

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 12 January 2016 (HL Bill 85).

- These Explanatory Notes have been prepared by the Ministry of Defence in order to assist the reader of the Bill and to help inform 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. So where a provision of the Bill does not seem to require any explanation or comment, the Notes simply say in relation to it that the provision is self-explanatory.

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These Explanatory Notes relate to the Armed Forces Bill as brought from the House of Commons on 12 January 2016 (HL Bill 85)

Overview of the Bill

- 1 The Bill deals with the following matters:
 - Duration of the Armed Forces Act 2006
 - Testing for alcohol and drugs
 - Investigation and charging of service offences
 - Suspended sentences of service detention
 - Offenders assisting investigations and prosecutions
 - The Armed Forces Act 2006 outside the United Kingdom
 - Repeals relating to discharge for homosexual acts
 - War pensions committees
 - Ministry of Defence fire-fighters

Policy background

- 2 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.
- 3 The Armed Forces Act 2006 introduced a single system of service law that applies to all service personnel wherever in the world they are operating. The Act 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 by some civilians when they are living or working with the armed forces outside the United Kingdom.
- 4 It 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. It also contains a large number of other important provisions as to the armed forces, such as provision for enlistment, pay and redress of complaints. In the Bill, and in these Notes, the Armed Forces Act 2006 is referred to as “AFA 2006”.
- 5 The Armed Forces Act 2011 was much smaller in scale than AFA 2006. Most of the provisions of the 2011 Act amended AFA 2006 but, in common with previous Armed Forces Acts, it also contained some provisions that fell outside the traditional area of service discipline.
- 6 This Bill is similar in scale to the 2011 Act. Like the 2011 Act, most of the provisions amend AFA 2006 and relate to the armed forces’ disciplinary system. Clauses 15, 16 and 17 fall outside the area of service discipline. Clause 15 relates to war pensions committees. Clauses 16 and 17 relate to Ministry of Defence fire-fighters.

Legal background

- 7 AFA 2006 contains nearly all the provisions for the existence of a system for the armed forces of command, discipline and justice. Clauses 1 to 13 and the Schedule insert new provisions into AFA 2006. The relevant provisions of AFA 2006 are:
 - in relation to the continuation of AFA 2006 (clause 1 of the Bill), section 382

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- in relation to the requirement for members of the armed forces and civilians subject to service discipline to co-operate with preliminary tests for alcohol and drugs (clause 2 of the Bill), sections 93A to 93I
 - in relation to the investigation, charging and mode of trial of offences under AFA 2006 (clauses 3 to 5 of the Bill), sections 113 to 128
 - in relation to the period for which a sentence of service detention may be suspended by the Court Martial (clause 6 of the Bill), section 190
 - in relation to AFA 2006 and the Isle of Man and British overseas territories (clause 13 of the Bill), section 384.
- 8 Clause 14 amends sections 146 and 147 of the Criminal Justice and Public Order Act 1994 by removing wording which provides that those sections do not prevent a homosexual act from being a ground for discharging a member of the armed forces.
- 9 Clause 15 amends section 25 of the Social Security Act 1989, which provides for the establishment and functions of war pensions committees.
- 10 Clause 16 makes free-standing provision to give Ministry of Defence fire-fighters statutory powers to act in an emergency to protect life or property. Ministry of Defence fire-fighters are not created by statute: they are employed by or on behalf of the Secretary of State for Defence, or a government contractor providing services to the Secretary of State for Defence, or are members of the armed forces. Clause 16 also amends sections 1 and 7 of the Emergency Workers (Obstruction) Act 2006, extending the offences under sections 1 and 2 of that Act so that they cover obstructing or hindering a Ministry of Defence fire-fighter responding to an emergency in the United Kingdom, or a person assisting such a fire-fighter.
- 11 Clause 17 amends enactments to give Ministry of Defence fire-fighters exemptions from provisions in those enactments. The relevant provisions in those enactments are:
- section 102(4) of the Transport Act 1968 (exemption for fire brigades, etc to rules on drivers' hours)
 - section 15(7)(a)(i) of the Greater London Council (General Powers) Act 1974 (exception for fire and rescue vehicles to offence of parking on footways, etc)
 - section 62(2)(a) of the Control of Pollution Act 1974 (exception for fire brigades, etc to prohibition on use of loud-speakers in streets)
 - section 135(1) of the Merchant Shipping Act 1995 (restrictions on transfer of oil at night).

Territorial extent and application

Territorial application of the Bill in the UK

- 12 In clause 14 (repeals relating to discharge for homosexual acts):
- section 146(4) of the Criminal Justice and Public Order Act 1994 is part of the law of England and Wales and Scotland;

- section 147(3) of the Criminal Justice and Public Order Act 1994 is part of the law of Northern Ireland only.
- 13 In clause 17 (Ministry of Defence fire-fighters: minor amendments):
- section 15 of the Greater London Council (General Powers) Act 1974 is part of the law of England and Wales only;
 - section 102 of the Transport Act 1968 and section 62 of the Control of Pollution Act 1974 are part of the law of England and Wales and Scotland;
 - section 135 of the Merchant Shipping Act 1995 is part of the law of the whole of the United Kingdom.
- 14 The rest of the Bill is part of the law of the whole of the United Kingdom.
- 15 The provisions applicable to members of the armed forces will apply to them wherever they are in the world.
- 16 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly without the consent of the legislature concerned. The Bill does not contain any provision which gives rise to the need for a legislative consent motion in the National Assembly for Wales or the Northern Ireland Assembly.
- 17 The powers conferred on Ministry of Defence fire-fighters by clause 16 (powers of Ministry of Defence fire-fighters in an emergency) fall within the convention as they could be exercised in Scotland for a devolved purpose. The consent of the Scottish Parliament has been sought in relation to the exercise of these powers by Ministry of Defence fire-fighters acting in an emergency in Scotland for purposes that are not reserved. The amendments made by clause 16(5) and (6) to the Emergency Workers (Obstruction) Act 2006 and the amendment made by clause 17(3) to the Control of Pollution Act 1974 fall within the convention as they make provision with respect to matters that are within the legislative competence of the Scottish Parliament. The consent of the Scottish Parliament has been sought in relation to this provision to the extent that it covers Ministry of Defence fire-fighters acting in an emergency in Scotland for purposes that are not reserved.

Territorial application of the Bill outside the UK

- 18 The changes that this Act makes 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).
- 19 The changes that this Act makes to AFA 2006 extend directly (ie 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 Act in its application to any of those territories.
- 20 The provisions applicable to members of the armed forces will apply to them wherever they are in the world.

Commentary on provisions of Bill

Clause 1: Duration of AFA 2006

- 21 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.
- 22 As originally drafted, section 382 of AFA 2006 provided that the 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, which provides that AFA 2006 will expire a year after the 2011 Act was passed, unless renewed by Order in Council approved by each House of Parliament. It provides that AFA 2006 may be continued by Order in Council for up to a year at a time, but not beyond the end of 2016.
- 23 The 2011 Act was passed on 3 November 2011. The Armed Forces Act (Continuation) Order 2015 will provide for the continuation of AFA 2006 for a period of 12 months so that, instead of expiring at the end of 2 November 2015, it will expire at the end of 2 November 2016.
- 24 Clause 1 substitutes a new section 382, which provides for the continuation of AFA 2006. It also repeals section 1 of the Armed Forces Act 2011, which inserted the current section 382 into AFA 2006.

New section 382 Duration of this Act

- 25 This new section provides that AFA 2006 expires a year after the Armed Forces Act 2015 (this Act) is passed, unless renewed by Order in Council approved by each House of Parliament. AFA 2006 may be renewed by such an Order for up to a year at a time, but not beyond the end of 2021.

Clause 2: Commanding officer's power to require preliminary alcohol and drugs tests

- 26 Sections 93A to 93I of AFA 2006 make provision with respect to the testing for alcohol and drugs of members of the armed forces and civilians subject to service discipline suspected of committing, or of having committed, certain offences.
- 27 Under section 93A, a commanding officer may require a member of the armed forces or a civilian subject to service discipline to co-operate with 'preliminary tests' (a preliminary breath test, a preliminary impairment test or a preliminary drugs test). A member of the armed forces may be required to co-operate with such tests where a commanding officer has reasonable cause to believe that the person:
 - a. is committing a specified type of offence, or
 - b. has committed such an offence and still has alcohol or a drug in their body or is still under the influence of a drug.
- 28 The offences in question are an offence of exceeding the alcohol limit for a prescribed safety-critical duty contrary to section 20A of AFA 2006 and an offence of unfitness for duty due to the influence of alcohol or drugs contrary to section 20(1)(a) of AFA 2006 in respect of a safety-critical duty (as defined in section 93I) (see the definition of "safety-critical duty offence" in new section 93AA(1)).
- 29 Under section 93A, a commanding officer may require a civilian subject to service discipline to co-operate with such tests where that officer has reasonable cause to believe that the person is:

- a. committing an offence under section 42 of AFA 2006 as respects which the corresponding offence, under the law of England and Wales, is one of the offences specified in subsection (3)(a) of section 93A, or
 - b. has committed such an offence and still has alcohol or a drug in their body or is still under the influence of a drug.
- 30 The offences specified in subsection (3)(a) are maritime and aviation offences under the Railways and Transport Safety Act 2003.
- 31 It is an offence under section 93A(6) to fail, without reasonable excuse, to comply with a requirement to co-operate with a preliminary test.
- 32 Subsection (2) of clause 2 amends section 93A to allow commanding officers to require co-operation with preliminary tests in three additional situations. These are referred to as “the third situation”, “the fourth situation” and “the fifth situation” in new subsections (3A), (3B) and (3C) of section 93A. The situations in which such tests may currently be required are referred to as “the first situation” and “the second situation” in subsections (1) and (3) of section 93A (as amended by subsection (2)(b) and (f) of clause 2).
- 33 The changes made by clause 2 provide for post-accident preliminary testing of a person for alcohol and drugs without the need for suspicion that the person may have committed an offence. New subsection (3A) of section 93A provides for the testing, after an accident involving an aircraft or a ship, of a person who was carrying out an aviation function in relation to the aircraft or a marine function in relation to the ship at the time of the accident. New subsection (3B) of section 93A provides for the testing after such an accident of a person who carried out such a function before the accident occurred, where the carrying out of the function by the person may have caused or contributed to the occurrence of the accident or its consequences. New subsection (3C) of section 93A provides for the testing, after other serious accidents, of people who carried out safety-critical functions (see new section 93AA(6)) before or at the time of the accident, where the carrying out of those functions may have caused or contributed to the occurrence of the accident or its consequences.
- 34 Subsection (3) of clause 2 inserts new section 93AA into AFA 2006. This new section sets out the meaning of terms used in section 93A (as amended by subsection (2) of clause 2).

New section 93AA Section 93A: interpretation

- 35 Under subsections (2) to (4) of this new section, the Defence Council may make regulations to specify roles or activities as “aviation functions” or “marine functions” for the purposes of new subsection (3A) (“the third situation”) and (3B) (“the fourth situation”) of section 93A. The regulations must be made by statutory instrument, subject to affirmative resolution procedure (see the amendments of section 373 of AFA 2006 in clause 2(8)).

Clause 3: Duty of service policeman following investigation

- 36 This clause amends provisions in Part 5 of AFA 2006 which deal with the process of deciding whether a person is to be charged with an offence under that Act. Part 5 sets out the roles of the service police, the commanding officers of those suspected or charged and the Director of Service Prosecutions (“the Director”) in the investigation, charging and prosecution of offences. Commanding officers have limited powers enabling them to deal with minor examples of some offences in a form of summary hearing.
- 37 In all cases which cannot be dealt with by the commanding officer, the decision on the charge and prosecution are the responsibility of the Director, but currently some of those cases have to be referred by the investigating service police to the commanding officer, and then from the commanding officer to the Director. They are only referred by the service police straight to the

Director if the offence for which there is enough evidence to bring a charge is one listed in Schedule 2 to AFA 2006 or if any circumstances set out under regulations in Part 5 apply to the case. Clause 3(1) amends section 116 of AFA 2006 to provide instead for the service police to refer straight to the Director any case where there is sufficient evidence to charge an offence and the commanding officer cannot deal with the case.

- 38 The other main change made by clause 3 is intended to deal with the issue that, under section 116, some cases may have to be sent to a commanding officer to deal with, although they are closely connected with a case which must be sent to the Director: for example, where separate offences occurred during the same incident. This can result in separate decisions on whether to prosecute, and separate trials. Section 117(3) of AFA 2006 was intended to deal with this issue of linked cases. It currently provides that, if the service police refer a case to the Director under section 116, any other case of a description prescribed by regulations under Part 5 is treated as also referred. But it has not proved possible to make general provision in regulations about when cases should be linked in this way. It depends too much on the facts of individual cases. Clause 3(5) amends section 117(3) so that, instead of cases being deemed to be referred, the service police will be able to refer a case to the Director if, after consulting the Director, they consider it appropriate to do so because of a connection with another case which is referred to the Director under section 116. Clause 3(6) amends section 118 of AFA 2006 to require the service police to inform the commanding officer where a case is referred to the Director under section 117(3).
- 39 Clause 3(7) applies the Director's charging powers under section 121 of AFA 2006 to linked cases referred to the Director under section 117.

Clause 4: Power of commanding officer to charge etc

- 40 One of the changes made by clause 3 to section 117 is that linked cases will actually be referred to the Director rather than deemed to be referred, as provided for in the current section 117. Clause 4(1) makes an equivalent change in relation to referrals of linked cases by commanding officers under section 120 of AFA 2006. Clause 4(2) applies the Director's powers of charging to linked cases referred under section 120.

Clause 5: Power of Director of Service Prosecutions to charge etc

- 41 Under the current section 121 of AFA 2006, where the Director decides that a charge should be brought in a case, he cannot bring the charge directly. Instead, he must direct the suspect's commanding officer to bring the charge. Under section 122, the commanding officer must then bring the charge as directed. Clause 5 introduces a new section 121(1A) under which the Director may, as an alternative, bring the charge himself. Clause 5 also provides for charges brought by the Director to be allocated to the appropriate service court on the same basis as where charges are brought at his direction.

Clause 6: Period for which sentence of service detention may be suspended

- 42 Section 190 of AFA 2006 enables a court or commanding officer, when passing a sentence of service detention, to suspend that sentence for between three and twelve months. The period for which the sentence is suspended is known as the 'operational period'. The person sentenced is required to serve the period of service detention if they are convicted of another offence committed during the 'operational period'.
- 43 Clause 6 amends section 190 to increase, from twelve to twenty-four months, the maximum 'operational period' which the Court Martial may impose when suspending a sentence of service detention. The maximum 'operational period' remains twelve months for a commanding officer sentencing a person following summary hearing and for the Court Martial sentencing a person whose case would have been dealt with summarily had they not made an

election to be dealt with by the Court Martial (section 129 of AFA 2006 makes provision to allow a person to elect to be tried by Court Martial rather than be dealt with by his or her commanding officer).

- 44 The effect of subsection (2) is that the new maximum may only be imposed when sentencing for offences committed on or after clause 6 comes into force. Subsection (3) makes provision for the purposes of subsection (2) with respect to cases where the date on which the offence was committed is not clear

Clause 7: Immunity from prosecution

- 45 Clauses 7 to 12 insert new sections 304A to 304H into AFA 2006. These create a statutory framework for immunity from prosecution, restrictions on the use of evidence and sentence reductions for offenders who co-operate in investigations and prosecutions. They make provision equivalent to the provision in sections 71 to 75 of the Serious Organised Crime and Police Act 2005 which applies to the civilian criminal justice system.
- 46 Clause 7 inserts a new section 304A into AFA 2006.

New section 304A Immunity from prosecution

- 47 This new section allows the Director of Service Prosecutions (“the Director”) to give a person immunity from prosecution for any service offence in return for assistance given by that person to the investigation or prosecution of a service offence. The effect of subsection (2) is that immunity may not be given for assistance in relation to a minor service offence. Service offences under section 42 of AFA 2006 are not minor offences if the corresponding civilian offence in England and Wales can be tried in the Crown Court. “The corresponding offence under the law of England and Wales” is defined in section 42(8) of AFA 2006. Other service offences are not minor offences if they are punishable with imprisonment for more than 2 years.
- 48 An offence for which immunity is given and any conditions to which it is subject must be specified in a written notice. The effect of subsection (4) is that the immunity is withdrawn in the event that the person to whom immunity is given fails to comply with those conditions.

Clause 8: Undertakings as to use of evidence

- 49 Clause 8 inserts a new section 304B into AFA 2006.

New section 304B Undertakings as to use of evidence

- 50 This new section allows the Director to give a person an undertaking that information will not be used against them in service proceedings. Such an undertaking may be given in return for assistance given by that person to the investigation or prosecution of a service offence. The effect of subsection (5) is that an undertaking may not be given for assistance in relation to a minor service offence. An undertaking may be given in respect of the use of information in service proceedings for any service offence.
- 51 The information in respect of which the undertaking is given, the proceedings that the undertaking applies to and any conditions to which it is subject must be specified in a written notice. The effect of subsection (4) is that the undertaking is withdrawn in the event of failure to comply with those conditions.

Clause 9: Reduction in sentence

- 52 Clause 9 inserts a new section 304C into AFA 2006. New section 304C makes provision equivalent to the provision in section 73 of the Serious Organised Crime and Police Act 2005.

New section 304C Reduction in sentence

- 53 This new section provides that a person who has been convicted of a service offence following a plea of guilty in the Court Martial may receive a reduction in their sentence in return for assistance that they have given, or offered to give, to an investigator or prosecutor pursuant to an agreement with the Director. Subsection (1)(b) refers to assistance in relation to any offence (not just service offences).
- 54 The effect of subsections (4) and (5) is that the power in subsection (2) to reduce a sentence overrides provisions in other legislation fixing minimum sentences or, in the case of a sentence fixed by law, affecting how a judge advocate determines the minimum period of imprisonment or detention that a person must serve, so the judge advocate could impose a sentence which is less than would otherwise be required.
- 55 The power in subsection (2) is also available to courts that substitute a sentence when dealing with appeals from the Court Martial. This is because sections 16A(2) and 41(3) of the Court Martial Appeals Act 1968 give the Court Martial Appeal Court and the Supreme Court the same powers as the Court Martial had when originally sentencing.

Clause 10: Review of sentence following offer of assistance

- 56 Clause 10 inserts new section 304D into AFA 2006. New section 304D makes provision equivalent to the provision in section 74 of the Serious Organised Crime and Police Act 2005 for sentences to be reduced on review (section 74(2)(b) and (c) and (6) cases).

New section 304D Review of sentence following offer of assistance

- 57 This new section provides that a person who has been sentenced by the Court Martial may have their sentence reviewed to take account of assistance that they have given, or offered to give, to an investigator or prosecutor pursuant to an agreement with the Director. The reviewing court may reduce the sentence in return for the assistance offered or given. Subsections (2)(b) and (3)(b) refer to assistance in relation to any offence (not just service offences).
- 58 The effect of subsection (1)(b) is that a person who received a sentence that was fixed by law may only have that sentence reviewed under new section 304D if they pleaded guilty to the offence for which they received that sentence.
- 59 A review under new section 304D may further reduce a sentence that has already been discounted under new sections 304C or 304D, if the person sentenced gives or offers to give further assistance.
- 60 Subsection (4) provides that a case may only be referred for review under new section 304D if the Director thinks that referral is in the interests of justice.
- 61 Subsection (8) allows a person whose sentence is reviewed under new section 304D to appeal against the Court Martial's decision to reduce, or not to reduce, the sentence. The Director may also appeal against the decision (see subsection (9)).
- 62 Subsection (10) allows regulations to be made in relation to the conduct of proceedings on appeals against decisions under new section 304D.
- 63 Subsection (12) applies, for the purposes of new section 304D, subsections (3) to (5) of new section 304C. The effect of this is that the power, in subsection (6) of new section 304D, to reduce a sentence overrides provisions in other legislation fixing minimum sentences or, in the case of a sentence fixed by law, affecting how a judge advocate determines the minimum period of imprisonment or detention that a person must serve, so the judge advocate could impose a sentence which is less than would otherwise be required.

Clause 11: Review of sentence following failure to assist

- 64 Clause 11 inserts new section 304E into AFA 2006. New section 304E makes provision equivalent to the provision in section 74 of the Serious Organised Crime and Police Act 2005 for sentences to be increased on review (section 74(2)(a) and (5) cases).

New section 304E Review of sentence following failure to assist

- 65 This new section allows a sentence to be reviewed to take account of a failure by the person sentenced to give assistance that they offered to a prosecutor or investigator and in return for which they received a sentence that was discounted under new section 304C or 304D. If the reviewing court is satisfied that the person knowingly failed to give the assistance, it may increase the sentence to take account of that failure.
- 66 Subsection (2) provides that a case may only be referred for review under new section 304E if the Director thinks that referral is in the interests of justice.
- 67 Subsection (7) allows a person whose sentence is reviewed under new section 304E to appeal against the decision of the reviewing court. The Director may also appeal against the decision (see subsection (8)).
- 68 Subsection (9) allows regulations to be made in relation to the conduct of proceedings on appeals against decisions under new section 304E.

Clause 12: Supplementary provision

- 69 Clause 12 inserts new sections 304F to 304H into AFA 2006. New section 304F makes provision equivalent to the provision in section 73(3), (4) and (7) of the Serious Organised Crime and Police Act 2005, including those provisions as applied by section 74(15) of that Act. New section 304G makes provision equivalent to the provision in section 75 of the 2005 Act with respect to the exclusion of people from review proceedings.

New section 304F Sections 304C to 304E: statements in open court

- 70 Subsections (1) and (2) of new section 304F provide that a court which reduces a person's sentence under new sections 304C or 304D is required to make a statement in open court confirming this and identifying the sentence it would have passed had that reduction not been given. However, this is subject to subsection (3), which provides that the requirement under subsection (2) and the requirement under section 252 of AFA 2006 (for a sentencing court to give reasons for deciding on the sentence passed), do not apply if the court thinks that it would not be in the public interest to disclose that the sentence has been discounted.
- 71 Where the court thinks that it would not be in the public interest to disclose that the sentence has been discounted, subsection (3) provides that it must instead make a statement in writing to the prosecutor and the defendant containing the same information as it would otherwise have been required to include in a statement in open court under subsection (2).
- 72 Subsections (4) and (5) provide that a court sentencing under new section 304E is not required by section 252 of AFA 2006 to disclose that the sentence imposed replaces a sentence that was discounted under new section 304C or 304D, if it thinks that disclosing this would not be in the public interest.

New section 304G Sections 304D and 304E: exclusion of public from review proceedings

- 73 This new section allows a court conducting review proceedings under new section 304D or 304E to make an order excluding members of the public from those proceedings and prohibiting publication of matters relating to the proceedings. Subsection (3) lists those who may not be so excluded. Such an order may only be made if the court is satisfied that making

the order is necessary to protect the safety of a person and that it is in the interests of justice (see subsection (4)).

New section 304H Meaning of “sentence”

- 74 This new section defines “sentence” for the purposes of new sections 304A to 304G.
- 75 The reference to “sentence” includes all of the types of punishment listed in section 164(1) of AFA 2006, not just imprisonment or service detention. It includes the service-specific punishments, such as forfeiture of seniority.
- 76 The orders referred to in paragraph (a) include orders made, where a life sentence is imposed, to set the minimum period of imprisonment that must be served, or having the effect that there is no such minimum period.

Offences under the Service Discipline Acts

- 77 The intention is to use the power in section 380(8A) of AFA 2006 to provide that new sections 304A to 304H of AFA 2006 will apply in connection with offences under the Service Discipline Acts that preceded AFA 2006. It would be necessary to do this as AFA 2006 does not include provision about such offences (they are not “service offences” as defined in section 50 of AFA 2006). Instead, orders under section 380 make transitional provision about such offences. The main order made under section 380 is the Armed Forces Act 2006 (Transitional Provisions, etc) Order (S.I. 2009/1059). That order makes provision so that various references in AFA 2006 to “service offences” include offences under the Service Discipline Acts that preceded AFA 2006.

Clause 13: AFA 2006: Isle of Man and British overseas territories

- 78 Subsections (1) and (2) of this clause provide for AFA 2006, as it currently has effect in the United Kingdom, to come into force in the Isle of Man and the British overseas territories (except Gibraltar), having previously expired there.
- 79 Subsection (3) of this clause amends section 384 of AFA 2006 to provide that AFA 2006 no longer extends to Gibraltar.
- 80 Unlike AFA 2006, the Armed Forces Act 2011 did not extend directly to the Isle of Man and the British overseas territories (but its provisions could be extended there by Order in Council). Section 1 of the 2011 Act inserted a new section 382 into AFA 2006, to provide for the continuation of that Act beyond 2011. Section 382 as originally enacted provided that AFA 2006 could not be continued in force beyond 2011. Section 382, as amended by the 2011 Act, provided that AFA 2006 could be continued beyond 2011 but not beyond the end of 2016. However, new section 382 did not extend to the Isle of Man or the British overseas territories, so in those jurisdictions section 382 remained as originally enacted. This meant that it continued to provide that AFA 2006 could not be continued in force beyond 2011. Accordingly, AFA 2006 expired in those jurisdictions in 2011 in accordance with section 382 as originally enacted.

Clause 14: Repeals relating to discharge for homosexual acts

- 81 Section 1(1) of the Sexual Offences Act 1967 provided that, subject to section 2 of that Act, a homosexual act committed in private between consenting adults was not a criminal offence. Section 1(5) of the 1967 Act provided that subsection (1) did not prevent an act from being an offence under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957. Section 146(1), (2) and (3) of the Criminal Justice and Public Order Act 1994 repealed sections 1(5) and 2 of the 1967 Act and the equivalent provisions of Scottish legislation. Section 147(1) and (2) of the 1994 Act repealed the equivalent provisions of Northern Irish legislation. The only provisions in sections 146 and 147 which remain in force are sections 146(4) and 147(3).

- 82 Sections 146(4) and 147(3) contain wording which provides that those sections do not prevent a homosexual act from being a ground for discharging a member of the armed forces. Clause 14 removes that wording. When sections 146 and 147 were enacted, it was government policy that homosexuality was incompatible with service in the armed forces and, accordingly, members of the armed forces who engaged in homosexual activity were administratively discharged from the armed forces. That policy was abandoned in January 2000, following a judgment of the European Court of Human Rights.

Clause 15: War pensions committees and armed and reserve forces compensation schemes

- 83 War pensions committees are established by regulations made by the Secretary of State under section 25(1) of the Social Security Act 1989. The Secretary of State may, by regulations under section 25, give war pensions committees functions relating to war pensions and war pensioners. Those functions may include, for example, considering complaints made to them by persons receiving or claiming war pensions and, if they think fit, making representations about those complaints to the Secretary of State. “War pension” and “war pensioner” are defined in section 25(4) of the 1989 Act. The committees’ existing functions relate primarily to the war pensions scheme provided for in the Naval, Military and Air Forces Etc (Disablement and Death) Service Pensions Order 2006 (S.I. 2006/606). This scheme provides compensation for injury or death caused by service in the armed forces before 6 April 2005.
- 84 Subsections (2),(3) and (5) of clause 15 amend section 25 so that war pensions committees may also be given functions relating to benefits payable under armed and reserve forces compensation schemes established under the Armed Forces (Pensions and Compensation) Act 2004. This allows provision to be made, by regulations under section 25, to extend the functions of war pensions committees to include, for example, considering complaints made to them by persons receiving or claiming benefits under the scheme provided for in the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 (S.I. 2011/517). This scheme provides compensation for injury or death caused by service in the armed forces on or after 6 April 2005. Clause 15(4) amends section 25 by inserting a new subsection (3A) which allows the Secretary of State to provide, in regulations under that section, for the naming of war pensions committees.

Clause 16: Powers of Ministry of Defence fire-fighters in an emergency

- 85 The purpose of this clause is to give Ministry of Defence fire-fighters (as defined in subsection (3)) statutory powers to act in an emergency to protect life or property. The powers conferred are the same as those of employees of Fire and Rescue Authorities under section 44 of the Fire and Rescue Services Act 2004, section 25 of the Fire (Scotland) Act 2005 and Article 18 of the Fire and Rescue Services (Northern Ireland) Order 2006.
- 86 Ministry of Defence fire-fighters who are authorised in writing by the Secretary of State for the purposes of clause 16 have the powers to act in an emergency that are set out in subsection (1). In particular, where the fire-fighter reasonably believes that a fire has broken out or is about to break out, he or she may do anything that he or she believes is reasonably necessary for the purpose of extinguishing or preventing the fire or protecting life or property (see subsection (1)(a)). Similar powers are conferred in connection with road traffic accidents (see subsection (1)(b)). Subsection (2) provides that the fire-fighters’ powers include powers to enter premises by force if necessary, to close roads and to regulate traffic.
- 87 Subsections (4) to (6) extend the offence in section 1 of the Emergency Workers (Obstruction) Act 2006 so that it is an offence under that section to obstruct or hinder a Ministry of Defence fire-fighter who is acting in an emergency (or a person who is assisting them) in England and Wales, Scotland or Northern Ireland.

Clause 17: Minor amendments

- 88 This clause makes minor amendments to enactments to give Ministry of Defence fire-fighters the same exemptions from provisions in those enactments as employees of Fire and Rescue Authorities. The enactments are:
- a. section 102(4) of the Transport Act 1968 (exemption for fire brigades, etc to rules on drivers' hours)
 - b. section 15(7)(a)(i) of the Greater London Council (General Powers) Act 1974 (exception for fire and rescue vehicles to offence of parking on footways, etc)
 - c. section 62(2)(a) of the Control of Pollution Act 1974 (exception for fire brigades, etc to prohibition on use of loud-speakers in streets)
 - d. section 135(1) of the Merchant Shipping Act 1995 (restrictions on transfer of oil at night).

Clause 20: Extent in the United Kingdom

- 89 With the exception of clause 14 (repeals relating to discharge for homosexual acts) and clause 17 (minor amendments) this Bill extends to the whole of the United Kingdom.
- 90 In clause 14 (repeals relating to discharge for homosexual acts):
- a. section 146(4) of the Criminal Justice and Public Order Act 1994 is part of the law of England and Wales and Scotland;
 - b. section 147(3) of the Criminal Justice and Public Order Act 1994 is part of the law of Northern Ireland only.
- 91 In clause 17 (minor amendments):
- a. section 15 of the Greater London Council (General Powers) Act 1974 is part of the law of England and Wales only;
 - b. section 102 of the Transport Act 1968 and section 62 of the Control of Pollution Act 1974 are part of the law of England and Wales and Scotland;
 - c. section 135 of the Merchant Shipping Act 1995 is part of the law of the whole of the United Kingdom.
- 92 The provisions applicable to members of the armed forces will apply to them wherever they are in the world.

Clause 21: Extent in the Channel Islands, Isle of Man and British overseas territories

- 93 The changes that this Act 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).
- 94 The changes that this Act makes to AFA 2006 extend directly (ie 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 under section 384(2) of AFA 2006 to modify the Act in its application to any of those territories.
- 95 The provisions applicable to members of the armed forces will apply to them wherever they are in the world.

Schedule to the Act: Isle of Man and British overseas territories: further provision

- 96 The Schedule makes further provision in connection with AFA 2006 and the Isle of Man and

British overseas territories.

- 97 Paragraph 2 provides that amendments of AFA 2006, and of provisions applied by AFA 2006, made before clause 13 comes into force extend to the Isle of Man and British overseas territories. When originally enacted, some of those amendments did not extend there. For example, the amendments made by the Armed Forces Act 2011 did not extend there (but could be extended there by Order in Council under section 33 of that Act).
- 98 Paragraph 3 provides that orders, regulations and rules made under AFA 2006 that are in force in England and Wales immediately before clause 13 comes into force extend to the Isle of Man and British overseas territories.
- 99 Paragraphs 4 and 6 to 12 make provision in consequence of the fact that AFA 2006 is no longer to extend to Gibraltar. Paragraph 4 provides that powers in certain Acts to extend amendments of AFA 2006 to jurisdictions outside the United Kingdom cannot be used in respect of Gibraltar. Paragraphs 6 to 12 amend certain references to British overseas territories in AFA 2006 to exclude Gibraltar.

Commencement

- 100 Clauses 1, 13 and 18 to 22 and the Schedule will come into force on Royal Assent. Clauses 14, 16 and 17 will come into force two months after Royal Assent. The remaining provisions of the Bill will come into force on a day (or days) to be appointed by the Secretary of State in regulations. These regulations are to be made by statutory instrument but not subject to parliamentary procedure.
- 101 Under subsection (4) of clause 19, the Secretary of State may make transitional, transitory or saving provision by regulations in connection with the coming into force of provisions of the Bill. Regulations made under this power are to be made by statutory instrument but not subject to parliamentary procedure.
- 102 Subsection (6) of clause 19 makes clear that the existing power under section 380(8A) of AFA 2006 to amend orders made under that section (that made transitional provision in connection with the coming into force of that Act) can be used to make amendments relating to subjects already dealt with in the order or new subjects, such as immunity from prosecution (see the new provisions inserted by clauses 7 to 12 of the Bill).

Financial implications of the Bill

- 103 The provisions of the Bill will not have an impact on public expenditure.

Parliamentary approval for financial costs or for charges imposed

- 104 The provisions of the Bill do not need to be authorised by a money resolution or a ways and means resolution.

Compatibility with the European Convention on Human Rights

- 105 The Minister of State for Defence 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. A European Convention on Human Rights memorandum will be submitted to the Joint Committee on Human Rights.

Related documents

- 106 The following documents are relevant to the Bill and can be read at the stated locations:

- A summary pamphlet, quasi-keeling schedules and the MOD's memorandum to the Joint Committee on Human Rights are available on the Armed Forces Bill homepage <https://www.gov.uk/government/collections/armed-forces-bill-2015>
- Armed Forces Bill 2015 Select Committee evidence and transcripts <http://www.parliament.uk/business/committees/committees-a-z/commons-select/armed-forces-bill-committee-2015/>

- Armed Forces Act 2006 <http://www.legislation.gov.uk/ukpga/2006/52>
- Armed Forces Act 2011 <http://www.legislation.gov.uk/ukpga/2011/18>
- The Delegated Powers and Regulatory Reform Committee Memorandum will be available at <http://www.parliament.uk/hldelegatedpowers-bills>.

Annex A - Territorial extent and application

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 required?	Extends to Scotland?	Legislative Consent Motion required?	Extends to Northern Ireland?	Legislative Consent Motion required?
Clauses 1 to 13 Clause 17(4) Clauses 18 to 22 Schedule	Yes	Yes	No	Yes	No	Yes	No
Clause 14 (2)	Yes	Yes	No	Yes	No	No	No
Clause 14 (3)	No	No	No	No	No	Yes	No
Clause 16	Yes	Yes	No	Yes	Yes	Yes	No
Clause 17(1)	Yes	Yes	No	Yes	No	No	No
Clause 17(2)	Yes	No	No	No	No	No	No
Clause 17(3)	Yes	Yes	No	Yes	Yes	No	No

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ARMED FORCES BILL

EXPLANATORY NOTES

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