodation or premises occupied or controlled by a person subject to service law, a civilian subject to service discipline or a person who is suspected of having committed an offence in relation to which the warrant is sought (this latter category includes individuals who are not subject to service law or discipline but who are suspected of having committed a service offence – i.e. an offence committed when they were so subject). It replaces the concept of ‘relevant residential premises’, which required such premises to be occupied as a residence. The new definition of ‘relevant premises’ dispenses with this requirement.

321 Section 86 is amended to enable the Secretary of State by order to establish procedures to enable service police investigating a service offence to apply to a judge advocate for a warrant for access to:

- a. excluded or special procedure material that is held on relevant premises, or
- b. material (other than items subject to legal privilege) on premises other than relevant premises.

322 The definition of ‘premises’ for the purposes of Part 3, contained in section 96(3) AFA 2006, is updated to align more closely with that in section 23 of the Police and Criminal Evidence Act 1984.

Clause 15: Arrest and detention by civil authorities

323 Clause 15 amends Chapter 3 of Part 13 of AFA 2006 to enable the civilian police in the UK or a British overseas territory to arrest without a warrant a person who is reasonably suspected of committing an offence under section 12 of AFA 2006 (disobedience to lawful commands).

324 Subsections (2) and (3) amend section 314 of AFA 2006 to expand the scope of the existing power of arrest for deserters and absentees under that section to also include those reasonably suspected of having committed an offence under section 12 of AFA 2006. The amendments will provide authority for an “authorised person” in the UK, the Isle of Man or a British overseas territory to issue an arrest warrant in certain circumstances. An authorised person is a person who is empowered in the civilian system to issue arrest warrants, e.g. a Crown Court judge or magistrate in England and Wales. A person who is arrested pursuant to these provisions must be brought before a court of summary jurisdiction.

325 Subsection (4) amends section 315 of AFA 2006 to provide that where a person surrenders themselves as having committed an offence under section 12 AFA 2006 to a police officer of a UK or British overseas territory police force that person must be taken to a police station. The person in charge of the police station (or a person authorised by the person in charge of the police station) must consider the case and if it appears to them that the person who has surrendered is subject to service law and has committed an offence under section 12 AFA 2006, may arrange for that person to be (a) delivered into service custody, (b) brought before a court, or (c) released with conditions.

326 Subsection (5) amends section 316 of AFA 2006 to make provision for the duties of a summary court in the UK, the Isle of Man or a British overseas territory when a person admits to having committed an offence under section 12 AFA 2006. If the suspect is not in custody for some other cause, and the required evidence exists, the court must either (a) arrange for the suspect to be delivered into service custody, or (b) release the suspect subject to conditions. If the court decides the suspect should be delivered into service custody it may hold a person in custody pending transfer into service custody where it is likely that such transfer will be subject to delay.

Clause 16: Pre-charge custody

327 Clause 16 enables the Provost Marshals of the service police forces and the Defence Serious Crime Command to act as an appropriate authority in place of a commanding officer when a person has been arrested for a serious offence and to place the person in custody without being charged for committing an offence. The commanding officer lacks jurisdiction to investigate and determine charge in serious service offences, and enabling Provost Marshals to authorise pre-charge detention in such cases will improve the efficiency of investigations.

328 Clause 16 amends Chapter 1 of Part 4 of AFA 2006, which sets out the conditions for custody without charge. Subsection (2) amends section 98 of AFA 2006 in relation to the limitations on custody without charge to substitute the term 'appropriate authority' for 'commanding officer'.

329 Subsection (3) amends section 99 of AFA 2006 in relation to authorisation by the commanding officer of custody without charge to omit commanding officer, and inserts where the person arrested is in respect of a serious offence. Subsection (3)(c) provides that where a person is arrested for a serious offence, that this must be reported to the Provost Marshal for Serious Crime and the relevant Provost Marshal for the service of which the person is a member.

330 Subsection (3)(f) enables a Provost Marshal to notify the commanding officer that the Provost Marshal will act as the appropriate authority in place of the commanding officer. The notification must be made orally or in writing and before six hours after the time of arrest.

331 Subsection (3)(f) inserts new section 99(10) which provides that the 'appropriate authority' in relation to a person being held in service custody applies where the person is arrested for a serious offence and a notification has been given by a Provost Marshal; in all other cases the commanding officer is the appropriate authority. New section 99(10) also provides that a serious offence is *any* of the following: an offence within subsection (2) of section 54 AFA 2006; a service offence listed in Schedule 2 AFA 2006; an offence under section 42 AFA 2006 which corresponds to an offence in England & Wales that is not listed in Schedule 1 or paragraph 12 of Schedule 2 AFA 2006 and is punishable by a sentence of over two years' imprisonment; and, an offence where prescribed circumstances in section 114 AFA 2006 apply.

332 Subsection (4) substitutes 'appropriate authority' for 'commanding officer' in section 100 AFA 2006 in relation to review of custody by the commanding officer.

333 Subsection (5) inserts into section 101 of AFA 2006 that an application for extension of custody by a Judge Advocate without charge may also be made by a Provost Marshal in the case of a person arrested under section 67 AFA 2006 for an offence listed in Schedule 2 AFA 2006.

334 Subsection (6) inserts into section 104 AFA 2006 after paragraph (a) a provision for the delegation by a Provost Marshal under sections 98 to 102 AFA 2006. The intention is that the Provost Marshal will delegate these functions to trained service police who are at the ranks of Lieutenant Commander, Major and Squadron Leader and above who are independent of the investigation into the person detained.

Clause 17: Time limit for charging certain offences

335 Clause 17 inserts new section 58A which imposes a time limit for charging service personnel and civilians subject to service discipline with summary offence under section 42 of AFA 2006.

336 The origin of new section 58A of AFA 2006 lies in the criminal justice system, where less serious offences are primarily dealt with by Magistrates' Courts. These include 'summary only offences' and 'either way offences' that may be tried summarily if the court considers its sentencing powers sufficient and the accused does not elect to have their case heard in the Crown Court. Under section 127 of the Magistrates' Courts Act 1980, a Magistrates' Court cannot try a summary offence unless the information is laid or the complaint is made within six months of the offence. In practice, this means that summary-only offences cannot be prosecuted after the six-month limit, unless a statutory exception applies. Exceptions include cases where another statute expressly provides a different time limit, or where section 40 of the Criminal Justice Act 1988 allows the summary offence to be tried in the Crown Court alongside a more serious offence.

337 The purpose of new section 58A AFA 2006 is to introduce a time limit on summary only offences in the service justice system. However, whilst new section 58A seeks to mirror section 127 MCA 1980, it is modified to reflect the nature of the services, service life and the requirements of the service justice system, as follows:

- a. New subsection 58A(1) means that a person (in this case a service person or a civilian subject to service discipline), cannot be charged with a summary offence after the end of the applicable period. For most summary offences, the applicable period will be 6 months, beginning on the date the offence was committed.
- b. New subsection 58A(2) clarifies when an offence will be considered a summary offence for the purpose of the new section.
- c. New subsection 58A(3)(a) and (b) sets out the applicable period for offences in the service justice system under s.42 AFA 2006. In most cases, this period will be 6 months, reflecting the time limit set out in section 127(1) MCA 1980 (58A(3)(a)). However, where the corresponding offence in the civilian system is subject to a different statutory time limit, that alternative period will apply instead (58A(3)(b)).
- d. New subsection 58A(4)(a) provides that the applicable time limit does not apply to a section 42 offence if the corresponding offence in the Magistrates' Court is not subject to a time limit.
- e. New subsection 58A(4)(b) provides that the applicable time limit does not apply to a section 42 offence if a determination is made by the Director of Service Prosecutions in accordance with the conditions set out in section 58A(5).
- f. New subsection 58A(5)(a)(i) and (ii), and (b) allows the Director of Service Prosecutions to disapply the usual time limit for charging someone with a summary offence under section 42. This is permitted where the case is referred by the person's Commanding Officer or a member of the service police and the Director considers it

in the interests of justice to do so. It is envisaged that this subsection will be used where the unique nature of the services, and the pace and length of operations means that it is not possible to adhere to the applicable period.

Clause 18: Duty of commanding officers to report serious offences

- 338 Clause 18 amends section 113 of AFA 2006 (which requires commanding officers to report serious offences to the service police). Currently, the duty under section 113 applies where a commanding officer becomes aware of allegations or circumstances which would suggest to a reasonable person that someone within the commanding officer's command may have committed any service offence listed in Schedule 2 to AFA 2006.
- 339 Clause 18 extends this duty to report to apply to all commanding officers who become aware of such circumstances or allegations relating to any person subject to service law, and not only relating to people in their chain of command.
- 340 Subsection (4) provides that the duty does not apply if the officer reasonably believes that a service police force or the tri-service serious crime unit is aware of the matter, in order to minimise unnecessary referrals to the service police.

Clause 19: Summary hearings: punishments available to commanding officers

- 341 Clause 19 gives a commanding officer the power to award a punishment of service detention to a corporal, bombardier, lance sergeant or lance corporal of Horse in any of His Majesty's military forces. At present, commanding officers within the Army and the Royal Air Force Regiment may only impose this punishment on individuals holding a rank below those listed. This will ensure commanding officers have the same powers to punish corporals in the Army and the Royal Air Force regiment as they do in respect of Leading Hands in the Royal Navy and corporals in the Royal Marines and Royal Air Force. Subsection (2) amends the table of punishments available to commanding officers in section 132 of AFA 2006 to make this change. Subsection (3) makes consequential amendments to section 133 of AFA 2006 which sets out the limits on commanding officers' powers to award service detention.

Clause 20: Deprivation orders: punishments available to commanding officers

- 342 Clause 20 gives a commanding officer the power to impose a deprivation order in combination with a punishment of service detention, forfeiture of seniority or reduction in rank or disrating. At present a commanding officer can only impose a deprivation order alongside a fine or a "minor punishment" such as an admonition.
- 343 Clause 20 will ensure commanding officers can impose deprivation orders in combination with one of the more serious punishments set out above that are currently available to them at a summary hearing. Subsections (2), (3) and (4) amend the lists of punishments set out in subsections (2) (service detention), (4) (forfeiture of seniority) and (5) (reduction of rank or disrating) of section 138 of AFA 2006 to include a deprivation order.

Clause 21: Qualification for membership of the Court Martial

- 344 This clause amends AFA 2006, correcting an anomaly relating to those who are eligible to sit on a Court Martial Board. Prior to AFA 2021, service personnel could only act as lay members on a Court Martial Board if they were officers or warrant officers. Schedule 1 AFA 2021 provided for personnel in the rank of OR-7 (chief petty officer, staff corporal, staff sergeant, Royal Marine colour sergeant, flight sergeant, or chief technician) to also sit on a Court Martial board in addition to warrant officers.
- 345 Presently, AFA 2006 permits only those former ORs who previously held the rank of warrant officer and become commissioned officers to automatically qualify to sit on a Court Martial Board. However, those who were previously OR-7 rank are required to undergo a three-year

qualification period as newly commissioned officers prior to becoming eligible to sit on a Court Martial Board. Clause 21 makes minor amendments to enable OR-7s, upon receiving their commission, to automatically qualify to sit upon a Court Martial Board, thereby aligning the legislation with the original policy intent.

346 The minor and consequential amendments are:

- a. Section 21(2)(a) and (b) amends subsection 156(2)(b) of AFA 2006 and inserts new subsections 156(2)(b)(i) and (ii). This expands the range of former OR service personnel who automatically qualify to be lay members upon receiving their commissions to include both former warrant officers and OR-7 rank. Subsection (2)(b)(ii) will bar those service personnel who were formerly acting and not substantive OR-7 rank from automatic qualification. Those who were formerly acting OR-7s will still be required to undergo the 3-year qualification process to sit on a Court Martial Board as lay members as per subsection 156(2)(a).
- b. Section 21(3) omits subsection 156(3) of AFA 2006. This subsection is omitted as it is redundant due to subsection (2)(a) amending subsection 156(2)(b).
- c. Section 21(4)(a) amends and clarifies subsection 156(3A) of AFA 2006. The amendment after the word “acting” inserts “OR-7”. This makes it clear that only those holding substantive OR-7 status qualify to sit on the Court Martial Board.
- d. Section 21(4)(b) omits subsections 156(3A) (a) - (f) of AFA 2006, which list the titles of various OR-7 ranks. These are omitted as they are already listed in subsections 155(9)(a) - (f) AFA 2006.

Clause 22: Power to impose post-charge conditions on persons not in service detention

347 Clause 221 amends Part 4 of AFA 2006 to provide judge advocates with a power to impose post-charge conditions on defendants in proceedings before the Court Martial or the Service Civilian Court, where the defendant is not held in service custody.

348 The clause inserts a new offence in section 50 of AFA 06 of breach of a requirement relating to attendance at hearing that ensures the Court Martial has jurisdiction in relation to the offence created by the clause (see new subsection 109A (5)).

349 The clause inserts a new section 109A that sets out the conditions where the new power will apply. New subsection 109A (1) provides that the new section applies when a person aged over 18 has been charged with a service offence or is awaiting sentence for a service offence and is not in service custody.

350 New subsection 109A (2) provides that following an application from an appropriate person, a judge advocate may impose requirements on the accused for the purpose of securing attendance at any hearing related to the service offence, preventing the accused from committing a further offence, preventing interference with witnesses, or for the accused’s own protection. New subsection 109A (3) defines an appropriate person as a member of a service police force, a member, or a person on the staff of the Service Prosecuting Authority. New subsection 109A(4) sets out that an application may also be made by or on behalf of the accused, by the commanding officer of the accused or by an appropriate person and that any requirements imposed may be varied or discharged by a judge advocate.

351 New subsection 109A (5) sets out that a person who, without reasonable excuse, fails to attend a hearing concerning a requirement set by a judge advocate under section 109A (2)(a) commits an offence. New subclause 109A(6) provides that the applicable punishments are those listed

in the table in section 164 of AFA 2006, and any sentence of imprisonment must not exceed two years.

352 Clause 22 also inserts a new section 109B that sets out the procedural requirements for applications under new section 109A. New subsection 109B (1) provides that a judge advocate may not hear an application under this section unless the accused has been informed in writing of the grounds for the application and has been given notice of the hearing. New subsection 109B (2) provides that the accused is entitled to attend the hearing, to make representations and be legally represented.

353 New subsection 109B (3) enables a judge advocate to impose a requirement without complying with subclauses 109B(1) and (2) if they consider it necessary due to urgency. New subsection 109B (4)(a) provides that, where such an urgent requirement has been imposed, the judge advocate must arrange a hearing that complies with subclauses 109B(1) and (2) as soon as practicable. New subsection 109B (4)(b) makes clear that any urgent requirement ceases to have effect at the end of that hearing unless the judge advocate renews it during the hearing.

354 Clause 22 (4) also amends section 110 of AFA 2006 to provide that a person may be taken into service custody if there are reasonable grounds for suspecting that, if not taken into service custody, they would fail to comply with a requirement imposed under new section 109A(2).

355 Clause 22 (5) and (6) amend Chapter 3 and section 112 of AFA 2006 to allow the Secretary of State to make rules with respect to applications under this new power. Finally, clause 22 (7) sets out that amendments made by this section apply only in relation to persons charged with a service offence on or after the day on which the section comes into force.

Clause 23: Dismissal of charges

356 Clause 23 amends section 163 AFA 2006 (which provides the Secretary of State with powers to make rules with respect to the Court Martial) to enable new procedures to be introduced allowing for dismissal of a charge before arraignment and, separately, for a charge that has been dismissed to be brought again under certain conditions.

357 These procedures currently exist within the criminal justice system through a combination of:

- a. Paragraph 2(1) and (2) of Schedule 3 to the Crime and Disorder Act 1998 – which provides for the dismissal of charges on application where it appears to the judge that the evidence would not be sufficient to convict;
- b. Paragraph 2(6)(a) of Schedule 3 to the Crime and Disorder Act 1998 – which provides that no further proceedings may be brought on a dismissed charge or charges except by way of a voluntary bill of indictment; and,
- c. Section 2(2)(b) of the Administration of Justice (Miscellaneous Provisions) Act 1933 – which provides that a bill of indictment cannot be preferred unless by the direction or with the consent of a judge of the High Court.

358 The voluntary bill procedure is an exceptional procedure only available where it is in the “interests of justice” and its primary use is to enable proceedings to be brought after a charge has been dismissed. Whilst there is no exhaustive list of the circumstances in which the High Court can grant consent to reinstate a previously dismissed charge, the principles are set out in case law: permission will be granted in exceptional cases only where there has been: (a) a substantive error of law that is clear or obvious, (b) new evidence has become available, or (c) there was a serious procedural irregularity.

359 Clause 23 will allow Court Martial rules to make provision for:

- a. a judge advocate to dismiss charges, on application, where it appears that the evidence is not sufficient to convict the applicant;
- b. a previously dismissed charge to be brought again if conditions set out in the rules are complied with (including the permission of a judge of the High Court).

Clause 24: Hospital assessment and treatment in cases of mental disorder

360 Chapter 4 of Part 7 of AFA 2006 makes provision allowing the Court Martial to make certain orders under Part 3 of the Mental Health Act 1983: this mirrors provision made in the civilian system by virtue of the Criminal Procedure (Insanity) Act 1964. Clause 24 amends Part 7 of AFA 2006, inserting a new Part 3A (Power to make orders under Part 3 of the Mental Health Act 1983) and Schedule 3B (Modifications of Part 3 of the Mental Health Act 1983) which will enable the Court Martial to make the same orders as the Crown Court in cases where an accused or convicted person may require assessment or treatment because they are (or may be) suffering from a mental disorder, but the case does not fall within Chapter 4 (Findings of Unfitness to Stand Trial and Insanity). In particular, judge advocates will be able to make orders for the following sections of the Mental Health Act 1983: section 35 (remand to hospital for report on mental condition), section 36 (remand to hospital for treatment), section 37 (hospital order), section 38 (interim hospital order), section 41 (restriction order) and section 45A (hospital admission where sentence of imprisonment imposed).

New section 165A

361 New section 165A of, and new paragraph 2 of the new Schedule 3B to, AFA 2006 will allow a judge advocate of the Court Martial to remand a defendant who is not yet sentenced or otherwise disposed of to a hospital for a report on their mental condition, in cases where evidence has been put before the court that they may be suffering from mental disorder. The new section 165A sets out the circumstances in which such an order may be made, and Schedule 3B modifies section 35 of the Mental Health Act 1983 for the service context.

New Section 165B

362 New section 165B of, and paragraph 3 of new Schedule 3B to, AFA 2006 allows a judge advocate of the Court Martial to remand a defendant who is not yet sentenced or otherwise disposed of, and where the court has received evidence that they are suffering from a mental disorder to a degree which makes it appropriate to do so, to a hospital for medical treatment. The new section 165B sets out the circumstances in which such an order may be made and paragraph 3 of new Schedule 3B modifies section 36 of the Mental Health Act 1983 for the service context.

New section 165C

363 New section 165C of, and paragraph 4 of new Schedule 3B to, AFA 2006 applies where a person is convicted by the Court Martial of an offence punishable with imprisonment, unless the sentence is fixed by law. A judge advocate of the Court Martial will be able to make a hospital order (with or without a restriction order, and also on an interim basis) under sections 37, 38 and 41 of the Mental Health Act 1983, as modified by paragraph 4 of the new Schedule 3B, instead of imposing a sentence of imprisonment. The new section 165C sets out the circumstances in which such orders may be made and paragraph 4 of new Schedule 3B makes the necessary modifications for the service context.

New Section 165D

364 New section 165D of, and paragraph 5 of new Schedule 3B to, AFA 2006 will where a Court Martial has convicted a defendant of an offence for which the sentence is not fixed by law, has considered whether to impose a hospital order and has decided to impose a sentence of imprisonment. A judge advocate will be able to impose an order under s.45A of the Mental Health Act 1983, to allow for the defendant to be detained in a hospital for the purposes of receiving treatment, but the sentence will be one of imprisonment. Paragraph 5 of the new Schedule 3B modifies sections 45A and 45B for the Service context.

Clause 25: Variation or rescission of activation orders by the Service Civilian Court

365 This clause replaces the incorrect reference to section 193 in section 288(3)(ea) of AFA 2006, with reference to an order under paragraph 13 of Schedule 16 of the Sentencing Act 2020, which is where the Service Civilian Court's powers to make activation orders are contained.

Clause 26: Guidance on exercise of criminal jurisdiction

366 This clause confers a duty on the Secretary of State to issue guidance to certain persons. These are persons who have functions of a public nature relating to victims of alleged conduct that occurred in the UK constituting an offence that could be tried in either a service court or a civilian court or any aspect of the civilian or service justice system. The purpose of the guidance is to assist those persons to provide sufficient information in a timely and appropriate manner to help victims reach an informed view, before the victim's preference is communicated to prosecutors, on whether the offence should be tried in either a service or civilian court. Decisions on the jurisdiction in which an offence committed in the UK may be tried will continue to be made by prosecutors using the protocols described in sections 320A to C of AFA 2006.

367 Subsection (3) sets out that the statutory guidance must: explain the similarities and differences between proceedings in a service or civilian court and conduct of investigations in connection with them; the manner in which that information is to be given; and that proportionate records must be kept of the information provided and the victim's preference.

368 Subsection (4) sets out that the statutory guidance must, in particular, address the need to ensure information is given in an objective and impartial manner and in a way that takes into account the circumstances of the offence and the needs of the victim.

369 Subsection (5) sets out that the statutory guidance may also include any other matters appropriate for ensuring that sufficient information is provided in a timely and appropriate manner to victims to help them reach an informed view on their preferred jurisdiction.

370 Subsection (6) requires any person who has functions of a public nature relating to victims of alleged conduct constituting an offence that could be tried in either a service court or a civilian court, or any aspect of the criminal or service justice system, to have regard to any guidance issued under this section. This means that if they are advising a victim on the differences between service and civilian justice systems in order to help the victim identify their preferred jurisdiction, the person who has functions of a public nature must take this guidance into account.

371 Subsection (7) makes it clear the duty under subsection (6) to have regard to the statutory guidance does not apply to anything done by a person acting in a judicial capacity or in the discharge of a prosecutorial function.

372 Subsection (8) requires the Secretary of State, before issuing or revising guidance (subsections (1) and (9)) under this clause, to consult the devolved governments of Scotland and Northern Ireland, the Lord Advocate, specified prosecutorial agencies, civilian policing, the Service

Police Complaints Commissioner, Provost Marshals, the commissioners for victims and witnesses and any other person the Secretary of State thinks appropriate. Subsection (10) sets out that the consultation requirement at subsection (8) does not apply if the revision of the guidance is considered insubstantial by the Secretary of State. Subsection (11) requires that the guidance and any subsequent revisions to be published.

Clause 27: Minor revisions of guidance on exercise of criminal jurisdiction

373 Clause 27 sets out that the consultation requirements under section 320A(7), 320B(8) and 320C(8) of AFA 2006 do not apply if any revisions to the protocol on concurrent jurisdiction are considered insubstantial by the Director of Service Prosecutions acting jointly with: the Director of Public Prosecutions (under section 320A); the Lord Advocate (under section 320B); or the Director of Public Prosecutions for Northern Ireland (under section 320C).

Clause 28: Driving disqualification orders: reduced disqualification period

374 Clause 28 introduces a new power into AFA 2006 that will enable a service court to reduce the disqualification period for an offender convicted of a relevant drink offence or a specified offence under section 42, providing they successfully attend and pass an approved course with a service provider in England. The purpose of clause 28 is to align the service justice system with the civilian justice system regarding reduced driving disqualification periods for offenders that complete approved courses.

375 Clause 28 inserts new section 177IA which mirrors, with modifications, the effect of section 34A of the Road Traffic Offenders Act 1988 ("RTOA 1988").

- a. Subsection 177IA(1) specifies that in order for an offender to be eligible for a reduced disqualification period for attendance on a course, they must have been convicted of a relevant drink offence or a specified offence under section 42 AFA 2006 and disqualified from driving for 12 months or more. A "relevant drink offence" and a "specified offence" are the drink driving offences set out in sections 34A(2) and 34A(3) RTOA 1988 respectively (for example, careless and inconsiderate driving under section 3 of the Road Traffic Act 1988).
- b. Subsection 177IA(2) enables a service court to make an order reducing the disqualification period where the offender satisfactorily completes an approved course by a date that is specified in the order. In accordance with subsection 177IA(3) that date must be at least two months before the last day of the reduced period of disqualification. Pursuant to subsection 177IA(4) the reduction in the period of disqualification must be at least 3 months and not more than one quarter of the original unreduced period of disqualification.
- c. Subsection 177IA(5) specifies that a service court may not make an order to reduce the disqualification period where the criteria in subsections 177IA(6) and (7) apply. Subsection 177IA(6) applies where the offender has, within the last 3 years, committed a specified offence and completed either an approved course under section 177IA AFA 2006 or a course under section 34A RTOA 1988, and received a reduced disqualification period. Subsection 177IA(7) applies where the offence was committed during the offender's probationary period under section 1 of the Road Traffic (New Drivers) Act 1995.
- d. Subsection 177IA(8) sets out circumstances where a service court may not make an order under section 177IA(2). To that end, the court must be satisfied that a place on an approved course will be available to an offender, the offender is over 17 years of age and is aware of the effect of the order and the fees they must pay for the course. Lastly, for the court to make an order it requires the offender's agreement.

- e. Subsection 177IA(9) specifies that an offence is committed under section 42 AFA 2006 if the offence is either a drink offence or specified (driving) offence under the law of England and Wales.
- f. Subsection 177IA(10) defines relevant terms.

376 New section 177IB makes provision for certificates of completion to confirm an approved course has been completed.

- a. Subsection 117IB(1) specifies that an offender is deemed to have completed a course satisfactorily where a clerk of the court is in receipt of a certificate from the course provider indicating the offender's completion of an approved course before the end of the unreduced period. For the service justice system, the relevant clerk of the court will be a member of the Military Court Service.
- b. Subsection 117IB(2) applies subsections (2) to (11) of section 34B of the RTOA 1988 with modifications. For instance, 117IB(c) when referring to the rules of the court, this is to be taken as Court Martial rules or Service Civilian Court rules.
- c. Clause 28 makes a consequential amendment to the RTOA 1988 by inserting new subsection 34A (8A) into the RTOA 1988. This provision ensures that a magistrates' court does not make an order where the offender has, in the last 3 years, committed an offence under section 42 AFA 2006 where the corresponding offence under the law of England and Wales is a specified offence, and have successfully completed an approved course set out in an order made under section 177IA AFA 2006.

Clause 29: Rehabilitation periods

377 Clause 29 inserts a new entry in the table in paragraph (b) of subsection (2) of section 5 of the ROA 1974. The new entry restores rehabilitation periods to the service punishments of Reduction in rank or disrating; Forfeiture of a specified term of seniority, or all seniority; service supervision and punishment orders.

378 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.

379 Subsections 3 and 4 align the rehabilitation periods for the same sentences in Scotland with those in the ROA 1974 in England and Wales.

Clause 30: Exceptions for spent cautions when taking administrative action

380 Clause 30 (1) and (2) amend Schedule 2 of the ROA 1974 (protection for spent cautions) to require members of the Armed Forces to disclose spent cautions so their single service can consider taking employment action, known as administrative action in the Armed Forces, against them.

381 The clause inserts a new paragraph 5(A)(1) into Schedule 2 of the ROA 1974, that earlier paragraph 3(3) which prohibits seeking information with respect to a person's previous cautions, does not apply and that spent cautions can be disclosed to a superior officer for the purpose of taking administrative action.

382 Subparagraphs 5A(2) and (3) provide that paragraphs 3(4) and 3(5) of Schedule 2 of the ROA 1974 do not apply to any obligation to disclose a spent caution or in relation to taking administrative action in connection with a spent caution. Paragraph 5(A)(4) provides that the preceding paragraphs only apply in relation to cautions given while the service persons were a serving member of His Majesty's Armed Forces.

383 Subparagraph 5A(5)(a) provides that the meaning of a "superior officer" has the same meaning as in AFA 2006 (section 374 read with section 377(3)).

384 Subparagraph 5A(5)(b) provides the meaning of "administrative action" as action (other than service disciplinary proceedings) taken by a superior officer acting under their powers of command in accordance with King's Regulations, and is taken with the purposes of rehabilitating, censoring or sanctioning another member of His Majesty's Armed Forces to safeguard or restore the operational effectiveness and efficiency of the Armed Forces.

385 Subparagraph 5A(5)(c) provides that references to taking administrative action include making of any decision as to whether to take such action.

386 Clause 30(4) amends Schedule 3 to the ROA 1974 so that the restriction in paragraph 4 (which prevents questions about a person's previous alternatives to prosecution) does not apply. As a result, spent alternatives to prosecution issued in Scotland must be disclosed to a superior officer for the purposes of administrative action.

387 Clause 30 (4) also inserts new subparagraphs 7A (2) to (5) to provide that paragraphs 5(1) and 5(2) of Schedule 3 of the ROA 1974 do not apply to any obligation to disclose a spent alternative to prosecution or in relation to taking administrative action in connection with a spent alternative to prosecution. Paragraph 7A(4) provides that the preceding paragraphs only apply in relation to cautions given while the service persons were a serving member of His Majesty's Armed Forces.

388 Subparagraph 7A(5)(a) provides that the meaning of a "superior officer" has the same meaning as in AFA 2006 (section 374 read with section 377(3)).

389 Subparagraph 7A(5)(b) provides the meaning of "administrative action" as action (other than service disciplinary proceedings) taken by a superior officer acting under their powers of command in accordance with King's Regulations, and is taken with the purposes of rehabilitating, censoring or sanctioning another member of His Majesty's Armed Forces to safeguard or restore the operational effectiveness and efficiency of the Armed Forces.

390 Subparagraph 7A(5)(c) provides that references to taking administrative action include making of any decision as to whether to take such action.

Clause 31: Commissioner's functions in relation to Royal Fleet Auxiliary

391 Clause 31 inserts a new subsection 365AA(7) into AFA 2006. This new subsection introduces Schedule 14ZB, which makes provision for the Commissioner to exercise general service welfare functions in relation to members of the Royal Fleet Auxiliary.

392 Subsection (2) introduces Schedule 4, which inserts new Schedule 14ZB into AFA 2006.

Schedule 4 Part 3: Armed Forces Commissioner: functions relating to the Royal Fleet Auxiliary

393 Part 1, paragraph 1 inserts new Schedule 14ZA into AFA 2006 (detail below).

394 Part 2, paragraphs 2 and 3 list the consequential and related amendments to be made to AFA 2006:

- a. Section 340IA subsection (5) (matters which the Commissioner may not conduct a general service welfare investigation into) is amended to exclude civil proceedings and coroner investigations from the Commissioner's scope.
- b. Subsection (9), of section 340IA is also amended to insert the definition of "coroner investigation", to mean:
 - (a) an investigation under Part 1 of the Coroners and Justice Act 2009;
 - (b) an investigation by the procurator fiscal under section 1(1)(a) of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2);
 - (c) an inquiry under that Act; or
 - (d) an inquest under the Coroners Act (Northern Ireland) 1959 (c. 15 (N.I.));".
- c. Section 340O (annual report on system for dealing with service complaints) is amended to include the Commissioner's functions that relate to the RFA in their annual reporting requirements.
- d. Schedule 14ZA (Armed Forces Commissioner) is amended so that person who is a member of the Royal Fleet Auxiliary ("RFA") cannot be a Deputy Commissioner.

New Schedule 14ZB – Introductory

395 Paragraph 1 introduces the content of the Schedule, establishing that it confers functions on the Armed Forces Commissioner in relation to members of the RFA.

396 For the purposes of this paragraph, subparagraph (2) explains that references to the Commissioner are to the Armed Forces Commissioner and references to RFA members are to persons who are members of the RFA.

New Schedule 14ZB – Additional general function

397 Paragraph 2 expands the Commissioner's general functions set out in section 365AA(2)(a) of AFA 2006, to include promoting the welfare of RFA members and improving the public's understanding of the welfare issues faced by RFA members.

New Schedule 14ZB – Investigations of general RFA welfare matters

398 Paragraph 3 enables the Commissioner to investigate a "general RFA service welfare matter". The intent of this section is to ensure the scope is broad enough to capture welfare issues experienced by RFA members, provided they relate to issues which have arisen as a result of their ongoing employment with the RFA and are sufficiently serious to warrant investigation.

399 Subparagraph (3) requires the Commissioner to consider a request from any member of the RFA to carry out an investigation under paragraph 3.

400 Subparagraph (4)(a) to (c) exclude certain matters that cannot be investigated under this paragraph due to the unique terms and conditions of service the RFA members hold as both civil servants and merchant seafarers. This means that the Commissioner cannot investigate particular matters processed under policies and procedures for RFA members serving as the civil service of the State, particular complaints brought on or on behalf of trade unions or matters which are subject to collective agreement between the Secretary of State and maritime trade unions.

401 Subparagraph (4)(d) excludes any other matter which falls within paragraphs (a) to (e) of section 340IA of AFA 2006 (Commissioner investigations of general service welfare matters).

- 402 Subparagraphs (4) and (5) ensure that although the Commissioner cannot investigate certain matters under subparagraph (4) and subsections 340IA(a) to (e) of AFA 2006, the Commissioner may still investigate issues that may have otherwise been brought to the Commissioner's attention. For example, where an issue is referred to the Commissioner that would be more appropriate for the matter to be referred to the appropriate complaints process, whether it be the civil service under the state or a trade union. An example of this would be if an RFA member or trade union raised a complaint to the Commissioner on a particular subject such as pay, working conditions or grievances against colleagues. However, a complaint may indicate wider systemic issues that could potentially affect the welfare of other RFA members. These wider systemic issues could then be a matter that can be investigated under this provision.
- 403 Subparagraph (6) places a requirement on the Secretary of State to co-operate with, and give reasonable assistance to, the Commissioner in relation to an investigation under this paragraph. The Secretary of State must also consider any findings or recommendations made by the Commissioner in connection with an investigation under this paragraph.
- 404 For the purposes of this paragraph, subparagraph (7) defines:
- a. "collective agreement" as having the same meaning as in the Trade Union and Labour Relations (Consolidation) Act 1992 (see section 178(1) of that Act).
 - b. "maritime trade union" as meaning any trade union, within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992, whose members include RFA members.

New Schedule 14ZB – Power of entry

- 405 Paragraph 4 confers on the Commissioner powers of entry to RFA sites. It specifies that this power of entry includes certain actions, including to observe activities at those sites and to inspect and take copies of documentation. These actions are set out in subparagraph (1).
- 406 Subparagraph (2) makes reference to subparagraph (1)(c) and provides that when inspecting and taking copies of any document kept in electronic form, the Commissioner can require such document to be produced in a form which is legible or which can readily be made legible, and can be taken away.
- 407 Subparagraph (3) and (4) require that prior to relying on their powers of entry the Commissioner should provide such notice to the Secretary of State as they consider appropriate. Where they consider that to provide such notice would defeat the object of their powers of entry, they may provide no notice at all only where their visit relates to RFA premises within the UK. For RFA premises outside of the UK the Commissioner must give notice of the proposal to visit within such a period as the Commissioner considers appropriate.
- 408 Subparagraph (5) enables the Commissioner to be accompanied by any person of their choosing to the premises and bring anything required for the purpose of exercising their powers of entry. It also places an obligation on the Commissioner to provide evidence of their identity and outline the purpose of exercising their power, should this be requested by a person on the premises.
- 409 Subparagraph (6) ensures that national security and personal safety considerations can be considered, even in instances where no notice of a visit is provided by the Commissioner. To achieve this subparagraph (6) enables the Secretary of State to prevent or restrict the Commissioner's powers of entry and related actions under subparagraph (1) (generally or in a particular case) where they consider it necessary to do so in the interests of national security

or for the safety of any person (which could include the safety of RFA members on the site, or the Commissioner themselves).

410 Subparagraph (7) sets out the instances in which the Commissioner may not exercise the powers under subparagraph (1). This includes when the Commissioner has reasonable grounds to believe an item is subject to legal privilege; and also prohibits exercising the power to require a person to do anything that they could not be compelled to do in civil proceedings before the High Court (or, in Scotland, the Court of session).

411 For the purposes of this paragraph, subparagraph (8) defines:

- a. “item subject to legal privilege” in England and Wales as the definition provided in the Police and Criminal Evidence Act 1984. In Scotland as the definition provided in section 412 of the Proceeds of Crime Act 2002. In Northern Ireland as the definition provided in the Police and Criminal Evidence (Northern Ireland) Order 1989.
- b. “premises” as including any place and, in particular, includes any vehicle, ship, aircraft, tent or movable structure.
- c. “RFA premises” as any premises which (at the time of exercise of the power under subparagraph (1)) are permanently or temporarily occupied or controlled for the purposes of the RFA but are not service living accommodation. “For the purposes of” has not been further defined and should be given its ordinary meaning. Privately-owned property, land and premises owned by members of the RFA for private use unconnected to their ongoing employment with the RFA would not be captured by the definition.

412 Subparagraph (9) specifies that in the definition of “RFA premises” in subparagraph (8), “service living accommodation” has the meaning given by section 96 of AFA 2006 as if references to His Majesty’s forces and the persons within subsection (1A) of that section included RFA members.

New Schedule 14ZB – other powers

413 Paragraph 5 expands section 340J and section 340K of AFA 2006 to include the Commissioner’s investigations into general RFA welfare under paragraph 3.

New Schedule 14ZB – reports

414 Paragraph 6 expands section 340LA of AFA 2006 (report and recommendations of Commissioner: general service welfare investigations) to include general RFA welfare investigations under paragraph 3.

Clause 32: Transfers between regular and Reserve Forces

415 Clause 32 amends sections of RFA 1996 and AFA 2006 to enable volunteer reservists at or below the rank of Warrant Officer from the Regular Forces to transfer to the Volunteer Reserve without having to leave one force and rejoin. This would also enable the same seamless transfer between the Reserve Forces of the UK (as set out in section 1 of RFA 1996) and the Regular Forces.

416 Subsection 2 adds a sentence in subsection 3 to section 2 (membership of the Reserve Forces) of RFA 1996 which would read: ‘men transferred to that force under regulations made under section 331 of the Armed Forces Act 2006’.

417 Subsection 3 adds a new subsection (2A) to section 4 of RFA 1996 (orders and regulations concerning the Reserve Forces) to allow for regulations to be made for persons to be able to transfer from the volunteer Reserve Forces to the Regular Force.

- 418 Subsection 4 adds a new subsection in section 331 in AFA 2006 to allow for regulations to be made with regards to a person's eligibility to be transferred into the volunteer reserve.
- 419 Clause 32 will only apply to the ranks of warrant officers and below. Officers are appointed under commissioning warrants (secondary legislation) that will be amended to ensure that the same effect is achieved for officers.

Clause 33: Call out for permanent service

- 420 This clause amends provisions in RFA 1996 to enable the Secretary of State to make an order to disapply aggregate service for members of the Reserve Force on call out under sections 52 and 54 of RFA 1996.
- 421 Subsection (1) establishes that Part 6 of RFA 1996 (call out for permanent service) will be amended. The effect of these amendments is to enable the Secretary of State to disapply aggregate service under call-out when warlike operations are in preparation or in progress or there is national danger, great emergency or attack on the UK.
- 422 Subsection (2) amends section 53(11) (maximum duration of service on call out under section 52) by inserting new subparagraphs (a) and (b) to allow aggregate service to be disapplied under this section. The insertion of the new subparagraph (b) reflects the existing wording in relation to the ability to extend the maximum duration of service on call-out under section 53 from 3 years to 5 years and makes no practical changes to that provision.
- 423 Subsection (3) makes a consequential amendment to section 53A(4) (agreement to alter limit in section 53) to ensure that the previous reference to section 53(11) remains specific to the ability to extend the maximum duration of service under the new subparagraph (11)(b).
- 424 Subsection (4) amends section 55(11) (maximum duration of service on call out under section 54) by inserting new subparagraphs (a) and (b) to allow aggregate service to be disapplied under this section. The insertion of the new subparagraph (b) reflects the existing wording in relation to the ability to extend the maximum duration of service on call-out under section 55 from 12 months to 2 years and is makes no practical changes to that provision.
- 425 Subsection (5) makes a consequential amendment to section 55A(4) (agreement to alter limit in section 55) to ensure that the previous reference to section 55(11) remains specific to the ability to extend the maximum duration of service under the new subparagraph (11)(b).

Clause 34: Recall for service

- 426 Subsection (1) establishes that Part 7 of RFA 1996 (recall for service of officers and former servicemen) will be amended. The overall effect of these amendments is to introduce recall liability for former members of the Volunteer Reserve Forces (Other Ranks), increase the age limit for recall to 65, harmonise the recall liability period on leaving service, enable the disapplication of aggregate service under recall and create a new recall power (recall for warlike preparations).
- 427 Subsection (2) amends the heading of Part 7 to reflect the fact that as a result of these amendments, former Volunteer Reserves will also be able to be recalled under this Part.
- 428 Subsection (3) similarly amends the heading of section 65 (liability of officers and former servicemen to be recalled) to reflect the fact that former volunteer reserves will have a liability to be recalled under this section. This subsection also adds a new provision to section 65 (new subsection (2A) to clarify that a person who is recalled for service as a member of any of the volunteer Reserve Forces is, while in service under the recall order concerned, deemed to be enlisted in that volunteer Reserve Force.

- 429 Subsection (4) makes a number of amendments to section 66 (persons who may be recalled under Part 7):
- 430 Subsection (4)(a) inserts a new subparagraph (1)(c) into section 66 to provide that persons who have served as an Other Rank in the volunteer Reserve Forces, other than as a special member of such a force, and have not become an officer since being discharged, will have recall liability under this section.
- 431 Subsection (4)(b)(i) inserts a reference to new subsection (1)(c) into subsection (2) to make provision for when section 66 does not apply to these individuals.
- 432 Subsection (4)(b)(ii) amends the upper age limit for recall liability for individuals who meet the criteria in section 66(1)(b) or (c) for recall liability under this section from 55 to 65.
- 433 Subsection (4)(b)(iii) removes subparagraphs (b) and (c) such that exemptions from recall liability under subsection (2) will no longer be based on the amount of time which has passed since a person's discharge from service or transfer to the reserves.
- 434 Subsection (4)(c) removes subsection (3) which is consequential on the changes above as date of discharge or transfer to the reserve will no longer be relevant when determining exemption from recall liability under subsection (2).
- 435 Subsection (4)(d) removes the reference to subsection (2) in subsection (4). This is consequential on the changes above as date of discharge or transfer to the reserve will no longer be relevant when determining exemption from recall liability under subsection (2).
- 436 Subsections (5) and (6)(a) and (b) make amendments to sections 68 (recall for national danger, great emergency or attack on the UK) and 69 (maximum duration of service on recall) to reflect the new recall provision inserted by virtue of subsection (7) of clause 34.
- 437 Subsection (6)(c) inserts a new subparagraph (a) into section 69(6) to allow aggregate service to be disappplied under this section. The insertion of the new subparagraph (b) reflects the existing wording in relation to the ability to extend the maximum duration of service on recall under section 68 from 3 years to 5 years and makes no practical changes to that provision.
- 438 Subsection (7) inserts new sections 69A (Recall for warlike operations) and 69B (Maximum duration of service on recall under section 69A) into RFA 1996. Defence is already empowered to call out personnel for warlike operations (section 54) but is not currently empowered to recall personnel for the same purpose (section 68). Accordingly, this is a small change which represents an amalgamation of what is already in place, to ensure that, in the event of a national crisis, defence is able to utilise all means to generate the mass of people it needs to plan, train, equip personnel and prepare to deliver warfighting and home defence capabilities. New sections 69A and 69B largely consolidate the existing provisions under sections 54 (call out for warlike operations), 55 (maximum duration of service on call out under section 54), 68 (recall for national danger, great emergency or attack on the UK) and 69 (maximum duration of service on recall under section 68), but ensure that recall is possible for warlike preparations. Beyond this, the main substantive change is the ability to disapply aggregate service in new section 69B(6).

New Section 69A: Recall for warlike operations

- 439 Subsection (1) enables the Secretary of State to make an order under this section authorising the recall under this Part of persons to whom section 66 applies if it appears to the Secretary of State that warlike operations are in preparation or progress.

- 440 Subsection (2) provides that a recall order under this section authorises, subject to new subsection (3), the recall of any person to whom section 66 applies or, if the order is so limited, any such person who is of a description specified in the order.
- 441 Subsection (3) provides that a recall order under this section does not authorise the recall of any person to whom section 66 applies who is not liable to be recalled under the order by virtue of regulations made by virtue of section 73 (the power to exempt persons from or relax recall liability conferred on the Defence Council) or an exemption granted on an application under regulations under section 79 (individual exemptions from recall).
- 442 Subsection (4) provides that a recall order under this section can only remain in force for 12 months (unless an order under subsection (5) is made) and has effect (subject to the 12-month time limit or to any order under subsection (5)) until it is revoked.
- 443 Subsection (5) provides that the Secretary of State may, before the end of the 12 months, make an order providing that a recall order under this section ceases to authorise the recall of any person who is not in service under the order.
- 444 Subsection (6) provides that the restriction of a recall order under subsection (5), or by the 12 month limit, does not affect the operation of any recall notice served on any person before the day on which an order under subsection (5) is made or, as the case may be, the day specified in the recall order for the purposes of the 12 month limit.
- 445 Subsection (7) allows the Secretary of State to make an order revoking a recall order under this section (whether or not its effect has been restricted as mentioned in subsection (5)).
- 446 Subsection (8) provides that where an order under subsection (7) revoking a recall order under this section is made, the recall order ceases to authorise the recall of anyone who could otherwise be recalled on the authority of that order (including anyone served with a recall notice before the revocation order who has not been accepted into service); and any person in service under the recall order is entitled to be released or discharged from that service.
- 447 Subsection (9) provides that the making of any recall order under this section, or any order under subsection (5) or (7), must be reported to each House of Parliament without delay.

New Section 69B: Maximum duration of service on recall under section 69A

- 448 Subsection (1) establishes when persons in service under a recall order under section 69A (“the recall order”) are entitled to be released from service (in the case of officers) or discharged (in the case of Other Ranks).
- 449 Subsection (2) provides that a person is (if not released or discharged sooner) entitled to be released from service or discharged when their current service under the recall order, or their current service and any relevant service in aggregate, exceeds 12 months.
- 450 Subsection (3) allows a person in service under the recall order to agree to the extension of their period of service by up to 12 months beyond the day on which they would otherwise be entitled to be released or discharged.
- 451 Subsection (4) states that an agreement under subsection (3) may not be entered into when the person concerned could not be served with a recall notice on the authority of the order or any other recall order; or when there is more than 12 months before the person would otherwise be entitled to be released or discharged by virtue of subsection (2) or subsection (5).
- 452 Subsection (5) provides that a person who has entered into an agreement under subsection (3) is no longer entitled to be released or discharged on the day they would otherwise be so

entitled and is instead entitled to be released from service or discharged at the end of the period specified in the agreement.

453 Subsection (6) enables the Secretary of State to, via signed order, provide that, in the case of such descriptions of person as may be specified in the order, aggregate service may be disappplied for the purposes of calculating their maximum service. This is the new provision that enables the disapplication of service in certain circumstances. This change will help to ensure that defence mitigates the risk of being unable to call on the people with the skills and experience it requires at times of need.

454 Subsection (6) also allows the maximum duration of service to be extended from 12 months to 2 years, which is the same as currently applies to members of the Reserve Forces called out under section 54.

455 Subsection (7) provides that the making of an order under subsection (6) must be reported to each House of Parliament without delay.

456 Subsection (8) defines “relevant service” as meaning any service under this Part, or under Part 4, 5 or 6, within the 3 years immediately preceding the day on which a person’s current service under the recall order began.

Clause 35: Sections 33 and 34: consequential amendments

457 This clause makes consequential amendments to RFA 1996 which flow from the changes introduced by clauses 33 and 34.

458 Consequential changes to RFA 1996 are as follows:

- a. Amendments to sections 34, 45, 60, 72, 75, 77 and 81, which all cover provisions around release from service after personnel have been recalled to full time service, are needed to reflect the fact in future there will be more than one recall option and therefore seeks to provide clarity and prevent any confusion in this space.
- b. Additionally, for the same reason, section 125A will be amended, which covers the supply of contact details by HMRC for those personnel defence wishes to recall to full time service.
- c. Section 127 is also amended so that the meaning of “prescribed” for the purposes of new Part 7 of Schedule 9 will not be captured by the definition in section 127. Instead, it will have the meaning in section 77.

459 Similarly, section 1 of the Reserve Forces (Safeguard of Employment) Act 1985 will be amended, which covers obligations covering a person’s return to civil employment after a period of recall to full-time service.

460 Finally, for the same reason, section 368 of AFA 2006 will be amended to reflect the addition of other recall options to the extant list which enable defence to recall personnel to full time service in certain circumstances.

Clause 36: Sections 32 and 33: transitional classes

461 Clause 36 introduces Schedule 5, which amends section 129 of, and Schedule 9 to, RFA 1996 (application of Act to members of transitional classes) to make transitional provision in connection with the provision made by clauses 33 and 34.

Schedule 5: Call out and recall for service: transitional classes

462 Paragraph 2(1) of Schedule 5 amends section 129 (application of Act to members of transitional classes) as follows:

- 463 The references to “members of the Reserve Forces” in subsections (1) and (3) of section 129 are removed to reflect the fact that new transitional classes are being created that will no longer just be applicable to members of the Reserve Forces.
- 464 Two new transitional classes are created under new subsection (1)(c) and (d) of section 129 – the third transitional class and the fourth transitional class.
- 465 Subsection (3) of section 129 is amended to state that “the third transitional class” is to be construed in accordance with Part 5 of Schedule 9, and that “the fourth transitional class” is to be construed in accordance with Part 7 of Schedule 9 RFA 1996.
- 466 Paragraph 3 (2) and (3) of Schedule 5 amends Schedule 9 of RFA 1996 to remove references to “members of the Reserve Forces” in the headings of Parts 1 and 3 of Schedule 9 to reflect the fact that new transitional classes are being created that will no longer just be applicable to members of the Reserve Forces.
- 467 Paragraph 3(4) amends Part 4 of Schedule 9 of RFA 1996 to provide that section 53 (maximum duration of service on call out under section 52) and section 55 (maximum duration of service on call out under section 54) RFA 1996 apply differently in relation to members of the second transitional class. These sections will apply as if the changes made under clause 31 in relation to disapplication of aggregate service were not made to RFA 1996.
- 468 Paragraph 3(5) of Schedule 5 inserts new Parts 5 to 8 into Schedule 9 RFA 1996 (see further detail below).

New Parts 5 and 6 of Schedule 9 RFA 1996 – the third transitional class

- 469 Part 5 establishes who the members of the third transitional class are and what is required to become and/or remain a member of that class, and Part 6 explains how RFA 1996 applies to those individuals in relation to aggregate service.
- 470 Paragraph 34(1) states that the third transitional class is to consist of people who:
- a. Are members of a Reserve Force;
 - b. are not members of the original transitional class or the second transitional class;
 - c. for the time being:
 - i. fall within paragraph 35 or 36; and have made an election under paragraph 38 which has not been revoked (this is the opt-out provision), or
 - ii. fall within paragraph 37 and have not made an election under paragraph 39 (this is the opt-in provision).
- 471 Paragraph 34(2) defines “the appointed day” for the purposes of Part 5 of the Schedule as meaning the day on which paragraph 3(5) of Schedule 5 to the Armed Forces Act 2026 (which inserts this Part of this Schedule) comes into force.
- 472 Paragraph 35 establishes the criteria required to fall within this paragraph for the purposes of paragraph 34(1). A person who becomes a member of a Reserve Force on or after the appointed day, on transfer to the Reserve from the regular services, falls within paragraph 35 if:
- a. they joined the regular services before the appointed day and did not re-enlist, re-engage or extend their service, or become an officer, in the regular services on or after that day;

- b. they have remained a member of the Reserve Force concerned without interruption since being transferred from the regular services; and,
- c. they have not extended their service in, or become an officer of, that force since being so transferred.

473 Paragraph 36 establishes the criteria required to fall within this paragraph for the purposes of paragraph 34(1). A person who was a member of a volunteer Reserve Force immediately before the appointed day falls within paragraph 36 if:

- a. they have remained a member of that force without interruption since that time; and,
- b. they have not extended their service in, or become an officer of, that force since that time.

474 Paragraph 37 establishes the criteria required to fall within this paragraph for the purposes of paragraph 34(1). A person who was a member of an ex-regular Reserve Force immediately before the appointed day falls within paragraph 37 if:

- a. they have remained a member of that force without interruption since that time; and,
- b. they have not extended their service in, or become an officer of, that force since that time.

475 Paragraph 38 sets out how an election can be made for individuals who fall within paragraphs 35 or 36 to become a member of the third transitional class (i.e. to opt-out of the changes to RFA 1996 made by clause 32):

- a. Subparagraph (1) provides that a person may make an election (opt-out) under this paragraph if they fall within either paragraph 35 or 36 on the day the election is made.
- b. Subparagraph (2) provides that a person who is a member of the regular services may make an election (opt-out) under this paragraph if:
 - i. they joined the regular services before the appointed day; and,
 - ii. they have not re-enlisted, re-engaged or extended their service, or become an officer, during the period beginning with the appointed day and ending with the day on which the election is made.
- c. Subparagraph (3) states that an election must be made within such period as may be prescribed and in the prescribed manner. "Prescribed" has the meaning in section 127 RFA 1996: prescribed by orders or regulations under section 4.
- d. Subparagraph (4) states that an election is revocable.

476 Paragraph 39 sets out how an election can be made for individuals who fall within paragraph 37 to no longer be a member of the third transitional class (i.e. to opt-into the changes to RFA 1996 made by clause 33):

- a. Subparagraph (1) provides that a person who is a member of an ex-regular Reserve Force may make an election (opt-in) under this paragraph if they fall within paragraph 37 on the day the election is made.
- b. Subparagraphs (2) provides that an election under this paragraph must be made within the prescribed manner. Prescribed has the meaning in section 127 RFA 1996: prescribed by orders or regulations under section 4.

- c. Subparagraph (3) provides that a person who makes such an election is no longer a member of the third transitional class.
- d. Subparagraph (4) states that such an election is irrevocable.

477 Part 6 makes provision for how the amendments introduced by clause 31 are to apply to the third transitional class.

478 Paragraph 40 establishes that RFA 1996 is to apply in relation to the call out of members of the third transitional class in accordance with new Part 6 of Schedule 9.

479 Paragraphs 41 and 42 provide that section 53 (maximum duration of service on call out under section 52) and section 55 (maximum duration of service on call out under section 54) RFA 1996 apply differently in relation to members of the third transitional class. These sections will apply as if the changes made under clause 32 in relation to disapplication of aggregate service were not made to RFA 1996.

New Parts 7 and 8 of Schedule 9 RFA 1996 – the fourth transitional class

480 Part 7 establishes who the members of the fourth transitional class are and what is required to become and/or remain a member of that class, and Part 8 explains how RFA 1996 applies to those individuals in relation to recall.

481 Paragraph 43(1) states that the fourth transitional class is to consist of people who have a recall liability under Part 7 of RFA 1996 (including the changes made by clause 33) and for the time being:

- a. fall within paragraphs 44 or 45 and have made an election under paragraph 49 (which has not been revoked) (this is the opt-out provision); or,
- b. fall within paragraphs 46, 47 or 48 and have not made an election under paragraph 50 (this is the opt-in provision).

482 Paragraph 43(2) defines “the appointed day” for the purposes of Part 7 of the Schedule as meaning the day on which paragraph 3(5) of Schedule 5 to the Armed Forces Act 2026 (which inserts this Part of this Schedule) comes into force.

483 Paragraph 44 establishes the criteria required to fall within this paragraph for the purposes of paragraph 43(1)(b)(i). A person who, immediately before the appointed day, was serving in the regular services falls within this paragraph if they have not since that time:

- a. re-enlisted, re-engaged or extended their service, or become an officer, in the regular services; or,
- b. after transferring to a Reserve Force, extended their service, or became an officer, in that Force or joined another Reserve Force.

484 Paragraph 45 establishes the criteria required to fall within this paragraph for the purposes of paragraph 43(1)(b)(i). A person who, immediately before the appointed day, was a member of a volunteer Reserve Force falls within this paragraph if they have not since that time:

- a. extended their service, or become an officer, in that force or joined another Reserve Force; or,
- b. joined the regular services or re-enlisted, re-engaged or become an officer, in those services.

485 Paragraph 46 establishes the criteria required to fall within this paragraph for the purposes of paragraph 43(1)(b)(ii). A person who, immediately before the appointed day, was a member of an ex-regular Reserve Force falls within this paragraph if they have not since that time:

- a. extended their service, or become an officer, in that force, or joined another Reserve Force; or,
- b. joined the regular services or re-enlisted, re-engaged or become an officer, in those services.

486 Paragraph 47 establishes the criteria required to fall within this paragraph for the purposes of paragraph 43(1)(b)(ii). A person who had recall liability under section 66 (as it then had effect) immediately before the appointed day falls within this paragraph if they have not since that time:

- a. joined the regular services or re-enlisted, re-engaged or become an officer, in those services; or,
- b. joined, re-enlisted, re-engaged or become an officer, in a Reserve Force.

487 Paragraph 48 establishes the criteria required to fall within this paragraph for the purposes of paragraph 43(1)(b)(ii). A person who, immediately before the appointed day, did not have recall liability under section 66 (as it then had effect), but who would otherwise as a result of the changes made by clause 33 falls within this paragraph, provided they have not since that time:

- a. joined the regular services or re-enlisted, re-engaged or become an officer, in those services; or,
- b. joined, re-enlisted, re-engaged or become an officer, in a Reserve Force.

488 Paragraph 49 sets out how an election can be made to become a member of the fourth transitional class (i.e. to opt-out of the changes to RFA 1996 made by clause 34) by a person who falls within paragraph 44 or 45:

- a. Subparagraph (1) provides that a person may make an election (opt-out) under this paragraph if they fall within paragraph 44 or 45 on the day the election is made.
- b. Subparagraph (2) states that an election must be made within such period as may be prescribed and in the prescribed manner. "Prescribed" has the meaning as in section 77 RFA 1996: prescribed in regulations made by the Defence Council.
- c. Subparagraph (3) states that an election is revocable.

489 Paragraph 50 sets out how an election can be made to leave the fourth transitional class (i.e. to opt-into the changes to RFA 1996 made by clause 33) by a person who falls within paragraphs 46, 47 or 48:

- a. Subparagraph (1) provides that a person may make an election (opt-in) under this paragraph if they fall within paragraph 46, 47 or 48 on the day the election is made.
- b. Subparagraph (2) states that an election must be made within the prescribed manner. Prescribed has the meaning as in section 77 RFA 1996: prescribed in regulations made by the Defence Council.
- c. Subparagraph (3) states that a person who has made an election under this paragraph is no longer a member of the fourth transitional class.

d. Subparagraph (4) states that an election is irrevocable.

490 Part 8 makes provision for how the amendments introduced by clause 34 are to apply to the fourth transitional class.

491 Paragraph 52 establishes that Part 7 of RFA 1996 (recall for service of officers and former servicemen and Reserves) is to apply in relation to the recall of members of the fourth transitional class in accordance with new Part 8 of Schedule 9.

492 Paragraphs 53 to 55 provide that sections 65 (liability of officers and former servicemen and Reserves to be recalled), 66 (persons who may be recalled under Part 7) and 69 (maximum duration of service on call out under section 68) RFA 1996 apply to members of the fourth transitional class as if the changes under clause 34 were not made to RFA 1996.

493 Paragraph 56 provides that new sections 69A and 69B RFA 1996 (recall for warlike operations and maximum duration of such recall) do not apply in relation to the recall of members of the fourth transitional class.

Clause 37: Punishments etc of offences of desertion or absence without leave

494 Clause 37 amends section 98 of RFA 1996 to close a loophole. Currently, failure to attend for service on call out or recall can constitute an offence under section 96 RFA 1996. Section 98 RFA 1996 then sets out the punishment attached to these offences. However, section 98 RFA 1996 only includes a punishment for members of a reserve force and consequently is only applicable to offences related to failure to attend for call out, and not failure to attend for recall. This is because individuals liable to recall are not members of a reserve force under the legislation (see section 1 RFA 1996) and are only regarded as members of the regular or Reserve Forces following acceptance into service (see section 368 AFA 2006).

495 This could therefore give rise to a situation where a person who failed to attend for service following receipt of a recall notice could be convicted of an offence but could not be awarded a punishment under section 98 RFA 1996.

496 The amendment changes the wording of section 98 RFA 1996 from “member of a reserve force” to “person” to ensure that the punishments under this section are also applicable to individuals who have committed an offence under section 96 RFA 1996 for failure to respond to a recall notice.

Clause 38: Reserve Forces and Cadets Association

497 Subsection (1) inserts a new section 111A into RFA 1996, which establishes the Reserve Forces and Cadets Association (RFCA) as a body corporate and provides that it has functions conferred on it by or under RFA 1996 or other enactments.

498 Subsection (2) abolishes the Associations established under section 110 RFA 1996 and the joint committee they appointed under section 116 RFA 1996 (“the abolished bodies”).

499 Subsection (3) introduces Schedule 6.

- a. Part 1 inserts a new Schedule 4A (constitution and governance of the RFCA).
- b. Part 2 provides for transfer schemes for staff, property, rights and liabilities.
- c. Part 3 makes consequential amendments and repeals.

Schedule 6: Reserve Forces and Cadets Association

500 Paragraph 1 confirms the RFCA’s status as a Crown body.

501 Paragraphs 2 to 5 sets out the composition of the Board:

- a. An independent Chair appointed by the Defence Council;
- b. 2 to 5 additional non-executive members appointed by the Defence Council;
- c. Chief Executive and 1 to 3 further executive members, appointed by the non-executive members with the consent of the Defence Council.
- d. Non-executive members must be appointed for a fixed term of not less than 3 years and not more than 5 years, and may not be appointed (or remain) as a non-executive member if they are, or become, a member of the RFCA's staff. A non-executive member holds and vacates office in accordance with the terms of their appointment, may resign by written notice to the Defence Council, and may be removed or suspended by the Defence Council where appropriate. A person may not be appointed as a non-executive member more than three times. The RFA may, with Defence Council approval, pay remuneration and allowances to non-executive members and may pay or provide for pensions, allowances and gratuities to or in respect of former or current non-executive members.
- e. Executive members must be RFCA employees.
- f. While the existing regional associations are abolished as separate legal entities, Schedule 6 requires the Reserve Forces and Cadets Association to establish regional councils and committees. This is intended to preserve local engagement with reserve units, cadet forces, employers and communities, and to ensure that regional knowledge continues to inform the exercise of the Association's statutory functions.

502 Paragraphs 6 to 9 covers matters relating to the RFCA's staff.

503 Paragraphs 10 to 13 gives the RFCA the power to set up committees and sub-committees and the power to delegate functions. The RFCA can establish committees and sub-committees (that may have external members) and can delegate functions to them. The RFCA can also delegate functions to members of the RFCA or staff of the RFCA.

504 Paragraph 14 requires the RFCA to establish committees known as regional councils for each area of the UK specified in regulations made by the Defence Council under subparagraph (2). These areas combined must cover the whole of the UK (and for the purposes of the regulations, the UK includes the Channel Islands and the Isle of Man). This is a key structural element of the new body, and the regional councils will ensure that the RFCA remains connected to regional volunteer, reserve and cadet communities and continues the local engagement role previously performed by the 13 associations. Subparagraph (4) gives the Defence Council the power to make provision in relation to the regional councils covering matters such as membership of the councils and the exercise of functions.

505 Paragraphs 15 to 19 cover proceedings, financial arrangements, powers, accounts, audit, and the RFCA seal. The RFCA must keep proper accounts, prepare annual statements, provide them to the Comptroller and Auditor General ("C&AG"). The C&AG must examine, certify and report on each statement, and the Defence Council must lay each certified statement before Parliament.

506 Paragraph 20 provides transitional arrangements for the appointment of the first Chief Executive.

Schedule 6: Part 2 Transfer of staff and property of abolished bodies

507 Part 2 provides powers for staff and property transfer schemes, including the ability to:

- a. Transfer rights or liabilities that could not otherwise be transferred.

- b. Include TUPE-style protections for staff.
- c. Ensure continuity of ongoing legal proceedings and documents.

Schedule 6: Part 3 Consequential amendments and repeals

508 Part 3: Removes redundant provisions relating to area associations and the power to create joint committees by updating RFA 1996 and other enactments to reflect the establishment of the RFCA and the Volunteer Cadet Corps as an MoD sponsored cadet force. Key changes include the amendment of various Acts to remove references to the Associations and insert references to the RFCA as a public authority or Crown body, including the Public Records Act 1958, Parliamentary Commissioner Act 1967, Freedom of Information Act 2010 and Equality Act 2010.

Clause 39: Parliamentary control of air forces numbers

509 Clauses 39 and 40 omit sections of RFA 1996 and amends Section 1 of the Air Force (Constitution) Act 1917, to remove the statutory requirements (where they exist) to request maximum numbers of regulars and reserves in each of the Armed Forces as well as the requirement to report the maximum numbers that can be employed on Full Time Reserve Service, Additional Duties Commitment and membership of the High Readiness Reserve and Sponsored Reserve.

510 Clause 39 specifically amends section 1 (raising and numbers or Air Force) of the Air Force (Constitution) Act by removing the requirement 'from time to time' to provide numbers on the persons in the RAF to Parliament. The title will be changed to 'raising air forces'.

Clause 40: Parliamentary control of reserve force numbers and commitments

511 Clause 40 omits section 3 of RFA 1996 (Control of numbers in the Reserve Forces), section 26 (Parliamentary control of Commitments), section 50(6) (persons called out not to be reckoned in regular service numbers) and section 65(5) (persons recalled not to be reckoned in regular service numbers).

512 Clause 40 omits subsections (1) and (2) of section 36 (Parliamentary control and reports: special agreements) and amends the title of the section to 'Reports: special agreements), as well as subsections (1) and (2) of section 47 (Parliamentary control and reports: special members of a reserve force) and amends the title of the section to 'Reports: special members of a reserve force).

513 Clause 40 also omits subsection (6) of section 50 (persons called-out not to be reckoned in regular service numbers), and subsection (5) of section 65 (persons recalled not to be reckoned in regular service numbers).

Clause 41: Prohibition on sentences of death

514 Clause 41 amends section 2(4) of the VFA 1952 to make clear that a visiting force service court cannot pass a capital punishment sentence in proceedings conducted in the UK. This amendment will remove the possibility, implicit in VFA 1952, that a visiting force could ask for an alleged offender (who is a member of their visiting force) to be transferred into its custody and conduct service court proceedings in the UK that could lead to the death penalty being issued. There is no basis in the North Atlantic Treaty Organization Status of Forces Agreement 1951 ("NATO SOFA 1951") to refuse such a request, but should such circumstances ever arise, doing so could potentially be in breach of the UK's obligations under the European Convention on Human Rights.

Clause 42: Evidence of act being carried out in course of duty

- 515 Clause 42 amends section 11(4) of VFA 1952 and inserts sub-sections 11(5) to (8) to enable, in line with the United Kingdom's obligations under the NATO SOFA 1951, State parties to negotiate over primacy of jurisdiction, in cases involving concurrent jurisdiction, in the event of a dispute between the UK and the visiting force.
- 516 The amendment to section 11(4) will remove the ability for a court to determine the question of fact of whether a member of a visiting force or a member of a civilian component of such a force was on duty at the time of an alleged offence. The insertion of sections 11(5) to 11(8) provides for a new legislative mechanism on how disputes which relate to whether a member of a visiting force or a member of a civilian component of such a force was on or off duty and how a visiting force certificate is dealt with. The new mechanism will empower the Secretary of State to decide as a question of fact, based on the facts of each case, whether the visiting force member or member of a civilian component of a force was or was not on duty at the time of the alleged offence. In doing so, the Secretary of State will, in line with the NATO SOFA 1951, determine this narrow issue only, following representations from both the visiting force and the relevant UK prosecution authority. The Secretary of State will issue a certificate outlining that determination.
- 517 Clause 42 also amends paragraph 8(1) and inserts subparagraphs 8(2), (3), (4), and (5) of the Schedule to IHDOA 1964 to align the provisions as amended under VFA 1952 to replicate the new mechanism.

Clause 43: Governance and administration of Ministry of Defence Police

- 518 This clause amends the Ministry of Defence Police Act 1987.
- 519 Subsection (2) amends section 3A (regulations relating to disciplinary matters) to widen the power to make regulations for the MDP to cover matters of governance and administration. It also allows regulations to be made to suspend an individual from their office of constable.
- 520 Subsection (3) amends section 4(1)(a), as a consequence of the amendment to section 3A, so that where disciplinary proceedings are set out in regulations made under sections 3A(1A) or (1B) that regulations must make provision enabling the officer concerned to be represented in those proceedings.
- 521 Subsection (4) amends section 4A (appeals against dismissal) to remove the reference to Schedule 3 to the Police and Fire Reform (Scotland) Act 2012.

Clause 44: Cross-border enforcement powers of Ministry of Defence Police

- 522 This clause amends Part 10 of the Criminal Justice and Public Order Act 1994 to add MDP constables so they can exercise the cross-border power contained in that Part.

Clause 45: Property in possession of the Ministry of Defence Police

- 523 This clause amends section 2 of the Police (Property) Act 1987 (regulations with respect to unclaimed property in possession of police) so that regulations made under that section can allow unclaimed property in the possession of the MDP to be retained for use for police purposes.

Clause 46: Detention etc of persons overseas in cases of mental disorder

- 524 This clause introduces Schedule 7, which amends Schedule 12 to AFA 2006. It makes provision for the temporary detention for assessment and treatment of individuals suffering from mental disorder where certain conditions are met. Principally, it will enable detention of such persons in suitable places other than overseas service hospitals, where detention in such

a hospital is impracticable. The provisions will apply only to persons subject to service law, or civilians subject to service discipline, who are outside the British Islands.

Schedule 7: Detention etc of persons overseas in cases of mental disorder

525 Currently paragraph 2 of Schedule 12 to AFA 2006 allows a commanding officer to make an order for a person's detention provided that:

- a. All of the relevant conditions in paragraph 1 of that Schedule are met; and,
- b. Either two registered medical practitioners recommend that such an order be made or, in urgent cases, one registered medical practitioner recommends that such an order be made.

526 Paragraph 4(2)(c) inserts further provision for urgent cases so that, in circumstances where it is impracticable for the recommendation of a registered medical practitioner to be sought, an order for the person's detention may be made upon recommendation by a registered nurse. Such an order may have effect for up to 5 days, which is consistent with orders made upon the recommendation of one registered medical practitioner pursuant to paragraph 2(2)(b) of Schedule 12. Orders made upon the recommendation of two registered medical practitioners may have effect for up to 28 days.

527 Paragraph 4(3) inserts new subparagraph (aa) into paragraph 2(3) of Schedule 12, which enables a commanding officer to detain a person in a place specified in the order for the purpose of facilitating assessment or treatment where admission to an overseas service hospital is impracticable.

528 Paragraph 5 inserts new subparagraph 2A into Schedule 12, which makes further provision about orders made under paragraph 2(3)(aa). In particular, new paragraph 2A(1) provides that a place may only be specified for a person's detention in an order under paragraph 2(3)(aa) if it appears to the commanding officer that, having regard to the health, safety and dignity of the person and other persons, the place is suitable for the person's detention.

529 Pursuant to new paragraph 2A(2), as soon as practicable after making an order under paragraph 2(3)(aa), and in any event while the order is still in force, the commanding officer must either make an order under paragraph 2(3)(a) or (b) in relation to the person, or make arrangements for the person to be removed to the UK for further assessment or treatment. Where it is impracticable to comply with this requirement, the commanding officer may make one further order under paragraph 2(3)(aa) without obtaining further recommendation of a registered medical practitioner or nurse. Where such an order is made, the commanding officer must as soon as practicable (and in any event while the order is still in force) make an order under paragraph 2(3)(a) or (b) in relation to the person, or make arrangements for the person to be removed to the United Kingdom for further assessment or treatment.

530 Paragraph 6(3)(a) provides that, while in force, an order made under new paragraph 2(3)(aa) is sufficient authority for the person to be taken and conveyed to the place specified in the order.

531 Paragraph 7(3) provides that, where a recommendation is made by a registered nurse under new paragraph 2(2)(c), the recommendation must include a statement that the person needs to be detained in (or admitted to and detained in) a hospital, or detained in another suitable place, urgently, and the urgency makes it impracticable for the recommendation of a registered medical practitioner to be sought before making an order under paragraph 2(3) in relation to the person.

532 Paragraph 9 makes amendments to paragraph 8 of Schedule 12. These amendments will empower the service police, in urgent cases, to enter service living accommodation and

remove a person that is suffering from a mental disorder to a suitable place where it is impracticable to remove them to an overseas service hospital. In determining the suitability of such a place, the service police must have regard to the health, safety and dignity of the person and must consult the patient's commanding officer and a registered medical practitioner or nurse, so far as it is practicable to do so. Where a patient is so removed, they may be detained in the suitable place by their commanding officer. If their commanding officer is absent or otherwise unavailable, they may be detained by an officer under the command of the patient's commanding officer that is of or above the rank of naval lieutenant, military or marine captain or flight lieutenant.

- 533 Paragraph 11 amends paragraph 9 of Schedule 12 to enable the service police to remove a person in a relevant place outside the British Islands to a suitable place where the need to do so is urgent and it is impracticable to detain the patient in an overseas service hospital. In determining the suitability of such a place, the service police must have regard to the health, safety and dignity of the person and must consult the patient's commanding officer and a registered medical practitioner or nurse, so far as it is practicable to do so. Where a patient is so removed, they may be detained in the suitable place by their commanding officer. If their commanding officer is absent or otherwise unavailable, they may be detained by an officer under the command of the patient's commanding officer that is of or above the rank of naval lieutenant, military or marine captain or flight lieutenant. A "relevant place" refers in this context to a place to which the public have access, or any premises permanently or temporarily occupied or controlled for the purposes of any of His Majesty's forces, other than service living accommodation.

Clause 47: Defence functions of the Oil and Pipeline Agency

- 534 Clause 47 inserts into the Oil and Pipelines Act 1985 ("the 1985 Act") new section 2A which makes provision to expand the defence functions of the Oil and Pipelines Agency ("OPA").
- 535 Subsection (1) of new section 2A provides that, in addition to its existing functions under section 2 of the 1985 Act, the OPA may carry out any other activity in connection with the production, conveyance, storage or supply of energy for defence purposes, or enter into an agreement with any other person for the carrying out of such an activity for such purposes. The effect of this provision is to widen the scope of the OPA's functions to include activities in connection with all forms of energy, including fuel or other substances used to produce energy, where that activity is carried out wholly or mainly for the purposes of, or otherwise for the benefit of, the MoD.
- 536 Subsection (2) of new section 2A defines relevant terms.

Clause 48: Protection of military remains

- 537 Clause 48 amends section 1 (Application of the Act) of the Protection of Military Remains Act 1986 to automatically protect all British Military vessels under section 1(b). The amendment also seeks to automatically protect, in the case of the Armed Forces of a country or territory outside the United Kingdom, while the vessel was in the service of or being used by the Armed Forces of that country, the remains of the vessel where they are in United Kingdom waters under section (1A). The overarching purpose of the amendments is to protect vessels that have been sunk or stranded and prevent interference or disturbance to the last resting places of military service personnel as 'Protected Places' regardless of the age of the shipwreck. The effect of the amendments would be that the current age limits under section 1(3)(a) and (b); section 1(4)(a); and section 1(8) for both 'Controlled Sites' and 'Protected Places' will be removed meaning automatic protection will apply for vessels as 'Protected Places' without the need for a designation order – as is the case now. For a vessel to be designated as a 'Controlled Site' a designation order will still be required. This will align the

approach to protecting vessels with the protection for aircraft and will offer a consistent approach to safeguarding the remains of service personnel.

Clause 49: Police and Criminal Evidence (Northern Ireland) Order 1989: updating

538 Clause 49 aligns more closely the Police and Criminal Evidence (Northern Ireland) Order 1989 (“PACE NI”) with the Police and Criminal Evidence Act 1984 (“PACE E&W”) in matters relating to the Armed Forces, and makes some minor amendments to Schedule 2 (preserved powers of arrest) PACE NI.

539 The AFA 2006 made amendments to PACE E&W, but these changes are not mirrored in PACE NI. Consequently, PACE NI makes outdated reference to the repealed single service acts and the Reserve Forces Act 1980, and does not reflect organisational and name changes to some service police forces since the inception of PACE NI. For instance, historically the Royal Marines had their own police force, the “Royal Marines Police”, but in 2009 they were incorporated into the operational command of the Royal Navy Police, whilst the “Royal Navy Regulating Branch” are now called the “Royal Navy Police”.

540 Clause 49 makes the following minor and consequential amendments to PACE NI:

- a. Subsection (2)(a) and (b) amends Article 63A(1B) (fingerprints and samples: supplementary provisions) of PACE NI. Subsection 48(2)(a) substitutes “the Royal Navy Regulating Branch” in Article 63A(1B)(g) with “the Royal Navy Police”. This aligns with sub-subsection 63A(1B)(h) (Fingerprints and samples: supplementary provisions) PACE E&W.
- b. Subsection (2)(b) omits sub-subsection 63A(1B)(j) PACE NI, and reference to “the Royal Marines Police”. This aligns with subsection 63A(1B) (Fingerprints and samples: supplementary provisions) PACE E&W and the omission of “Royal Marines Police” by schedule 16 paragraph 100(b) AFA 2006.
- c. Subsection (3) amends Schedule 2 (preserved powers of arrest) of PACE NI. It omits entries relating to the single service Acts – the Army Act 1955, the Air Force Act 1955, the Naval Discipline Act 1957, along with the Reserve Forces Act 1980, as these Acts have been repealed and replaced by AFA 2006 and RFA 1996 respectively.

Clause 50: Coroners and Justice Act 2009: correcting amendment

541 This clause amends paragraph 5(2)(a) of Part 2 (allowances payable to witnesses) of Schedule 7 to the Coroners and Justice Act 2009 to make it clear that “police force” means “service police force”.

Clause 51: Interpretation

542 This clause defines terms used in the Bill.

Clause 52: Financial provisions

543 This clause enables any expenditure arising under the Bill, whether directly or under other legislation, to be paid out of money provided by Parliament.

Clause 53: Extent in the United Kingdom

544 This Bill will extend to the whole of the United Kingdom subject to the following applying to England and Wales only:

- a. Clause 3 and Schedule 1 (Defence housing and other property), so far as it inserts Chapter 2 of Part 16C of, and Part 4 of Schedule 11A to, AFA 2006.
- b. Clause 5 and Schedule 2 (Sexual harm prevention orders and sexual risk orders).

- c. Clause 8(2) and (3) (Service restraining orders: enforcement etc by civilian courts).
- d. Clause 10 (Assessment etc of risks posed by certain offenders).
- e. Clause 29(2) (Rehabilitation Periods).
- f. Clause 50 (Coroners and Justice Act 2009: correcting Amendments).
- g. Parts 6 and 7 of Schedule 3 (Protection from domestic abuse and stalking) (and clause 6 as far as it relates to those Parts of that Schedule).

545 The following provisions will extend to Scotland only:

- a. Clause 3 and Schedule 1 (Defence housing and other property), so far as it inserts Part 5 of Schedule 11A to AFA 2006.
- b. Clause 8(4) and (5) (Service restraining orders: enforcement etc by civilian courts).
- c. Clause 29(3) and (4) (Rehabilitation Periods).

546 The following provisions will extend to Northern Ireland only:

- a. Clause 3 and Schedule 1 (Defence housing and other property), so far as it inserts Parts 6 and 7 of Schedule 11A to AFA 2006.
- b. Clause 8(6) (Service restraining orders: enforcement etc by civilian courts).

547 Clause 49 (Police and Criminal Evidence (Northern Ireland) Order 1989).

548 Amendments or repeals made by this Bill have the same extent in the UK as the provisions to which they have amended or repealed.

Clause 54: Extent in the Channel Islands, Isle of Man and British Overseas Territories

549 The changes that this Bill makes to AFA 2006 may be extended to the Channel Islands by Order in Council under section 384(1) of 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).

550 The following provisions will extend to the Isle of Man and the British Overseas Territories except Gibraltar:

- a. Clauses 1, 2, 9, 11, 13 to 28, 35(12) and 46;
- b. Clause 3 and Schedule 1 (defence housing and other property), except so far as they insert Chapter 2 of Part 16C of, and Parts 4 to 7 of Schedule 11A to, AFA 2006;
- c. Clauses 51 (interpretation), 52 (financial provision), 54 (extent in Channel Islands, Isle of Man and British Overseas Territories), 55 (commencement and transitional provision) and 56 (short title);
- d. Parts 1 to 5 and 8 of Schedule 3 and clause 7, so far as it relates to those Parts of that Schedule (protection from domestic abuse and stalking);
- e. Schedule 7 (detention etc of persons overseas in cases of mental disorder).

551 His Majesty may by Order in Council provide for clause 31 (Commissioner's functions in relation to the Royal Fleet Auxiliary) and Schedule 4 (Armed Forces Commissioner: functions relating to Royal Fleet Auxiliary) to extend, with or without modifications, to the Isle of Man or any British Overseas Territories, except Gibraltar.

552 An Order in Council may be made under section 384(2) of AFA 2006 to modify any provision of that Act, as amended by this Bill, in its application to the Isle of Man or any British Overseas Territories, except Gibraltar.

553 The changes that this Bill makes to RFA 1996 may be extended by Order in Council to the Channel Islands or the Isle of Man. If such an Order is made under section 132(3) of RFA 1996, 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).

554 The changes that this Bill makes to VFA 1952 may be extended by Order in Council to the Channel Islands or the Isle of Man. If such an Order is made under section 15(1) of VFA 1952, 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).

555 The changes that this Bill makes to IHDOA 1964 may be extended by Order in Council to the Channel Islands or the Isle of Man. If such an Order is made under section 2(1) of IHDOA 1964, 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).

Clause 55: Commencement and transitional provision

556 This clause sets out when different parts of the Bill will come into force, and that the Secretary of State may make transitory, transitional or savings provisions by regulations.

Commencement

557 Clauses 1, 3, 43(1) and (2), 44, 45, and 51 to 56, and Schedule 1 will come into force on Royal Assent. Clauses 19, 20, 32, 39, 40, 43(2) and (3), and 48 will come into force two months after Royal Assent. The remaining provisions of the Act will come into force on such a day (or days) to be appointed by the Secretary of State by way of regulations.

Financial implications of the Bill

558 The provisions of the Bill will have an impact on public expenditure, with these costs met by means of annual votes in the defence budget. The identified provisions that have an impact on the public purse are as follows:

- a. Clause 2 (Armed Forces Covenant) – It is estimated that the implementation of the duty for Government departments could lead to initial training and familiarisation costs ranging from £307,000 to £1.5 million.
 - b. Clause 3 (Defence housing service) – The Defence Secretary and the Prime Minister have announced funding a “total investment of £9 billion over the next decade” to deliver the Defence Housing Strategy via the new Defence Housing Service.
 - c. Clause 4 (Interference with uncrewed devices) – This provision provides powers for defence personnel to authorise the use of approved equipment to detect and prevent certain offences being committed with uncrewed devices (aka drones) at defence sites. Any future additional costs will depend on future policy and threat levels of drones being used in relation to defence sites, and these shall be met by means of annual votes in the defence budget.
- 559 Clause 31 (Commissioner’s functions in relation to Royal Fleet Auxiliary) – While this provision will extend the remit of the Armed Forces Commissioner to cover the Royal Fleet Auxiliary, costs are not expected to impose more than a minimal continuing demand on the annual running costs of the Commissioner.
- 560 Clause 32 (Transfers between regular and Reserve Forces), clause 33 (Call out for permanent service) and clause 34 (Recall for service) - Any future additional costs will be dependent on future requirements of defence.
- a. Clause 38 (Reserves Forces and Cadets Association) – There will be some nominal costs with the establishment of a new NDPB, associated with the recruitment of non-executive directors, although they will not be full-time employees, and costs associated with the TUPE (or similar) transfer of the staff to the NDPB.
 - b. Clause 47 (Defence functions of the Oil and Pipelines Agency) – The MoD require the OPA to provide and store new sources of energy etc (beyond that of solely petroleum-based types). This could lead to additional public expenditure.

Parliamentary approval for financial costs or for charges imposed

561 A money resolution is required for the Bill. A money resolution is required where a bill authorises new charges on the public revenue – broadly speaking, new public expenditure. The most significant new public expenditure will arise from clause 3, which establishes the Defence Housing Service in line with the Government’s 2025 Defence Housing Strategy.

562 New public expenditure is also likely to be incurred under clauses 2, 4, 31 to 34, 38, and 47 of the Bill:

- Clause 2 which puts the Armed Forces Covenant fully into law, so that its principles are enshrined across a broad range of Government-delivered policies and services.
- Clause 4 will allow service police to have the authority to use authorised equipment to detect and prevent threats posed by drones.
- Clause 31 extends the remit of the Armed Forces Commissioner as concerns the Royal Fleet Auxiliary.
- Clauses 32 to 34 will enable service persons to more easily transfer between regular and reserve service whilst clauses 33 and 34 will allow defence to respond to current threats where there is a need to recall for warlike operations.
- Clause 38 deals with the restructuring of the CRFAC and the RFCAs into a NDPD.
- Clause 47 enables the OPA to store new sources of energy on behalf of defence.

563 The Bill does not require a ways and means resolution. A ways and means resolution is required where a bill authorises new charges on people – broadly speaking, new taxation or other similar charges. Nothing in the Bill authorises such charges.

564 The money resolution passed on 26 January 2026 and continues to apply to the Bill.

Compatibility with the European Convention on Human Rights

565 Lord Coaker, Defence Minister, has made a statement under section 19(1)(a) of the Human Rights Act 1998 that, in his view, the provisions of the Bill are compatible with the Convention rights.

Related documents

566 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>
- Reserve Forces Act 1996 <https://www.legislation.gov.uk/ukpga/1996/14/contents>
- House of Commons Defence Committee Inquiry into the Armed Forces Covenant <https://committees.parliament.uk/work/8757/the-armed-forces-covenant/publications/>
- The Defence Housing Strategy 2025 <https://www.gov.uk/government/publications/the-defence-housing-strategy-2025>
- The Strategic Defence Review 2025 <https://www.gov.uk/government/publications/the-strategic-defence-review-2025-making-britain-safer-secure-at-home-strong-abroad>
- Select Committee on the Armed Forces Bill Strategic Defence Review 2025: Armed Forces Bill 2026 – First Special Report of Session 2024-26 <https://committees.parliament.uk/publications/52862/documents/294854/default/>
- Government responds to Armed Forces Bill Committee special report <https://committees.parliament.uk/committee/826/select-committee-on-the-armed-forces-bill/news/213654/government-responds-to-armed-forces-bill-committee-special-report/>

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	Yes	Yes	Yes	Yes	Yes
Clause 3	Yes	Yes	No	In part	No	In part	No
Clause 4	Yes	Yes	No	Yes	No	Yes	No
Clause 5	Yes	Yes	No	No	No	No	No
Clause 6	Yes	Yes	No	Yes	No	Yes	No
Clause 7	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 8	Yes	Yes	No	In part	Yes	In part	Yes
Clause 9	Yes	Yes	No	Yes	No	Yes	No
Clause 10	Yes	Yes	No	No	No	No	No
Clauses 11 - 28	Yes	Yes	No	Yes	No	Yes	No
Clause 29	In part	In part	No	In part	No	In part	No
Clauses 30 - 43	Yes	Yes	No	Yes	No	Yes	No
Clause 44	Yes	Yes	No	Yes	Yes	Yes	No
Clauses 45 - 48	Yes	Yes	No	Yes	No	Yes	No
Clause 49	No	No	No	No	No	Yes	No
Clause 50	Yes	Yes	No	No	No	No	No
Clauses 51 - 55	Yes	Yes	No	Yes	No	Yes	No
Schedule 1	Yes	Yes	No	In part	No	In part	No
Schedule 2	Yes	Yes	No	No	No	No	No
Schedule 3	Yes	Yes	No	Yes	Yes	Yes	Yes

These Explanatory Notes relate to the Armed Forces Bill as brought from the House of Commons on 23 June 2026 (HL Bill 36)

Schedule 3 Parts 6 - 7	Yes	Yes	No	No	No	No	No
Schedules 4 - 7	Yes	Yes	No	Yes	No	Yes	No

ARMED FORCES BILL

EXPLANATORY NOTES

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