

Armed Forces Bill

HL Bill 42 of 2021–22

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On 7 September 2021, the second reading of the Armed Forces Bill is scheduled to take place in the House of Lords.

The [Armed Forces Bill 2021–22](#) is a government bill that would renew the statutory basis for the United Kingdom's armed forces. The bill would also further incorporate the armed forces covenant into law, and would make several amendments to the service justice system, including the creation of a service police complaints commissioner.

Parliamentary consent for the armed forces dates back to the 1688 Bill of Rights. Consent is currently given through the renewal of armed forces primary legislation every five years, and through the passing of yearly orders in council approved by affirmative resolution in both Houses.

The Armed Forces Act 2006 was a significant piece of legislation that made major changes to the armed forces. One of the major provisions of the Armed Forces Act 2006 was to establish a single system of service law which applied to personnel of the Royal Navy, the British Army and the Royal Air Force, wherever they were operating. Prior to the act, each service had its own justice system. The 2006 Act was subsequently amended by the Armed Forces Act 2011 and the Armed Forces Act 2016, with each act extending parliamentary consent for the armed forces for a further five years, as well as other provisions.

The current Armed Forces Bill was introduced in session 2019–21, and was subject to a carry-over motion. It completed its House of Commons stages on 13 July 2021. The bill received broad support in the House of Commons. However, several MPs raised concerns around service justice system reform, whether the legal strengthening of the armed forces covenant went far enough, and whether national as well as local authorities should be included in the covenant clauses of the bill.

1. Background: service justice system review

In 2017, the Ministry of Defence commissioned a review of the service justice system “in preparation for the next Armed Forces Bill in 2020”.¹ The service justice system review² was led by retired senior crown court judge, Shaun Lyons, and published in two parts, in March 2018 and March 2019.

Many of the review's recommendations did not require primary legislation. Those recommendations that did require legislation included:

- Court martial jurisdiction should no longer include murder, manslaughter and rape when

¹ [HL Hansard, 23 October 2017, col 767.](#)

² Ministry of Defence, [Service Justice System Review](#), 27 February 2020.

these offences are committed by service personnel in the UK, except when the consent of the attorney general is given. These offences should be tried in the civil system, as was the case prior to the Armed Forces Act 2006.

- Changes to the make-up of court martials (requiring six members), and a move to a majority verdict system where at least five members have agreed.
- The creation of an independent oversight body for the service police and the investigative functions of the service justice system.

Most of these recommendations have been included in this Armed Forces Bill. However, the Defence Secretary, Ben Wallace, has rejected the Lyons recommendation on the trying of serious crimes in the civilian justice system. This is discussed further below.

2. What would the bill do?

Clause 1 of the bill would extend the Armed Forces Act 2006 and allow for orders in council to extend the legal basis of the armed forces on a yearly basis, for a period of up to five years (not beyond the end of the year 2026).

2.1 Changes to the service justice system

Clause 2 of the bill would make changes to the rules around court martials. These changes would include those recommended in the Lyons review around the make-up of court martials and the requirement for a majority verdict. Clause 3 would allow for a circuit judge to sit as a Judge Advocate at Court Martial.

Clauses 4, 5 and 6 of the bill would make amendments to the Armed Forces Act 2006 on the powers of summary hearings, the Summary Appeal Court and the Service Civilian Court to vary or rescind punishments.

Clause 7 would introduce new provisions to the Armed Forces Act 2006 around concurrent jurisdiction. Concurrent jurisdiction refers to cases where either the service justice system or the civilian criminal justice system has jurisdiction to try criminal offences committed by service personnel in the United Kingdom. According to the explanatory notes, clause 7 would require the director of service prosecutions and each of the heads of the civilian prosecution services across the UK to agree protocols on the handling of serious cases where there is concurrent jurisdiction.³ New sections would be inserted into the 2006 act that apply to England and Wales, Scotland and Northern Ireland respectively. The Lyons review recommended that certain serious crimes committed by service personnel should be tried in a civil court, unless the attorney general gives consent for a case to be prosecuted in the service justice system. Defence Secretary Ben Wallace rejected this recommendation, arguing that “the service justice system is capable of dealing with these offences when they occur in the UK, as well as overseas”.⁴

³ [Explanatory Notes](#), p 11.

⁴ House of Commons, [‘Written Statement: Service Justice System Update’](#), 12 November 2020, HCWS577.

2.2 Armed forces covenant

Clause 8 of the bill would make further provisions around the armed forces covenant.

The covenant is:

The nation's commitment [to] acknowledge and understand that those who serve or who have served in the armed forces, and their families, should be treated with fairness and respect in the communities, economy and society they serve with their lives.⁵

The first tri-service armed forces covenant was published on 16 May 2011.⁶

The covenant is based around the principle that those who have served and their families should face “no disadvantage” compared to other citizens in the provision of public and commercial services. The Armed Forces Act 2011 placed a statutory requirement on the defence secretary to provide an annual armed forces covenant report⁷ to Parliament each year. In the 2019 Queen's Speech, the Government announced that the covenant would be “further incorporated into law”.⁸

Clause 8 would insert new sections into the Armed Forces Act 2006 to create greater legal enforcement of the armed forces covenant. The new sections would require a specified person or body exercising a relevant housing, education or healthcare function, to have due regard to the principles laid out in the armed forces covenant. These persons and bodies are identified in the bill, and would include:

- Local authorities.
- Schools and post-16 institutions.
- NHS commissioning boards and clinical commissioning groups.
- NHS trusts.

New sections would be inserted into the 2006 act that would apply to England, Wales, Scotland and Northern Ireland respectively.

2.3 Reserve forces and complaint system reform

Clause 9 of the bill would amend the Reserve Forces Act 1996 to allow those in the reserve forces to serve on a part-time basis.

Clause 10 would amend the Armed Forces Act 2006 to, according to the explanatory notes, make “reforms to increase efficiency and speed up the process within the statutory service complaints system”.⁹

⁵ Armed Forces Covenant, [‘What is the Armed Forces Covenant?’](#), 2021.

⁶ House of Commons Library, [The Armed Forces Covenant and Status in Law](#), 8 December 2020.

⁷ Ministry of Defence, [Armed Forces Covenant Annual Report 2020](#), 7 December 2020.

⁸ Prime Minister's Office, 10 Downing Street, [‘Queen's Speech December 2019’](#), 19 December 2019.

⁹ [Explanatory Notes](#), p 14.

2.4 Service police complaints commissioner

Clause 11 of the bill would insert a new section into the Armed Forces Act 2006 creating a new complaints regime, including a new role of service police complaints commissioner. According to the explanatory notes to the bill,¹⁰ this post would lead the creation of the new regime for complaints, conduct matters, and death or serious injury matters within the service police. This would be modelled on the regime for the civilian police in England and Wales.

This clause would implement a recommendation from the Lyons review, which called for an independent body to provide oversight of the service police and of the investigative functions in the service justice system.

2.5 Further provisions

Clauses 12–15 would introduce new punishments to the service justice system. Clause 12 would give a commanding officer the power to award a punishment of service detention to a corporal in the Royal Marines. Clause 13 would insert new sections into the Armed Forces Act 2006 that would introduce the new punishment of a deprivation order. This would be modelled on punishments available in civilian courts and would deprive offenders of any rights they had in specified property. Clause 14 would introduce the punishment of a driving disqualification order to service personnel.

Clause 16 would remove the requirement for service courts to take into account EU member state convictions when sentencing. Clause 17 would amend the Rehabilitation of Offenders Act 1974 to increase the rehabilitation period for the punishments of “reprimand” and “severe reprimand” to 12 months for adults and 6 months for young offenders.

Clause 18 would amend section 164 of the Police and Crime Act 2017 to extend posthumous pardons for abolished service offences.

Clause 19 would amend section 357 of the Armed Forces Act 2006. Section 357 allows British overseas territories to apply the act in their state to a locally raised force. This amendment would clarify that section 357 may be applied by a British overseas territory even when the section does not extend to that overseas territory. The explanatory notes state that this would confirm “that Gibraltar legislation can apply the 2006 act (with or without modification) to bring the Royal Gibraltar Regiment into the UK’s service justice system”.¹¹

Clause 20 would amend the Pensions Appeal Tribunals Act 1943 to bring late appeal rules around war pensions in Scotland and Northern Ireland in line with England and Wales.

Clauses 23 and 24 cover commencement and territorial extent. The bill would extend to the whole of the United Kingdom, with some minor exceptions.

¹⁰ [Explanatory Notes](#), p 15.

¹¹ *ibid*, p 20.

3. Bill stages in the House of Commons

The bill received cross-party support in the House of Commons. However, concerns were raised about issues including:

- Whether the Government should have accepted the Lyons review recommendation around concurrent jurisdiction and the jurisdiction of civilian courts for serious crimes such as murder, manslaughter and rape committed by service personnel.
- Whether the legal duty on various bodies to have “due regard” for the principles of the armed forces covenant goes far enough in ensuring the covenant is utilised to its full extent.
- Whether national as well as local authorities should be included in clause 8 provisions on the covenant.

3.1 Commons second reading

The House of Commons second reading of the bill took place on 8 February 2021. This section summarises some of the issues debated during second reading.

Clause 7: concurrent jurisdiction

Some MPs raised concerns over the Government’s decision not to accept the Lyons review’s recommendation on concurrent jurisdiction and the right of civilian courts to try cases of murder, manslaughter and rape committed by service personnel in the UK. Shadow Defence Secretary, John Healey, argued that military courts have low conviction rates in cases of rape when compared to civilian courts. The bill, Healey argued, is a missed opportunity to improve “confidence and results” in cases of murder, manslaughter and rape committed by service personnel in the UK.¹²

In response, the Defence Secretary, Ben Wallace, questioned why certain serious offences should be tried in civilian court and not others.¹³ In addition, Wallace argued that the protocol between the director of service prosecutions and the director of public prosecutions included in clause 7 was more “open and transparent” than the attorney general consent mechanism recommended by the Lyons review.

Clause 8: armed forces covenant

Several MPs cited concerns around clause 8 provisions (placing a legal duty on authorities to have “due regard” for the principles of the armed forces covenant), and criticised them for not going far enough in strengthening the covenant. The Shadow Defence Secretary criticised the bill as a “missed opportunity” with regards to strengthening covenant law. He cited research from the Royal British Legion,¹⁴ which criticised clause 8 for being too narrow in its focus on health, housing and education,

¹² [HC Hansard, 8 February 2021, col 59.](#)

¹³ *ibid*, col 126.

¹⁴ Royal British Legion, [‘Royal British Legion and leading military charities join together to urge the UK Government to improve the Armed Forces Bill’](#), 2021.

and for only placing a duty on local authorities. The Shadow Defence Secretary argued this could create a “two-tier” covenant that applied to local but not national authorities.¹⁵

Shadow SNP Spokesperson for the Armed Forces and Veterans, Carol Monaghan, said that “the commitment to the covenant in the bill falls far short of what it needs to be and ought to be”.¹⁶ Monaghan and others also criticised the wording of the bill, arguing that the phrase “must have due regard to” (the principles of the covenant) was too weak, and did not offer a definition of what local authority action in regard to the covenant should look like.

In response to criticism of clause 8, the Minister for Defence People and Veterans, Johnny Mercer, said that the Government did not want to prescribe specific outcomes for local authorities. Mercer said:¹⁷

We want local authorities to adhere to the principles of the covenant and, because of the way that local authorities deliver their services, to have a due regard in law to consider the covenant but not to prescribe outcomes.

[...]

We are placing a duty to have due regard to the covenant principles on public bodies responsible for the delivery of key functions in housing, education and healthcare. We have chosen those three areas because they are the bedrock of a stable and secure life. Unsurprisingly, they are also raised by members of the armed forces community as areas of greatest concern.

3.2 Select committee on the Armed Forces Bill

The Armed Forces Bill is unusual in that it has traditionally been committed to a specially convened ad-hoc select committee after its second reading debate. This committee sits only for the duration of the bill, and undertakes a select committee-style evidence-based inquiry, followed by formal line-by-line consideration of the bill. This is in addition to its usual committee stage.

The select committee was appointed on 24 February 2021 and held its evidence sessions throughout March. It also ran a public survey, which received over 3,000 submissions.

The committee’s report was published on 22 April 2021.¹⁸ The bill was not amended by the select committee, although several amendments were moved by Labour and the SNP, which were defeated on division.

On clause 7 and the issue of concurrent jurisdiction, the committee heard evidence from the Victims’ Commissioner, Dame Vera Baird QC. She criticised the rejection of the Lyons review

¹⁵ [HC Hansard, 8 February 2021, col 58.](#)

¹⁶ *ibid*, col 62.

¹⁷ *ibid*, col 54.

¹⁸ House of Commons Select Committee on the Armed Forces Bill, [The Armed Forces Bill](#), 22 April 2021, HC 1281 of session 2019–21.

recommendation that murder, manslaughter and rape in the armed forces should be tried in civilian courts. Baird told the committee:

Rape and sexual assault are hugely under-reported, and it is all the harder to report something when you are inside a system that is hierarchical and you may be jeopardising your own career by making a complaint about somebody, or you may indeed be complaining about somebody who is above you in the hierarchy. How is that not a power imbalance that actively deters people who have been wronged from seeking justice?

The committee also heard from the current Director of Service Prosecutions, Jonathon Rees QC, who argued that prosecuting officers for serious crimes within the service justice system were “the equivalent of their counterparts in the civilian system”, and that the quality of the Service Prosecuting Authority was “fit for purpose” for serious crimes.

The committee said that it did recognise concerns around concurrent jurisdiction and the decision not to implement this recommendation of the Lyons review. It recommended that the Ministry of Defence should work quickly to introduce “the defence serious crime capability, and ensure clear protocols are in place to allow effective cooperation with civilian police forces”.

On clause 8 and the legal enforcement of the armed forces covenant, the committee’s report stated:

Most of our witnesses agreed that a duty of due regard was an appropriate mechanism to bring the covenant further into law.

55% of respondents to our survey agreed that the introduction of the duty of due regard would help current and former service personnel and their families receive the support set out in the armed forces covenant.

However, the committee also cited evidence that raised concerns around clause 8. These concerns included:

- Difficulty in identifying veterans to whom authorities would be expected to apply the duty. In its evidence to the committee, the Royal British Legion said the inclusion of an armed forces question in the census would help authorities map populations of veterans and target support.
- Limiting the duty to healthcare, housing and education was an incomplete picture of support veterans need. In its evidence to the committee, the Confederation of Service Charities, Cobseo, said that this focus may mean that “issues of vital concern to veterans, such as social care, pensions, compensation, employment, benefits and support within the criminal justice system, are not included”.
- Limiting the duty to local authorities and some health and education bodies, rather than central government, missed the “day-to-day experience of the armed forces community, as well as the realities of policy development and the precedent set by other legislation that incorporates duties of due regard.”

The committee made several general recommendations on clause 8 that were not tabled as formal amendments to the bill. These included:

- That questions be included in future editions of the annual continuous attitude surveys for the regular armed forces, service families and the reserves on whether the covenant has had a positive or negative impact on respondents in the areas of housing, healthcare and education, in the previous 12 months.
- If enacted, the Government should review after 24 months of operation how the duty to have “due regard” works in practice and whether it is negatively impacting other areas of the covenant.
- The House of Commons Defence Committee should conduct post-legislative scrutiny into how the Armed Forces Act has worked in practice once it has come into force.

Government response

The Government responded to the committee’s report in a written statement from the Parliamentary Under Secretary of State at the Ministry of Defence, Leo Docherty, on 22 June 2021.¹⁹

On the service justice system, the minister said:

We are implementing a number of recommendations following the service justice system review that will ensure the service justice system is more effective, efficient and provides a better service to those who use it, in particular victims and witnesses. A key means of underpinning that assurance will be the establishment of a defence serious crime capability. We are making progress to build a stronger, more effective and collaborative approach to policing across defence, building a means of maintaining the capability and skills of the service police along with further joint working with the civilian police forces.

On the armed forces covenant, the minister said:

I welcome the committee’s assertion that questions in the annual continuous attitude surveys would help to ascertain whether the covenant has had a positive or negative impact on the defence community. For that reason the armed forces, and families continuous attitude surveys already include a covenant-related question on whether the service person or service family feels advantaged or disadvantaged compared to the general public in specific areas, such as housing, education and healthcare. This provides a measure of whether service life is having a positive or negative impact and is therefore of use as a measure of the covenant.

I acknowledge the select committee’s concern over how the duty to have ‘due regard’ would function in practical terms and its recommendation that the Government should conduct a review of this after 24 months of operation. We recognise the importance of understanding the impact of the new duty and how that can be measured will form an important part of our ongoing work in helping our covenant stakeholders as they begin to implement the new covenant duty. We are always happy to work with the House of Commons Defence Committee, and the Government will of course continue to report on the progress of the armed forces covenant, including the new duty, annually to Parliament. As part of the Armed

¹⁹ House of Commons, [‘Written Statement: Report of the Select Committee on the Armed Forces Bill’](#), 22 June 2021, HCWS109.

Forces Act, the new covenant duty would also be subject to the quinquennial parliamentary renewal process.

3.3 Committee stage

The House of Commons considered the bill in a committee of the whole house on 23 June 2021.²⁰

Amendments

At committee, several government amendments were moved, all of which were agreed to without division. The Minister for Defence People and Veterans, Leo Docherty, described these as technical amendments.

Two opposition amendments were defeated on division.²¹ These were:

- A Labour amendment that would place the same legal responsibility to have ‘due regard’ to the covenant on central government as would be placed on local authorities (amendment 1). This was defeated by 355 to 271.
- An SNP amendment that would require accommodation provided to service people in Scotland to meet the Scottish Housing Quality Standard (amendment 41). This was defeated by 354 to 273.

An amendment supported by Labour and SNP that would implement the Lyons review recommendations that serious crimes committed by service personnel in the UK should be tried in a civilian court was debated, but not called to a decision by the chair.

New clause 7: immigration status of commonwealth and Gurkha veterans

In addition, Labour moved that a new clause 7 be added to the bill that would have amended the Immigration Act 2014 to allow “any person with citizenship of a Commonwealth country (other than the UK) who has served at least four years in the UK armed forces” to be exempted from visa fees. This clause would also apply to those who had served at least four years in the Brigade of Gurkhas. The SNP also put its name to the new clause. Shadow Minister, Stephen Morgan, said:²²

Turning to new clause 7, the bill does nothing to address the shameful scandal of visa fees for non-UK personnel. Under current rules, Commonwealth personnel face a fee of £2,389 per person to continue to live in the UK after having served at least four years. To add further insult, they are given just 28 days following their discharge in which to pay it. This leaves many facing financial ruin and feeling abandoned by the country that they served with courage and distinction.

[...]

²⁰ [HC Hansard, 23 June 2021.](#)

²¹ House of Commons, [Armed Forces Bill \(Committee Stage Decisions\)](#), 13 July 2021.

²² [HC Hansard, 23 June 2021, col 893.](#)

Labour's new clause 7 would see those who have served more than four years pay only the cost price of their application for indefinite leave to remain, [which would be] £204, down from £2,389. That is a 90% reduction, and a long overdue step towards ensuring that these veterans can live in the country they fought for.

The minister, Leo Docherty, said that provisions for settlement fees were out for public consultation, and that he was “optimistic and expectant that we will deliver a good and honourable result for those who serve and deserve to be able to settle without exorbitant and unjust fees”.

The new clause 7 was defeated on division by 355 to 272.

3.4 Report stage

Report stage of the bill in the House of Commons took place on 13 July 2021.²³

Two opposition amendments were defeated on division.²⁴ These were:

- A Labour amendment that would require the attorney general's consent for murder, manslaughter, domestic violence, child abuse and rape charges to be tried in a court martial when offences have been committed by service personnel in the UK. If attorney general consent is not given, charges would be tried in a civilian court only (amendment 1). This was defeated by 360 to 274.
- A Labour amendment that would extend clause 8 covenant provisions to central government (amendment 2). This was defeated by 358 to 272.

One new clause was defeated on division by 361 to 272. New clause 4 would have required the Government to conduct a formal review of the standards of mental health care available for service personnel. On the new clause, the Shadow Minister for Veterans, Stephanie Peacock, argued that the Government is “currently missing a range of targets on mental health care for people who have served”.²⁵

One other new clause was withdrawn before division. New clause 1, moved by the Labour Party, would have established a duty of care standard in relation to legal, pastoral and mental health support provided to service personnel involved in investigations or litigation arising from overseas operations. The shadow minister said that this new clause was debated in the parliamentary stages of the Overseas Operations (Service Personnel and Veterans) Act 2021, but that “ministers did not accept this important duty as part of that Bill”.²⁶ Provisions in new clause 1 were discussed in the House of Lords report stage of the Overseas Operations (Service Personnel and Veterans) Act 2021. The issue was tabled as an amendment by Lord Dannatt and agreed on division;²⁷ however, the amendment was subsequently defeated in division when the bill returned to the Commons. Speaking at the time about

²³ [HC Hansard, 13 July 2021.](#)

²⁴ House of Commons, [Armed Forces Bill, As Amended \(Report Stage Decisions\)](#), 13 July 2021.

²⁵ [HC Hansard, 13 July 2021, col 237.](#)

²⁶ *ibid*, col 236.

²⁷ [HL Hansard, 13 April 2021, col 1243.](#)

the amendment, Baroness Goldie, Minister of State at the Ministry of Defence, said:

There was a question as to whether this bill was the correct or best forum for wider discussions about the duty of care owed to service personnel. The Armed Forces Bill, which was introduced into the other place on 26 January 2021, will further incorporate the armed forces covenant into legislation. That bill is a more appropriate mechanism for any discussion of the wider duty of care owed to our people²⁸.

Responding to new clause 1 at report stage of the Armed Forces Bill in the Commons, the minister, Leo Docherty, replied:²⁹

This amendment was debated at length in the other place during the passage of the Overseas Operations (Service Personnel and Veterans) Act 2021. Our service people are entitled to receive comprehensive legal support, and a full range of welfare and mental health support is offered to all our people, as laid out in the Defence Secretary's written ministerial statement of 13 April 2021.³⁰

[...]

We resist the new clause because a one-size-fits-all approach is not appropriate. People have different needs, and we want to ensure bespoke provision—the right support at the right time. Furthermore, the difficulties of drafting such a duty of care would inevitably mean the involvement of the courts and additional litigation.

²⁸ [HL Hansard, 13 April 2021, col 1257.](#)

²⁹ [HC Hansard, 13 July 2021, col 249.](#)

³⁰ House of Commons, '[Written Statement: Overseas Operations Bill: MOD Support to Service Personnel](#)', 13 April 2021.

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