Armed Forces Bill: Consideration in Select Committee

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Unlike the majority of Government Bills, the *Armed Forces Bill* has traditionally been committed to a specially convened Select Committee after Second Reading, which sits only for the duration of the Bill.

Three oral evidence sessions were held in early February 2011 on some of the general themes associated with the Bill. Armed Forces welfare and the section of the Bill relating to the Military Covenant received particular attention. Those sessions were then followed by four sessions dedicated to formal consideration of the Bill.

Several amendments relating to clause 2 of the Bill were moved in Committee, but after extensive debate were defeated on division.

The Special Report of the Select Committee was published on 10 March 2011 (HC 779, Session 2010-11). The Bill will now be re-committed to a Committee of the Whole House, which is due to take place on 14 June 2011.

Library briefing SN05991, *Amendments to the Armed Forces Bill* examines the amendments that have been tabled ahead of that debate, including the Government's amendments to clause 2.

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1 Introduction

Unlike the majority of Government Bills, the *Armed Forces Bill* has traditionally been committed to a specially convened Select Committee after Second Reading, which sits only for the duration of the Bill.

In 2005, when the last Armed Forces Bill Select Committee was convened, the decision was also taken to conduct clause-by-clause scrutiny of the Bill in public, in the same way that a Public Bill Committee would. That decision was taken in response to:

> the observations of the previous Armed Forces Bill Committee […] and the Defence Committee's 2nd Report of last Session […] that it is unsatisfactory for the detailed amendment of the Bill to take place in private.[1]

In adopting this hybrid approach, not only is the Committee now able to publicly scrutinise the clauses of the Bill and make amendments, it is also able to take formal evidence and make visits, both in the UK and abroad, in order to examine the broader context of the Bill.[2]

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1 Armed Forces Bill Select Committee, H*Armed Forces Bill: Special Report,*H HC 828, Session 2005-06, p.4

As well as reporting the Bill to the House, the Armed Forces Bill Select Committee may also make a Special Report to the House on its findings and recommendations.

For the current *Armed Forces Bill*, this hybrid committee approach has once again been adopted. Three oral evidence sessions were held in early February 2011 on some of the general themes associated with the Bill. Armed Forces welfare and the section of the Bill relating to the Military Covenant received particular attention. Those sessions were then followed by four sessions dedicated to formal consideration of the Bill.

The Committee published its Special Report on the Bill on 10 March 2011 (HC 779). The Bill will now be re-committed to a Committee of the whole House.

The following briefing examines the debate that took place within the Select Committee during its oral evidence sessions and then proceeds to examine the amendments tabled during formal consideration of the Bill and the subsequent conclusions of the Committee's Special Report.

This briefing should be read with reference to Library Research Paper RP10/85, *Armed Forces Bill,* 17 December 2010.

2 Oral Evidence Sessions

As with the Second Reading debate in the Commons on 10 January 2011, the main focus of the oral evidence sessions was the Military Covenant and whether the Bill goes far enough in delivering on the Government's commitment to rebuild it. Attention was also given to how well the Service complaints procedures that were established in the *Armed Forces Act 2006*, are working;[3] and the measures in the Bill that seek to strengthen the independence of the Service police.[4]

2.1 Armed Forces Covenant

As part of the Government's pledge to rebuild and renew the Military Covenant, in June 2010 the Prime Minister indicated that it would be rewritten and enshrined in law for the first time.[5] The current *Armed Forces Bill* has been regarded by many as the primary legislative measure through which that could be achieved. However, clause 2 of the Bill does not go as far as some commentators had considered it might. It does not state what welfare provisions must be provided for under the Military Covenant; nor does it establish any minimum standards of care. Instead, clause 2 places the statutory obligation on the Government to present an Armed Forces Covenant Report to Parliament each year on the effect of membership of the Armed Forces on Service personnel, their dependants and veterans in the UK. The effect on healthcare, education and housing are specifically listed for inclusion in that report, although the Bill does also provide for an examination of "such other fields as the Secretary of State may determine".

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2 The ability of a Public Bill Committee to take oral evidence in the same way as a Select Committee was only introduced in November 2006 as a result of recommendations made by the Select Committee on Modernisation in its report: *The Legislative Process* (HC 1097, Session 2005-06). A Public Bill Committee still does not, however, have the power to conduct visits.

3 Notably: the creation of the post of Service Complaints Commissioner and the creation of Service Complaints Panels. See HHC 779-i,H questions 52-57 and HHC 779-ii

4 See HHC 779-iH, questions 35-42 and HHC 779-iii,H questions 261-276

5 MOD Press Release, H"Military covenant to be enshrined in law",H 25 June 2010

The focus of the oral evidence sessions was, therefore, on three main issues:

- Whether the Bill actually 'enshrines' the Military Covenant in law.
- Whether the Armed Forces Covenant Report should be statutorily obliged to report on other areas of welfare, or establish minimum standards.
- The future status of the External Reference Group (ERG) and how its work will fit in with this new reporting mechanism. The ERG was established to monitor implementation of the 2008 Service Personnel Command Paper (Cm 7424, Session 2007-08) and reports annually to the Prime Minister.[6]

Enshrined in Law?

At the heart of the debate, was the question of whether legislating for the Secretary of State to make an annual Armed Forces Covenant Report to Parliament actually gives the Military Covenant definitive legal status.

The Government has been firm in its view that the approach adopted in the Bill fulfils the Prime Minister's pledge to write the Covenant into the law of the land, and has reiterated on many occasions the Government's commitment to rebuilding the Covenant.[7] As part of those measures, the Government has stated its intention to publish a non-legislative Tri-Service Covenant in spring 2011.

During the Committee session on 3 February, Humphrey Morrison, Head of Legal Services at the MOD, stated:

> "Enshrined" is really a rather grand word, but the Bill is certainly the first statutory recognition of the existence of the Covenant – that's the first element. The second, obviously, is that it provides for the first time a statutory mechanism for dealing with problems that arise under the Covenant, I think I would probably call that "enshrining" but it is quite grand, as I say.[8]

Several members of the Committee, including Kevan Jones, took an opposing view; a position also supported by the Royal British Legion. Prior to giving evidence to the Committee, the Director General of the Royal British Legion, Chris Simpkins, suggested that the Bill as it stood "looks like the beginnings of a Government u-turn".[9] Giving evidence on 10 February 2011 Mr Simpkins argued:

> It was...a surprise on publication of the Bill that an enshrined form of the Covenant – or at least, as I would put it, principles that such a Covenant should satisfy – is absent from the provisions of clause 2 [...]
>
> This group is the only group of people in the country who contract with the state to lay down their lives on behalf of the state. We believe that the other side of the contract, and what the state contracts towards those individuals, represented by

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6 The ERG's annual report for 2010 is available at: H*External Reference Group Annual Report 2010*H

7 See, for example, MOD Press Releases H"Government's commitment to the Military Covenant"H, 9 February 2011 and H"Defence Secretary on the Military Covenant",H 10 February 2011.

8 Armed Forces Bill Select Committee, *Uncorrected transcript of Oral Evidence,* HC779-i, Session 2010-11, Q93

9 Hhttp://www.britishlegion.org.uk/about-us/media-centre/news/campaigning/legion-to-defend-military-covenant-in-armed-forces-bill-hearingsH

> Parliamentarians, should equally be given some better status in law. There is no better opportunity that that currently presented by the Bill.[10]

In comments to *Channel 4 News*, Mr Simpkins also suggested that given the extent of cutbacks in the Armed Forces at present, "if we then see that the Government isn't prepared to give a legal commitment to an armed forces covenant... that may well be the straw that breaks the camel's back and will have a very harmful impact on morale".[11]

In contrast Tony Stable, Chairman of the Confederation of British Service and Ex-Service Organisations, suggested during the evidence session on 10 February that while he was "broadly in favour of a report",[12] to enshrine the Military Covenant "in a bill before we have a clear understanding of what the word is and what it means to people, particularly when the overuse of the word, to my mind, raises expectations in people, seems wholly irresponsible. We have to go back to the start point and determine what it actually is".[13]

In written evidence to the Committee, The Archbishops Council of the Church of England, also expressed the view that understanding the military covenant as a moral rather than a legal obligation is to be welcomed, and was "therefore encouraged that the Bill does not propose a formal legal contract or attempts to define in law the exact nature of the relationships underpinning the Military Covenant. That we believe is best done by the writing of a new Tri-Service Covenant".[14] That written submission went on to state:

> It follows from this that we agree that the Bill's provisions should not explicitly state what welfare provisions Service personnel, their dependants, or veterans should be entitled to as part of any Military Covenant. We would encourage the Coalition Government to resist any steps that might seek to set in law any minimum standards of care.[15]

Content of the Armed Forces Covenant Report

Justifying the approach taken by the Government in clause 2 of the Bill, Gavin Barlow, Director Service Personnel Policy at the MOD, stated:

> In the end, we felt that the group of policy areas that we put on the table in the Bill was representative of what the proper focus of work on the Covenant would include on a regular basis. We have then included the ability for Ministers to draw in other areas as required, including areas that may be required by the External Reference Group and other stakeholders. We are trying to create neither something that will be too focused and too limiting on the one hand nor coverage that will simply be unrealistic and too broad to be of use.[16]

On the issue of minimum standards, Head Service Personnel Policy, Service Conditions and Welfare, Gary Lewitt, noted that:

> Just because there are not minimum standards in the Bill, it does not mean that there are not minimum standards either in other legislation... or through policy areas. I

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10 Armed Forces Bill Select Committee, *Uncorrected Transcript of Oral Evidence*, HC 779-iv, Session 2010-11, Q293

11 "Military covenant u-turn will harm morale and recruitment", *Channel 4 news,* 10 February 2011

12 Armed Forces Bill Select Committee, *Uncorrected Transcript of Oral Evidence*, HC 779-iv, Session 2010-11, Q323

13 ibid, Q310

14 Armed Forces Bill Select Committee, *Written Evidence*, HAFB07

15 ibid

16 Armed Forces Bill Select Committee, *Uncorrected transcript of Oral Evidence,* HC779-i, Session 2010-11, Q6

> believe that it is now MOD policy that a family should not have to occupy a house at one of the lowest standards for condition. That is now established as a policy that families can draw on, but it does not need legislation to create that standard.[17]

The Adjutant General, Lieutenant-General Mans, also raised the legal implications of this issue:

> I personally don't feel that standards would be appropriate. You could end up in quite a legal minefield, perhaps, in terms of obeying standards, what they meant and what have you. We might possibly lose sight of the original intent. In other words, you would have so much legal process tied up with what you're trying to do.[18]

However, John Moore-Bick, General Secretary of the Forces Pension Society, agreed with the view of some members of the Committee that the contents of the Armed Forces Covenant report should be expanded, in particular with reference to pay and pensions which he suggested are "two key notes that people want to see".[19]

Questions were also raised in the Committee about the independence of the report if the Secretary of State is to be given responsibility for its formulation. While Mr Barlow suggested that the ERG would be full engaged in drawing up the report,[20] Kevan Jones raised concerns over the ability of a future Secretary of State to ignore the recommendations of the ERG as the Bill, as it stands, does not provide any statutory role for that group.[21]

Chris Simpkins also raised this issue of independence in the session on 10 February, commenting:

> While we don't doubt the intentions and good faith of Parliament to respect the needs of the Armed Forces and support then- particularly now during a period of intense operational activity with all its familiar results – it is rather odd that the Secretary of State can determine what he includes and excludes from that report. While that will be subject to Parliamentary scrutiny, there is no provision in the Bill for any independent input as stated in the Bill. I understand that behind the scenes there is the intention to do that, but we believe that it's something that should be recorded statutorily.[22]

He went on to suggest that "either the Bill should be more specific and include other specific areas of activity, or there must be a provision by which some other body – not just the Secretary of State – can raise...issues, if it feels that it is appropriate.".[23]

Many, including Dawn McCafferty, Chairman of the Armed Forces Families Federation,[24] raised the possibility of a formal role for the ERG in formulating this new report, as a means of providing a degree of independence. However, as Chris Simpkins pointed out, the terms of reference of the ERG is to review implementation of the recommendations in the 2008

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17 Armed Forces Bill Select Committee, *Uncorrected transcript of Oral Evidence,* HC779-i, Session 2010-11, Q92

18 Armed Forces Bill Select Committee, *Uncorrected Transcript of Oral Evidence,* HC 779-iii, Session 2010-11, Q231

19 Armed Forces Bill Select Committee, *Uncorrected Transcript of Oral Evidence*, HC 779-iv, Session 2010-11, Q370

20 Armed Forces Bill Select Committee, *Uncorrected transcript of Oral Evidence,* HC779-i, Session 2010-11, Q103

21 ibid, Q104

22 Armed Forces Bill Select Committee, *Uncorrected Transcript of Oral Evidence*, HC 779-iv, Session 2010-11, Q293

23 ibid, Q319

24 ibid, Q381

Service Personnel Command Paper and does not extend to a review of the Armed Forces Covenant. As such, he argued that:

> If there is to be a role for the external reference group, particularly its independent members, in the review of whatever Covenant provisions eventually see the light of day, their terms of reference must be extended, otherwise it has no locus.[25]

While the Archbishops Council of the Church of England welcomed the intention to establish a review mechanism for the Military Covenant, it also did not support the presentation of an annual report to Parliament by the Secretary of State. Instead the Council called for an independent Reviewer of Armed Forces Welfare to be appointed, who could monitor and report on the same provision of welfare services as set out in clause 2, and make suitable recommendations accordingly in an annual report and a four-year audit of welfare provision, both of which would be laid before Parliament.

Responding to concerns over the Secretary of State's remit with respect to the annual report, Mr Barlow commented:

> It's not going to be in any Government's interest to produce a report on the Covenant that clearly ignores matters of significant concern to, say the RBL, SSAFA, the War Widows Association or the Families Federations...[26]

Status of the ERG and its Annual Report

In its Annual Report for 2010 the ERG stated:

> Ministers have given a number of important undertakings to us since the General Election. First, they have confirmed that they support the thrust of the SPCP initiative, and are looking to carry forward the commitments made by their predecessors in office. Second, they have stated that they continue to value our input and advice, and would like the External Reference Group to remain in being. We have agreed to do so. We see many parallels between the commitment to the Covenant and the SPCP, not least that rebuilding the Covenant will continue to require the active involvement of Ministers and officials across Government, including the Devolved Administrations.[27]

During the second reading debate in January 2011 several concerns were, however, raised over the future of the ERG and the annual report it makes to the Prime Minister, in light of the proposals in this Bill for the Secretary of State to make an annual Armed Forces Covenant report to Parliament.

Many observers considered that contradictory evidence had been presented to the Committee over whether the ERG would continue to publish its own independent report, in tandem with the report of the Secretary of State. Several suggested that the Secretary of State had indicated during the second reading debate on the Bill that the ERG report would continue to be published. In the evidence session on 3 February, Mr Barlow confirmed that the new Armed Forces Covenant Report would replace the ERG annual report.[28] When asked for clarification on this point, MOD officials commented:

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25 Armed Forces Bill Select Committee, *Uncorrected Transcript of Oral Evidence*, HC 779-iv, Session 2010-11, Q316

26 Armed Forces Bill Select Committee, *Uncorrected transcript of Oral Evidence,* HC779-i, Session 2010-11, Q8

27 External Reference group, HAnnual Report 2010

28 Armed Forces Bill Select Committee, *Uncorrected transcript of Oral Evidence,* HC779-i, Session 2010-11, Q102

> Ministers were clear in the debate that the voice of the ERG would come through. I think it's in that sense that we would maintain its report, rather than necessarily as a separate publication [...]
>
> We will produce, with the external Reference group, the annual report on the Covenant as set out in the Bill. That, therefore, is a report presented by the Secretary of State, which has been prepared with the External Reference Group. It therefore represents their annual report. We have recognised [...] that it is important that that process genuinely presents their independent views within that annual report so that they can say it is effectively their report. If, in doing that, they wish to raise matters separately and we cannot find a way of fairly representing their views within a report [...] we may see a separate document being produced. We have not crossed that bridge yet.[29]

3 Formal consideration of the Bill

Formal consideration of the Bill began on 10 February and concluded on 17 February. Clauses 1, 3-10, 12-23, 25-33 and Schedules 1 and 3-5 of the Bill were passed without debate or amendment.

Clause 11 (Testing for Alcohol and Drugs on Suspicion of Offence) was raised in debate merely on a point of order; while an amendment to clause 24, which sought to ensure that the Ministry of Defence Police are consulted over the enforcement of byelaws, was subsequently withdrawn after a short debate. Schedule 2 was also agreed after a short debate.

3.1 Clause 2 – Armed Forces Covenant Report

Reflecting the extent of the debate in the oral evidence sessions over the Bill's proposals relating to the Military Covenant, several amendments were tabled to clause 2, which makes provision for the Secretary of State to present an Armed Forces Covenant Report to Parliament every year on the effect of membership in the Armed Forces on Service personnel, their dependants, and veterans in the UK.

Role of the External Reference Group

Three of those amendments sought to strengthen the status and composition of the External Reference Group, including provision for an independent Chair of the ERG; commit the ERG to continuing to produce a publicly available annual report on the Military Covenant and for that report to be laid before Parliament by the Secretary of State. In presenting those amendments Gemma Doyle commented:

> In July 2009, the Prime Minister promised a written military covenant enshrined in law, but the Bill falls far short of that pledge, proposing merely an annual report written by the Government. Clearly, that does not enshrine the rights and expectations of our brave service personnel into law. It does not even give them the courtesy of independent scrutiny that is free from political interference, because it moves responsibility for monitoring the Government's progress on strengthening the covenant away from independent experts and into the political hands of Ministers [...]

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[29] Armed Forces Bill Select Committee, *Uncorrected transcript of Oral Evidence,* HC779-i, Session 2010-11 Q116 and 122

> The amendments would ensure the independence and legitimacy of the annual covenant report by putting it into the hands of an independently chaired external reference group [...]
>
> I believe that the ERG is better placed than the Government to assess the success of past measures and to identify areas for further action.[30]

She also went on to note that:

> My concern is that the input of the ERG will be lost entirely [...] in a briefing from the Bill team to the Committee, Gavin Barlow stated that the Secretary of State's report [as proposed in the Bill] would replace the ERG's report. That is contradictory to the position that the Minister set out in the House [HC Deb 10 January 2011, c120]. We had further questioning on the matter...which revealed great confusion within the Bill team about how the ERG will continue to fit into the process. The one thing that those giving evidence were clear about was that one report will be published only.[31]

Kevan Jones also supported the view that the Bill, as it stands, does not enshrine the Military Covenant in law, suggesting that "the only thing that it enshrines in law, perhaps for the first time, is the phrase "armed forces covenant report"". He went on to argue that:

> What we have to do in the proposed legislation is deal not just with this Government but with Governments in the future and consider how the Act will be looked at and interpreted by future Secretaries of State [...] it is not good enough that we are left in a situation in which we have been asked to consider this Bill...without even being clear about the constraints on or the terms of reference for the Secretary of State when he draws up this report [...] it is important for the credibility of the report that is going to be produced now that it is seen to be independent.[32]

He concluded by stating that the loss of "the ERG's expertise would be a mistake".[33]

In response, the Parliamentary Under Secretary of State for Defence, Andrew Robathan, stated that "The covenant is a conceptual thing that will not be laid down in law", but that "the report will measure the actions, results and policies of the Government against the Covenant" which "is being written into the law of the land".[34] With respect to the role of the ERG, Mr Robathan reiterated the Government's support for the group, and went on to state:

> I want Parliament not to read a report that simply highlights issues for the Government to consider, but to get one that also sets out the Government's position on such issues, so that it can take an informed view on whether the Government's response is adequate. Our approach acknowledges and strengthens the Government's responsibility for the armed forces covenant, whereas the amendment seems more designed to stir up controversy [...]
>
> Let me make it clear exactly where I stand, both to reassure colleagues and to demonstrate why these amendments are unnecessary. I am committed to the ERG continuing to report, and I am committed to full transparency in the whole process. It would be pointless to proceed in any other way...because of the possibility that the report would be disowned as soon as it was published [...]

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30 Select Committee on the Armed Forces Bill, HFirst Formal SittingH, 10 February 2011, c6 and 9
31 ibid, c7
32 ibid, c17-18
33 ibid, c19
34 ibid, c20-21

> We see the ERG being inherently involved in the production of the [armed forces covenant] report for the Secretary of State – involved, but not writing it [...] its comments, good or otherwise, will be published. That is our intention, as a matter of policy, as part of the annual report from the Secretary of State. With that assurance, the Committee should reject amendments 2, 4 and 5.[35]

Those amendments subsequently fell after being put to a vote (Ayes 5, Noes 7).

In its Special Report the Committee did, however, note the valuable role of the ERG. It stated:

> It was apparent to all of us that the work of the External Reference Group has been highly valuable. Our evidence clearly shows that this group presents a vital means by which the voluntary sector can relay key messages from personnel and their families and make a genuine contribution to policy. It would be a considerable loss if this group were disbanded or sidelined as a result of this legislation. It is essential that this important forum continues and we recommend that a change to its terms of reference is made to give the group a broader, more permanent role for the future.[36]

Content of the Armed Forces Covenant Report

Two further amendments were tabled in relation to the topics that would be covered by the Armed Forces Covenant Report. Under the Bill, as proposed, the report would cover healthcare, education and housing, and any other fields determined by the Secretary of State.

At issue is the extent to which the Bill should be prescriptive about what is included in the Armed Forces Covenant Report. As one Member noted, there is no obligation in the Bill to report on areas that are directly within the remit of the Secretary of State, such as Armed Forces pensions; while the other areas to be included in the report, including healthcare and education, are areas for which the MOD has limited responsibility. It was noted on several occasions that many of the issues relating to veterans, are in fact the responsibility of the devolved administrations.

One amendment therefore sought to expand the field of topics covered in the report to include, among other things, pensions and benefits, support for reservists and their employers, employment and training, the Armed Forces Compensation Scheme and "other such fields as the External Reference Group may determine" (see above on the role of the ERG). The second amendment sought to make provision for the report to specifically cover the effects of service on Reserve personnel.

In introducing the first amendment Gemma Doyle highlighted the support that the Service charities, in particular the Confederation of British Service and Ex-Service Organisation, the Armed Forces families' federations and the Forces Pension Society, had reportedly given to the proposal to expand the list of issues set out in clause 2 during the oral evidence sessions. She did also acknowledge, however, that the charities giving evidence to the Committee "did not want the Bill to lay down a list of minimum standards or demands".[37]

Mark Lancaster suggested that the arguments for and against the expansion of the list of issues was "at best balanced" and pointed to the fact that nothing is specifically excluded

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35 Select Committee on the Armed Forces Bill, HFirst Formal SittingH, 10 February 2011 c25-28
36 Armed Forces Bill Select Committee, *The Armed Forces Bill,* HC 779, Session 2010-11
37 Select Committee on the Armed Forces Bill, HSecond Formal SittingH, 15 February 2011, c36

from the Bill as it currently stands.[38] However, in introducing his amendment relating to the Reserve Forces specifically, he suggested that:

> Although we have a one-Army concept in theory, in practice all too often we do not. That is why my colleagues and I are deeply concerned that the three categories that have been chosen to be reported – health, education and accommodation – do not best reflect the specific needs of the Reserve Forces [...] I am also concerned that some areas do not fall naturally in the scope of the Bill – employer relations, for example. [39]

Bob Russell supported this stance stating that "the Bill's great strength is that it allows anything and everything to be added or included as and when circumstances require it". He concluded that "I believe the clause is best for our military personnel and their families. I do not disagree with the sentiments behind the amendment, but I believe the clause before us is better".[40]

Going back to comments made in relation to the role of the ERG and the importance of independence, in response Kevan Jones once again expressed support for the expansion of the report, reiterating the importance of future-proofing the legislation. He noted that "if it is not specified in the Bill, a future Secretary of State could exclude those areas, and there would be nothing that anybody could do about it".[41]

Thomas Docherty also supported the amendment, arguing that:

> Surely it is right that the decision on which aspects are covered by the military covenant – and, therefore, the report – be determined by the House? Who is more accountable on this matter than Members of Parliament? Indeed, if I can be so bold as to suggest it, Members of Parliament as a whole are more accountable than is the Secretary of State. That is why I think the amendment is entirely sensible and reasonable.[42]

In response to both amendments the Minister, Andrew Robathan, made the following points:

> "Requiring every report to cover all the issues that anybody can think of will inevitably mean that the report lacks depth and focus, and it is extraordinarily prescriptive".[43]

> "Proposed new Section 359A (3) in clause 2 specifically provides for reserve forces... and also covers other groups, including veterans and a wide range of people within the Service community. The amendment would imply that less importance is attached to other groups of service people and would be prescriptive about how reserves are covered in the report [...] I understand that their needs are different and that healthcare, education and housing are not necessarily important in the same way for them. However, such prescription would not be the right way forward".[44]

On the issue of why the three identified topics were chosen for statutory inclusion in the Armed Forces Covenant Report he stated: "we specifically mentioned these three things because they are concerns that are raised perennially. The three issues are central to the

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38 Select Committee on the Armed Forces Bill, HSecond Formal SittingH, 15 February 2011, c39 and 41
39 ibid, c43
40 ibid, c47-48
41 ibid, c41
42 ibid, c45
43 ibid, c54-55
44 ibid, c56

welfare of our serving personnel and their families, and they are raised each year by the families federations and serving personnel".[45]

On division, the first amendment was defeated by a vote of 6-7; while the second was not put to a vote and subsequently fell.

Written Military Covenant

In response to the argument of several Members of the Committee that clause 2, as it stands, does not enshrine the Military Covenant in law, Kevan Jones and Gemma Doyle introduced an amendment that would establish, through secondary legislation, a written Military Covenant. That legislation would define the Covenant and set out the principles against which the annual Armed Forces Covenant Report would be assessed. The amendment also called for a draft Order to be prepared only after public consultation, for it to be approved by both Houses of Parliament and renewed every five years.

A further amendment was also tabled that sought to provide the Parliamentary and Local Government Ombudsman with the power to investigate complaints from Service personnel that a public body or local authority has failed to meet the commitments outlined in the Covenant.

Introducing those amendments, Kevan Jones stated:

> The amendments would enshrine the military covenant in law for the first time and provide a means of redress for Service people, as defined in the Bill, through the parliamentary ombudsman [...]
>
> There will also be consultation before the Order is laid, so the public can examine the Government's record and what actually is meant by the Covenant. The amendment would also ensure that all public bodies in the UK took into account the special nature of service, to ensure that people are not penalised as a result of their service. When the Prime Ministers talked of writing the covenant into law, I believe this is what the British people thought he meant by that – not a simple report being laid before Parliament, without any recommendations or view of what the covenant should be [...]
>
> If we mean what we say on the covenant, it has to be enshrined – not only in being referred to as a report within the Bill, but as a central part of it. There is an opportunity here to do that.[46]

In response Andrew Robathan once again confirmed that a new written military covenant would be published in spring 2011.[47] However, he went on to note that "the covenant is a statement of moral obligation... it is broad, aspirational and a developing notion that reflects the relationship between society, the armed forces and, indeed, the Government". As such, he argued that:

> we [the Government] still do not think that the covenant should be codified on a statutory basis any more than the Service Command Paper was [...]
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> The amendment would require us to put a sweeping burden on a huge range of bodies without any regard to cost – cost is important – to do nothing that would create a disadvantage for service people [...]

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45 Select Committee on the Armed Forces Bill, HSecond Formal SittingH, 15 February 2011, c57
46 ibid, c58-64
47 ibid, c64

> The amendment would also ride roughshod over the needs of local authorities and the NHS not to be burdened with unworkable legal obligations. That is the issue. I therefore believe this to be the wrong route to follow. The Bill provides for an annual report to give the right level of assurance about the covenant, without the disadvantages I have outlined.[48]

Bob Russell, took a more compromising view, suggesting that:

> The important thing is that the words "armed forces covenant" appear, quite clearly in clause 2 of the Bill, which, if passed, will become an Act of Parliament and thus the law of the land. I urge both sides of the debate to seize on that as a step forward, building on the Armed Forces Act 2006. I have every confidence that, in four or five years' time, as things unfold, another Committee will want to build on what is here. It is not possible to have an all-singing, all-dancing, word-perfect Bill today, because we do not know how things will unfold in the months and years ahead.[49]

On the issue of redress, Mr Robathan, concluded with the point that "if the amendment were agreed to it would be impossible for an ombudsman to apply it without detailed laws explaining what was really required of all the public bodies to which the amendment would apply".[50] On that basis he urged the Committee to reject both amendments.

On division, the amendments were subsequently rejected by a vote of 6 (ayes) -7 (noes).

Armed Forces Advocates

Amendment 7, also tabled by Kevan Jones and Gemma Doyle, sought to extend the network of Armed Forces Advocates that currently exists, to ensure the delivery of services that may affect service people, at a local level. Introducing that amendment, Kevan Jones noted:

> The previous Government piloted an armed forces welfare pathway [...] it involved a number of local authorities appointing armed forces advocates whose job it was to ensure that in policy development terms, armed forces families and veterans were put to the forefront. I envisage that the existing network could be extended to regional level, although I accept that the Government are doing away with Government regional offices at the local level. The amendment would ensure the thrust of the covenant in terms of what has been outlined and issues relating to the veterans' community and to servicemen and women and their families.[51]

While supporting the intention of the amendment, Bob Russell raised concerns over logistics and how this amendment would work in practice. Specifically, he made reference to the fact that the number of personnel in the civil service, local government and the Armed Forces is likely to be reduced, and therefore concluded that the proposal could not be delivered, other than in the manner in which it is already being so.

Talking of the existing system of Armed Forces Advocates, Andrew Robathan also made the point that legislation was not required to set up the advocate system, and therefore "it does not need legislation now".[52] He also argued that "the amendment would impose a solution, rather than allow local solutions to local needs".[53]

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48 Select Committee on the Armed Forces Bill, HSecond Formal SittingH, 15 February 2011, c65-67
49 ibid, c66
50 ibid, c67
51 ibid, c69
52 ibid, c71
53 ibid, c72

On division, this amendment was again rejected by a vote of 6-7.

Clause 2 was therefore ordered to stand as part of the Bill.

3.2 New Clauses

Amendments introducing three new clauses were also tabled for debate in Committee on 17 February 2011.

Veterans ID Cards

Alex Cunningham introduced an amendment (new clause 1) that would oblige the Secretary of State to institute a Veterans ID card in order to assist access to public services, such as priority NHS treatment.

Introducing the new clause, Mr Cunningham stated at the outset that it was intended to be a probing clause and that he was interested in obtaining the Government's view on this issue. He argued that:

> A veterans identity card would be a way to ensure that veterans who had risked their lives for their country were valued by the community in a practical and clear way that would be welcomed by our veterans. It would make them easily identifiable, so that we could ensure that they received priority treatment in areas such as health care and housing, as well as various financial benefits. An extension to that could be access to services from other organisations, public or private, that might choose to recognise our service people's contribution to our country by offering concessions for everything from theme parks to the local butchers.[54]

He also went on to note that any ID card scheme could have additional benefits including "a useful database of veterans that would help us monitor, and potentially improve, the services that veterans are using".[55]

In support of his comments he highlighted the fact that the September 2010 *Report of the Task Force on the Military Covenant* had recommended the institution of a "veteran's privilege card".[56]

Members of the Committee generally expressed support for the principles behind the new clause, although questions were raised about the possible definition of a veteran and the cost of any scheme. To alleviate some of the high costs associated with introducing such a card, Jack Lopresti suggested that, as an alternative, Service personnel should be allowed to keep their military ID card upon leaving the Forces.

In his response to the debate, the Minister, Andrew Robathan, reiterated the Government's current position: that it will not introduce a veteran's card. However, he did state that the Government was currently considering the idea of a veteran's privilege card, as recommended by the Strachan report, and that "if we consider it to be useful, we would consider supporting such an initiative if it proceeded at no cost to the public purse".[57] He also stated that the proposal for veterans to retain their military ID cards would also be looked in to.[58]

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54 Armed Forces Bill Select Committee, *Fourth Formal Sitting,* 17 February 2011, c89
55 ibid, c91
56 A copy of that report is available at: H*Report of the Taskforce on the Military Covenant*H
57 Armed Forces Bill Select Committee, *Fourth Formal Sitting,* 17 February 2011, c102
58 ibid, c100

The new clause was subsequently withdrawn. In its Special Report the Committee concluded, however, that "the matter of a veterans ID card could usefully be explored further".[59]

Enlistment of Minors

Background

The minimum age at which an individual can enlist in the Armed Forces is set down in the *Armed Forces (Enlistment) Regulations 2009*. Under those regulations the current minimum recruitment age is set at 16.

Outside of the legislation introduced to establish military or national service as it later became known, the age at which an individual could be deployed on operations with the British Armed Forces has never been legislated for, but has evolved as Ministry of Defence policy and in line with the UK's international legal obligations.

In summary, it is currently MOD policy that Service personnel under the age of 18 are not deployed on operations outside of the UK, except where the operation is purely for humanitarian purposes, such as the delivery of aid, and does not involve personnel becoming engaged in, or exposed to, hostilities. In addition, in line with current UN policy, Service personnel under the age of 18 are not deployed on UN peacekeeping operations. These policies are common to all three Services.

While parental consent is required for enlistment purposes, parental consent is not required for the deployment of under 18s in any theatre of operation.

Under the *Queens Regulations for the Army* all Service personnel have the statutory right, after 28 days of service, to leave within the first six months of enlistment. In addition, all of the Services operate a policy focused on "unhappy juniors", which allows for a person under the age of 18 who has shown a genuine and persistent unhappiness with Service life to be discharged outside of his/her statutory right to leave within the first six months. As with the statutory right to discharge a period of 14 days notice is usually required. After this point a person is tied to a minimum period of service of four years, with a right to give 12 month's notice at the three year point.

Armed Forces Bill – New Clause 2

Several organisations submitted written evidence to the Committee regarding the UK's ongoing practice of enlisting minors into the Armed Forces. The Coalition to Stop the Use of Child Soldiers called for the Committee to address the issue of raising the minimum recruitment age and the welfare of young recruits during its deliberations on the bill. Change to recruitment age also called for by the General Assembly of Unitarian and Free Christian Churches, At Ease, Forces Watch and The Peace Pledge Union.[60]

The tabling of a new clause relating to the enlistment of minors was, once again, introduced as a probing clause. The proposed new clause would raise the minimum recruiting age for the Armed Forces to 18; place on a statutory basis the right of an individual under the age of 18 to leave the Armed Forces with two week's notice (thereby formalising the current unhappy minors policy), and to require recruits to re-enlist at the age of 18. The new clause

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[59] Armed Forces Bill Select Committee, *The Armed Forces Bill,* HC 779, Session 2010-11

[60] Written evidence is available at: HHttp://www.publications.parliament.uk/pa/cm201011/cmselect/cmarmed/writev/contents.htmH

also called for an annual report to parliament on the recruitment and retention of minors in order to facilitate "a more targeted recruitment strategy..."[61]

Introducing the new clause Alex Cunningham stated:

> The intention is to bring armed forces recruitment into line with national legislation and international standards on the rights and welfare of young people [...]
>
> International best practice has set the minimum recruitment age at 18. That age is adhered to by more than 130 countries and the UK is now one of fewer than 20 countries recruiting at 16. The practice isolates us amongst our allies. No other state in the EU recruits at 16, nor does any other permanent member of the Security Council. There is no demographic reason that would justify an exception for the UK [...]
>
> We have to recognise that a forces career is a commitment that must be entered into with due solemnity by mature individuals who are prepared to shoulder the burden it places upon them. Sixteen-year olds are barred from the police and the fire service because they are not considered to be physically or psychologically ready. It is insulting to suggest that joining the armed forces is less challenging.[62]

On the issue of rights of discharge, Mr Cunningham went on to state:

> The Ministry of Defence, through the unhappy minors provision, recognises the desirability of granting discharge to any recruit under the age of 18 who wishes to leave the forces. If that is indeed the policy, it should be clarified and formalised as a legal right, rather than be maintained in its current weakened form.[63]

Opinions on the new clause were mixed. Kevan Jones disagreed with the new clause arguing that "we must look at the armed forces not as something that does damage to individuals, but in many cases as a way of improving people's life and education chances".[64] Tobias Ellwood supported that position, expressing the view that "we have a very robust system that we can be proud of. I would not accept the new clause in any shape or form and we should leave things as they are".[65]

In response Andrew Robathan stated:

> We take pride in the fact that a career in the forces, especially for somebody under 18, provides challenging and constructive education, training and employment opportunities for young people [...] We equip them with valuable transferrable skills. We recognise the need for special care in recruiting and training those under 18 [...] There are currently no plans to revisit the Government's recruitment policy for under-18s, which is fully compliant with the optional protocol to the United Nations convention on the rights of the child, on the involvement of children in armed conflict [...]
>
> As regards ending service below 18 or continuing service after 18, the new clause is inappropriate... any service person who makes it clear before their 18th birthday that they are unhappy with military life can request permission to leave... the policy is to treat all such cases with great sympathy, because nobody wants unwilling soldiers in a volunteer Army... that does not give an absolute right to discharge after the first six

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61 Armed Forces Bill Select Committee, *Fourth Formal Sitting,* 17 February 2011, c108
62 ibid, c105
63 ibid, c106
64 ibid, c109
65 ibid, c112

> months of service, and it has been considered that it would be wrong to give that as a right.[66]

The new clause was subsequently withdrawn. In its Special Report the Committee supported the MOD's current recruitment policies for under-18s.[67]

Closure of Bases

The final amendment sought to introduce an obligation upon the Secretary of State to prepare, prior to commencing a programme of closure or realignment of military bases, a base closure report to be laid before Parliament. Parliamentary approval of any base closures or realignment would also become a statutory requirement.

At the outset, Mr Robathan, stressed that the introduction of such a clause was "unwelcome at a time when we are trying to streamline the Government and conduct operations". He went on to argue:

> We are going through a tortuous, lengthy and considered process in the MOD on future basing. If we were to go down the route of the new clause, it would involve publicly revealing our plans and a lot of highly sensitive information [...]
>
> Base closures and changes are already subject to a number of legislative requirements – for example, planning consents and the necessity for sustainability assessments. Parliament already has ample opportunity to make its views known to the Government about proposed major changes [...] Parliament and, indeed, the nation will no doubt hold the Government to account for the decisions that are taken. The right approach, however, must be that the Government should take those decisions. Requiring advance approval would abandon the Government's responsibility and make vital strategic decision making difficult or, indeed, impossible.[68]

The new clause was subsequently withdrawn and formal consideration of the Bill was concluded.

4 Opposition Day Debates on the Military Covenant

Amid the Committee's deliberations on the *Armed Forces Bill*, an Opposition Day debate on the subject of the Military Covenant was also held on 16 February 2011.

That debate was on the motion:

> That this House supports establishing in law the definition of the Military Covenant, in doing so fulfilling the Prime Minister's pledge of 25 June 2010 to have 'a new Military Covenant that's written into the law of the land'; believes that this commitment should not be diluted or sidestepped; and further supports service charities' and families' calls for a legally-binding Military Covenant which defines the principles that should guide Government action on all aspects of defence policy.

In opening the debate the Shadow Defence Secretary, Jim Murphy, noted that "the Government have already voted against an amendment in the Armed Forces Bill Committee that would have fulfilled the aim of today's motion" and called on the Secretary of State to

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66 Armed Forces Bill Select Committee, *Fourth Formal Sitting,* 17 February 2011, c113-114
67 Armed Forces Bill Select Committee, *The Armed Forces Bill,* HC 779, Session 2010-11
68 Armed Forces Bill Select Committee, *Fourth Formal Sitting,* 17 February 2011, c116-117

use the debate "as an opportunity to reconsider the Government's policy".[69] He went on to state:

> Let me explain why I think that the Government's position is flawed. In the Armed Forces bill, the Government have provided for an annual report on the covenant, explicitly using the term "covenant". However, Ministers are choosing to overlook the fact that there is no legally binding definition of the terms to accompany its use, which means that Ministers can themselves determine how it is interpreted [...] the Veterans Minister, said that the Government had no intention of placing in law a legal definition of a covenant [...]
>
> The military covenant should not be whatever the Government of the day determine it to be. It should not be at the whim of Ministers to decide in a report what is and is not in the covenant [...] it should be defined in law so that it is removed from the cut and thrust of party politics.[70]

To support his points, Mr Murphy highlighted the opinion of the Royal British Legion, and in particular their view that "to suggest an annual covenant report would be as effective as a piece of legislation is nonsense and would be evidence of the Government doing a u-turn on their explicit promises".[71]

In response to Mr Murphy's comments, the Secretary of State for Defence, Liam Fox, reiterated many of the points which had already been made by the Minister, Andrew Robathan, during the Select Committee debate. In his opening comments, however, he made the point that:

> There is no doubt about the general desire in this country to improve and develop the armed forces covenant. It encompasses those of all ages and social groups, those with different politics and those with none. It does not and cannot exist in the abstract, however. It cannot be a wish list separated from the economic reality in which we find ourselves.[72]

He went on to argue that the approach adopted by the Government in the *Armed Forces Bill* is:

> for the first time recognising the covenant in law. We are setting it out in law...that the Secretary of State for Defence will be required to come to the House of Commons, and when we have published the tri-forces covenant, the House of Commons will be able to decide whether the Government have lived up to their part of the bargain [...]
>
> The covenant will set out how we are supporting our armed forces, their families and veterans in key areas such as healthcare, housing and education. It will be the first time the existence of the armed forces covenant is recognised in statute. For that, I think all fair-minded people would believe that the coalition Government deserve some credit.[73]

Opinions expressed during the ensuing debate varied greatly. Many of the arguments on the Military Covenant raised during the oral evidence sessions of the Select Committee were once again reiterated, with an apparent division between those Members who support the

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69 HC Deb 16 February 2011, c1026-7
70 ibid, c1028-1032
71 ibid
72 ibid, c1036
73 ibid, 1042

proposals as they currently stand in clause 2 of the Bill, and those who support the view that the Bill does not enshrine the covenant in law, and should be amended accordingly.

Speaking during the debate Mark Lancaster made the observation:

> Much of the debate has been about whether the Government should enshrine the military covenant in law, or whether there should be a report on the military covenant by law [...] As a member of the Armed Forces and like fellow members of the Armed Forces, I do not really care. What is important to me is not whether we enshrine it in law. That is a process point which demonstrates how out of touch the House of Commons is with our armed forces [...]
>
> The Government's move to recognise the military covenant in a Bill for the first time is to be welcomed. We can argue about the semantics, but as I said at the start of my speech, I and many other members of the armed forces will judge this and successive Governments not on the detail, but on what is achieved.[74]

Patrick Mercer also shared this view, commenting that "what this is about is making sure that we honour our men, our women, our fighters and their families. Whether it be in law or whether it be simply talked about, as we are talking about it today, that is the important thing [...] I do not care whether that is written into law; the point is that we must get it right".[75]

Caroline Dinenage also commented:

> We need to rebuild the trust of our armed forces, and if we make a promise we must stick to it. Making promises that are achievable and then exceeding expectations is far better than seeking to enshrine things in law.[76]

In contrast, Sandra Osborne argued:

> The military covenant is...not a mere service level agreement; and it is more than a bundle of moral obligations or philosophical statements. Moral obligations and philosophical statements do not pay the bills for our service personnel or veterans, not do they give guarantees in legislation, which is the promise that was made and the promise that should be kept.[77]

She also expressed support for the view that the External Reference Group, and not the Secretary of State, should determine the content of the Armed Forces Covenant Report, suggesting that "It is important that we have a level of independence. I do not make a party political point. I believe that Governments of any persuasion have a vested interest in highlighting the areas that suit them and ignoring those that do not".[78]

She also went on to raise concerns about the proposed content of the Armed Forces Covenant Report, arguing that "education, health and housing are very important, but none of them comes under the remit of the MOD. That is not an adequate list of the many issues that exist and, as hon. members have said, are by no means the only matters of concern".[79]

The motion was subsequently defeated on Division by a vote of 234 (ayes) – 318 (noes).

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74 HC Deb 16 February 2011, c1047 and c1049
75 ibid, c1051-52
76 ibid, c1060
77 ibid, c1053
78 ibid, c1031 and c1053
79 ibid, c1053

A copy of the full debate is available at: Hansard 16 February 2011

On 3 March 2011 a further Opposition Day debate, initiated by the Democratic Unionist Party, called on the Government to adequately support the UK Armed Forces and veterans and "to honour in full its commitments in relation to the Military Covenant".[80] In opening the debate, Jeffrey Donaldson stated:

> I know that there is some concern about what is meant by enshrining the military covenant in law. We welcome that commitment and I know that it is widely welcomed, particularly among the veteran community [...]
>
> Our purpose in putting the motion before the House today even though there have already been debates on these issues, including one on the military covenant a few weeks ago, is to show that we think those debates should continue and that the House should not tire of discussing these issues until we get them right.[81]

In reply, the Secretary of State summarised the progress that had been made in rebuilding the covenant since the new Government took office, and went on to explain:

> We need to ensure that progress is made year on year. That is why we have brought forward measures in the Armed Forces Bill requiring the Defence Secretary to present an armed forces covenant report to Parliament every year. I hope to deliver the first of those reports in the autumn. It will not simply be about the relationship between the Government and the armed forces but, as I have set out, a wider picture of how the covenant is being respected across the whole of our society, including, as has been pointed out in this debate already, the charitable sector, which has a role to play. The right hon. Member for Lagan Valley (Mr Donaldson) asked about that specific element. We have decided that a tri-service covenant should be developed along with the armed forces, the charitable sector and interested parties, including veterans, and that the Secretary of State will be answerable for how that is put into practice.
>
> There is a genuine debate to be had about other ways of doing this, and it is fair that we consider those today. Some believe that we should have definable rights, enshrined in law; if so, they should make that clear. However, when rights are defined in law, they become justiciable. There are potentially complex and expensive legal implications for that, right up to interpretations by the European Court; Members would not expect me to go into private grief on that particular subject. If one were to apply rights in law, one would need to consider, given that the military covenant is not delivered only by Government, the implications for the charitable sector in terms of its legal obligations for delivery.
>
> It is a complex argument, and there are perfectly reasonable points of view to be expressed on either side. The Government have decided that the best way to ensure that this is recognised in law is to develop the tri-service covenant and for the Secretary of State to make a statement so that Parliament as a whole can assess how it is being delivered. Ultimately, although we in this House will have a lot of debate about process, what matters is outcome and whether service personnel and veterans are getting an improvement in what society as a whole has promised to deliver, and wants to deliver, to them.
>
> I welcome the support in this House for members of the armed forces community. That is why the Government support this motion, just as I hope that the House supports the

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80 HC Deb 3 March 2011, c477
81 ibid, c481-2

positive measures we are taking. The coalition Government will continue to rebuild the armed forces covenant. I wish we could go faster, but we will go as fast as we can.[82]

A copy of the full debate is available online at: Hansard 3 March 2011

[82] HC Deb 3 March 2011, c491-2