



Amendments to the Armed Forces Bill

Standard Note: SN05991
Last updated: 13 June 2011
Author: Claire Taylor
Section: International Affairs and Defence Section

In June 2010 the Prime Minister pledged to 'enshrine' the Military Covenant in law. The extent to which the *Armed Forces Bill*, as introduced, fulfilled that pledge has been the subject of intense debate both during the Select Committee stage of the Bill and during a number of Opposition Day debates that have taken place since the Bill's introduction.

The Committee of the Whole House and remaining Commons stages of the *Armed Forces Bill* were delayed by the Government at the beginning of May amid speculation that the Government was reconsidering the provisions in the Bill relating to the Military Covenant, following a campaign by the Royal British Legion and several newspapers to get the legislation amended.

Indeed, on 15 May 2011 the Prime Minister announced that aspects of the Military Covenant would now be written into the Bill. The Secretary of State for Defence provided further details to the House on 16 May when the Government also published the first Tri-Service *Armed Forces Covenant*, along with a document outlining the practical measures that are being undertaken to implement the Covenant, and future commitments in this area.

This note examines the amendments to the *Armed Forces Bill* that have been tabled ahead of the Committee of the Whole House debate on 14 June 2011.

Discussion of the Select Committee Stage of the Bill and the previous debate over the Military Covenant is available in Library briefing [SN05899](#).

Library briefing [SN05979](#), examines the principles and commitments of the new Tri-Service *Armed Forces Covenant*.

This information is provided to Members of Parliament in support of their parliamentary duties and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as being up to date; the law or policies may have changed since it was last updated; and it should not be relied upon as legal or professional advice or as a substitute for it. A suitably qualified professional should be consulted if specific advice or information is required.

This information is provided subject to [our general terms and conditions](#) which are available online or may be provided on request in hard copy. Authors are available to discuss the content of this briefing with Members and their staff, but not with the general public.

Contents

1 Clause 2 – Armed Forces Covenant 2

1.1 Government Amendments 11-13 3

1.2 Amendments 2-4 and New Clauses 2-6 4

1.3 Amendments 16-17 and New Clauses 13-14 6

1.4 New clause 17 6

2 Other New Clauses 6

2.1 Reserve Forces – New Clause 12 6

2.2 Enlistment and Discharge of Under 18s– New Clauses 7 and 11 7

2.3 Defence Statistics – New Clause 15 7

2.4 Base Closures – New Clauses 1 and 16 8

1 Clause 2 – Armed Forces Covenant

Much of the focus in the Select Committee stage of the Bill was on the provisions of clause 2 and it is widely expected that this issue will dominate the Committee of the Whole House on 14 June.

Initially the Committee of the Whole House and Commons Remaining Stages had been scheduled for 10 May 2011. However, this stage was delayed by the Government at the beginning of May amid speculation that the Government was reconsidering the provisions in the Bill relating to the Military Covenant. This followed a sustained campaign by the Royal British Legion and several newspapers for the Bill to be amended in order to enshrine the Covenant in law, as promised by the Prime Minister in June 2010.

Indeed, on 15 May 2011 the Prime Minister announced that the principles of the Military Covenant would now be written into the Bill. The Secretary of State for Defence provided further details to the House on 16 May when the Government also published the first tri-Service *Armed Forces Covenant*, along with a document outlining both the measures that are being undertaken to implement the Covenant, and future commitments in this area. In his statement to the House, the Secretary of State commented:

In deciding how best to recognise the covenant in law, the Government have had to maintain a careful balance. On the one hand, we do not want to see the chain of command undermined or the military permanently involved in human rights cases in the European courts. On the other, we must ensure that the legitimate aspirations of the wider service community, the armed forces charities and the British public for our armed forces are met.

We believe that a sensible way forward – one that will give the right kind of legal basis to the armed forces covenant for the first time in our history – is to enshrine the

principles in law, provide a regular review of the policies that will make them a reality, ensure that Parliament has a chance to scrutinise that review through the annual report, and ensure that the report itself is widely informed, consultative and transparent. I believe that it is right for the Government to be held to account on delivering the principles underpinning the covenant by this House, and not by the European Courts. That is what our approach will ensure [...]

The Government will set out on the face of the Armed Forces Bill the key principles that we believe underpin both the covenant and any report on its implementation. Ensuring that members of the armed forces community do not suffer disadvantage as a result of their service, and that where appropriate they receive special treatment, are at the heart of the armed forces covenant [...] the Government will bring forward amendments before Third Reading to require the Secretary of State to address those principles in preparing his report to Parliament, and to recognise the unique nature of service life.¹

Several amendments to clause 2 had already been tabled prior to the Government's announcement on 16 May. Amendments 5-10, new schedule 1 and new clauses 8-10 have subsequently been withdrawn.

1.1 Government Amendments 11-13

These [amendments](#) do not change the text of clause 2 as it currently stands, but make additions to that clause.

Amendment 11 adds new subsection 2A which sets out the key principles that underpin the Covenant and which must be taken into consideration when preparing the Armed Forces Covenant Report. The amendment largely mirrors the text of the *Armed Forces Covenant* which was published on 16 May, recognising in particular the unique obligations of, and sacrifices made, by the Armed Forces and the principle that they should not be disadvantaged by that service.

Amendment 12 makes it an obligation for the Secretary of State to set out in the annual Armed Forces Covenant report whether Service personnel, in his opinion, are at a disadvantage with regards to the areas covered in the report, and what the Government's response to that would be. Amendment 13 also makes it an obligation for the annual report to set out when the Secretary of State considers that making special provision for Service personnel is justified.

These amendments do not introduce justiciable rights for Service personnel or minimum standards of care which could potentially leave the MOD open to legal challenges.

With respect to preparation of the annual report, in his statement on 16 May 2011 the Secretary of State confirmed that "we intend to consult widely in its preparation, and prior to laying it before the House will give external reference group members from outside Government the opportunity to comment on it".² He also went on to confirm that any observations of the ERG would be published alongside the annual report and that work is currently ongoing with the ERG to update its terms of reference. Those provisions are not part of the Government's amendments however, and therefore do not make the consultation with the ERG a statutory obligation.

¹ HC Deb 16 May 2011, c26

² HC Deb 16 May 2011, c26

Further detail on the *Armed Forces Covenant* is available in Library briefing [SN05979](#).

1.2 Amendments 2-4 and New Clauses 2-6

The [amendments](#), tabled by Elfyn Llwyd, do not seek to significantly amend clause 2 as it currently stands, but to make additions to that clause in relation to veterans. The new amendments make provision for a new Minister for Former Armed Forces Personnel (created by new clause 2),³ who would be responsible for the annual report to Parliament that is currently envisaged under clause 2 of the Bill. The scope of that report would also be broadened to include those areas identified in amendment 3, including the operation of a newly established Former Armed Services Personnel Rights Charter, the operation of Former Armed Services Personnel Support Officers, the financial support of veterans' welfare groups and the operation of a new Former Armed Services Personnel Policy Forum (all created by new clauses 3-6). Under amendment 4 that report would also be required to include "expert recommendations on improving the welfare of former armed services personnel", although it does not go on to specify who those experts should be.

Specifically, the Former Armed Services Personnel Charter envisaged under new clause 3, would set down all of the rights to assistance that veterans can expect; including the requirement for Service personnel to undergo a psychological assessment and a resettlement assessment prior to leaving the Armed Forces; access to advice on a number of welfare issues prior to discharge; the provision of support and advice during the first six months of discharge and tailored support for veterans in the criminal justice system. That latter support would be provided through the establishment of Former Armed Forces Personnel Support Officers in each prison and probation service in England and Wales (new clause 4).

New clause 5 also makes provision for the funding of specified welfare groups in order to provide assistance to veterans; while new clause 6 establishes a new Former Armed Services Personnel Policy Forum to ensure best practice in the treatment and discussion of veterans' welfare issues.

Service personnel leaving the Armed Forces, and veterans, are already able to access a variety of support and assistance mechanisms through the Career Transition Partnership (<http://www.ctp.org.uk/ctp/serviceleavers>), the Veterans UK helpline and the Veterans Welfare Service (<http://www.veterans-uk.info/welfaresupportcontact.htm>), in addition to the myriad of veterans' charities and organisations including the Royal British Legion. Information on the support provided by the MOD upon discharge, specifically in relation to homelessness and veterans in the criminal justice system, is also available at:

<http://www.mod.uk/DefenceInternet/AboutDefence/WhatWeDo/Personnel/Pensions/VeteransTransition.htm>

In answer to a Parliamentary Question in November 2010, the MOD set out the level of financial assistance it had provided to various organisations in 2010-11:⁴

The departmental figures for FY 2010-11 are the forecast payments to be made this financial year. The funding allocation for the forward years has still to be agreed.

³ The position of Minister for Defence Personnel, Welfare and Veterans is one which already exists within the MOD.

⁴ HC Deb 30 November 2010, c746W

| <i>Name of grant/grant in aid</i> | <i>FY 2010-11 (£ million)</i> |
|--|-------------------------------|
| Veterans Challenge Fund | 0.280 |
| Armed Forces Day | 0.290 |
| Reserve Forces and Cadets Association-Tri-Service activities | 105.489 |
| Sports Board-in support of Tri-Service activities | 0.811 |
| Museums e.g. Army, Air, Navy | 20.568 |
| Welfare Grants | 2.457 |
| St Clement Danes Church | 0.020 |
| Royal Navy Historic Flight | 0.225 |
| Commonwealth War Graves Commission | 44.641 |
| National Memorial Arboretum | 0.523 |
| Grants to the Royal British Legion | 0.115 |
| Scott Polar Research Institute | 0.035 |
| Gurkha Welfare Trust | 1.155 |
| Royal Hospital Chelsea | 10.838 |
| Royal Irish Benevolent Fund | 0.127 |
| Council of Voluntary Welfare Work in Germany (Welfare Council) | 0.031 |
| RMB Chivenor Nursery | 0.015 |
| Duke of York's Royal Military School | 0.786 |
| Victoria Cross and George Cross Association | 0.040 |

The Veterans Challenge Fund was also established in 2003: http://www.veterans-uk.info/veterans_challenge_fund/index.html

The National Audit Office also published a report in 2007, *Leaving the Services*, which examined the resettlement package offered by the MOD. The Public Accounts Committee published [its report](#) on this issue in July 2008.

1.3 Amendments 16-17 and New Clauses 13-14

[Amendment 16](#), tabled by Gemma Doyle and Kevan Jones, seeks to expand the issues to be covered in the Armed Forces Covenant report. This amendment was also tabled during the Select Committee stage of the bill, although it was defeated on division by a vote of 6-7.⁵ See Library briefing [SN05899](#) (section 3.1) for the discussion related to this amendment.

Alternatively, [amendment 17](#) seeks to add one issue: the operation of inquests, to the list of areas for compulsory inclusion in the Armed Forces Covenant report.

New [clause 13](#) relating to the expansion of the existing network of Armed Forces Advocates, was also tabled Gemma Doyle and Kevan Jones during the Select Committee stage. Again, that amendment was defeated on division by a vote of 6-7.⁶ See section 3.1 of [SN05899](#) for the discussion relating to that amendment.

New clause 14 was also tabled during the Select Committee stage, although the language of this new clause has been altered slightly to take into consideration the two documents that the Government published on 16 May: *The Armed Forces Covenant* and *The Armed Forces Covenant: Today and Tomorrow*. Again, that amendment was defeated on division by a vote of 6-7.⁷ See section 3.1 of [SN05899](#) for the discussion relating to that amendment.

1.4 New clause 17

[New clause 17](#), tabled by Gemma Doyle and Kevan Jones, would make it an obligation on all public bodies and Ministers, when making policy, to have regard to the same issues that the Secretary of State must also consider in preparing the Armed Forces Covenant report, which would be set out in new subsection 2A of section 359A (see amendment 11 above). It also calls for public bodies and Ministers to consider whether the making of special provision for Service personnel would be justified.

2 Other New Clauses

In addition to the new clauses tabled with respect to the Armed Forces Covenant, the following new clauses have been tabled ahead of the Committee of the Whole House.

2.1 Reserve Forces – New Clause 12

The Government has introduced a [new clause](#) relating to the call-out of the Reserve forces. The clause amends section 56 of the *Reserve Forces Act 1996*, which as a whole legislates for the maintenance and composition of the Reserves, their terms and conditions of enlistment, employee agreements and the terms of their call-out for operational duty.

Subsection 1 of section 56 already provides for the Secretary of State to make an order authorising the call-out of the Reserves for “operations outside the United Kingdom for the

⁵ Amendment 3 of the Select Committee amendments, HC 779, Appendix Two, Session 2010-12

⁶ Ibid, amendment 7

⁷ Ibid, amendment 8

protection of life or property; or [...] on operations anywhere in the world for the alleviation of distress or the preservation of life or property in time of disaster or apprehended disaster”.

This new clause makes provision for the Reserves to also be temporarily called out for “urgent work of national importance” in accordance with instructions issued by the Defence Council under the *Defence (Armed Forces) Regulations 1939*, which form part of the UK’s emergency powers legislation.⁸

New amendment 14 provides for this new clause to commence two months after this Act is passed. New amendment 15 merely alters the title of the Bill to reflect this new clause on the Reserves.

2.2 Enlistment and Discharge of Under 18s– New Clauses 7 and 11

A number of new clauses have also been tabled which mirror some of the amendments which were tabled during the Select Committee stage of the Bill in relation to the enlistment and discharge of minors.

[New clause 7](#) relating to the voluntary discharge of under-18s with 14 days notice, tabled by Dr Julian Huppert, and [new clause 11](#) which would prohibit the enlistment of under 18s, tabled by John McDonnell, were also introduced during the Select Committee stage of the Bill by Alex Cunningham, as part of a broader clause on the enlistment of minors. Those amendments were withdrawn at the time and in its Special Report the Select Committee supported the MOD’s current recruitment policies for under-18s.⁹ See section 3.2 of [SN05899](#) for further details.

In its response to the Select Committee the Minister for Defence Personnel, Welfare and veterans, Andrew Robathan, also confirmed:

I welcome the Committee’s support for the existing policy in relation to the recruitment of under-18s. However, following a review of discharge policy I am pleased to announce that, for those under the age of 18, the ability to be discharged will in future be a right up to the age of 18, subject to an appropriate period of consideration or cooling off. My officials are currently finalising the policy details and these will be brought forward shortly in secondary legislation.¹⁰

2.3 Defence Statistics – New Clause 15

[New clause 15](#), tabled by Angus Robertson, seeks to make provision for the Secretary of State to publish annual statistics on defence spending, by both Government Office Region and each Local Authority area, with respect to equipment and non-equipment expenditure, and service and civilian personnel costs. Subsection 2 of that clause also seeks to oblige the Secretary of State to publish annual estimates of the national and regional employment that is dependent upon MOD expenditure and defence exports.

The annual statistics currently published by the MOD are available in the *Defence Statistics* publications produced by the Defence Analytical Services Agency. UKDS 2010 is available [online](#).

⁸ Including the *Emergency Powers Act 1920*, as amended by the *Emergency Powers Act 1964*, and the *Emergency Powers Act 1939*

⁹ Armed Forces Bill Select Committee, *The Armed Forces Bill*, HC 779, Session 2010-11

¹⁰ *Government Response to the Select Committee on the Armed Forces Bill Special Report*, HC 779, Session 2010-12

In answer to a Parliamentary Question in April 2010 the MOD provided the figures cited in subsection 1 of this clause, as they related to Scotland in 2008-09, and set out its position on the availability of figures after this date:

Angus Robertson: To ask the Secretary of State for Defence how much his Department incurred in (a) equipment expenditure, (b) non-equipment expenditure, (c) service personnel costs and (d) civil personnel costs in Scotland in (i) 2007-08, (ii) 2008-09 and (iii) 2009-10. [324959]

Mr. Bob Ainsworth [holding answer 29 March 2010]: Estimated direct Ministry of Defence (MOD) expenditure for Scotland in the categories requested for the years where data are available is presented in the following table:

| | <i>2007-08 current prices (£ million)</i> |
|---|---|
| (a) Equipment expenditure | 510 |
| (b) Non Equipment expenditure | 280 |
| (c) Service personnel costs | 590 |
| (d) Civilian personnel costs | 190 |
| <p><i>Notes:</i></p> <ol style="list-style-type: none"> 1. Figures are rounded to the nearest £10 million. 2. Figures relate to expenditure in the whole Scottish Government office region rather than to any individual military or civilian establishments. 3. Indirect expenditure, such as subcontracted work, is not reflected in the figures. 4. Personnel costs exclude contributions made by MOD to the Armed Forces Pensions Scheme and War Pensions Scheme. | |

Since 2008 the MOD has not collected estimates of regional expenditure on equipment, non-equipment, or personnel costs as they do not directly support policy making or operations. The last estimates for 2007-08 were published in UK Defence Statistics in September 2009. As a result, the complex analysis required to produce the underlying regional expenditure data is no longer performed. Information for a comparable time series beyond 2007-08 could be provided only at disproportionate cost.¹¹

2.4 Base Closures – New Clauses 1 and 16

[Amendment 1 and new clause 1](#), tabled by Thomas Docherty, are identical to his previous amendments on the closure of bases that were tabled in the Select Committee. Those amendments were subsequently withdrawn. See section 3.2 of [SN05899](#) for further detail.

¹¹ HC Deb 6 April 2010, c1199-1200W

[New clause 16](#), tabled by Angus Robertson, seeks to establish an independent UK Defence Base Closure and Realignment Commission. The intention of that Commission would be to review and make recommendations on the “draft force structure plan” envisaged under any future strategic defence and security review. Particular consideration would be given by the Commission to the economic effects of a proposed closure or realignment of a military installation, and the overall effect on the strategic military presence across the UK.

The reports of that Commission would be laid before Parliament and its recommendations would only be brought into effect upon approval by both Houses of Parliament.

The Commission would comprise 12 members, proposed by the Defence Select Committee giving due consideration to the nations and regions of the UK, their military expertise, and their experience in the assessment of economic impact. The proposed membership of the Commission would then be subject to approval by both Houses of Parliament.

A similar commission was established in the United States in 2005. Under Congressional mandate, the intention of the Commission was to ensure the integrity of the base closure and realignment process and provide an objective, non-partisan, and independent review and analysis of the list of military installation recommendations that had been previously issued by the US Department of Defense. Further information and a copy of the Commission’s final report is available at: <http://www.brac.gov/>