The Armed Forces Bill
[Bill 5 of 1995-96]

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The *Armed Forces Bill* was presented to the House on 23 November 1995 and is due to have its second reading on 13 December 1995. An Armed Forces Bill comes before Parliament every five years. It provides for the three Forces discipline Acts (the *Army Act 1955*, the *Air Force Act 1955* and the *Naval Discipline Act 1957*) to continue in force for a maximum of five years subject to an annual Order in Council. The other main purpose of the bill is to amend the discipline Acts in order to bring military law in line, in as far as is considered possible, with civil law.

This paper will examine the provisions of the *Armed Forces Bill* and discuss certain related issues which may arise during debate and consideration in committee. It includes contributions from Mary Baber of the Home Affairs Section and Julia Lourie of the Business and Transport Section.

On 7th December the MOD announced that it would be making further changes to the court-martial system. Amendments to the *Armed Forces Bill* will be tabled shortly (HC Deb 7/12/95 c 346-347w).

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I Military and Civil Law

A person joining the armed forces becomes subject to military law under the *Army Act 1955*, the *Air Force Act 1955* or the *Naval Discipline Act 1957*. This does not mean that this person is no longer subject to civil law, but rather that his or her civilian status is modified by the superimposition of a military status. On the whole the result is that certain rights and freedoms are restricted in order to preserve military discipline and readiness. For example, a civilian who fails to attend his or her place of work cannot be subject to criminal proceedings, but a member of the armed forces who does so without leave commits a punishable offence under the Service Discipline Acts.

Certain parts of the Armed Forces Acts apply also to certain categories of civilians. These included civilians overseas who are either employed by the armed forces or who are dependents of someone who is subject to Service law. Offences committed by such persons may be dealt with by courts-martial or by summary proceedings, or, in the case of army and air force law by standing civilian courts. Standing civilian courts were set up in 1977 (under the *Armed Forces Act 1976*). Arrangements for the application of Service law to Service dependents and British employees based overseas have existed since 1748.[1]

It has long been government policy that the provisions of Service law governing civilians are as close as possible to those governing civilians in UK courts.[2] A similar general aspiration has also been followed in respect of Servicemen and Servicewomen. At the same time it is recognised that some special circumstances do prevail which make a complete identity between the two systems impossible. One of the most striking and controversial differences continues to be the availability of the death penalty for five serious military offences. These are misconduct in action, assisting the enemy, obstructing operations, mutiny, and failure to suppress mutiny. (In addition, civil criminal law provides for a mandatory death penalty in cases of treason which applies to civilians and Servicemen alike.) Despite its existence in law, capital punishment has not been invoked for a Serviceman since the end of the Second World War.[3]

The *Army* and *Air Force Acts* are now forty years old and the *Naval Discipline Act* only two years younger. The last Select Committee on the Armed Forces Bill complained that scrutiny of the Bill is made difficult by "the complexity of the three Acts that it seeks to amend. Since they became law in the 1950s, the Service Acts have been repeatedly amended,

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[1] HC Deb 21/11/90, c 356
[2] HC Deb 21/11/90 c 356
[3] HC 179, Sess. 90/91, Para 21

with sections and subsections both inserted and repealed. The result is frankly a mess".[4] The 1991 Committee recommended that the *Acts* should be consolidated by the time of the next Armed Forces Bill.

From time to time it has also been suggested that the three separate Service Discipline Acts might be merged into a single Act. In Canada, for example, up until 1950 the legal authorities for discipline in the three Services were almost exactly the same as those which existed in Britain. Under the *National Defence Act 1950*, all three Canadian Services, which at the time both in organization and traditions were very close to their British counterparts, were placed on a single legal basis. A uniform set of Canadian *Queen's Regulations* was introduced in 1965.

In response to the last Select Committee's recommendations, the Law Commission began an examination of Service discipline legislation. The possibility of merging the three Acts was looked at. Although much new armed forces legislation common to the three Services has been introduced in recent years, it was felt that there was insufficient commonality in earlier pieces of Service law, particularly between the Army and Air Force Acts, on one hand, and Naval Acts, on the other, to allow for the latter step to be taken. Some progress was made, however, in drafting a consolidation of the three separate Acts although this exercise was not completed. Changes to the discipline Acts introduced in the latest Armed Forces Bill might make both a consolidation or the drafting of a single Service discipline Act easier in the future.

II The Armed Forces Bill Procedure

For many centuries military law was a matter of Crown prerogative. Given the long-standing presumption against standing armies, military law was something which applied in time of war and in the proximity of the enemy. The so-called Articles of War issued by successive monarchs were generally of great severity and involved either the death penalty or mutilation. Since English, and later British, forces were normally deployed abroad it was generally held that the Articles of War could only apply abroad and "when an enemy is really near to an army of the King's".[5]

The involvement of Parliament in military law was at first limited to peace-time. The first Mutiny Act was passed in 1689 at which time Parliament was anxious to ensure the loyalty of the army to William and Mary. From this date on Parliament passed various Mutiny Acts

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[4] HC 179, Sess. 90/91, Para 44

[5] *Manual of Military Law* Part II (10th edition), 1-31

which were allowed to lapse during periods of prolonged peace, but the prerogative Articles of War continued to apply to active service abroad. The prerogative power of making Articles of War was finally superseded by a statutory power in 1813, but Parliament still had little influence over how this power was to be exercised. Only with the passage of the Army Act 1881 did Parliament achieve full control of military law.[6]

The present procedure dates from the 1950s, with some modification in 1971. *The Army Act 1955*, the *Air Force Act 1955* and the *Naval Discipline Act 1957* (the last of these being brought into the system in 1971, having previously been a permanent statute) stand to lapse unless Parliament positively decides that they should continue. Every five years an Armed Forces Bill is brought forward which proposes that the three Acts should continue, with whatever amendments are proposed, for a further year. The first Armed Forces Bill was passed in 1961. Contained within the Bill is a clause (1 in the present Bill) which allows for further annual extensions by Order-in-Council to be approved by affirmative resolution of both Houses of Parliament. These annual extensions can continue for a maximum of five years after which a new Armed Forces Act is required.

In practice what this means is that the Government and Parliament have a major opportunity to review military law every five years with opportunities for brief debates (usually l½ hours) to review the working of the law every intermediate year. In 1976 the Armed Forces Bill proposed that the system of annual orders should be dropped, but this idea did not find favour with the Select Committee examining the Bill or the House of Commons and the annual continuation procedure was maintained.[7]

The Armed Forces Bill, once presented and given a second reading by the House of Commons, is referred to an *ad hoc* Select Committee which takes evidence and reports back to the House. The 1985-86 Select Committee suggested that consideration be given to the idea that the Bill might in future be referred to the Defence Committee rather than to an *ad hoc* committee. This suggestion was rejected by the Defence Committee. The last Select Committee in 1990-91 reaffirmed its belief in the formation of a special Committee to consider the Armed Forces Bill as the most appropriate procedure.[8] The treatment of any legislation is, of course, a matter for the House itself to determine but the use of a special committee to consider a bill with often controversial content may provide an interesting precedent.

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[6] *Manual of Military Law*, Part II, 1-10
[7] HC 170 of 1985-86, evidence, 2. 41
[8] HC 179, Sess. 90/91, Para 46

One of the advantages of the use of a Select Committee to examine the Bill is that this committee not only may propose amendments to the Bill before the House, but may also recommend that certain matters should be reviewed before the passage of the next Armed Forces Bill. It is not, of course, the case that the Service discipline acts can only be amended by the five-yearly Armed Forces Bill. They can, in principle, be amended at any time. In its 1991 report the Select Committee, although not persuaded that the Armed Forces should accept homosexuals or homosexual activity, recommended that "homosexual activity of a kind which is legal in civilian law should not constitute an offence under Service law".[9] This recommendation was accepted by the government in 1992 which later promised that the necessary amendment to the *Sexual Offences Act 1967* would be made "as soon as the legislative programme allows".[10] The amendment was made by Section 146 of the *Criminal Justice and Public Order Act 1994.*

In another example, the last Select Committee asked that the MOD look again at the in-service monitoring of ethnic minorities which it has previously rejected.[11] This suggestion was supported by the Defence Select Committee. Subsequently, the MOD announced that it would conduct a survey of in-Service ethnicity, excluding the Gurkhas, in May 1992.[12]

III The Armed Forces Bill of 1990-91

The Armed Forces Bill of 1990-91, which became the *Armed Forces Act 1991,* was handled according to the procedure described in the previous section. Amongst the changes introduced by the Act were the authorization of the use of deductions from a serviceman's pay in respect of maintenance orders and changes to the sentencing of young offenders. The Bill was given a second reading by the House of Commons on 21 November 1990.[13]

The Bill was referred to an ad hoc Select Committee which reported on 24 April 1991.[14] The Bill passed through its committee and remaining stages on 17 June 1991 and then passed to the House of Lords.[15] Since the Bill provided, as usual, for the existing discipline acts to be continued, consideration went far wider than the matters covered by the government-proposed amendments. The topics discussed at length included the death penalty, homosexuality, trade union rights in the armed forces, bullying and racial harassment, young Servicemen and drug

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[9] HC 179, Sess. 90/91, Para 41
[10] HC Deb 17/6/92 c 989-990 and HC Deb 1/12/93 c 610w
[11] HC 179, Sess. 90/91, Para 35
[12] HC 218, 91/92, Para 5.15
[13] HC Deb 21/11/90, c 355-382
[14] HC 179, 90/91
[15] HC 17/6/91, c 51-89

abuse.[16] In addition, there was discussion of the idea that, by analogy with civil juries, courts-martial should include at least one person of below commissioned rank. Many of these issues have been of perennial interest to Select Committees on the Armed Forces Bill.

IV The Armed Forces Bill of 1995-96

Clause 1 Continuation of the Acts

The significance of this clause is described in Section II above. It provides for the Service Discipline Acts to continue in force until 31 August 1997 and allows for them to be continued until the end of 2001 by annual Order in Council subject to the approval of both Houses of Parliament. This clause has also in the past given the House a very broad opportunity to review Service discipline. Amongst the issues regularly addressed are various questions relating to equal opportunities, including the position of homosexuals, women and ethnic minorities in the Forces. These issues are discussed in Section V-VIII.

Clause 2 Local Service Engagements

This clause provides for a member of the regular services to restrict his service to a particular area although it allows for regulations to be made to compel the person to serve outside this area for a period of time to be determined. It relates to proposals to establish a new category of guard personnel on Military Home Service Engagements to undertake certain guarding duties.

The Defence Costs Study of 1994 initiated two inquiries into Service and MOD physical security. The first inquiry was divided into two parts. The first was to examine the guarding requirements of each MOD and Service establishment "in generic terms" and then secondly to see how these requirements might be met. This process was to be completed by spring 1995. The second study was to examine policing in each of the three Services, how this related to the MOD Police (MDP) and the Military Home Service Engagement (MHSE) concept within roughly the same timescale. The results of the inquiries, known as the *Defence Policing and Guarding Structures Study* and *MOD Guarding and Police Manpower Review*, have just been published.[17] The inquiries could lead to the introduction of a cheaper mix of and reduced number of MDP, MOD Guard Service (MGS), Service and MHSE guards.

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[16] In 1991, the Select Committee approved an amendment to remove the death penalty from military law. This was overturned on the third reading of the Armed Forces Bill (HC Deb 17/6/91 c 68)

[17] Defence Select Committee Eighth Report, *The Defence Costs Study*, Paras 31-32 and p. 47. The *Defence Policing and Guarding Structures Study* and *MOD Guarding and Police Manpower Review* have been deposited as Dep 2458 and 2456, respectively. A consultative document, the *Employment of the MOD Police in the Royal Ordnance Factories*, which suggests the removal of MDP personnel from three of them, has also been published (Dep. 2458).

As of March 1995 the actual strength of the MDP was 4,536. The Defence Police Study suggest that this may fall by up to 2,000 by the early years of the next century.[18] Consultation on the government's proposals has begun.[19]

Clause 3 Discharge from the Armed Forces

Clause 3 clarifies the detail to be included in the certificates of discharge of persons discharged from the armed forces. Additional particulars can be added by order of the Defence Council or by an officer authorized by them.

Large numbers of Servicemen are discharged from the armed forces each year. Although some are discharged following custodial sentences and for indiscipline or inefficiency, adminstrative action may also include Servicemen deemed unsuitable in training or discharged on the grounds of their sexuality. Certainly, some ex-Servicemen in the past have complained that insufficient detail on discharge certificates has prejudiced their subsequent re-entry into civilian society.[20]

Clause 4 Making of Enlistment and Entry Regulations by Statutory Instrument

This clause is a consolidation measure amending the 1955 Acts and the *Armed Forces Act 1966* to provide for all relevant regulations relating to enlistment and entry to the Services to be made by Statutory Instrument subject to the negative resolution procedure. Previously, the Defence Council has had powers to issue such Regulations for the Army and Air Force under the 1955 Acts without Parliamentary scrutiny and for all Services under the 1966 Act through Statutory Instruments. Existing regulations will remain in force until such time as they are replaced by new regulations made by SIs.

Clauses 5-8 Application of Certain Provisions of Criminal Law

Clauses 5 and 6 are concerned with ensuring that certain provisions of the general criminal law apply to Service disciplinary proceedings and proceedings before Service courts.

Clause 5 is designed to apply provisions in the *Criminal Justice Act 1988* and the *Criminal Justice and Public Order Act 1994* [21] to service disciplinary proceedings. These provisions

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[18] *The Times* 10/3/94, *MOD Police Annual Report 94/95,* Appendix C and *Defence Police and Guarding Structures Study,* Part V

[19] HC Deb 28/11/95 c 1047

[20] see HC 179, Sess. 90/91, evidence p. 169

[21] Section 32

abolished rules which required judges in proceedings at the Crown Court to give juries warnings about convicting defendants on the uncorroborated evidence of their accomplices, their victims in cases involving alleged sexual offences or of children. Similar requirements which applied to summary trials before magistrates were also abolished. Clause 5 will not operate retrospectively to affect the determination of questions about the law applicable to service disciplinary proceedings prior to its implementation.

Clause 6 is designed to enable the Secretary of State to make an order applying to proceedings before Service courts, provisions which currently enable civilian courts to accept video recordings of interviews with children as evidence in criminal proceedings. The provisions were introduced for civilian courts by Section 54 of the *Criminal Justice Act 1991*, which added a new Section 32A to the *Criminal Justice Act 1988.* The admissibility of video-recordings of children's evidence under Section 32A of the 1988 Act is governed by a number of requirements, such as the availability of the child witness for cross-examination, and disclosure of the circumstances in which the recording was made. A civilian court has the power to exclude all or part of a video-recording if it takes the view that in all the circumstances of the case the interests of justice require that all or part of it should not be admitted in evidence. Clause 6 is intended to enable these provisions to be applied to Service courts, subject to such modifications as may be specified in the order made by the Secretary of State. Orders made under Clause 6 will be statutory instruments subject to the negative procedure. The Secretary of State will also be able to make procedural instruments concerning the application of the provisions concerning video-recorded evidence to Service courts.

Clause 7 and Schedule 1 are designed to replace provisions in the current armed forces legislation on findings concerning the fitness of an accused person to stand trial and his or her insanity. The new provisions are intended to correspond broadly with the arrangements for civilian courts in England and Wales, which were changed by the *Criminal Procedure (Insanity and Unfitness to Plead) Act 1991*. Schedule 1 provides that the question of an accused person's fitness to stand trial by court-martial should be determined as soon as it arises. It does, however, enable the court to postpone consideration of the question until any time, up to the opening of the case for the defence, if it is of the opinion that it is expedient and in the interests of the accused to do so, having regard to the nature of the supposed disability. The court-martial which determines an accused person's fitness to stand trial will not be the same as the court-martial which tries the accused.

If an accused person is found not guilty before the question of fitness to stand trial has come up for consideration, the question of his fitness to stand trial will not be determined. Where it is determined that the accused is unfit to stand trial, the trial will not proceed but the court will have to determine, on evidence already given and subsequently presented by the prosecution and a person appointed by the court to put the case for the defence, whether the

accused did the act or made the omission which had been charged against him. If the court is not satisfied that the accused did the act or made the omission, it will have to find the accused not guilty, as if the trial had in fact been concluded.

If, on a trial by court-martial the court is satisfied that the accused committed the act or made the omission with which he is charged but that he was insane at the time, it will have to find him not guilty by reason of insanity. The court will only be able to make such a finding on the written or oral evidence of two or more registered medical practitioners, one of whom will have to have been approved.

Where the court finds that an accused person is unfit to stand trial but that he did the act or made the omission charged against him, or finds the accused not guilty by reason of insanity, it will be required to make whichever of the following orders it sees fit:

i) an admission order requiring him to be admitted to a hospital specified by the Secretary of State (this option will be mandatory where the offence concerned is one, such as murder, for which the sentence is fixed by law);

ii) a guardianship order, (which has the same meaning as under the *Mental Health Act 1983* and will lead to the accused being placed in the care of the appropriate local social services department);

iii) an order for his absolute discharge;

iv) a supervision and treatment order, requiring him to be under the supervision of a specified person for up to two years, to submit to medical treatment for his mental condition at a specified place, and to comply with any other specified requirements. The Secretary of State will be able to make an order substituting a different period for the period set down by the court-martial. Before making a supervision and treatment order the court-martial will have to be satisfied:

    a) that it is the best means of dealing with the accused;

    b) that the mental condition of the accused requires and may be susceptible to treatment but is not such as to warrant an admission or guardianship order (written or oral evidence will once again

be required from at least two medical practitioners, one of whom has been duly approved);

c) that the supervising officer who is to be specified in the order is willing to undertake the supervision; and

d) that arrangements have been made for the treatment which is to be specified. The Secretary of State will be able to make regulations detailing further provisions concerning this type of order.

Clause 8 Community Supervision Orders

Clause 8 introduces **Schedule 2** which makes changes to the powers of Service courts to impose community supervision orders on civilians. Such orders will be extended from a maximum of 12 months to a maximum of three years. The schedule clarifies the powers of officers arresting persons in breach of such orders. Fines for failure to comply with orders will be increased from a maximum of £50 to a maximum of £1,000.

Clause 9 Fingerprinting

Clause 9 is intended to give Service policemen powers to take the fingerprints of a person who has been convicted in Service disciplinary proceedings of a recordable offence (that is, an offence convictions for which are recordable as a consequence of regulations made under the *Police and Criminal Evidence Act 1984*). The fingerprints may be taken without the person's consent and, if necessary, reasonable force may be used. The power may not be exercised where the person's fingerprints were taken during the investigation of the offence or since his conviction, or after three months from the date of his conviction. The power is in addition to any other powers to take fingerprints which are available to Service policemen.

Clauses 10-11 Rehabilitation of Offenders

Clause 10 amends the *Rehabilitation of Offenders Act 1974* which allows convictions to become "spent" after a specified period of time. It is intended to bring a wider range of convictions imposed following Service disciplinary proceedings within the ambit of the Act, which does not at present apply to Service convictions for minor offences or minor punishments imposed by Service courts. The 1974 Act provides for an offender's rehabilitation period (the period of time which must elapse before his conviction can be

regarded as "spent") to be extended where he is subsequently convicted of a further offence. Subsequent minor convictions are disregarded, but this is not the case where the conviction arises in Service disciplinary proceedings. Clause 10 is designed to remove the general prohibition on disregarding subsequent convictions from Service courts and replace it with a provision whereby subsequent convictions for a number of offences listed in Schedule 3 will be able to be disregarded. Thus a convicted Serviceman who is subsequently convicted at Service disciplinary proceedings of one of the offences listed in Schedule 3 will not have his rehabilitation period extended as a result. The benefits of these changes will apply retrospectively to convictions made and punishments imposed in Service disciplinary proceedings before, as well as after the provisions are brought into force.

Clause 11 makes similar provisions concerning rehabilitation periods in Northern Ireland.

Clauses 12-17 Changes to Court-Martial Procedures and Appeals

The court-martial system has been subject to criticism both regarding its handling of military as well as civilian cases. A number of applications have been made by ex-Servicemen convicted by courts-martial to the European Commission of Human Rights contesting the independence and impartiality of courts-martial and courts-martial review procedures. The leading case is that of Findlay, a former Serjeant in the Scots Guards. In 1990 whilst serving in Northern Ireland, Findlay ran amok with a loaded pistol, threatening to kill himself and certain of his colleagues. Findlay subsequently pleaded guilty to the majority of the charges arising, including assault and threatening to kill, at a general court-martial held in November 1991. He was sentenced to two years imprisonment, reduction of rank and dishonourable discharge. His application contests that on various points the court-martial itself and subsequent sentence reviews contravened Article 6 of the European Convention of Human Rights which guarantees a fair and impartial trial. Findlay claims, *inter alia*, that medical evidence that he was suffering from Post Traumatic Stress Disorder was not given sufficient weight, that he was given no reason for his level of sentence and that subsequent post-hearing review procedures were largely administrative. In 1994, in a separate action, the MOD agreed to pay Findlay £100,000 in compensation for their failure to treat his PTSD and an earlier back injury .[22]

In February 1995, the European Commission of Human Rights, which acts to 'filter' applications to the Court of Human Rights, held that Findlay's case was admissible. This decision is only taken in around 15 per cent of cases. A Commission decision as to whether the case should be referred to the Court is pending. Twenty other applications concerning the fairness of the courts- martial and courts-martial appeals procedures are now staid pending

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[22] *The Times* 7/12/94 and *The Independent* 24/2/95, FCO and European Commission of Human Rights Decision as to the Admissibility of Findlay, Application 22107/93, 23/2/95.

the progress or otherwise of the Findlay case.[23] If the latter does reach the Court, due to the backlog of cases, it may take up to two to three years before judgement is reached.

Criticism of the courts-martial system has also been expressed by George Galloway MP in respect of the murder of Christina Menzies, the daughter of a constituent serving in the RAF in Germany in 1993. L/Cpl. Darren Fisher was charged with her murder and subsequently acquitted at a court-martial in 1994. Mr Galloway declared, "The military police, who were soldiers with armbands, and the military prosecutor, who was a soldier with a wig, bungled the case".[24]

Clause 12 (with **Part I of Schedule 6**) of the Bill changes the *Army* and *Air Force Acts 1955* to remove the powers of the Confirming Officer to confirm and revise the findings of courts-martial. Under the revised procedure the findings of a court-martial will come into immediate effect as is already the case in the Royal Navy. There have been suggestions that the powers of Confirming Officers in the Army and RAF, that is also the superior officer who has ordered the court-martial to be convened, in this respect have led to variations in sentencing. A former member of the Army Legal Service has commented: -

Discretionary powers

> By rights the system should not be unfair. On paper it is a good system with checks and balances that preserve the proper interests of justice ao also ensure the utmost fairness for an individual accused. Many safeguards brought into existence by or under the Army Act 1955 give more advantages to a military accused than do the similar civilian provisions, especially during the trial process where there are greater opportunities for the defence to obtain an acquittal. Yet there is still unfairness in the way justice is dispensed in the army and these aspects of iniquity arise almost exclusively from the way in which discretionary powers are granted to commanding officers and superior authorities. These are officers higher in the chain of command, to whom a commanding officer is responsible for discipline, and who can therefore affect the pre- and post-trial process. Because discretion exists within the system-to decide whether a matter should go for trial by court-martial, for example it is possible for officers in the chain of command above the CO, who are responsible for overseeing the disciplinary system, to introduce bias in two ways: first, by reducing the discretion of individual commanding officers by direct influence; and, secondly, by initiating policies that will debar all commanding officers from using discretionary powers properly. Thus an individual facing an allegation which after investigation may require him to be charged and dealt with formally, may be dealt with more

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[23] FCO

[24] HC Deb 28/3/95 c 812-813 and *The Scotsman* 3/3/95

> harshly than is appropriate, or more leniently, with consequent unfairness to others, simply because the system decrees this rather than the circumstances of his case.
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> (J. K. Venn, 'Military Justice - an oxymoron?', *New Law Journal* 19/4/91 & 26/4/91)

Clause 13 introduces **Schedule 4** which amends the provisions of the three Service Discipline Acts as to the manner in which reviews are made of courts-martial findings and sentences. Hitherto, a Serviceman sentenced by court-martial could appeal to the following reviewing authorities: officers superior in command to the Confirming Officer, then the appropriate Service Board of the Defence Council and ultimately the Queen. Under the system proposed by the Clause, there will now be a single stage review by the appropriate Service Board of the Defence Council or their delegates. The reviewing authority will have powers, *inter alia*, to quash the sentence or substitute it with another sentence not being in the opinion of the authority more severe than the original. There will no longer be power to review findings and sentences on a subsequent occasion.[25]

Clause 14 changes the powers of the Courts-Martial Appeal Court by amending the *Courts-Martial (Appeals) Act 1968* to allow the Court to hear appeals against sentence where the accused is a soldier, in addition to the existing power to hear appeals against conviction. This distinction has been another area of criticism of the courts-martial system as civilians under military law already have the right to appeal against both sentence and conviction.[26] The clause also increases the Secretary of State's powers to refer the sentences passed on Servicemen as well as civilians under Service legal jurisdiction to the Appeals Court. The Secretary of State has not had this power before.

Clause 15 provides for the registrar of the Appeals Court, on the Court's behalf, to extend the time limits for notice of appeal or application of leave to appeal and to order witnesses to attend for examination.

Clause 16 extends the rights of appeals on behalf of convicted persons, now deceased, who were under Service jurisdiction. Family members or personal representatives can continue with appeals to the Appeals Court begun by the deceased within one year of his or her death. The provisions will be the same as that already allowed for those solely under civil law under the *Criminal Appeal Act 1968* Section 44A.

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[25] Officers have the right to take complaints to Her Majesty see, for example, *Army Act 1955*, Section 180

[26] Venn, p. 577

In the press release accompanying the publication of the Armed Forces Bill, the Minister for the Armed Forces stated in addition to the above provisions "Further proposals for court-martial reform will be brought forward shortly"[27].

Clause 17 Changes to Service Complaints Procedures

This clause replaces the existing provisions in the Service Discipline Acts relating to armed forces' complaints procedures. New provisions are introduced which are common to all ranks and all Acts with the exception of different cross-referencing. They stipulate that : any person subject to military law can make a complaint; the manner in which complaints are to be made and dealt with is to be laid down in *Queens Regulations*; and that a time limit of not less than three months is to be allowed for a complaint to be made. The new clause also allows for the granting of any redress deemed necessary. Changes to complaints procedures relate to Clauses 18-24.

Clauses 18-24 Changes to Service Law with Regard to Employment Protection

Until relatively recently the armed forces were excluded from much of the employment protection legislation covering civilian employment. EC equal treatment legislation has been a major force in bringing about the following changes:

- The ***Sex Discrimination Act 1975 (Application to Armed Forces etc) Regulations 1994, SI No 3276*** amended the *Sex Discrimination Act 1975 [SDA]* so that it now applies to the armed forces. Originally, the Act excluded the armed forces by virtue of section 85(4). The Equal Opportunities Commission challenged this exclusion in the Courts, arguing that it was incompatible with the EC *Equal Treatment Directive*.[28] The Ministry of Defence conceded the case in December 1991 and, thereby, opened the door to a flood of compensation claims from women who had been dismissed from the armed forces on pregnancy grounds. They did not, however, repeal this exclusion until 1 February 1995 when these Regulations came into effect.

  The Equal Opportunities Commission [EOC] has questioned whether these amending regulations are sufficient to make UK law compatible with EC law. This is because the amending regulations still permit sex discrimination "for the purpose of ensuring the combat effectiveness of the naval, military or air forces of the Crown." The EOC believe that "combat" duties might be too

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[27] MOD PR 130/95 24/11/95 and see p.26
[28] Directive EC/76/207

broadly defined to bring the law within the very narrow exclusions allowed by the EC Directive. These exclusions are permitted by Article 2(2) which states:

> "This directive shall be without prejudice to the right of Member States to exclude from its field of application those occupational activities and, where appropriate, the training leading thereto, for which, by reason of their nature or the context in which they are carried out, the sex of the worker constitutes a determining factor."
>
> The "combat effectiveness" exclusion was debated in both the Lord and the Commons, but it remains.[29]

- Section 31 of the ***Trade Union Reform and Employment Rights Act 1993*** inserted a new section 138A in the *Employment Protection (Consolidation) Act 1978* which extended the following employment rights to members of the armed forces:

  written statement of terms of employment

  itemised pay statement

  payment during medical suspension

  time off for ante-natal care

  maternity leave

  written statement of reasons for dismissal

  right to claim unfair dismissal

  right to go to industrial tribunal.

  These changes were introduced in the Lords and only briefly debated in each House. [30] The section allows for Orders in Council to be made amending the new provisions and providing that servicemen and women may not complain to an industrial tribunal without first making use of the internal service procedures for redress. However, the section has not yet been commenced because of technical problems.

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[29] First Standing Committee on Statutory Instruments, 7 February 1995. HL Deb 16 February 1995, cc 852 - 869
[30] HL Deb, 25 March 1993, cc 583-584, HC Deb, 16 June 1993, cc 918-922

Clauses 18 - 24 of this Bill are primarily concerned with tidying up the changes that have already been made. They also ensure that service personnel applying to industrial tribunals must first have gone through the forces' internal redress procedures. In December 1994, the Government published a Green Paper, *Resolving Employment Rights Disputes, Options for Reform.* [31] The driving force behind the Green Paper was a desire to cut down the ever-growing caseload faced by the industrial tribunals. It sought views on the introduction of a statutory requirement that industrial tribunals be required to take into account whether applicants had sought to resolve their dispute with their employer before making a tribunal application and/or a statutory requirement for employees to pursue grievances with their employer before a tribunal complaint can be made. In the event, the Government decided not to proceed with these suggestions because many respondents to the Paper had argued that attempting to resolve disputes with an employer in-house "might lead to increased delays and complexity in tribunal procedures, rather than alleviating them". [32] These arguments might not apply to the armed forces which have clearly laid down internal redress procedures.

Clause 18 amends the *Sex Discrimination Act 1975*. It provides that a serviceman or woman may not make a complaint of sex discrimination to an industrial tribunal if they have not first made a complaint under the service redress procedures. To make allowance for the time this will take the normal time limit of three months on applications to industrial tribunals is extended to six months in armed forces cases. A power to make Regulations (subject to the negative procedure) allowing earlier application to industrial tribunals in prescribed circumstances is included in the Clause. This could be used to ensure that service personnel did not lose their right to apply to a tribunal because of delays in the internal procedures.

Clause 19 makes similar amendments to the *Sex Discrimination (Northern Ireland) Order 1976*.

Clause 20 extends the right to complain of race discrimination to an industrial tribunal to the armed forces. Race discrimination is already illegal in the armed forces under section 75(2). However, such complaints have to be referred to the service's own redress procedures. This clause allows such complaints to go to industrial tribunals but only after a complaint has been made through internal channels. Its provisions follow closely those for sex discrimination.

Clause 21 amends the *Equal Pay Act 1970* so that the armed forces have the same rights to take an equal pay case to an industrial tribunal as civilian employees. Again, internal procedures will have to be used first. At present, section 1 (9) of the Act excludes the armed forces from its standard provisions. Section 7 requires that the terms and conditions

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[31] Cm 2707

[32] HC Deb, 20 November 1995, c 20w

of service personnel make no "distinction, as regards pay, allowances or leave, between men and women ....., not being a distinction fairly attributable to differences between the obligations undertaken by men and those undertaken by women". However, there is no appeal to a tribunal if people feel there is an unfair distinction. The section 1(9) exclusion was raised during the debate on the *Sex Discrimination Act 1975 (Application to Armed Forces etc) Regulations 1994, SI No 3276,* but the Minister then argued that no amendment was necessary:

> The Motion seeks also to repeal the blanket derogation for the Armed Services in Section 1(9) of the Equal Pay Act 1970. We do not believe that there is any need to do so. The Equal Pay Act 1970 does not deal with the Armed Forces in the same way as does the Sex Discrimination Act 1975. Section 7 of the Equal Pay Act specifically precludes the Secretary of State for Defence from making any distinction between servicemen and servicewomen in pay, allowances or leave, unless it is fairly attributable to differences in obligations undertaken. The basic pay of the Armed Forces already complies with the principle of equal pay for equal work.[33]

The clause replaces section 7 of the *Equal Pay Act* with a new section 7A (sic) which extends the Act, with appropriate modifications, to the armed forces. An "equality clause" will be deemed to be included in the service terms and conditions. Equal pay claims will be able to be presented to industrial tribunals (as long as internal procedures have first been used). Women will not be able to make a claim more than nine months after leaving the forces. (The civilian limit is six months).[34] Arrears are limited to two years before the complaint was made. This is the same limit as for civilian cases.[35]

Clause 22 makes similar amendments to the *Equal Pay Act (Northern Ireland) 1970*.

Clause 23 amends section 138A of the *Employment Protection (Consolidation) Act 1978*, inserted by section 31(2) of the *Trade Union Reform and Employment Rights Act 1993* [TURER], which has not yet been brought into force. The purpose is to make technical changes to ensure that the extension of the right to go to an industrial tribunal in ordinary employment protection cases to the armed forces introduced by the Act can be commenced as intended. The same procedure, requiring the use of internal service redress procedures before an application can be made to an industrial tribunal, is included.

Clause 24 makes similar amendments to the *Industrial Relations (Northern Ireland) Order 1993* which introduced the changes made by TURER to Northern Ireland.

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[33] Lord Henley, HL Deb, 16 February 1995, c 867
[34] *Equal Pay Act 1970*, section 2 (4)
[35] Ibid, section 2 (5)

Clause 25 Exemptions from the Firearms Act 1968

Clause 25 amends Section 54 of the *Firearms Act 1968* and adds a new Section 16A to the *Firearms (Amendment) Act 1988*. Section 54 of the 1968 Act applies the requirements of that Act governing the purchase and acquisition of firearms, and the exemptions from those requirements, to Crown servants acting as such, subject to the following modifications:

> (a) a person in the service of Her Majesty duly authorised in writing in that behalf may purchase or acquire firearms and ammunition for the public service without holding a certificate under this Act;
>
> (b) a person in the naval, military or air service of Her Majesty shall, if he satisfies the chief officer of police on an application under section 26 of this Act that he is required to purchase a firearm or ammunition for his own use in his capacity as such, be entitled without payment of any fee to the grant of a firearm certificate authorising the purchase or acquisition or, as the case may be, to the grant of a shot gun certificate.

By virtue of the amendment to Section 54 set out in Clause 25, it is intended that members of foreign forces serving with the Crown forces, members of approved cadet corps engaged as such in drill, target practice or related activities and their instructors should be deemed to be "in the naval, military or air service of Her Majesty" and thus be considered exempt from the relevant provisions concerning firearms.

Section 54 of the 1968 Act also provides for the exemption of Crown servants acting as such from the Act's restrictions on the possession of firearms. Clause 25 will exempt members of approved cadet corps engaged in target practice on service premises from the 1968's restrictions on the possession of prohibited weapons or ammunition. The new Section 16A which the Clause will insert in the *Firearms (Amendment) Act 1988* is intended to enable a person under the supervision of a member of the armed forces to have a firearm and ammunition in his possession on service premises without a certificate or the authority of the Secretary of State.

Clause 26 Greenwich Hospital

As part of the Defence Costs Study it was decided to create a Joint Services Command and Staff College on a single site. This would involve the merger of the Royal Naval College, Greenwich, the Army Staff College, Camberley and the RAF Staff College, Bracknell. As

the latter site was deemed to be too small for the new College, a subsequent examination was made of the relative benefits of either the Surrey or east London location.[36]

The Royal Naval College is located in the Greenwich Royal Hospital, a palace built by Sir Christopher Wren in 1696. It was used as a seaman's hospital until it became the Royal Naval Staff College in 1869.

In March 1995 the MOD announced that it had chosen Camberley as "the most cost effective option". Alternative Service uses were being considered for the Greenwich site when it is vacated by the RNC the end of 1997. Although it had been decided that Greenwich was an inappropriate site for a new Tri-Service Chaplaincy School, it might still house the Defence School of Languages. The Ministry was also intending to seek "expressions of interest in the site from organisations [outside the MOD] able to propose uses sympathetic to the character of the buildings". A final decision on the future of the Royal Naval College would be announced by the end of the year.[37] In September 1995 the MOD invited tenders for a 150-year lease on the Royal Hospital and associated buildings. The proposed sale has encountered strong criticism.[38] The need to change the law to make such a sale possible may delay a decision until well into next year.

The *Greenwich Hospital Act 1869* enables the Hospital, "or any part thereof, to be used for the Naval service, any Government Department or of the benefit of persons engaged, or who have been engaged, in seafaring pursuits. The Act requires that the buildings 'be at all times available' for their original use as a Hospital".[39] There has been some doubt as to whether Section 7 of the *Greenwich Hospital Act 1869* permits the Secretary of State as trustee of the Hospital to grant a long-term lease of the site to a non-government body. **Clause 26**, which amongst other things repeals Section 7 of the 1869 Act, ensures that "the Secretary of State, in whom the freehold of the buildings is vested, has the power to grant such a lease, if he decides that is an appropriate course of action" or to retain the buildings in government use.[40]

Clause 27 Penalties for Failure to Provide Specimen for Drug Testing

Drug abuse takes place in the armed forces, as in society at large, and is concentrated in the below thirty age group. If discovered, those taking drugs are expelled from the armed forces subject to certain exceptions. The Army rules concerning drug misuse are detailed in the *Queen's Regulations*: -

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[36] *Front-line First: the Defence Costs Study*, July 1994, Paras 319-321
[37] HC Deb 30/3/95 c 746-47
[38] see for example *The Guardian* 6/9/95 and *The Independent* 18/9/95
[39] HL Deb 6/11/95 WA 186
[40] *ibid*

Misuse of Drugs

5.089. It is Service policy that save in exceptional cases those found to be involved in drug misuse will be discharged, and that retention in the Service will normally only be appropriate where all the following factors apply:

a. It was a first offence involving personal use or possession.

b. The misuse involved other than Class A drugs.

c. The chances of reforming the individual are good.

d. The individual is a young Serviceman or woman and is below the rank of Corporal.

e. In all other respects the individual is considered a good Serviceman or woman whose drug misuse was uncharacteristic, and whose retention would be in the interests of the Service.

The Military Ethos (The Maintenance of Standards) (Dep 10456), published by the Army in January 1994, contained a section on its determination to stamp out drug misuse: -

> 21. The misuse of controlled drugs is illegal. It undermines trust and mutual respect, impairs efficiency, judgement and reliability and is therefore detrimental to operational effectiveness. Drug misuse has an insidious effect and wherever it takes hold will undermine quickly a unit's discipline, morale and cohesion. Drug misuse will not be tolerated and the Army's sentencing policy for drug offences is based upon dismissal. To that effect the Army Board are committed to Compulsory Drug Testing. Drugs misuse, which includes pharmaceuticals, such as anabolic steroids, and solvents as well as controlled drugs, may result in administrative discharge (or a call to resign or retire in the case of an officer) even when charges are not preferred.

In provisional figures for 1993, the latest available, there were 134 convictions at courts-martial for drug offences; 367 warrant punishments/summary trials and proceedings; and 12 conviction in civilian courts. The comparable figures for 1992 were 171, 413 and 28, respectively.[41]

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[41] Tri Service Personnel Statistics Bulletin TSP 16 "Disciplinary Convictions - UK Regular Forces & Proceedings Against Civilians"

The Army decided to step up its anti-drug campaign by introducing random compulsory drug testing from the end of 1994 . Hitherto, only those suspected of taking drugs had been tested.[42] Widespread random testing in the Army followed a trial conducted in 1993.[43] Details of wider MOD policy on drug abuse were given in a statement: -

Drug Testing

Mr. Butler: To ask the Secretary of State for Defence what plans he has to introduce random compulsory drug testing in the armed forces.

Mr. Jamieson: To ask the Secretary of State for Defence what plans he has to introduce random compulsory drug testing in the armed services.

Mr. Soames: The House will be aware that we have for some time been working on plans to introduce random compulsory drug tests in the armed forces.

The Government attach very high priority to tackling the problem of drug misuse. This is reflected in the proposals set out in the recent Green Paper, "Tackling Drugs Together". In the spirit of the Green Paper, a number of measures are already taken in the armed forces to educate recruits and service personnel about the dangers of drugs, and the unlawful possession or supply of a controlled substance is contrary to service as well as civilian law.

Following detailed studies, a broad policy framework was agreed last year for the introduction of a compulsory drug testing regime in each of the three services, should that be judged necessary. I can now announce that, following an anonymous trial of testing procedures in the Army, we have decided as a further deterrent to introduce compulsory drug testing in the Army.

With immediate effect, Army personnel may be required to provide urine specimens for testing at any time and with no prior warning. Personnel who are tested positive or who refuse to provide a specimen will in the case of officers be required to resign and

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[42] *The Independent* 1/11/94
[43] HC Deb 28/3/94 c532w

> soldiers will normally be discharged. Lance corporals and below may in certain circumstances be given a second chance and allowed to remain in the Army for counselling.
>
> The Royal Navy is initiating compulsory drug testing trials, which will allow decisions to be taken as to whether there is a need to introduce a drug testing regime. The Royal Air Force does not need to introduce compulsory drug testing for the moment, but it is keeping its policy under review. In the meantime the RN and RAF will continue to apply other measures to deter drugs misuse.[44]

As of 15th November 1995, 16,968 Army personnel had been tested. 133 had failed and the results of a further 328 tests were awaited.[45] Random drug testing was introduced into the US armed forces in 1980, after abuse had become widespread during and as a consequence of the Vietnam War. By 1988, the number of those tested who tested positive had fallen by 82 per cent.[46]

Clause 27 is intended to assist the compulsory drug testing programme. Hitherto, those refusing to provide specimens could only be the subject of adminstrative actions, including discharge for soldiers and resignation for officers. Now all those refusing to do so in all three Services will be liable to a maximum punishment of six months' imprisonment.

Clause 28 Application of Visiting Forces Act 1952

The Visiting Forces Act (VFA) 1952 governs the legal status of foreign forces serving in the United Kingdom. The Act replaced earlier wartime legislation and also implemented the NATO Status of Forces Agreement (SOFA) 1951. In essence, the VFA provides for the exercise of extraterritorial jurisdiction by the sending state over members of its armed forces and their dependents in the receiving state's territory in certain cases.[47] **Clause 28** would allow the Government, by Order in Council, to extend the provisions of the Act to foreign servicemen located in Britain from states with which the UK is engaged in defence co-operation. The VFA currently applies only to Servicemen from Commonwealth and NATO countries. The amendment may be intended to cater for servicemen from central and eastern Europe who are training in the UK under NATO's Partnership for Peace and other bilateral

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[44] HC Deb 13/12/94 c. 571 w
[45] HC Deb 27/11/95 c 487-488w
[46] see `Drug Testers Stand by to Move in', *The Soldier* 9/1/95
[47] S. Duke, *US Defence Bases in the United Kingdom: A Matter for Joint Decision?*, p. 117

defence initiatives. It might also be applied to Servicemen from other countries undertaking training at UK military establishments.

Clause 30 Minor Changes and Repeals

This clause introduces **Schedule 5**, which makes several minor and consequential amendments to the Service discipline acts, and **Schedule 6**, which specifies enactments to be repealed as a consequence of the provisions of the Bill.

Clauses 29 and **31** are procedural.

A. Further Changes to the Court-Martial System

On 7 December the MOD announced that it proposed to make further changes to the court-martial system. Amendments to the *Armed Forces Bill* will be tabled shortly. The proposals were outlined in a Parliamentary Answer: -

Court Martial System

Mr. Clifton-Brown: To ask the Secretary of State for Defence what are his proposals for the reform of the court martial system.

Mr. Soames: We have undertaken a review of the court martial system as part of our preparations for the Armed Forces Bill which was introduced recently.

As a result, we are including in the Bill proposals to reform aspects of the court martial system, while enabling it to continue to meet the armed forces' requirement to administer discipline firmly but fairly. I am today putting a note setting out the detail of these proposals in the Library, and copies will be available in the Vote Office. The main features of the changes are as follows: there will be changes in the formal part played in court martial proceedings by the military chain of command. Its functions, such as settling charges, responsibility for the prosecution and appointing court martial members, will remain in the services but generally be independent of the chain of command; there will be

> an enhancement of the part played at court martial by the judge advocate, who is similar in many ways to a judge in a civilian court; the right for defendants to choose to have their cases tried by court martial, rather than dealt with summarily by the commanding officer, will be extended; access to the courts martial appeal court, which is composed of senior civilian judges, will be extended, to enable it to hear appeals against sentence as well as against conviction.
>
> This last proposal is already included in the Armed Forces Bill. Amendments to the Bill to address the other proposals which require legislation will be tabled shortly.
>
> The court martial system has served the services very well over the years. We believe that the proposals represent a major improvement to the present system and will enable it to continue to fulfil its purpose for a long time to come.

HC Deb 7/12/95 c 346--347w

A longer explanation of these proposals was deposited in the Library and is available in the Vote Office.[48]

V The Armed Forces and Society

As noted above, the quinquennial debates and select committee reports on the Armed Forces Bill have traditionally offered Parliament the opportunity to examine the full range of non-operational Service issues. The post-Cold War period has been one of rapid change for the armed forces. Not only have there been reductions in the number of personnel of about 25 per cent, but also substantial relocations and changes in the nature of the armed Services.

Apart from the two World Wars, the British armed forces have traditionally been somewhat isolated from British society as a whole. Whether on HM ships at sea, in distant colonial outposts or on windswept East Anglian airfields, the Services have been largely self-contained. Apart from recurrent manning problems, the armed forces were largely unaffected

[48] Deposited Paper 3S/ 2462

by wider social changes which began in the 1960s. It was not until the 1980s that the forces began to face the implications of societal shifts. The Army was reputed to be particularly conservative. As one commentator has remarked, "As recently as 1988, some senior officers were still asserting that the Army should always remain half a generation behind society as a whole".[49]

Conservative governments since 1979 have sought to introduce more managerialism into the defence establishment. This process began within the Ministry of Defence with the introduction of MINIS and reforms to defence procurement practices in the mid-1980s. It then extended to the Services themselves with the introduction NMS in 1991 and continued with the Independent Review of Service Career and Manpower Structures and Terms and Conditions of Service or the Bett Review which began in 1994 and parts of which may be implemented from 1996.[50]

At the start of the 1990s the defence establishment began to adopt much of the equal opportunities agenda set out in law in the 1970s. This affected women particularly who now enjoy equal status with men in all but a few areas of Service life. Recently, the MOD has also made some efforts to increase the number of recruits from the ethnic minorities and to address racial discrimination in the armed forces. It should be pointed out, though, that these changes have not always been voluntary. Some changes have been forced on the MOD by legal challenges. Others are a consequence of the need to find recruits of sufficient number and calibre to operate increasingly high technology equipment.

In contrast to current policy on equal opportunities for women and ethnic minorities in the Services, the MOD has so far steadfastly refused to apply similar arguments to the employment of homosexual servicemen. Despite recent changes to Service law on homosexuality, homosexuality is still "considered incompatible with military service" and on discovery or self-confession gay and lesbian military personnel are "required to leave the Services".[51]

Armed forces abroad have adopted varying approaches to the question of equal opportunities. Within Europe, northern European states were generally the first to integrate women fully into their armed forces during the 1980s. Some have also adopted similar policies with regard

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[49] A. Beevor, *Inside the British Army*, p. 362

[50] The latter aimed to "examine service career and manpower structures, and terms and conditions of service, and recommend changes required to render them appropriate to the needs of the 21st century" (HC Deb 30/3/94 c 752w). *Managing People in Tomorrow's Armed Forces* was published in March 1995. A number of studies connected with Bett have now been launched. A definitive government response to Bett is to be made in spring 1996 (HC Deb 26/6/95 c 503w).

[51] MOD, *Armed Forces Policy and Guidelines on Homosexuality*, 15 December 1994, Para 3 (Deposited Paper 3S/1112)

to homosexual Servicemen. Southern European states have been more slow to open up Service appointments to women and have less defined policies on homosexuality. Further afield, the Services of British allies such as the USA, Australia and Canada have in general been slightly ahead of Britain in providing equal opportunities for women and have made recent changes to their policies on homosexuality.

VI Women in the Armed Forces

Women became recognized components of modern armed forces, including those of Britain, at the beginning of the twentieth century. Women's branches of the three Services were raised during the First World War only to be disbanded afterwards. Re-raised in 1939, the Womens' Services were retained after the end of hostilities as the Women's Royal Naval Service (WRNS), Women's Royal Army Corps (WRAC) and the Women's Royal Air Force (WRAF). Over the next forty years, although there was an expansion of trades open to women and adminstrative distinctions between servicemen and women gradually blurred, Servicewomen were still confined to support functions. It was not until the 1980s that sexual equality began to arrive in the British armed forces.[52]

The Royal Navy, acting as the pioneer in the full integration of women, allowed WRNS a combat role for the first time in 1990. WRNS adopted RN rank titles in 1991. The Royal Naval Bands Service was opened to women in September 1992. By the end of 1993, a woman pilot cadet had entered the Britannia Royal Naval College, Dartmouth and 800 women were serving at sea in nearly 30 warships. The WRNS was formally integrated into the Royal Navy on 1 November 1993.[53] In the Army, women have continued to advance both in number and in roles since the disbandment of the WRAC in 1992. By May 1995 there were three Army Air Corps pilots. Women soldiers, as well as those from the other Services, can now enter for bomb disposal training.[54] The Women's Royal Air Force was dissolved on 1st April 1994.[55] In May 1995 there were eight women pilots, including one qualified for fast jet aircraft and 12 female navigators. 28 women were undergoing pilot training and 22 navigator training.[56] As of 1 September 1995, 12.8 per cent of Naval, 3.5 per cent of Army and 8.7 per cent of RAF personnel were women.[57]

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[52] Research Paper 93/12 *Women in the Armed Forces*, February 1993, pp 1-2
[53] *Statement on the Defence Estimates* (SDE) 1994, Para 522
[54] *SDE 95*, Para 524
[55] HC Deb 24/2/94 c 381-382w
[56] *SDE 95*, Para 524
[57] Tri-Service Personnel Statistics

The MOD has sought to entrench equal opportunities for women in the Services via management and other training. Equal opportunities training is to be introduced on new entry and management courses and the career progression of women is to be monitored to make sure that they receive equal treatment to men.[58] Guidelines have been issued on sexual harassment. For example, the Army guidelines state that "It is Army policy that sexual harassment is not to be tolerated. It is unacceptable behaviour which must be dealt with in the appropriate manner, and if necessary, by formal disciplinary or administrative action".[59] Sexual harassment is listed as including: "Unwelcome sexual attention in the form of unwelcome physical and verbal conduct"; "Other behaviour of a consistent and offensive nature involving physical conduct such as patting, pinching or brushing against another person's body" ; " the circulation or display of sexually explicit material"; and "The inclusion of stories/jokes and illustrative material in formal presentations or lectures that may cause offence in a mixed audience".[60] Since February 1995, Service personnel have been able to take complaints of sexual harassment directly to industrial tribunals.[61]

The Services have also introduced rules on sexual conduct between male and female service personnel. Physical contact is not allowed between members of the opposite sex whilst on duty which includes service in the Royal Navy whilst on board ship. Off duty there are no objections to a consensual relationship between "a junior non-commissioned officer and a private of opposite sexes" in the Army. However this is not true of one between a senior NCO and a private and particularly between an officer and a non-commissioned rank. "Such relationships diminish the authority and standing of the superior in the eyes of his subordinates resulting in a loss of credibility and trust. While marriage between an officer and a non-commissioned rank is not prohibited, such relationships will inevitably cause difficulties, as the couple will not be permitted to serve in the same unit, and are therefore to be discouraged".[62]

Women are now integrated into the majority of arms of the British Armed Forces and serve with British UN peacekeeping missions in the Former Yugoslavia and Angola, for example. However, although serving in some combatant corps, women are excluded from front-line duties. These include: for the Navy, service in the Royal Marine Commandos and in submarines; for the Army, service in tanks, in infantry rifle companies; in the RAF, as gunners in the RAF Regiment. These exclusions are based on the apparent difficulties of providing separate accommodation and relative differences in physical strength between men and women. From April 1996, the Army is to introduce new non-gender specific physical tests which may allow women who pass them to serve in front-line units.[63] In Canada, for

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[58] *SDE 95*, Para 524
[59] *Sexual Harassment - Policy and Guidelines*, Para 6 (Dep 1112 3/S)
[60] *Sexual Harassment - Policy and Guidelines*, Para 4
[61] see pp. 17-20 and HC Deb 11/7/95 c 527w
[62] Dep 10456, *The Military Ethos (the Maintenance of Military Standards)*, January 1994, Para 33
[63] *The Independent* 12/7/95

example, small numbers of women serve in the Canadian infantry and armoured corps.[64] Among other NATO countries, Belgium, Denmark and the Netherlands have also removed all Service bars to women.[65] In Australia, a new class of submarines include births for women.[66]

The position of women in the British Armed Forces remains clouded by the controversy surrounding compensation awards made to several thousand Servicewomen, discharged from the armed forces between 1978 and 1990 on becoming pregnant. This followed the MOD's acceptance in 1991 that it had acted in contravention of the EC Equal Treatment Directive of 1976 in discharging pregnant Servicewomen between 1978, when the Directive came into force, and 1990 when it introduced Service maternity leave.[67]

Some 4,700 women dismissed have been eligible for compensation. Much publicity has been given to ex-Servicewomen who have received significant compensation payments, amounting in one case to £150,000.[68] However, these examples are exceptional, comprising highly qualified usually commissioned women, often with specialist training, who would have earned substantial sums if they had remained in the Services. As at 7th April 1995, 87 per cent of all claims had been settled at an average cost of £10,600 each. Total expenditure on compensation was some £44.75m.[69] A press report from September states that 4,760 cases had been settled at a average cost of £11,000 each. Seventy per cent of payments have been less than £30,000 each.[70] This would bring the overall cost of compensating the pregnant women to a total in excess of £50m. This will be more than original estimates of £30m but lower than later estimates of £100m.[71] The necessary amendment to the Sex Discrimination Act 1975 to apply the Equal Treatment Directive to the armed forces came into force in February 1995.[72] In March 1995 a Wren became the first Servicewoman, dismissed on becoming pregnant, to be reinstated nine years after her dismissal.[73]

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[64] Research Paper 93/12, p. 6

[65] *The Guardian* 22/2/95

[66] *Jane's Defence Weekly* 3/6/95

[67] See pp.17-20. The amount of compensation is decided by industrial tribunals and assessed on suggested loss of earnings created by the dismissal and thus also takes into account the likely future career of the individual if she had not been dismissed. The compensation may also include allowance for pension rights and interest. There is an element of uncertainty in the compensation payments in that, in order to help to fix a payment, an industrial tribunal must decide that the ex-Servicewoman in question fully intended to return to work after childbirth. This is often a matter of great dispute.

[68] *The Times* 28/9/95

[69] *SDE 95*, Para 513

[70] *The Times* 28/9/95

[71] *The Daily Telegraph* 31/1/95

[72] see p. 17

[73] *The Times* 31/3/95

In a separate case, three women, who were made redundant from the Army under Options for Change, were awarded compensation for receiving lower redundancy payments than their male Service counterparts. In all there are 54 women eligible for compensation on these grounds.[74]

VII Ethnic Minorities in the Armed Forces

A. History

The position of ethnic minorities in the British armed forces continues to be influenced by Britain's imperial and colonial past. Many regiments of the British Army bear and indeed cherish the honours of battles fought in Africa and India against the ancestors of ethnic communities resident in this country. Such tribal memories, of particular importance to regiments of the Army, may continue to act as a barrier against non-white recruitment.

As the extent of British colonies and overseas interests developed and with a limited supply of domestic military manpower and finance, the British government and the East India Company, began to raise native regiments for their defence. For example, locally recruited Black regiments, notwithstanding local planter concerns, were first raised in the West Indies during the French Revolutionary Wars.[75] Yet from the start, British-recruited regiments and colonial units were kept quite separate, the lowest level of integration being at brigade level. Furthermore, non-White units were intended to defend the colonies where they were raised and were not posted elsewhere. Not until the end of the nineteenth century did British Indian Army units begin to be used for service beyond India and it was not until the First World War that colonial units first came to Britain.

In 1914, after the opening battles of the War has decimated the pre-war regular British Army an Indian Corps was dispatched to the Western Front Although it served with ability, the Corps was withdrawn in 1915 and sent to the Middle East. Officially, the War Office claimed that this was largely due to the weather and the Indian troops better suitability for use in hot conditions. However, London was also unhappy about using non-White troops in Europe, unlike the French Army which became increasingly dependent on its colonial forces for the defence of metropolitan France as the war progressed. After 1915, units from the West Indies and other parts of the Empire were mainly used on the Western Front in a labouring role, combat units being confined to Africa and the Middle East. In 1919, there were race riots in England and Wales involving British solders waiting to be demobbed and

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[74] *Equal Opportunities Review*, July/August 1995

[75] W.L. Young, *Minorities in the Military: A cross-national study in world perspective*, pp. 139-149

members of Black labour units. Some of the former remained in Britain, contributing to the growth of Britain's ethnic minority communities.

During the Second World War, Britain again called for assistance from its colonies and dominions. During the War, the Indian Army grew to a strength of two and a half million men, and over 350,000 West and East Africans were recruited as well as thousands of West Indians. Again, on the whole, colonial units were not brought to Britain, serving instead in Africa, the Middle East and Asia. The exception was the recruitment of non-White personnel, particularly of some 8,000 West Indians, to serve in the RAF. Other West Indians served in small numbers in the British Army. Again, as after the First World War, many West Indians who had served in Britain opted to remain there after the War had ended.

The subject of ethnic minorities in the British Armed Forces, that is as opposed to colonial forces of the Crown, only becomes of greater interest after 1945 when the ethnic minority population became sufficiently large to recruit from it in peacetime. This is not to say that individual Black Britons had not served in the armed forces before. Until the first half of the nineteenth century, the Royal Navy recruited Black seamen. It would seem probable that at least some of these came from the established Black communities of Bristol and London, for example. However, after 1945, a number of Black Servicemen, who had joined the British Armed Forces during the War and who had become permanently resident in UK, continued in military service thereafter. In 1951 there were some 500 Black and Asian British soldiers, but these were a tiny proportion of an Army of half a million. Over the next twenty years, this figure increased there were over 2,000 Black and Asian British soldiers in Armed Forces which had decreased to below 200,000. The number of Black sailors and airmen at the time appears to have been negligible.

Despite the slow increase in non-White soldiers in the Army during the 1960s, the Army did operate a number of quotas and exclusions. In 1961, the War Office set an unofficial 2 per cent quota on Black recruiting. In 1964, the WO specifically excluded "coloured" soldiers from the Guards, the Household Cavalry, Scottish regiments and a number of support regiments, including the Military Police. In 1966, the then Army Minister ordered the withdrawal "of all remaining obstacles to the recruitment of suitably qualified coloured soldiers".[76] Despite this, in 1967 the Army still operated a Black quota of 4 per cent. Continued media and parliamentary pressure on the issue led to a parliamentary statement in 1968: -

[76] Young, p. 174

Coloured Personnel
(Recruitment)

104. **Mr. David Steel** asked the Secretary of State for Defence whether he has set a limit on the number of coloured men who may be recruited into the Army.

Mr. Healey: A percentage limitation on coloured personnel in the Army was authorised in 1961 at a time when operational circumstances often required units to be stationed in overseas theatres to which it was not customary to send coloured troops. The percentage was increased in April, 1964. No coloured man has ever been turned away as a result. In the light of the changes in defence policy introduced since that date, with its increased emphasis on the Army's role in Europe, I have decided that there is now no need for this type of limitation. Should the need ever arise, it would,of course, be open to the Army, as to any other organisation, to secure or preserve a reasonable balance of persons of different racial groups, in accordance with the provisions of the Race Relations Act, 1968.

HC Deb 11/12/68 c 151w

Unlike the RN and RAF, the Army continued to maintain statistics on the numbers and ranks, although not units, of Black soldiers. This practice was discontinued in the early 1970s "as coloured soldiers are treated no differently from any others in the Army there seemed no point in continuing the exercise".[77]

B. The Last Twenty Years

Although until 1995 there were no figures available for ethnic minority representation in the armed forces, anecdotal evidence suggests that Afro-Caribbean representation in the armed forces reached a peak in the early 1970s and declined thereafter. According to one report, some eight per cent of the strength of the then Queen's Regiment, which recruited in and around London, were Black.[78] Another source refers to nearly one in ten members of another

[77] Young, p. 177
[78] Young, p. 183

infantry regiment, the Royal Green Jackets, as being Black.[79] Today, although figures for ethnic minorities by regiment are not available, it is widely held that Black soldiers are mainly present in nationally recruited units such as the Parachute Regiment and Royal Marines and in 'large' regiments recruiting in the English conurbations. Black soldiers appear to be few and far between in the country regiments of the North and virtually non-existent in the Guards and Highland regiments.[80] Furthermore, of ethnic minority members of the armed forces few appear to come from the Asian community. This is despite the fact that certain sections of the community in Britain, for example the Sikhs, have strong martial traditions; the Sikhs have traditionally formed one of the backbones of the Indian Army.

In 1987, following its earlier introduction in the civil service in 1985, the MOD introduced ethnic monitoring of recruits into the armed forces. The first results for 1987/88 showed that ethnic minority applicants to the armed forces accounted for 1.6 per cent of all applicants whereas 5.6 per cent of the population in the 15-24 age group, those most likely to begin military service, came from the ethnic minorities. Furthermore, the statistics showed that non-White candidates were a third less successful than their White counterparts.[81]

The reasons for the possible decline in Black representation in the armed forces during the late 1970s and 1980 may relate to the increasing proportion of Black Britons born and/or brought up in UK as a percentage of Black population of service entry age who may have differing perceptions of British institutions to the previous generation educated under colonial rule. These perceptions were revealed in a report commissioned by the MOD in response to the first results of ethnic recruitment monitoring. The report *Ethnic Minority Recruitment to the Armed Forces*, undertaken by KPMG Peat Marwick McLintock, was published in July 1989. It found that the ethnic minority youth had a perception of widespread racism in the armed forces although this was only marginally higher than their perception of racism in employment generally.[82] However, of the small number of Black and Asian young people who had joined the Service cadet forces, 62 per cent of Asians and 71 per cent of Afro-Caribbeans thought that they would experience racial discrimination in the armed forces.[83] The report also found that, although the Services' recruitment processes were not discriminatory per se, there was potential for indirect discrimination against ethnic minorities through the application of rigid selection criteria which favoured White candidates. More could also be done by targeting the ethnic minorities with particular literature promoting the idea of Black military service and successful Black servicemen and women.

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[79] Beevor, p. 26

[80] Beevor, p. 26

[81] KPMG Peat Marwick McLintock, *Ethnic Minority Recruitment to the Armed Forces*, Vol 1, p.12. The provisional figures for 93-94 indicated that non-White applicants constituted 1.4 per cent of Service applicants and 1 per cent of entrants (*Defence Statistics 1995*, Fig 2.15)

[82] KPMG Report, p. 22

[83] KPMG Report, p. 23

Although the commissioning of the KPMG report marked an attempt by the MOD to tackle the question of ethnic under-representation in the armed forces, attempts to improve the situation were perhaps hesitant. In January 1990 at the public launch of the KPMG Report, Lord Arran, then Under Secretary of State for Defence, stated that "I firmly don't believe there is an enormous amount of racial discrimination in the services ... the armed services have done all they can to stamp out racism".[84] However, in a number of cases since 1990, black ex-Servicemen have continued to leave the Army and to be awarded compensation payments for having undergone racial discrimination.[85] In addition, it was not until May 1992 that the MOD agreed to conduct an in-service survey of ethnic minority representation, excluding the Gurkhas, having previously resisted such a step.

Since 1992, however, the MOD has been more active in this area. The MOD drew up a Code of Practice on Race Relations and disseminated it throughout the Services in December 1993.[86] The Code "makes it clear that action will be taken against any personnel found guilty of racial discrimination, abuse or other ill-treatment. Racial abuse including name-calling or nicknames which are offensive to those who are the target of such treatment. The Services' policy is that all personnel, irrespective of their racial origin, should be able to pursue their Service career free from harassment and intimidation".[87] The MOD has also hired consultants to give race relations training to recruitment staff and is producing recruitment literature in minority languages.[88]

Despite recent efforts by the MOD, the results of in-service ethnic monitoring survey reveal the extent of ethnic under-representation in the Forces. Published in July 1995, they indicated that only 1.4 per cent of the armed forces were Black or Asian .[89] Although the data allowed an ethnic breakdown by rank, regiment and unit, the table was not published in this form.[90] The Defence Select Committee has called for statistics to be broken down by unit, particularly for the Army. It declared, "Only thus will the Government be able to demonstrate that racial discrimination has been eliminated across the Services".[91] On receiving the survey, the Committee was surprised to discover that the Armed Forces had only managed to gain a response rate of 57 per cent.[92]

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[84] *The Sunday Time*s 18/1/90

[85] For example, J. Malcolm, a corporal denied attachment to the Life Guards, "when it became known that he was black" and consequently awarded £6,500 (*The Sunday Times* 18/6/95). Richard Stokes, the first Black soldier to mount guard outside Buckingham Palace, also left the Army due to racial victimization *(Scotland on Sunday* 12/11/95)

[86] Dep 10032

[87] *SDE 94*, p. 74

[88] *The Sunday Times* 187/6/95 and *Scotland on Sunday* 12/11/95

[89] *Defence Statistics 1995*, Fig. 2.16. The survey was conducted between December 1993 and May 1994 (HC Deb 16/12/93 c 920w and *SDE 94*, p. 74)

[90] HC Deb 8/12/93 c 294w

[91] HC 218, Para 5.15

[92] Defence Select Committee Ninth Report, *Statement on the Defence Estimates 1995*, HC 572, Sess 94/95, Para 72

In 1994, in response to the specific incident of a Black soldier being refused attachment to the Life Guards on account of his ethnicity, the Commission for Racial Discrimination began an inquiry under Section 49 (3) of the *Race Relations Act 1976* into alleged wider racial discrimination in the Household Cavalry. A report was completed in mid-1995 and has been sent to the MOD for formal response. This is imminent.[93] In the mean time, Mark Campbell became the first Black soldier to join the Sovereign's Escort of the Household Cavalry in August 1995. The MOD has also created a Household Division Youth Team which, in part, seeks to encourage applications from non-White school leavers.[94]

The British position on the percentage of ethnic minorities in the armed forces is at variance with that in the USA where there have been some complaints that ethnic minorities are over-represented in the armed forces. Whereas the Black population alone represented 21 per cent of US military personnel in 1991, they only constituted 14 per cent of the population aged 18-24. Due to high reenlistment rates around a third of NCOs were Black. Blacks constitute six per cent of the officer corps in 1991.[95] Up until the 1950s, when integration began during the Korean War, the US armed forces were segregated with specifically Black army regiments, Black air force squadrons and even Black ships. There are now Black US Servicemen at all levels of the US armed services. In 1989, Gen. Colin Powell, the son of Jamaican emigrants to the USA, became Head of the Joint Chiefs of Staff, the equivalent of the Chief of Defence Staff. Given that there are "less than five" Black or Asian officers above the rank of colonel in the UK armed forces it is difficult to imagine such an event happening in the UK for many years to come.[96]

VIII Homosexuality in the Armed Forces

A. In Britain

Although homosexual acts between consenting adults were legalized under the Sexual Offences Act 1967, the armed forces were specifically excluded from the legislation. Homosexual acts remained criminal under military law until they were decriminalized by Section 146 of the *Criminal Justice and Public Order Act 1994.* Despite this, homosexuality is still deemed to be incompatible with military service and, once discovered, homosexuals are discharged by administrative action. Homosexual acts are still treated as criminal if they are linked to "other acts and circumstances".[97] Some 260 Service personnel were discharged

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[93] *The Sunday Times* 18/6/95 and CRE

[94] Tpr. Campbell was former TA soldier and at 28 is significantly older than most recruits *PA* 11/8/95

[95] *BW* 25/2/91

[96] HC Deb 23/3/95 c 321w

[97] *MOD, Armed Forces Policy and Guidelines on Homosexuality,* 15 December 1994, Para 6 (Deposited Paper 3S/1112)

for being homosexual between 1991, when homosexual activity in the armed forces was decriminalized in practice, and 1994.[98] Stonewall, a gay rights pressure group, claims that around another 240 found the pressures of being homosexual in organizations in which gays were prescribed unbearable and also left the forces between 1991 and 1995. Some of the reasoning behind the government's stance on the issue was given during the RAF debate in May: -

> The Ministry of Defence has long taken the view that homosexuality is not compatible with securing the aims of the armed forces, because it undermines the good order and discipline necessary for military effectiveness. This is not a moral judgment, but a practical assessment by those best placed to make it - the military - of the implications of homosexual orientation on military life. It is therefore our policy administratively to discharge personnel who admit to being homosexual or who engage in homosexual activity.
>
> We consider that homosexuals and homosexual activity should be excluded from the armed forces in that way because of the different, and unique, nature of service life. No parallel exists in civilian life. Service personnel are often required to live and work together in very close proximity to one another. They have little choice about living in communal single-sex accommodation, with the resultant lack of privacy. At times, they must work in difficult circumstances, under considerable stress, where operational requirements take precedence over personal privacy and comfort. In such circumstances, absolute trust and confidence between all ranks is essential.
>
> Moreover, some 35 per cent. of new recruits to the armed services as a whole are aged under 18. The services have a responsibility for the welfare and morale of their young recruits, and in that sense, act in loco parentis. Parents, as well as the young people themselves, trust the services to look after and safeguard them properly. We should be failing in our duty if we did not do so.

HC Deb 4/5/95 c458-459

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[98] E. Hall, *We Can't Even March Straight: Homosexuality in the British Armed Forces*, p. 3

Four ex-Service personnel, three gay and one lesbian, dismissed on discovery of their sexuality, mounted a legal challenge against the armed forces' ban.[99] They claim that the ban is irrational and perverse, that it breaches Article 8 of the European Convention on Human Rights (the right to privacy) and is also in contravention of the EC Equal Treatment Directive. Stonewall has pointed to the money wasted in training costs in dismissing personnel because of their sexuality. One commentator suggests that the up to 600 homosexuals who have either been forced to or have left the forces voluntarily over the last four years have cost some £40 - £50m to train.[100]

Ruling in June 1995, Lord Justice Brown and Mr Justice Clegg of the High Court upheld the legality of the MOD position and rejected the applicability of EC law although the former judge was notable in expressing his sympathy for the plaintiffs. The ban was upheld by the Appeal Court in November 1995.[101]

Following the High Court case there was some speculation that the MOD might be reviewing its ban on homosexuals.[102] Such speculation was dismissed as being "wholly inaccurate" by the minister in charge, the Minister of State for the Armed Forces, Nicholas Soames.[103] However, an inquiry into Service attitudes towards homosexuals and Service regulations governing homosexuals in other NATO countries has began. Initial returns indicate that up to 80 per cent of respondents to 15,000 questionnaires sent out have opposed changes to the ban. The Service chiefs apparently hold similar views. A copy of the final report is to be presented to the forthcoming Select Committee on the Armed Forces Bill.[104]

The Labour Party has stated that on entering office it will establish a commission, which will include the Service chiefs, to examine the question of the homosexual ban. The commission will "adopt the best practices towards evolving a solution for the British Armed Forces".[105] The commission will draw on the experience of the many NATO and Commonwealth countries.

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[99] Lustig-Prean, Smith, Grady, Beckett and Smith

[100] Hall, p. 6. Commentators have also pointed to the history of gay Servicemen. As one declared: - "The history of world warfare teems with accounts - some apocryphal, some firmly based - of warriors whose gaiety extended beyond their humorous moments. These include Alexander the Great, most of the army of ancient Sparta, Julius Caesar, Frederick the Great, Lord Kitchener, Lawrence of Arabia, Earl Montgomery of El Alamein and Earl Mountbatten of Burma" (*The Guardian* 8/6/95)

[101] *The Daily Telegraph* 4/11/95

[102] *The Daily Telegraph* 3/7/95

[103] *HC Deb* 4/7/95 c132

[104] *The Economist* 18/11/95

[105] *HC Deb* 4/5/95 c 460

The four ex-Servicemen are taking their cases to the House of Lords and then possibly to the European courts. Should gay ex-Servicemen force the government to change its policy either in the UK courts or in the European courts, then the MOD may be forced to pay compensation to possibly in excess of 500 individuals. Stonewall have estimated the cost of this to be £12m.[106]

B. NATO and the Commonwealth

Within NATO, apart from Luxembourg and Turkey, no other country imposes an absolute ban on homosexuals in its armed forces. The USA and Germany operate partial bans. In the USA, under a Presidential directive promulgated in 1993, the US armed forces operate a policy of not asking new recruits about their sexual preferences and not discharging homosexuals who did not make their sexuality manifest through homosexual conduct.[107] However, on discovery, homosexuals can still be discharged. It is claimed that in the first year of the new policy's operation at least 600 US Service personnel have been dismissed on grounds of their sexuality, a reduction of 80 per cent on annual figure dismissal average figure for the 1980s.[108] This policy has been challenged by both supporters of a more liberal approach and its opponents and cannot be regarded as a definitive solution.

German military rules as regards homosexuality are complex. Homosexuals are conscripted into the *Bundeswehr* as long as their sexual preferences are either concealed or remain muted. They are not, however, allowed to extend their service onto either a short-term or long-term regular basis (over four years). Short-term regulars if reprimanded for or convicted of a homosexual act can be discharged if their continued service would prejudice "military order and discipline or endanger the good reputation of the Federal Armed Forces". Officers with less than three years service are automatically discharged if convicted of a homosexual act. Long-service personnel seem only to face discharge if they have committed a serious homosexual offence. This would include, for example, a superior taking advantage of his status to coerce a junior into performing sexual acts. However, avowed homosexuals in both short- and long-term categories, while not discharged, cannot hold commands or act as instructors and are disbarred from further promotion.[109]

Practice in Australia New Zealand may be of particular interest since their armed forces have similar traditions and legal base to those of Britain. In the past Australian military practice as regards homosexuality appears to have been similar to the British position. The Australian Sex Discrimination Act, which amongst other things precludes discrimination in employment

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[106] *The Scotsman* 9/6/95
[107] *The Guardian* 20/7/93
[108] Hall, p. 4
[109] Source: German Embassy

on grounds of sexual preference, included an exemption for the Australian Defence Forces. In 1991 Australian policy was altered. A person now applying to join the ADF is not required to declare his sexual orientation and the admission of homosexual activity by Service personnel does not, by itself, constitute grounds for discharge. The ADF is now solely concerned with sexual behaviour, of whatever sort, which disrupts good order and discipline, morale and readiness.[110] New Zealand has followed the changes in Australian policy and homosexuality is no longer a bar to military service.[111]

TD/JML

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[110] Australian High Commission and *Naval Institute Proceedings*, April 1993, p. 94

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