

ARMED FORCES BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

What these notes do

- 1 These Explanatory Notes relate to the Lords Amendments to the Armed Forces Bill (Bill 206) as brought from the House of Lords on 30 November 2021.
- 2 These Explanatory Notes have been prepared by the Ministry of Defence in order to assist the reader of the Bill and the Lords amendments, and to help inform debate on the Lords amendments. They do not form part of the Bill and have not been endorsed by Parliament.
- 3 These Explanatory Notes, like the Lords amendments themselves, refer to Bill 42, the Bill as first printed for the Lords.
- 4 These Explanatory Notes need to be read in conjunction with the Lords amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the Lords amendments.
- 5 Lords Amendment 1 was tabled by Lord Thomas of Gresford and was opposed by the Government.
- 6 Lords Amendment 2 was tabled by Lord Mackay of Clashfern and was opposed by the Government.
- 7 Lords Amendments 3 to 50 were tabled in the name of the Minister.
- 8 In the following Commentary, an asterisk(*) appears in the heading of any paragraph that deals with a non-Government amendment.

Commentary on Lords amendments

Lords Amendments to Clause 7: Concurrent jurisdiction

Lords Amendment 1*

- 9 Lords Amendment 1 would make further provision about the protocol between the Director of Service Prosecutions and the Director of Public Prosecutions on the handling of concurrent jurisdiction. It would require the protocol to provide that where a service person is alleged to have committed certain serious offences in the United Kingdom, those offences are normally to be tried in civilian courts unless, by reason of specific naval or military complexity involving the service, the Attorney General has consented to such offences being tried in the Court Martial.

Lords Amendments to Clause 8: Armed Forces Covenant

Lords Amendment 2*

- 10 Lords Amendment 2 would amend clause 8 to add the Secretary of State to the list of specified persons and bodies which are required to have due regard to the principles of the Armed Forces Covenant.

Lords Amendments 3, 4, 6, 7 and 12

- 11 Lords Amendments 3, 4, 6 and 7 would amend new section 343AE of the Armed Forces Act 2006 which provides that the Secretary of State may issue guidance in relation to the duties to have due regard to the principles of the Armed Forces Covenant. These amendments would require the guidance to be laid before Parliament in draft before it can be issued. The amendments would also provide that the guidance comes into force on a day appointed by the Secretary of State by regulations. Lords Amendment 12 provides that these regulations are to be subject to the affirmative procedure.

Lords Amendment 5, 8 and 9

- 12 Lords Amendments 5 and 8 would correct omissions in new sections 343AE(4)(c) and 343AF(7)(c) of the Armed Forces Act 2006 to ensure that the duty on the Secretary of State to consult the relevant Northern Ireland department on, respectively, guidance or regulations under those new sections, applies only where the Northern Ireland devolved context is affected. This mirrors the position for Wales and Scotland.
- 13 Lords Amendment 9 would amend new section 343AF of the Armed Forces Act 2006 to remove a superfluous part of the definition of “Northern Ireland devolved competence”, also bringing it into line with the approach for Wales and Scotland.

Lords Amendments 10, 11 and 13

- 14 Lords Amendments 10, 11 and 13 would provide that the meaning of “relevant family members” for the purpose of the new Armed Forces Covenant duty is to be prescribed by regulations. Those regulations would be subject to affirmative procedure.

Lords Amendments to Clause 9: Reserve forces: flexibility of commitments

Lords Amendments 14 to 22

- 15 Lords Amendments 14 to 22 (with Lords Amendments 36 to 48 to Schedule 2) are minor and technical amendments and would replace the label “continuous service commitment” with the term “commitment under this section”.

Lords Amendments to Clause 11: Service police: complaints, misconduct etc

Lords Amendments 23 and 25 to 27

- 16 Lords Amendments 23 and 25 to 27 would amend clause 11 to include the new tri-service serious crime unit (see Lords Amendment 28) within the new regime for complaints against

the service police and related matters that is modelled on the regime for the civilian police in England and Wales.

Lords Amendment 24

- 17 Lords Amendment 24 would enable regulations about the new regime for service police complaints to impose duties on the chief inspector of constabulary which are reciprocal to duties imposed on the Service Police Complaints Commissioner by those regulations.

Lords Amendments after Clause 11

Lords Amendments 28

- 18 Lords Amendment 28 would insert a new clause to the Bill which deals with the framework for the establishment of a tri-service serious crime unit for the service police. The new clause would provide that the Provost Marshal for serious crime (who will head the new unit) is subject to the same rules about appointment as the existing provost marshals of the service police forces. In particular, the Provost Marshal for serious crime will be appointed by Her Majesty. The new clause would also provide that the Provost Marshal for serious crime owes the duty of investigative independence for investigations by the tri-service serious crime unit on the same terms as existing provost marshals owe a duty of investigative independence for investigations by their service police force.

Lords Amendments to Clause 13: Deprivation orders

Lords Amendments 29 and 30

- 19 Lords Amendments 29 and 30 would make consequential provision in connection with the new clause which would be inserted by Lords Amendment 28 after clause 11.

Lords Amendments to Clause 24: Extent in the United Kingdom

Lords Amendments 31

- 20 Lords Amendment 31 would make consequential provision about the territorial extent in the United Kingdom of the new Schedule for the tri-service serious crime unit that would be inserted by Lords Amendment 50 after Schedule 4.

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

Lords Amendments 32

- 21 Lords Amendment 32 would make consequential provision about the territorial extent of the new Schedule for the tri-service serious crime unit that would be inserted by Lords Amendment 50 after Schedule 4.

Lords Amendments to Schedule 1: Constitution of the Court Martial

Lords Amendments 33 to 35

- 22 Lords Amendments 33 to 35 would provide that a judge advocate may direct that there be a fourth lay member of the Court Martial in circumstances where there would otherwise be three lay members. These amendments would address, for example, the possibility that the Court Martial may lose a lay member due to illness or enforced isolation.

Lords Amendments to Schedule 2: Reserve forces: flexibility of commitments

Lords Amendments 36 to 48

- 23 Lords Amendments 36 to 48 are consequential on the changes which would be made by Lords Amendments 14 to 22.

Lords Amendment to Schedule 4: Service police: complaints, misconduct etc

Lords Amendment 49

- 24 Lords Amendment 49 would provide for records of the Service Police Complaints Commissioner to be public records for the purposes of the Public Records Act 1958.

Lords Amendments after Schedule 4

Lords Amendment 50

- 25 Lords Amendment 50 would insert a new Schedule to the Bill making amendments in consequence of the creation of a tri-service serious crime unit, headed by the Provost Marshal for serious crime. These amendments provide in particular for the tri-service serious crime unit and Provost Marshal for serious crime to have the same statutory powers as, respectively, the existing service police forces and provost marshals.

Financial Effects of Lords Amendments

- 26 The Department does not consider that any of the Lords Amendments would give rise to significant expenditure.

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