



HOUSE OF LORDS

Select Committee on the Constitution

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13th Report of Session 2005–06

# Armed Forces Bill

Report

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# Armed Forces Bill

1. The Committee is appointed “to examine the constitutional implications of all public bills coming before the House; and to keep under review the operation of the constitution”. The subject matter of the Armed Forces Bill, which is set down for second reading on 14 June 2006, is plainly of constitutional significance.
2. The main aims of the bill—to modernise the law relating to criminal offences committed by service personnel and to provide a uniform criminal justice system across the Army, Royal Navy and Royal Air Force—have received broad support.

## AN ARMED FORCES OMBUDSMAN?

3. The bill also makes provision for reforming the system for handling individual grievances of service personnel (clauses 332 to 335 in part 14 of the bill). This, too, is a matter of constitutional importance. The primary source of redress is, and should remain, within the command structures of the three Services. Any reform must, of course, recognise the unique features of life in the armed Service. Several countries have in recent years recognised that an effective, accessible and fair system for redressing grievances requires a degree of independence from command structures of their armed forces and have established ombudsmen systems.<sup>1</sup> The bill acknowledges that an independent element is desirable in some (unspecified) circumstances. It will be for the House to determine whether the proposed arrangements are satisfactory or whether a more radical reform in the form of an ombudsman is required to maintain confidence.
4. Our task of assessing the constitutional implications of the Government’s proposals was hindered for two reasons.
5. First, the clauses provide only a bare framework for the new system, with many important aspects left to be decided in delegated legislation. Clause 332 of the bill provides that if “a person subject to service law thinks himself wronged in any matter relating to his service” he may make a complaint. The Secretary of State reserves the right, by order, to specify matters about which no complaint may be made (clause 332(2)). The procedures for making and dealing with complaints are to be made, by order, by the Defence Council (clause 332(4)–(5))<sup>2</sup> or that task may be delegated to a “service complaint panel” (clause 333).
6. Service complaint panels may also deal with individual complaints and will consist of at least two members, one of whom must be a senior officer and one of whom may be “a person employed in the civil service of the state” (clause 334). The Secretary of State is empowered to make, by order, further provision and may in particular “require, in the case of any service complaint of a prescribed description, a service complaint panel to include one

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<sup>1</sup> These are described in outline by the House of Commons Defence Committee in their Third Report of Session 2004–05, *Duty of Care* HC 63-I, paras 414–418.

<sup>2</sup> The Defence Council provides the legal basis for the conduct and administration of defence. It is chaired by the Secretary of State for Defence and its members include other ministers with responsibility for Service matters, the Chiefs of Staff of the three services and senior officials.

independent member” (clause 334(6)(a)). According to the explanatory notes to the bill, that power is likely to be exercised for complaints involving bullying or harassment.<sup>3</sup> An officer, or a person who was an officer at the time the matter occurred, whose complaint has been determined by the Defence Council (rather than delegated to a service complaint panel) has a right to have the complaint referred to Her Majesty (clause 335, preserving a long-standing right).

7. The second source of difficulty (and one we shared with the House of Commons)<sup>4</sup> is that at the time of our consideration of the bill, the Government had not yet made a formal response to the Deepcut Review Report.<sup>5</sup> Mr Nicholas Blake QC’s report, published on 29 March 2006, investigated the circumstances surrounding the deaths of four young soldiers at the Princess Royal Barracks between 1995 and 2002. Among the recommendations made by the review was that “There should be established a Commissioner of Military Complaints (the Armed Forces Ombudsman) who should be a person independent of the three Services”.<sup>6</sup> The Review Report stated that “The full role of such a Commissioner may require further reflection but, for the Review, it is essential that soldiers and their families have access to an established authority who understands the military and its ways of working, but stands outside the chain of command, and beyond its influence, in order to ensure that best practice is adhered to.”<sup>7</sup> The Review Report states that the possible roles of such a Commissioner have been informally discussed with Commanding Officers and that there is no objection in principle, or in practice, to such an independent oversight, nor concern that it will undermine military discipline.<sup>8</sup> The Review report envisaged that an ombudsman would have at least four functions.<sup>9</sup>
- The ability to receive unresolved complaints from service personnel and their families about specific allegations of conduct prejudicial to their welfare.
  - The supervision of the investigation of complaints that have been made to the Service authorities.
  - Supervising how the Service authorities respond to the complaint.
  - Providing an annual public report to the Minister of State for the Armed Forces on issues relating to the welfare of all soldiers.
8. The recommendations of this aspect of the Deepcut inquiry clearly deserve detailed consideration in the context of the bill. We note that on 19 April 2006 Lord Drayson, the Parliamentary Under-Secretary of State, Ministry of Defence, told the House that “We shall ensure that the Government’s response is available to the House to assist it in its consideration of the Bill”.<sup>10</sup> **We trust that the bill will not be considered in Committee until some days after publication of that response.**

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<sup>3</sup> para 664 (p 102).

<sup>4</sup> See e.g. HC Hansard, 22 May 2006, col 1300.

<sup>5</sup> Nicholas Blake QC, *The Deepcut Review Report* HC 795.

<sup>6</sup> Recommendation 26, p 403.

<sup>7</sup> *The Deepcut Review Report* HC 795.

<sup>8</sup> para 12.103.

<sup>9</sup> para 12.101.

<sup>10</sup> HL Hansard, 19 April 2006, col 1126.

9. The Deepcut Review Report was not the first call for an independent grievance redressing process for Service personnel. In March 2005, the House of Commons Select Committee on Defence, in their report on “Duty of Care”, recommended that an independent military complaints commission be established.<sup>11</sup> The Defence Committee’s recommendation was not accepted by the Government.<sup>12</sup> In December 2005, the Defence Committee again urged the Government “to table amendments to strengthen the degree of independence in its proposals and meet the previous Defence Committee’s recommendations”.<sup>13</sup>
10. The arguments about an ombudsman for the armed forces are not all one way. We have noted the Government’s rejection of the Defence Committee’s recommendation (albeit before the publication of the Deepcut Review Report). The House of Commons special select committee appointed to scrutinise the Armed Forces Bill concluded that “we remain unconvinced that an Ombudsman is the appropriate way to deal with problems with redress of complaint”.<sup>14</sup>
11. **We draw these matters to the attention of the House as matters of constitutional principle affecting a principal part of the constitution.**

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<sup>11</sup> Third Report of Session 2004–05 *Duty of Care* HC 63-I.

<sup>12</sup> Fourth Special Report of Session 2005–06 *Armed Forces Bill: Government Response to the Committee’s First Report of Session 2005–06* HC 1021.

<sup>13</sup> First Report of Session 2005–06 *Armed Forces Bill* HC 747.

<sup>14</sup> Select Committee on the Armed Forces Bill, Special Report of Session 2005–06, HC 828-I, para 125.