



House of Commons
Select Committee on the
Armed Forces Bill

Armed Forces Bill

Special Report of Session 2005–06

Volume I

*Special Report, together with Proceedings of
the Committee, oral and written evidence and
Official Report*

*Ordered by The House of Commons
to be printed 25 April 2006*

Select Committee on the Armed Forces Bill

The Select Committee on the Armed Forces Bill was appointed by an Order of the House of Commons to consider the Armed Forces Bill.

Current membership

Rt Hon George Howarth MP (*Labour, Knowsley North and Sefton East*)
(Chairman)

Vera Baird MP (*Labour, Redcar*)

Mr Colin Breed MP (*Liberal Democrats, South East Cornwall*)

Mr Simon Burns MP (*Conservative, Chelmsford West*)

Mr David Burrowes MP (*Conservative, Enfield Southgate*)

Mr Alan Campbell MP (*Labour, Tynemouth*)

Ben Chapman MP (*Labour, Wirral South*)

Mr Gerald Howarth MP (*Conservative, Aldershot*)

Mr Kevan Jones MP (*Labour, North Durham*)

Robert Key MP (*Conservative, Salisbury*)

Sarah McCarthy-Fry MP (*Labour, Portsmouth North*)

Bob Russell MP (*Liberal Democrats, Colchester*)

Jim Sheridan MP (*Labour, Paisley and Renfrewshire North*)

Mr Don Touhig MP (*Labour, Islwyn*)

The following Member was also a Member of the Committee during the period covered by this report: Mr Michael Moore MP (*Liberal Democrats, Berwickshire, Roxburgh and Selkirk*)

Powers

Extract from the Order of the House, 12 December 2005:

“Armed Forces Bill,—Ordered, That the following provisions shall apply to the Select Committee on the Armed Forces Bill:

1. The Committee shall have 14 members, to be nominated by the Committee of Selection.
2. The Committee shall have power—
 - (a) to send for persons, papers and records, to sit notwithstanding any adjournment of the House, to adjourn from place to place and to report from day to day the minutes of evidence taken before it;
 - (b) to admit the public during the examination of witnesses and during consideration of the Bill (but not otherwise); and
 - (c) to appoint specialist advisers either to supply information not readily available or to elucidate matters of complexity relating to the provisions of the Armed Forces Bill.”

Publication

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at www.parliament.uk/parliamentary_committees/afbcom.cfm.

Committee staff

The current staff of the Committee are Richard Cooke (Clerk), Anwen Rees (Committee Assistant) and Catherine Close (Secretary).

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1 Introduction

The Armed Forces Bill

1. The United Kingdom's Armed Forces have a system of military law that supplements the civilian law of England and Wales, which is intended to underpin Service discipline and support operational effectiveness. Military law is currently based on the Service Discipline Acts, which provide the statutory basis for the disciplinary regime in each of the three Services.¹ The legislation establishing this separate system of military law must be renewed every year by Order in Council. Primary legislation is required every five years to maintain in force and amend the Service Discipline Acts.² This Armed Forces Bill does more than re-enact the existing Service Discipline Acts: it establishes for the first time a single tri-Service system of military law.

2. The Defence Committee in the previous Parliament conducted an inquiry, in early 2005, into some of the proposals then expected to be included in the Bill on the basis of a memorandum provided by the Ministry of Defence (MoD).³ Shortly before the Bill's Second Reading, the Defence Committee published a short report reiterating two recommendations it made in the previous Parliament.⁴ The Constitutional Affairs Committee also published a report before Second Reading based on an evidence session with Judge Blackett, the Judge Advocate General.⁵

3. Shortly before the conclusion of our work on the Bill, the Deepcut Review, conducted by Nicholas Blake QC, reported.⁶ Mr Blake's Review considered circumstances surrounding the deaths of four young soldiers at The Princess Royal Barracks, Deepcut. The Review touches on several issues relevant to the Bill, which we discuss later. The Government has undertaken to consider Mr Blake's recommendations and conclusions, and to amend the Bill where necessary.⁷ It is unfortunate that we were unable to take more account of his conclusions in the course of our deliberations.

Our inquiry

4. Quinquennial Armed Forces Bills have been committed, after Second Reading in the House of Commons, to an ad hoc Select Committee established to consider the Bill. Those select committees have been given the power to take oral and written evidence and to undertake visits in the United Kingdom and abroad. We have followed the same

1 The Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 are collectively known as the Service Discipline Acts (SDA). See Explanatory Notes to the Armed Forces Bill [Bill 94 (2005–06)-EN], page 1.

2 Known as a quinquennial Armed Forces Bill.

3 Defence Committee, Second Report of Session 2004–05, *Tri-Service Armed Forces Bill*, HC 64

4 Defence Committee, First Report of Session 2005–06, *Armed Forces Bill*, HC 747. The Defence Committee recommended the retention of annual renewal, and the establishment of an independent military complaints mechanism.

5 Constitutional Affairs Committee, Second Report of Session 2005–06, *The Office of the Judge Advocate General*, HC 731

6 *The Deepcut Review*, Nicholas Blake QC, 29 March 2006, HC 795, hereinafter '*Blake Review*'

7 HC Deb, 29 March 2006, col 855

procedure, with one procedural innovation. We have been able to carry out the clause-by-clause consideration of the Bill in public.⁸ The Explanatory Memorandum accompanying the Motion to establish the Committee explained that:

This innovation responds 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.⁹

5. We decided to undertake the public deliberations in a manner as close as possible to a Standing Committee, the usual committee format for consideration of legislation. For convenience, in this Special Report we refer to those formal deliberations on the Bill as the 'Standing Committee phase'. As with most Committees considering legislation, much of the debate in the Standing Committee phase was directed at probing the Government's proposals. **We commend the Government for bringing forward a motion that has enabled us to meet in public to conduct our formal consideration of the Bill.**

6. We strongly support the Select Committee approach adopted for the consideration of the Bill. This approach may not be appropriate for all Bills, but was invaluable for this one. We recommend that the Government considers this procedure for other legislation, in addition to future Armed Forces Bills.

7. The Committee was Ordered by the House to consider the Bill, and that has been our primary focus although we have also considered other issues related to the operation of the Armed Forces. We made amendments to the Bill, which are recorded in the Minutes of Proceedings included in this Special Report.¹⁰

8. This Special Report does not provide a detailed commentary on the provisions in the Bill, which is provided by the explanatory notes published with the Bill and the briefing material available on MoD's website.¹¹ More detail on the proposals in the Bill considered in the course of our work can be found in the Standing Committee phase proceedings and the additional written memoranda provided by MoD.¹²

9. Many of the details of the Government's proposals—and the procedures that will have a direct practical effect on the ground—are not set out in the Bill itself but will be included in various layers of subordinate legislation, rules and guidance. MoD will need to draft new tri-Service statutory instruments to replace the existing separate single Service legislation. Mr Humphrey Morrison, Director of Legislation MoD, described the scale of the task:

8 The *Explanatory Memorandum on the Motion Relating to the Armed Forces Bill*, issued by the Office of the Leader of the House, explains that paragraph (2)(b) of the motion gives the Committee the power to meet, "... if it so chooses, in public when it is formally considering the clauses and amendments to the Bill."

9 *Ibid.*

10 See pages 59–83

11 The Armed Forces Bill page of the MoD website: <http://www.mod.uk/DefenceInternet/AboutDefence/Organisation/AgenciesOrganisations/ArmedForcesBill.htm> has links to briefing material, including: Explanatory Notes to the Armed Forces Bill, Bill 94-EN. : House of Commons Library research paper, 05/86, *The Armed Forces Bill*; and House of Commons Library research paper, 05/75, *Background to the Forthcoming Armed Forces Bill*

12 The Official Report of the Standing Committee phase proceedings of the Select Committee on the Armed Forces Bill are annexed to Volume II of this Report. The written evidence is printed in Volume II.

I certainly do not want to suggest that the drafting of these regulations is some easy and trivial matter. It is a very big project. We are replacing a system which has lots and lots of minor differences between the Services, often obscure differences...¹³

10. We expressed our concern to MoD that we had not been provided with more detail of the proposals likely to be in secondary legislation, without which we have not had a complete picture of the legislation's proposals. We understand that MoD intends to produce more details before the conclusion of proceedings on the Bill in the House of Commons.¹⁴ **We urge the Government to provide more detail on the proposals that will be included in subordinate legislation and how they will work before the House of Commons completes its consideration of the Bill.**

11. We held eight sessions of oral evidence. We took evidence from MoD officials on three occasions, and from the Chief of the Defence Staff and his immediate predecessor, the Chiefs of the three Services and from the heads of the three Service Prosecuting Authorities. We took evidence from the Provost Marshals of the three Service police forces and from the Judge Advocate General. We also took oral evidence from civilian legal practitioners; from the Soldiers, Sailors, Airmen and Families Association (SSAFA) Forces Help, WRVS and the Army chaplaincy; and witnesses on behalf of the 'Deepcut & Beyond' group.¹⁵

12. We received a substantial amount of written evidence, which is published with this Special Report.¹⁶ We visited the Military Corrective Training Centre, Colchester and Victoria Barracks, Windsor; and British forces in Cyprus, Oman and Iraq.¹⁷ We are grateful to all those who assisted us in our work, either by providing oral or written evidence or by contributing to our visits.

13 Q 47

14 See Ev 204–211, Annex Volume II, 29 March 2006, col 111

15 See pages 84–85

16 See pages 86–87

17 See Annex at pages 57–58 for our itineraries and lists of those we met.

2 Military context, operational effectiveness and the tri-Service approach

A separate system of military law

13. Military law encompasses both Service-only offences (disciplinary offences) and civil offences (criminal conduct offences). In producing a harmonised, tri-Service approach, the Bill has removed some offences and others have been recast to make them consistent with changes in the criminal law.¹⁸ One new disciplinary offence has been added to those in the existing Service Discipline Acts.¹⁹

14. The Military Covenant, which sets out the Army's doctrine, states:

Soldiers differ from civilian employees because success in military operations, when the price of failure may be death, requires the subordination of the rights of the individual to the needs of the task and the team, albeit within a legal framework.²⁰

Air Chief Marshal Sir Jock Stirrup, Chief of the Air Staff and Chief of the Defence Staff designate, told us that: "The key element for me in this Bill is the recognition that within the over-arching context of UK law the Armed Forces are different...".²¹ The Judge Advocate General, Judge Blackett, summed up the need for a separate system of military law in his written evidence:

There are cogent reasons for maintaining a unique system of military justice, separate and distinct from the civilian system. These are to:

- support operational effectiveness and morale
- maintain discipline which is an essential element of command
- reflect the special and unique nature of the Armed Forces, in which sailors, soldiers and airmen are required to use lethal force to support Government policy, to risk their personal safety, and to be prepared to lay down their lives for their country, and
- extend the law of England and Wales to personnel serving overseas and outside the jurisdiction of the civilian courts.²²

We believe that the Armed Forces are distinct from other parts of society and that the work they undertake on the nation's behalf requires a separate system of Service law.

18 See Ev 197–198 for disciplinary offences which may be dealt with by Commanding Officers of all Services under the Bill.

19 Clause 49 provides for air navigation order offences, made under section 60 of the Civil Aviation Act 1982. These are not offences provided for under the existing Service Discipline Acts.

20 See http://www.army.mod.uk/servingsoldier/usefulinfo/valuesgeneral/adp5milcov/ss_hrpers_values_adp5_0_w.html. The Military Covenant (Army Doctrine Publication Volume 5: Soldiering) sets out the doctrinal mutual obligations between the nation, the Army and each individual soldier. This text is taken from the section relating to 'Law'.

21 Q 339

22 Ev 145

Military context

15. The importance of understanding the military context was highlighted by many of our witnesses. The former Chief of the Defence Staff, Admiral the Lord Boyce, emphasised the need for those involved in administering the military justice system to have an understanding of the military context.²³ His successor, General Sir Michael Walker told us that:

What you do need is people making judgments who do understand the context of those who are being accused of some crime, so 24/7 living, stress, pressures, finding yourself in a riot in some godforsaken part of the world produce pressures on people [...] when you are looking at making judgments about what they do, it requires you to have an understanding of that context.²⁴

16. The Chief of the Defence Staff and the three Service Chiefs emphasised the degree of support within the Armed Forces for the proposals in the Bill, although the full significance of the changes has understandably not yet permeated all levels of the Armed Forces.²⁵ The Service Chiefs were consistent in their view that the military context should be considered in all areas of the military disciplinary system, not only to ensure that justice was served, but also to provide confidence in the system for soldiers, sailors and airmen.²⁶ Air Chief Marshal Sir Jock Stirrup told us that:

What is crucial in terms of maintaining that bond of trust is that people understand and feel that their actions are going to be judged in the context in which they are operating, not as if they were walking down, dare I say, Watford High Street, but the fact they were in downtown Basra with everything that that implies. So our concern is that the military justice system and the aspects of it which are covered in the Armed Forces Bill clearly recognise that difference from civilian life. That, it seems to me, is the fundamental point in maintaining this bond of trust.²⁷

17. The Judge Advocate General also highlighted the importance of those “who are alleged to have committed offences, [being] investigated and, if necessary, tried expeditiously and fairly by a tribunal with unique knowledge of Service life and discipline”.²⁸ His written evidence states that the panel of Service personnel in courts martial are “... essential in ensuring that the unique nature of Service life is taken into account...”.²⁹ **Appreciating and understanding the military context is essential to the administration of justice in the Services.**

18. The system of Service law applies in all military environments, not only on operational deployment where the importance of the military context is clear. The Chief of the Defence Staff told us that:

23 Q 327

24 Q 397

25 See Qq 339, 417, 462

26 Qq 339, 352, 359

27 Q 352

28 Q 86

29 Ev 147

I do not think you can have a separate system for non-operations and a different system for operations. I firmly believe that what you need is a consistent and coherent approach to what you do and it should apply in both peace and war.³⁰

19. The importance of the military context is most apparent when considering the hostile and dangerous situations that Service personnel can encounter on operational deployment. However, Service law must be equally applicable in operational and non-operational environments, and the military context is also important in non-operational environments.

Operational effectiveness

20. The system of military law is intended to support operational effectiveness.³¹ In recent years, the nature of operations has changed significantly, with a shift away from Cold War standing armies towards more mobile forces facing a greater range of challenges. An issue that has frequently been raised is whether the Armed Forces are now excessively constrained in their operations by the weight of legal obligations on them.³² Lord Boyce told us that during his conversations with Service men and women he had detected that there was "... a feeling of legal encirclement".³³ The concern about the effect of legislation on the Services is expressed in the Military Covenant, which states:

In recent years the range and scale of employment and social legislation that may be applied to the Army has changed radically. Individual rights are enshrined in legislation which seeks to eliminate discrimination. By placing more emphasis on individual rights than on collective responsibility, much domestic and European legislation may impact adversely on the operational effectiveness of the army.³⁴

21. It has been argued that operational effectiveness may be diluted because Service personnel in the front line are concerned that they may be prosecuted if they open fire. Lord Bramall, Chief of the Defence Staff from 1982 to 1985, said in February 2006, in a debate in the House of Lords, that:

The key question that must be asked and resolved is, in a combat zone, in the middle of a battle, what exactly constitutes a criminal offence? It is certainly not, by itself, the act of killing or wounding, which may be exactly what the fighting man is there to do. It has to depend on the circumstances prevailing at the time, including the tempo of operations; the perception of the threat; the rules of engagement [...] if applicable; and the good faith of those involved. The vital follow-up question is: who then decides whether, in the light of those circumstances, there is a *prima facie* case to answer and at what level is that decision made?³⁵

30 Q 398

31 <http://www.mod.uk/DefenceInternet/AboutDefence/Organisation/AgenciesOrganisations/ArmedForcesBill.htm> An overview of the Military Criminal Justice System and the Armed Forces Bill.

32 See, for example debate in the House of Lords on *Armed Forces: Chain of Command*, HL Deb 14 July 2005, cols 1220–1265

33 Q 309

34 The Military Covenant (Army Doctrine Publication Volume 5), section relating to 'Law'.

35 HL Deb, 16 February 2006, col 1272

22. During our visits some we met acknowledged that there were concerns about their legal position, although no one claimed that the action of military personnel had been impaired by concerns about legal pressure. As Brigadier Andrews, Director of Personal Services (Army) conceded, "... it is fair to say that the average soldier on the ground would always be concerned at the prospect of investigation and prosecution...".³⁶ According to General Walker, in respect of Iraq, Service men and women understood that:

... if you operate outside the law, you are going to be subject to it yourself, and I do not think there is a member of the Armed Services who would disagree that that is the right principle to have.³⁷

23. Following our visits to deployed forces and discussions with those who had been deployed, we are not convinced that operational effectiveness has been adversely affected by a sense of legal encirclement. Despite the sense that troops were not hamstrung on operations by legal considerations, it is clear that there is a perception, among some troops and among some sections of the public, that Service men and women feel constrained by legal considerations in acting in accordance with their orders and training. That perception must not be allowed to become reality and must be countered by communication. In the Standing Committee phase of our proceedings, the Minister said:

All soldiers understand that, whatever their mission and role, they can use lethal force when there is an imminent threat to human life. It is important that we lay to rest the fear, suspicion and perception that our soldiers might be holding back in a difficult situation for fear of a possible court hearing or a charge further down the line.³⁸

24. Service law protects Service personnel and civilians subject to Service discipline overseas by providing an appropriate legal framework under which they can be tried according to United Kingdom law. That provides protection from being tried by a local jurisdiction, and possibly sentenced to imprisonment, under legal systems that may not be compliant with international laws on Human Rights.

25. Mr James Mason, a civilian barrister with considerable experience of courts martial, described the military legal system as having been in the past "a rather sleepy little backwater", which was not well-understood by those outside the Armed Forces.³⁹ The current high-profile cases in Iraq, and interest in events at Deepcut and elsewhere have increased interest in the military jurisdiction. Major General Howell, head of the Army Prosecuting Authority, placed in context the perception that there was greater legal pressure on the Services in Iraq. He set out the number of investigations and prosecutions in relation to incidents in Iraq.⁴⁰ Later, in the Standing Committee phase, the Minister updated the Committee:

36 Q 9

37 Q 443

38 Annex Volume II, 28 March 2006, col 73

39 Q 227

40 Q 185

Since 2003, there have been more than 100,000 troop deployments in Iraq. During that period, there have been 191 investigations of all types; 170 cases have now been closed, and of the remaining 21, three have been dealt with summarily, four are still being investigated by the Service police, one is being considered by chain of command post-investigation, four are being considered by the prosecuting authorities, four are awaiting trial, and five trials have been held.⁴¹

26. Service law needs to be framed in such a way that operational effectiveness is supported. It should protect Service personnel when they are conducting operations and provide an appropriate framework for justice if they act outside the law. Service men and women should have confidence in the system and know that if they act within the law they will be supported by the chain of command and that if they act outside the law they will face justice. That confidence will be provided only by clarity.

Training and rules of engagement

27. Rules of engagement cover many aspects of a deployment's activities and provide "... a set of parameters to inform Commanders of the limits of constraint imposed, or freedom permitted, when carrying out their assigned tasks".⁴² We focused on rules of engagement related to the use of force. We discussed with witnesses whether adherence to rules of engagement provided Service personnel with sufficient protection against prosecution.⁴³ Brigadier Andrews told us that soldiers acting within their rules of engagement could be assured that they were acting within the law.⁴⁴ During the Standing Committee phase of our deliberations, the Minister explained that rules of engagement are developed for specific deployments.⁴⁵ He confirmed that they do not have the status of law, but that legal advice is "invariably built into the process" of their development, and that:

... a soldier who complies with his rules of engagement and any associated guidance in good faith will not stray outside the law. The soldier's guidance card will make it clear that lethal force may be used only where an imminent threat to life exists. Assessing whether such a threat exists in a given set of circumstances requires a separate judgment, which the rules cannot address.⁴⁶

28. We do not consider operational effectiveness to be constrained by current rules of engagement although there may be circumstances in which Service personnel would be constrained in acting against new threats that are emerging. We urge MoD to ensure that rules of engagement and their associated training keep pace with the threats now faced by Service personnel on deployment.

41 Annex Volume II, 28 March 2008, cols 72–73

42 Ev 212–213

43 Q 16 ff. See Annex Volume II, 30 March 2006, cols 202–204

44 Q 18

45 Annex Volume II, 30 March 2006, col 203

46 *Ibid.*

29. MoD provided us with a briefing on the pre-deployment training that Service personnel receive, which aims to ensure that they understand their rights and obligations under the rules of engagement and the law. The Chief of the Defence Staff told us that:

If you go down to our operational training advisory groups where we train people, they are taken specifically through these situations where they are given an opportunity to make mistakes and so on. I think, therefore, that people understand absolutely what is the right side of the law and what is the wrong side of the law.⁴⁷

He reminded us that the Armed Forces had long experience of training personnel for deployment in Northern Ireland. He said: “The training for that part of the world made it very clear that, if you stepped outside the law, you would be subject to that rule.”⁴⁸

30. Training for operations is crucial for preparing Service men and women for the realities of deployment and the legal context in which their actions may be judged. Those to whom we spoke to on our visits in the United Kingdom and abroad praised pre-deployment training. **We were impressed by the level of judgment and self-restraint that Service personnel are asked to exercise in complying with their rules of engagement. Rules of engagement relating to the use of force should be sufficiently flexible to enable Service personnel to protect themselves and others without risk of legal consequences.**

Human Rights legislation

31. Several important changes to the military justice system over recent years have been made in response to judgments made at the European Court of Human Rights (ECHR). The Judge Advocate General’s written evidence states: “There has been a succession of ECHR-based challenges to the military justice system in recent years, leading to significant improvements”.⁴⁹ He notes that:

... the law is not static and there are some areas which may prove susceptible to challenge, and although such challenges may be successfully withstood there is no room for complacency.⁵⁰

32. Mr Morrison, MoD’s Director of Legislation, told us that none of the proposals in the Bill had been introduced to ensure compliance with Human Rights legislation and that the proposals in the Bill were compliant with European Convention on Human Rights, but he was clear that he expected further challenges to the system.⁵¹ He explained that the changes to the military justice system made following challenges in the European Court of Human Rights, for example those leading to the introduction of an independent prosecuting authority, had strengthened the system for Service personnel accused of an offence.⁵² **We have received no evidence to suggest that the recent changes to the military justice**

47 Q 443

48 *Ibid.*

49 Ev 146

50 *Ibid.*

51 Qq 29, 31–34

52 Q 30

system made as a result of judgments in the European Court of Human Rights have been detrimental to Service personnel.

33. Human Rights legislation and challenges to the military legal system in the European Court of Human Rights do not place Service personnel at greater risk: they provide additional protection by strengthening the military justice system.

Role of the media

34. We found during our visits that one of the main sources of concern to soldiers, sailors and airmen was the media reporting of activities in Iraq. Major General Howell confirmed the view that “there has been so much misinformation that has been put out by the press which has worried troops”.⁵³ Service personnel did not object to the coverage of events in which the conduct of Service personnel appeared to have fallen below the expected levels, but they highlighted the fact that those reports failed to place those events in context. Service personnel also told us that disproportionate attention was paid to unrepresentative events, and that the widespread excellent work undertaken by the Armed Forces went unreported.⁵⁴

35. Those who express their views in the media, whether journalists, commentators or former officers, have a responsibility to ensure that their comments do not undermine military effectiveness and public confidence in the professionalism of the Armed Forces. **We note the concerns of Service personnel about the role of the media and support calls for the media to provide more balanced and accurate coverage of the work of the Armed Forces on deployment.**

A tri-Service approach?

36. There have long been calls for a tri-Service approach to military discipline. Mr Julian Miller, the Director General of Service Personnel Policy, MoD, explained how the idea had developed over a period of years and was first set out in the 1998 Strategic Defence Review.⁵⁵ All our military witnesses emphasised the importance of a tri-Service system in the modern era and supported the changes proposed in the Bill, as did many of the Service personnel to whom we spoke during our visits. While welcoming a tri-Service approach, the three Service Chiefs nevertheless emphasised that each Service retained its own ethos. General Jackson told us that:

... each Service has its own ethos and that is right and proper too. We do different things and we do them in different ways for very good reasons. Ethos is part of the military jurisdiction system and I think we need to bear that in mind.⁵⁶

53 Q 193

54 On returning from Iraq, Lt. Col. Ben Edwards, Commanding Officer of the Royal Scots Dragoon Guards, expressed his disappointment at the lack of interest by journalists in the positive work carried out by British Forces, *Scottish Press Association*, www.mediapoint.press.net. See also *Blake Review*, paras 1.63–1.69 for analysis of influence of media.

55 Q 2; The Strategic Defence Review announced that there would be an ‘examination of the need for a single tri-Service Discipline Act’; *Strategic Defence Review*, Ministry of Defence, July 1998, Cm 3999, para 133.

56 Q 371

37. The principal reason given to us for a tri-Service approach was the inconsistencies that have developed between the three Service Discipline Acts and the difficulties those inconsistencies can cause on joint operations. Brigadier Andrews emphasised that, although joint working was not new, the current system was “rather difficult and complicated”.⁵⁷

38. Commodore Fraser, Director of Naval Legal Services, and Air Commodore Hughesdon, Director of Personnel Policy (RAF), gave examples of circumstances in which a tri-Service system would be beneficial, such as the joint deployment to the Falkland Islands and the Joint Harrier Force.⁵⁸ Brigadier Andrews, Director of Personal Services (Army) confirmed that the Army considered the Bill to be: “fit for purpose when we are undertaking expeditionary operations in a way that is very closely integrated with the other two Services”.⁵⁹ Lord Boyce, former Chief of the Defence Staff, emphasised that in practice most Service personnel operate for the most part in a single Service environment.⁶⁰

39. The way each Service fights is different and the Bill needs to accommodate those differences. We were particularly struck by the difference of approach that each Service took to military discipline. It was suggested on our visits that a disciplinary record in the Royal Air Force has more serious implications for career advancement than in the Royal Navy or the Army and that RAF Commanding Officers were more reluctant to instigate formal charges preferring to deal with low level disciplinary matters informally.⁶¹ When we put those points to our witnesses, Air Commodore Hughesdon responded that the RAF has “... a different ethos, a different way of disciplining our people: no less efficient, but a different way”.⁶²

40. Even in a tri-Service environment, differences remain among the three Services but a difference in application of military discipline will lead to inconsistencies and injustices. For example, we were told in Iraq that in a joint unit led by an Army Commanding Officer, RAF personnel may be treated more harshly than they would be when the unit was led by an RAF Commanding Officer.⁶³ Personnel from the three Services would therefore perceive a difference in approach depending on which Service happened to hold the command of the unit at a given time.

41. We recognise the thinking behind and welcome the establishment of a tri-Service system of military justice. Not all operations or military establishments will be tri-Service, but that is the direction in which the Armed Forces are moving, and the pace of change is swift. The Armed Forces will need to assess how the proposals in the Bill might impinge on the culture of each Service.

57 Q 4

58 Q 6

59 Q 3

60 Q 305

61 See Qq 778–780, Annex Volume II, 29 March 2006, col 108–109

62 Q 778

63 Qq 778–780

3 The role of Commanding Officers

Commanding Officers' powers

42. Central to the system of military discipline is the union of command and responsibility for discipline in the person of the Commanding Officer who is at the apex of a unit's disciplinary system. The Bill includes provisions that will change the role, responsibilities and powers of Commanding Officers.⁶⁴ General Jackson, Chief of the General Staff, told us that there was “interest” in the changes proposed in the Bill among Commanding Officers, but not “concern”.⁶⁵ Some of those changes will reduce the powers of Commanding Officers, a prospect that has led to concern in some quarters. Lord Boyce referred to perceptions of the Commander's authority being undermined by the Bill, and said: “If you diminish [the Commanding Officer's] authority or start to erode his authority you will get a fracture which is ultimately going to cause failure”.⁶⁶

43. The Bill's provisions retain the Commanding Officer at the centre of the summary dealing process, which represents more than 95% of Service discipline cases.⁶⁷ Under the Bill, Commanding Officers of all three Services will have the same jurisdiction—broadly reflecting the present jurisdiction of the Army and Royal Air Force in the current Service Discipline Acts, plus eight offences the Royal Navy wished to preserve, such as assault causing actual bodily harm and fraud.⁶⁸ The sentencing powers of Commanding Officers of all three Services will be the same.⁶⁹ **We are content with the proposals for aligning the jurisdiction and powers of punishment of Commanding Officers of the three Services.**

Administrative action

44. All three Services operate a separate system of administrative action—a system of administrative discipline, distinct from their criminal disciplinary systems—for minor infringements. The Army recently reformed its administrative action regime, including introducing a distinction between major and minor matters—Army General Administrative Instruction (AGAI) 67.⁷⁰ This change has allowed junior commanders to deal with the lowest level of misconduct, and it has resulted in a 50% reduction in the number of summary dealings in the Army. During the Committee's discussions with officers and NCOs in Cyprus and Iraq, AGAI 67 was considered a great improvement, as it empowered NCOs and improved discipline without resorting to the more time-consuming summary dealing procedures. When we visited the Coldstream Guards, at Victoria

64 See Ev 194–198

65 Q 343

66 Q 309

67 Ev 139

68 See Ev 194–198. Part 1 of the Bill sets out the offences which may be committed under Service law. Clauses 1 to 41 set out disciplinary offences; Clauses 42 to 49 set out criminal conduct offences. Clauses 52 to 54 make provision for charges and offences that may be dealt with summarily.

69 See Q 785 and Ev 195. Clauses 131 to 138 provide for the punishments available to Commanding Officers of all three Services.

70 See http://www.army.mod.uk/servingsoldier/termsofserv/discmillaw/current_issues/agai_67.htm for details of Army General Administrative Instruction 67

Barracks, Windsor, we were told of the difficulties that could arise in bringing an accused before the Commanding Officer for a summary hearing in Iraq because of the risks associated with road movements and the limitations placed on all forms of transport. They explained that AGAI 67 had provided a procedure under which formal administrative action could be taken at a local level, removing the risks associated with convening a summary hearing.

45. The AGAI 67 regime also applies to Navy and RAF personnel in Army-led joint units and the Royal Navy and RAF are understood to be considering introducing a similar system for their own Services.⁷¹ **We were impressed by the positive response to the Army’s revised administrative action procedures, and we recommend that they should be reflected across the other Services.**

Commanding Officers and the Service police

46. The Commanding Officer will have a general duty to “ensure that possible Service offences are appropriately investigated”, which may be discharged by making the Service police aware of the matter.⁷² Commanding Officers will also have a duty to inform the Service police of allegations that a serious offence has been committed.⁷³ Brigadier Findlay did not believe that the new duty would increase the SIB’s workload because Commanding Officers already invited the Service police to conduct enquiries into matters that could be dealt with summarily. The Bill lists the offences that would require the Commanding Officer to inform the Service police. That list may be supplemented by secondary legislation.⁷⁴ We discussed with our witnesses the circumstances in which a Commanding Officer would call in the Service police.⁷⁵ Brigadier Findlay made the point that in some circumstances in the United Kingdom it would be more appropriate for the civilian police to investigate an incident. Mr Robert Rooks, MoD’s Director General of Security and Safety, told us that the Commanding Officer would call in the Service police “... far more often than not...”⁷⁶ Brigadier Findlay told us that:

The Commanding Officer at present can ask the Service police to assist him with an investigation really at any level depending upon whether he feels he is competent enough himself to get on with it or he would like it done by the Service police.⁷⁷

47. Commander Price, Provost Marshal (Navy), explained that Commanding Officers will receive additional guidance to give “a clearer steer on for what or when he should be calling

71 Qq 778–779, 781

72 Ev 196

73 Clauses 113 to 115 impose duties on a Commanding Officer to ensure serious allegations are reported to the service police and investigated. Schedule 2 lists those offences that would require the Commanding Officer to inform the Service Police. That list may be supplemented in prescribed circumstances under Clause 114. See Q 533, 567 ff

74 Qq 570 ff; Schedule 2 lists those offences that would require the Commanding Officer to inform the Service Police. That list may be supplemented by the Secretary of State under the provisions of Clause 113. Under Clause 114 the same duties to inform the Service police may be placed on the Commanding Officer in prescribed circumstances. See Q 581 and Ev 160 for an explanation of how the provisions of clauses 113, 114 and 115 ensure the Service Police are informed.

75 Qq 567 ff

76 Q 569

77 Q 568

in the Service police”.⁷⁸ The Provost Marshals were confident that guidance to Commanding Officers would make it clear that an alleged offence should be reported to the relevant police force.⁷⁹

48. We are content with the provisions that set out the Commanding Officer’s duty to inform the Service police. MoD should ensure that, in addition to the provisions in the Bill, guidance makes it clear that incidents are reported promptly to the relevant police force.

49. Commanding Officers will retain the power to determine the charge to be heard summarily. In all other cases, the charge will be decided by the Director of Service Prosecutions.⁸⁰ In all cases, the Commanding Officer will put the charge to the accused, including cases in which the charge is determined by the Director of Service Prosecutions.⁸¹ Lord Boyce told us:

It is a two-way system and it is very important that the accused, and indeed his peer group and the whole company of the unit, whatever sort of unit it is, perceives that the Commanding Officer has control of the way he operates...⁸²

50. Lord Boyce advocated a requirement that the Commanding Officer write to the prosecuting authority describing the context of the incident.⁸³ We debated whether it was necessary to include such an express duty or a permissive provision in the Bill.⁸⁴ In the Standing Committee phase of our deliberations, the Minister argued that Commanding Officers were already entitled to make the relevant authorities aware of any mitigating factors, including the military context, and that a statutory provision would introduce delay into the process.⁸⁵ **We emphasise the importance of Commanding Officers exercising their responsibilities to inform the prosecuting authorities of any relevant mitigating factors and the context in which events occurred.**

Support for the accused

51. The Commanding Officer has a responsibility to ensure that the accused has access to the appropriate support during the disciplinary process. General Jackson told us that the Commanding Officer can give “moral and material support”.⁸⁶ There has been criticism of the level of support for some Service men accused of serious offences in Iraq.⁸⁷ The Chief of the Defence Staff told us that he had initiated:

78 Q 570

79 Qq 580 ff

80 Clauses 118 to 121 set out the Commanding Officer’s powers in relation to charging.

81 Clauses 120 and 121 provide for the Director of Service Prosecutions directing the Commanding Officer to put a charge.

82 Q 321

83 Qq 320–321

84 Annex Volume II, 28 March 2006, cols 57–76

85 Annex Volume II, 28 March 2006, cols 78–79

86 Q 352

87 See HL Deb, 14 July 2005, col 1233

... a review into the support mechanisms that surround people who are facing an allegation of some sort. There is no doubt that once [...] an allegation is made against an individual and he is under an investigation, he feels hugely under stress. What we wanted to do was to make sure that the processes and the systems in our military world were there supporting him in areas that he needed support, in legal terms, in immediate terms and in welfare terms.⁸⁸

We welcome the fact that the mechanisms for support of the accused are under review.

Commanding Officer's power to dismiss charges

52. Alleged offences are generally reported in the first instance to the Commanding Officer, who is then responsible for ensuring that the matter is investigated appropriately. Under the Bill, Commanding Officers will no longer have the power to dismiss a charge without a hearing. In relation to summary offences the Commanding Officer may discontinue the process. For serious offences, the Commanding Officer will have to refer the case to the Director of Service Prosecutions.

53. The Trooper Williams case arose from the use of this power. The Attorney General described to the House of Lords, the circumstances surrounding the Trooper Williams case.⁸⁹ He explained that, after the Commanding Officer had, following legal advice, dismissed the charges, Trooper Williams could not be tried in the military system. However, the civilian jurisdiction was not removed and so when the Director of Army Legal Services subsequently referred the case to the Attorney General, the civilian jurisdiction was the only route available for a prosecution. The Crown Prosecution Service decided to proceed with the prosecution, but the case collapsed in April 2005 after the Director of Public Prosecutions decided, on review, that there was no longer sufficient evidence to gain a realistic prospect of conviction. Trooper Williams was subsequently acquitted of all charges.

54. The Trooper Williams case has attracted considerable comment in the media and among senior serving and retired Service personnel.⁹⁰ The principal concern has centred on the ability to transfer a case to the civilian system once it has been disposed of in the military system. The Chief of the General Staff considered that it was important to ensure that no other Service person was placed in the position of Trooper Williams, and believed that removing the power from Commanding Officers to dismiss serious cases should achieve that outcome.⁹¹ He told us:

I would find it very hard logically to argue why a Commanding Officer should retain, or even have in the first instance, the power to dismiss a charge with which he cannot

88 Q 455

89 HL Deb, 16 February 2006, col 1294

90 "Officers will lose historic power to charge their men", *The Times*, 18 November 2005, p 2; "Marines boss raps lawyers", *Plymouth Evening Herald*, 3 December 2005; p 2; "'Show trials' fear as court martial powers are axed", *Daily Mail*, 2 December 2005, p 19.

91 Q 350

himself deal; that seems to be a matter properly that should go to court martial, for the evidence to be tested there.⁹²

55. Despite widespread concern about the Trooper Williams case, the removal of the Commanding Officer's power to dismiss serious cases with which he is unable to deal summarily has itself attracted criticism because it is seen as undermining the role of the Commanding Officer.⁹³ During our visits in the United Kingdom and abroad, we did not encounter resistance from Commanding Officers to the removal of the power to dismiss serious cases. Lord Boyce, who has been critical of the handling of the Trooper Williams case, accepted the removal of the Commanding Officer's power to dismiss a serious case, but only "so far as non-operational offences are concerned".⁹⁴ Mr Miller, Director General of Service Personnel Policy, acknowledged that:

There has been one case which [...] has led to a soldier being tried outside the military system and the circumstances that led to that we think are circumstances we would wish to avoid in future and the Bill has been constructed in a way which will, we believe, ensure that that does not happen again.⁹⁵

He described the change in the Bill as an "important adjustment", but said that it was not a "fundamental change of the aims of the system".⁹⁶ In the Standing Committee phase of our deliberations, the Minister said:

... the predominant view is that their [Commanding Officers'] current power to dismiss cases without a hearing is not important to them. The overriding concern is that the proper competent authorities of the military criminal justice system should deal with serious cases.⁹⁷

56. The majority of the Committee do not consider that the removal of the Commanding Officer's power to dismiss serious cases will undermine his central command and disciplinary role in a unit. Commanding Officers to whom we have spoken were not resistant to the changes which the Bill makes. The Committee recognises the importance of retaining the integrity of the chain of command but there were reservations among some Members on the potential risk to the chain of command by the removal of the Commanding Officer's powers to dismiss serious cases, especially on active operations.

Investigation of shooting incidents

57. There has been public concern expressed about incidents in which Iraqi civilians have been shot by British Servicemen. We were told in Iraq that, under the shooting

92 *Ibid.*

93 "Officers will lose historic power to charge their men", *The Times*, 18 November 2005, p 2; "Marines boss raps lawyers", *Plymouth Evening Herald*, 3 December 2005; p 2; : "'Show trials' fear as court martial powers are axed", *Daily Mail*, 2 December 2005, p 19.

94 Qq 314, 321

95 Q 7

96 Q 13

97 Annex Volume II, 28 March 2006, col 71

investigation policy introduced in November 2004, all incidents that involve shots being fired that may have resulted in death or injury are investigated by the Commanding Officer. The Commanding Officer produces a report to establish whether there are grounds to believe that an offence has been committed. Reports of shooting incidents are passed to the Commanding Officer's superiors for review. The Commanding Officer will inform the Service police if he considers that there is a case to investigate. During the Standing Committee phase, the Minister confirmed that:

Under the policy, if a commanding officer decides that he must make the Service police aware, he should do so as soon as is reasonably practicable. The unit's operational circumstances may prevent an immediate investigation, perhaps because of the threat at that time.⁹⁸

58. Officers and other ranks told us, during our visits, that the investigation and consideration of shooting incidents were a high priority and completed swiftly, usually within 24 hours. The policy therefore enabled those involved in shooting incidents to be made aware of their position quickly.

59. Those we spoke to during our visits in the United Kingdom and abroad expressed confidence in the shooting incident policy, which they considered provided assurance and confidence for the soldiers in the front line.

4 Investigations and prosecutions

Service police

60. The Service police are not a militarised version of the civilian Home Department police forces.⁹⁹ The police force of each Service has distinct roles and responsibilities that relate to that Service. For example, the Royal Military Police have responsibility for traffic control on operations, and the RAF Police have a particular responsibility for counter-intelligence.¹⁰⁰ The Special Investigation Branches (SIB) of each of the three Service police forces are responsible for investigations. There has been criticism of the SIB in relation to the investigation of offences.¹⁰¹ Mr Rooks told us that “the SIB was under-resourced” for the investigations that had occurred after the cessation of hostilities in Iraq.¹⁰² The three Provost Marshals made clear to us in evidence that they would appreciate further resources, particularly manpower.¹⁰³

61. Brigadier Findlay explained that there were particular challenges faced by the Service police which are not characteristic in a civil police investigation:

The incident might have taken place in Germany. The troops may then take part in exercises in Canada, at the British Army unit or they may go on leave to the United Kingdom. We have a very, very mobile population. The two major reasons for delay in investigations relate to either forensic submissions [...] or indeed the availability of military witnesses.¹⁰⁴

He told us, in relation to investigations in Iraq, that:

One of the greatest challenges in Iraq is the rapidity with which bodies of the deceased are buried and indeed the graves may not be marked. There is quite reasonably, because of religious sensitivity, enormous unwillingness to accede to exhumation and in some cases the families will intentionally not mark the graves in order to ensure that that request, if made, cannot be met.¹⁰⁵

He further explained that:

... each theatre brings with it a particular cultural and environmental challenge, not least also when you add to that the force protection challenge that you have in trying to acquire evidence in a highly volatile and unstable environment where active operations may still be in progress.¹⁰⁶

99 See Ev 164 ff for description of service police forces.

100 Qq 584, 585

101 See, for example, “Army faces accusation of cover-up over Iraq deaths” *The Times*, 27 February 2006, p 12.

102 Q 515

103 Qq 510–513

104 Q 516

105 Q 539

106 *Ibid.*

62. We spoke to SIB officers during our visits, who described to us the extremely complex and often dangerous task they face in investigating incidents in Iraq. General Walker told us that:

... it is extremely difficult, it is even more difficult, to conduct an investigation in an operational theatre, as you can imagine. Trying to get forensic evidence at a scene where there is an alleged crime to have taken place when bombs and bullets and things are going off is incredibly difficult and they are very time-consuming.¹⁰⁷

SIB officers in Iraq told us that their difficulties in collecting witness statements were exacerbated by Iraqi civilians being advised by UK-based civilian lawyers not to co-operate with police investigations, and to seek compensation. **Criticism of investigations in Iraq should be considered in the light of the extremely difficult environment in which the Special Investigation Branches are operating. Those who advise Iraqi civilians not to co-operate with police investigations in order to pursue compensation claims do a disservice both to their prospective clients and to the Armed Forces. We deplore this practice. We are therefore drawing this aspect to the attention of the Law Society and the Bar Council, inviting them to consider whether touting for business in this way represents an acceptable professional practice on the part of those subject to their respective regulation.**

Investigations in the United Kingdom

63. We have acknowledged the difficulties faced by the Service police in investigating incidents in operational theatres. There has also been criticism of investigations in the United Kingdom. The Defence Committee's 2005 Duty of Care report noted: "A consistent criticism from the families of recruits who died during their initial training is that the deaths of their children were not properly investigated".¹⁰⁸ The investigation of unexplained deaths of this sort are subject to a protocol between the Service police forces and the Association of Chief Police Officers that sets out the circumstances in which the civilian or Service police forces take the lead in an investigation.¹⁰⁹ In written evidence, JUSTICE expresses concern about "how issues of jurisdiction will be resolved when both civil and Service authorities have jurisdiction in any given case".¹¹⁰ Within the United Kingdom the civilian police, and therefore the civilian jurisdiction, has primacy for investigations. As Brigadier Findlay explained, "There is absolutely no doubt in the minds of the Service police over the complete primacy of the civil authority to investigate all issues within the United Kingdom".¹¹¹ Mr Rooks described the normal arrangements with the civilian police, saying that:

The Home Department civil police have primacy on everything, but there is a protocol which is formalised with the Home Office which sets out what will happen in normal circumstances and [...] that a list of serious crimes, which include murder

107 Q 441

108 Defence Committee, Third Report of Session 2004–05, *Duty of Care*, para 328

109 *Ibid.*, paras 330–339 for discussion about the role of civilian and service police and Ev 164–165.

110 Ev 186

111 Q 534

and rape, will automatically be reported by the Commanding Officer or the Service police, if they are the first responder [...] to the Home Department police force and they then decide how to deal with the investigation. For a serious crime of that sort they will almost certainly decide to lead that investigation themselves. They may well use the expertise of either the Service police or the MDP, but they will definitely be in the lead.¹¹²

64. Mr Blake's Review noted that guidance on primacy should be "clear and unambiguous", in order to "avoid confusion that could diminish the scope and nature of future investigations".¹¹³ It also observed "Where the Royal Military Police (RMP) has primacy for an investigation, the quality of the investigation may vary according to resources, training and the context of the investigation".¹¹⁴

65. We discussed with the Provost Marshals the impact on the Service police's reputation of the criticism of SIB investigations in the United Kingdom and abroad.¹¹⁵ Mr Rooks told us that the RMP would be subject to inspection by Her Majesty's Inspectorate of Constabulary (HMIC).¹¹⁶ The Minister for the Armed Forces, responding to questions on the Blake Review in the House of Commons, confirmed, in relation to the Review's recommendation for HMIC inspection of the RMP, that:

Her Majesty's Inspectorate of Constabulary will run a slide rule over the RMP's special investigations branch, which is at the critical end of the investigative capacity, to make sure that the RMP meets the very high standards that have been set.¹¹⁷

We welcome the announcement that Her Majesty's Inspectorate of Constabulary will inspect the Royal Military Police's Special Investigation Branch. Such an inspection regime will raise standards in the Special Investigation Branch and raise public confidence in its work. We recommend the HMIC inspection regime is extended to the rest of the Royal Military Police and the other two Service police forces.

Police and Criminal Evidence Act

66. MoD's intention is to bring the procedures for the Service police into line with the Police and Criminal Evidence Act 1984 (PACE). This process is part of the overall objective to bring the Service discipline legislation in line with civilian legislation where appropriate.¹¹⁸ Mr Morrison explained that much of the detail of the provisions would be in secondary legislation, in part to avoid setting out large sections of the PACE legislation in the Bill.¹¹⁹ He also noted that some aspects were covered by common law.¹²⁰

¹¹² Q 532, see Ev 161–163

¹¹³ *Blake Review*, para 12.29

¹¹⁴ *Ibid.*, para 12.30

¹¹⁵ Qq 550 ff

¹¹⁶ Q 551

¹¹⁷ HC Deb, 29 March 2006, col 859. See also Qq 551 ff and *Blake Review*, Recommendation 24, page 400.

¹¹⁸ Parts 3 and 4 of the Bill set out the provisions relating to powers of arrest, search and entry, and custody.

¹¹⁹ Qq 765–766

¹²⁰ *Ibid.*

67. We asked MoD witnesses about custody powers in the Bill, which Mr Rooks explained were the only part of PACE that would apply directly, with modifications, to the Service police.¹²¹ Provisions relating to arrest, stop and search, powers of entry, and search and seizure have been drafted to be as similar to PACE as appropriate.¹²² Mr Morrison confirmed that the Bill’s provisions relating to the powers of the Service police were based “as closely as we can” on PACE, but that there had to be differences to take account of the particular circumstances in which the Service police operate.¹²³ The details of these provisions will be provided in secondary legislation.

68. In the civilian system, the custody process is separated from the investigation, and there are established procedures, enforced by statute, relating to the powers to hold a person in custody. Brigadier Findlay explained that:

The major difference is that in the civilian system it is the civil police who are responsible under PACE for the issue of custody. In the military system the Service police are not responsible for custody. We do not maintain the custody cells, for example, we are not accountable for that, that is a matter for the Commanding Officer. Since the Service police have been conducting the investigation separately from the Commanding Officer, he is perhaps in a better position to judge the requirement for the continued detention and, after all, it has to go before a judicial officer at the prescribed time, a Judge Advocate.¹²⁴

We welcome the general principle of applying the provisions of PACE to the military system where appropriate, and accept that it is not necessary to set out those provisions in the Bill.

69. Parliament must have scrutiny of the detailed provisions in secondary legislation, rules and guidance that will implement PACE-like provisions in the military system.

Director of Service Prosecutions

70. Currently, the three Services each have their own prosecuting authority. In the Army and the RAF, the head of the prosecuting authority is also the head of that Service’s legal branch. The Bill will establish a single tri-Service Director of Service Prosecutions, who will fulfil the prosecuting function for all three Services.¹²⁵ For the Army and RAF, the present ‘double-hatted’ link between the prosecuting authorities and the legal services departments will be removed under the new provisions. Major General Howell explained that the move to a single prosecuting authority would also provide economies of scale.¹²⁶ **We recognise the merit of bringing the tri-Service system under a single prosecuting authority.**

121 Q 608. See Ev 158–159

122 See Ev 160–161

123 Q 35

124 Q 522

125 Clause 355 creates the post of Director of Service Prosecutions.

126 Q 159

71. General Walker said that it would be preferable if the Director of Service Prosecutions had appropriate military experience.¹²⁷ He told us that:

You do need to have somebody who knows about the heat, the stress, the pressure, the stones and the bombs being thrown at you in modern circumstances or the confined nature of your activities in the back of an armoured vehicle or that rather lonely activity that goes on up in the sky above somewhere where you are flying your aeroplane or on board a ship. Somebody needs that as a context, I think, to make all these sorts of judgments.¹²⁸

The three Service Chiefs also supported the Director of Service Prosecutions having military experience. Admiral Sir Jonathon Band, the First Sea Lord, told us that:

We all agree there is something about military operations which is different and therefore we need our own Act and our own context, and therefore there is a consistency in that the court martial can be and should be slightly different from a county court case, and I think to have a prosecuting service run by people who do not know the context in which this is all enacted is just counter-intuitive.¹²⁹

72. We asked MoD officials about the desirability of requiring the Director of Service Prosecutions to have military experience. Mrs Jones, head of the Bill team, explained the difficulties in framing a description of military experience that could be put into the Bill.¹³⁰ She told us that:

Our difficulty with actually putting that on the face of the Bill is in defining what you mean by “Service experience”. [...] Are you talking about somebody who held a short Service commission 20 years ago? That counts as Service experience. Are you talking about somebody who has been in the front line on operations? Not many lawyers are in the front line on operations, although they visit operational theatres.¹³¹

73. It was clear from our discussions, however, that MoD shares our view on the desirability of the DSP having an appreciation of the military environment, and preferably military experience. Mr Morrison said that: “it is very well acknowledged that the importance of a clear understanding of the Service context will be a central element in the selection process”.¹³² Service personnel must have confidence that the person taking the decisions on prosecutions has sufficient understanding of the context in which the events occurred. **Whilst we appreciate the difficulties involved in defining military experience in statute, we do consider it important for the Director of Service Prosecutions to have had military experience.**

127 Q 423; Clause 355(2) prescribes the minimum qualifications required to hold the appointment of Director of Service Prosecutions. The provisions do not exclude a civilian from being appointed as Director of Service Prosecutions.

128 Q 426

129 Q 359

130 Qq 758 ff

131 Q 758, see Annex Volume II, 30 March 2006, col 156

132 Q 764

74. The Director of Service Prosecutions will be superintended by the Attorney General, who currently superintends the three individual Service prosecuting authorities. The role of the Attorney General in the decision-making process was discussed with the three heads of the prosecuting authorities. Major General Howell described the relationship as being similar to that between the Attorney General and other small prosecuting organisations. He explained that in practice “... we take the view that he has the right to be consulted on major cases”.¹³³ Major General Howell went on to say that:

One matter I must make absolutely clear, and I am sure this goes for my two colleagues as well, we have to accept that the final decision on whether to court martial someone ultimately is our decision; it is not the Attorney’s or anybody else’s. [...] that the decision is ours.¹³⁴

The Service Chiefs and the Chief of the Defence Staff were content with the arrangements for superintendence of the Director of Service Prosecutions by the Attorney General.¹³⁵

75. We are content that the Attorney General, as the Government’s principal legal adviser, will retain an advisory and superintendent role in respect of the new Director of Service Prosecutions.

133 Q 185

134 *Ibid.*

135 Qq 355–356, 436 ff

5 Courts martial

Harmonisation with civilian procedures

76. The Judge Advocate General's memorandum emphasises that the military justice system should not be perceived to be inferior to the civilian system.¹³⁶ He notes that:

There may be an unfortunate and damaging perception that a person accused of a serious criminal offence in a civilian court may be tried in a court or by a judge of apparently higher status or quality than a person being tried for the same offence, and in jeopardy of the same punishment, in a military court. That perception, if it exists, must be reversed.¹³⁷

To that end, the Judge Advocate General has proposed several changes to the court martial system, some of which would require legislative changes.¹³⁸ He told us that:

In my view, the court martial system should reflect the Crown Court in all respects except where there are good operational reasons for differences. And there is a need for some differences. However, the greater the differences which cannot be properly justified, the greater the risk that those differences will be challenged.¹³⁹

He readily acknowledged that the Armed Forces would not be ready to accept some of his proposals.¹⁴⁰

77. The Judge Advocate General provided evidence on several aspects of the court martial process which he considered could be improved. His main concern was to remove the delay in the system. He told us:

Delay is caused throughout the system at all levels and I would not criticise or pick out any one part of the process, but waiting to convene a court, particularly for a guilty plea, can put in an unnecessary delay. For instance, if somebody is willing to plead guilty shortly after committing an offence the judge advocate, if he were able to, could sentence there and then rather than having to set a date in the future when he has got to come back to court to sentence.¹⁴¹

Civilian practitioners from whom we took evidence noted the improvements in the system since the Judge Advocate General's innovations to the court martial system, such as more effective pleas and directions hearings.¹⁴² **We welcome the enhancements introduced by the Judge Advocate General to improve the efficiency of courts martial and reduce delay in the system.**

¹³⁶ Ev 146

¹³⁷ *Ibid.*

¹³⁸ See Constitutional Affairs Committee, *The Office of the Judge Advocate General*; and Ev 146–150.

¹³⁹ Q 86

¹⁴⁰ Q 127

¹⁴¹ Q 125

¹⁴² Qq 247–248

Standing court martial

78. The existing arrangements for courts martial are to be replaced by a single Standing court martial.¹⁴³ Written evidence from the Judge Advocate General describes the change as “a welcome replacement of a cumbersome system with a simpler one”.¹⁴⁴ Commodore Fraser, Director of Naval Legal Services, explained that it was envisaged that Service personnel would be required to serve on a court martial panel for two weeks at a time and said that the change would improve the efficiency of the system.¹⁴⁵

79. In Iraq we were told that senior officers were concerned that serving on a court martial panel might take them away from other important work, particularly if that service coincided with preparations for a deployment or major exercise. Mr Mason noted that “for more senior members of the Armed Forces [serving on the Board] can sometimes prove very difficult because they have a whole ongoing range of commitments”.¹⁴⁶ Commodore Fraser said that serving on a court martial was a public duty, similar to jury service for a member of the public. Brigadier Andrews, Director of Personal Services (Army), told us that serving on a court martial panel was a “professional obligation” that had to be discharged.¹⁴⁷ **We support the establishment of the standing court martial. However, officers told us during our visits in the United Kingdom and abroad that sitting on a court martial panel can be disruptive. We urge MoD to ensure that a flexible approach is taken to the appointment of court martial panels.**

80. Lord Boyce expressed concern about whether the geographical spread of court martial centres was sufficient. He suggested the establishment of additional court martial centres in the South West and Scotland, and that the existing naval court martial centres be retained.¹⁴⁸ During our visit to Iraq, sailors on HMS Bulwark, supported the retention of a court martial centre in Portsmouth.

81. Witnesses and others have to travel to court martial centres from a wide range of military locations in the United Kingdom and abroad. Civilian courts are making greater use of video links and other technological solutions to these problems. We understand that the primary legislation has been passed to enable military courts to use of these solutions but the necessary Statutory Instrument has not yet been implemented.¹⁴⁹ **We recommend that the Government ensures that the necessary legislation is implemented to allow for the use of video links in Service courts.**

82. The Judge Advocate General recommended that the administration of the military court service be transferred from MoD to the Department for Constitutional Affairs. However, the civilian practitioners explained the difficulties involved in arranging for

143 Clause 153 establishes the court martial as a standing court. See House of Commons Library Research Paper 05/75, *Background to the Forthcoming Armed Forces Bill*, November 2005, pp20–21 for description of current court martial arrangements.

144 Ev 146

145 Q 717

146 Q 230

147 Q 718

148 Q 327; see Q 109

149 See Q 233, Ev 218–219

military witnesses to appear and considered it more appropriate for MoD to retain responsibility for making those arrangements.¹⁵⁰ **We consider it appropriate for responsibility for the administration of military courts to remain in MoD.**

Size of court martial panels

83. The Judge Advocate General had two concerns about the size of court martial panels. First, the size of the panel was not specified in the Bill; and secondly, the size of the panel should be appropriate to the seriousness of the offence.¹⁵¹ He said:

Any risk of unfairness would be better avoided if the panels were larger [...] Serious matters should always be decided by a panel of at least five persons, and the legitimacy of verdicts would be enhanced if they were decided by seven persons or more.¹⁵²

JUSTICE also expressed concern in its written submission about the size of court martial panels:

... in more serious cases where a person tried with an equivalent offence in the civil system could have elected Crown court trial or would have been sent to the Crown court, it is essential that the military system provide equivalent protections to the jury system. One important aspect of the jury system is in maintaining the high standard of proof required in criminal cases: the requirement that a sizable number of people, usually at least ten, are sure of guilt is an effective safeguard against error and prejudice (both conscious and subconscious).

Such an important safeguard should not be left to be determined merely by Rules of the Court; it should be express on the face of the Bill. The current customary size of the panel—for general courts martial, currently at least five members—is in our view insufficient in serious cases.¹⁵³

Mr Mason, a barrister with considerable experience of the military jurisdiction, told us that:

In serious cases there is no doubt that it is not only proper to have a larger panel because the person charged feels there are going to be more people involved in his case; it brings it slightly more compatible to 12 good men and true. I also think that there is going to be clearly an impression that if you are trying to make it more civilian compatible, you should have a broader panel, and in the more serious cases you would inevitably have five, possibly even more.¹⁵⁴

Mr Miller explained that MoD's expectation was for:

150 Qq 249–250

151 Ev 148. Clause 154 sets out the constitution of the court martial. The number of other persons (in addition to the Judge Advocate) is to be prescribed in Court Martial Rules, which under Clause 162, are made by the Secretary of State.

152 Ev 148

153 Ev 187

154 Q 229 [Mr Mason]

... a panel of three for the great majority of comparatively straightforward cases, and a larger panel, which we think is likely to be five, for some of the more difficult cases. We share a degree of the Judge Advocate's analysis there and that is the approach that we are likely to be proposing.¹⁵⁵

84. The Chief of the General Staff said that he considered “three, five, perhaps seven, depending on the severity of the charge, is the sort of area we should be looking at”; and agreed with the First Sea Lord who thought that “on the heavy charges, I think we are safer on the five to seven figure than three”.¹⁵⁶ **We are content to retain panels of three for cases equivalent to those tried in Magistrates’ Court and of five for those more serious cases equivalent to those tried in a Crown Court. The Minister urged us not to put the size of the court martial panel on the face of the Bill.**¹⁵⁷

Composition of the panel

85. The Bill contains the permissive power to appoint members of any of the three Services to a court martial panel.¹⁵⁸ Currently, the panel almost always consist of members of the same Service as the accused. The Chief of the Defence Staff and Judge Advocate General welcomed the ability to have mixed panels.¹⁵⁹ The Service Chiefs were less enthusiastic about the proposal: General Jackson said: “For me the default setting would be that the soldier [...] on the face of it will be more comfortable being tried by members of his own Service”.¹⁶⁰ We found in our discussions with officers and other ranks a general preference for the present arrangements to continue. That point was echoed by Mr Mason, who told us “... most soldiers like to be in front of their own”.¹⁶¹

86. The Judge Advocate General proposes that a presumption should apply that first, the panel will be mixed unless inappropriate (for example in the case of highly technical Service-specific offences) and, secondly, that the senior member of the court martial panel should always be drawn from the same Service as the accused.¹⁶² Our witnesses accepted that mixed panels would be appropriate (except for cases involving technical Service-specific offences) as long as the majority of panel members were from the same Service as the accused. Mr Morrison confirmed that proposals on when a mixed panel would be appropriate would be set out in subordinate legislation.¹⁶³ **We recommend that for cases that involve technical issues specific to a particular Service, such as navigation offences, the panel should be from the same Service as the accused. We agree with the Chief of the General Staff and the First Sea Lord that there should be a presumption for single**

155 Q 706

156 Q 365

157 In the Committee the Minister argued for the need for flexibility in the size of court martial panels. See Q 49

158 Clause 134 sets out the constitution of the court martial. The provisions allow for mixed court martial panels. Clause 155 provides for warrant officers as well as officers serving on the court martial panel.

159 Q 448, Ev 147

160 Q 369

161 Q 227 [Mr Mason]

162 Ev 150

163 Q 707

service panels unless there is good reason for mixed panels.¹⁶⁴ We recognise that there will be circumstances when a mixed panel is considered appropriate. In such cases it should be appointed with the senior member, and the majority of members, coming from the same Service as the accused.

Size of majority

87. Under the Bill a court martial is required to reach a finding by simple majority, which means that convictions or acquittals even on a serious offence such as rape or murder, may be reached on a 3:2 basis.¹⁶⁵ The Judge Advocate General, has expressed concern about the desirability of applying a simple majority in all courts martial. He said:

... it seems to me less safe for a serious offence, for instance murder, that one would rely on three people outvoting two people before sending somebody to prison for life. It seems to me that it would be safer to have only one dissenting voice if that were the size of the panel. It is a matter of personal assessment.¹⁶⁶

88. JUSTICE has also expressed concern about the simple majority in courts martial. It considers it inappropriate:

that a conviction for an offence carrying even life imprisonment should be made on the basis of a 4:3 verdict or even a 5:4 verdict—where almost half the panel have not found the charge proved.¹⁶⁷

JUSTICE also comments that:

Provision for unanimous or strong majority verdicts, as in the Crown Court, would have the advantage both of safeguarding against wrongful convictions, and allowing the possibility of a retrial where the votes are tied or there is a slim majority against conviction. While retrials are in many ways undesirable, the decision to hold them is a discretionary one on the part of prosecutors and they may be necessary in order to avoid the prospect of a person guilty of a serious offence going back on active service and into the community at large.¹⁶⁸

89. The Judge Advocate General argued that Judge Advocates should be able to direct court martial panels to seek unanimity, as in the Crown Court. If the panel were unable to reach a unanimous verdict, the Judge Advocate would be able to tell the panel that he would accept a majority verdict.¹⁶⁹ The Judge Advocate General explained: “That means that the defendant knows when he is found guilty either he has been found guilty on a unanimous jury verdict or by majority”.¹⁷⁰

164 Q 371

165 Clause 159 provides for finding and sentence of the court martial being determined by simple majority.

166 Q 96

167 Ev 185

168 Ev 185

169 Q 117

170 *Ibid.*

90. Currently, although the Judge Advocate General has issued a practice note to Judge Advocates to urge court martial panels to unanimity, there is no power to issue directions to the panel. It is not possible to determine how frequently court martial panels reach their findings unanimously. As Judge Advocate General explained: “It could be that every verdict is unanimous for all I know. It is the appearance that I am concerned about, the perception”.¹⁷¹ One of the difficulties in assessing how these proposals would affect courts martial is the lack of evidence about the way in which panels have voted in the past.¹⁷² There is no indication that such evidence will be available in the future. Views on the efficacy of the panel and the safety of its findings must therefore remain subjective.

91. The Minister said in the Standing Committee phase that Judge Advocates “... can and will advise the Service members of the court that they should try to reach unanimity on the finding of guilt or innocence. Without doubt, this is good practice”.¹⁷³ He argued against qualified unanimities because of the risk of retrying trials, which would be unacceptable in a Service environment.¹⁷⁴

92. We believe that guidance to Judge Advocates should continue to emphasise the desirability of courts martial reaching unanimous decisions whenever possible. But we do not believe that the Bill should impose a requirement of unanimity.

Jurisdiction of courts martial

93. The Bill extends the jurisdiction of courts martial in the United Kingdom to include serious offences that previously could be considered only in civilian courts, or courts martial sitting overseas.¹⁷⁵ Major General Howell, head of the Army Prosecution Authority, explained that the power to try those more serious cases in courts martial in the United Kingdom would be used rarely, but would be useful if a Service man or woman committed related offences abroad.¹⁷⁶ He told us that:

I can see a situation where if you had a soldier committing murders in a lot of different countries, one of which is the UK, it may be easiest for a court martial to try the case because the court martial can move around countries and listen to witnesses locally and has that other advantage. I do think it is something that is going to be very rare, to be frank, but I can imagine the situation might exist.¹⁷⁷

94. We accept the arguments for extending the jurisdiction of courts martial so that they may consider those serious cases. However, we note that, unless there is a specific need to try such cases by court martial, public confidence may be better served by their being tried, as now, in the civilian system.

171 Q 120

172 See Q 238 [Mr Hugheston-Roberts]

173 Annex Volume II, 28 March 2006, col 85

174 *Ibid.*, col 84–85

175 Clause 50 provides for the court martial trying any service offence. See House of Commons Library Research Paper 05/86, 7 December 2005, *The Armed Forces Bill*, page 15.

176 Q 201

177 *Ibid.*

95. JUSTICE’s memorandum argues that some criminal conduct cases, such as “a wounding in a pub fight involving a soldier committed whilst on leave in a town centre”, may be more appropriately tried in civilian courts. The memorandum notes, in relation to the example above, that “the elements of offences and defences—self-defence, dishonesty, etc.—often refer to reasonableness or the standards of a reasonable person”.¹⁷⁸

96. Mr Gilbert Blades, a solicitor of considerable experience, submitted evidence to us recommending that the accused in serious cases should have the right to elect for trial by the civilian system rather than in a court martial. His memorandum states that:

... a Serviceman has no right at the present time to elect whether he should be tried for a criminal offence by a Board of 3 Officers of a court martial, or by a Jury of 12 of his peers in a civilian court in the UK.

Accordingly a Serviceman is disfranchised, and deprived of the right to demand a trial on a serious criminal charge by 12 of his peers, namely a jury of 12 independent and impartial persons who have no Service connections or commitments.¹⁷⁹

If Mr Blades’s argument were accepted, the accused would be able to choose the jurisdiction in which he were tried. Mr Miller explained that:

In the UK, for the most serious offences in most circumstances it is likely to be the civilian system in any case, but we certainly do not want to imply in any way that we do not have faith in the military system. Indeed, while we have no reason to expect that what we are proposing will be the subject of a challenge, perversely, it could be more likely to be challenged if we were to indicate that in some way we thought that one system was preferable or better than the other.¹⁸⁰

97. During our discussions with witnesses, parallels were drawn with the defendant’s right in the civilian system to elect for trial in the Crown Court rather than the Magistrates’ Court. Similarly, the accused in the military system might elect to be tried by court martial, rather than summarily.¹⁸¹ Commodore Fraser responded that in such cases the accused chooses the forum but not the jurisdiction for the trial.¹⁸² **We accept MoD’s argument that it would be inappropriate and unnecessary for the accused to have a right to elect to be tried in the civilian courts rather than at court martial.**

Judge Advocates

98. The military nature of the court martial suggests that Judge Advocates should be aware of the military context. That awareness need not necessarily come from having served in the Armed Forces: the Judge Advocate General told us that half of Judge Advocates had a

¹⁷⁸ Ev 186

¹⁷⁹ Ev 151

¹⁸⁰ Q 710

¹⁸¹ Qq 711–714. Clause 128 requires a Commanding Officer hearing a charge summarily to give the accused the opportunity to be tried by court martial. If the accused elects for trial by court martial the Commanding Officer must refer the charge to the Director of Service Prosecutions.

¹⁸² Qq 713–714

Service background, and that that experience was helpful.¹⁸³ **We consider it essential for Judge Advocates to have a military understanding.**

99. As in the judiciary as a whole it is important for judges to be able to interpret and understand the technical and scientific evidence that is increasingly relied on in courts. **We encourage the Department for Constitutional Affairs to ensure that Judge Advocates have access to all the appropriate training, particularly in relation to forensic evidence.**

Judge Advocates sentencing alone

100. Presently the sentencing decision is taken together by the Judge Advocate and the members of the lay panel.¹⁸⁴ The Judge Advocate advises the lay members on the appropriate sentencing guidelines for the offence, and the Judge Advocate General told us that advice is invariably accepted.¹⁸⁵ Nevertheless, it is possible for the Judge Advocate's advice to be ignored, and for him to be outvoted by the other members of the panel.

101. The Judge Advocate General has argued for Judge Advocates to sentence alone, as in the civilian courts.¹⁸⁶ He accepted that his proposal would not be acceptable to the Armed Forces at the moment, due to the imperative that the military context, and Service experience play a part in sentencing as well as findings. He suggested, "Perhaps the Service interest could be put into the sentencing process by simply having the senior member involved with the Judge Advocate in sentencing".¹⁸⁷

102. Mr Mason told us that:

... I would be wholly against the idea that you could have a judge coming in, or even a non military background judge, and dealing with either military offences or more serious ones just on his own. [...] The input from the board members is very relevant. If you have someone who has come back, let us say, from a Telic operation, with some real background problems and something has happened out of character, then a person who has also been down there and knows what it is like and has some general operational experience brings that experience to the professional body, which is, in a way, what they are.¹⁸⁸

The Service Chiefs were equally adamant that the military context should be considered during sentencing. Sir Jock Stirrup explained that:

If, in considering sentencing, one is having regard to the maintenance of discipline, one has to understand what that means, what things affect discipline and what things

183 Q 131

184 Clause 159 provides for the Judge Advocate and lay members of the panel deciding sentence together.

185 Q 124, Ev 148. Parts 8 and 9 of the Bill refer to sentencing powers, principles and procedures. With one exception (the service supervision and punishment order provided for in clauses 172 and 173) the sentences are modelled on equivalent sentences available to civilian courts in England and Wales.

186 Ev 148–149

187 Q 125

188 Q 239

do not. So it seems to me the military involvement in sentencing is absolutely fundamental to the effectiveness of a military justice system.¹⁸⁹

We consider it essential that the lay members of the court martial panel are involved in sentencing in order to provide Service context to those deliberations. We are therefore not persuaded that it would be beneficial for the Judge Advocate to sentence alone.

103. We discussed the involvement of lay members in sentencing. We note that it is possible that the panel may ascribe certain actions or thoughts to the accused in its deliberations when it discusses the military context.¹⁹⁰ **We consider that the presence of the Judge Advocate to guide the panel on its sentencing role should be sufficient protection to ensure that no extraneous material is considered by the panel in its deliberations, which the accused has not had an opportunity to comment on.**

Review and ‘slip rule’

104. The Judge Advocate General explained that at present his office reviewed every court martial and provided a legal advice to the Reviewing Authority, which could quash the conviction or reduce the sentence.¹⁹¹ The Reviewing Authority will be abolished by the Bill, following criticism in the European Court of Human Rights that it constituted non-judicial interference in the process.¹⁹² The Judge Advocate General accepted the loss of the Reviewing Authority, but thought there should be an alternative method of reviewing the outcomes of courts martial. He proposed the introduction of a ‘slip rule’—a simple review mechanism to correct errors—analogueous to that in the Crown Court. His written evidence states that:

In the Crown Court, the Powers of Criminal Courts (Sentencing) Act 2000, section 155 allows the judge to vary a sentence within 28 days, this power being commonly known as the “slip rule”. Thus it is not necessary to trouble the Court of Appeal with cases where a mistake soon comes to light. The same powers have been unnecessary in Courts-Martial so long as the Review process continued.¹⁹³

The Judge Advocate General provided supplementary material that suggested that a slip rule might be applied in around 1% of cases.¹⁹⁴

105. Judge Blackett advocated a ‘slip rule’ that would be exercised by the Judge Advocate alone. Mrs Jones, head of the Bill team, explained that proposals for a ‘slip rule’ had been considered. She explained that:

We did not want that to be a matter that we would leave to the Judge Advocate alone, even where it was, on the face of it, just a straightforward technical matter because

189 Q 362

190 See Q 334

191 Q 143. Ev 148–150. Under the Service Discipline Acts, there is a statutory right for the Defence Council, or any other specified authority (such as an officer appointed for the task by the Defence Council) to review the findings and punishments awarded at a courts martial or summary hearing.

192 Q 143

193 Ev 148

194 Ev 150

quite often with technical matters, there can be other implications in what the actual sentence will be.¹⁹⁵

She confirmed that discussions were continuing with the Judge Advocate General on reaching a solution that would enable a ‘slip rule’ type procedure to be introduced.¹⁹⁶ **We urge MoD to pursue the possibility of providing a ‘slip rule’ for courts martial.**

Provisions relating to civilians

106. It has been long practice that civilians are subject to aspects of military law when they are living or working alongside the Armed Forces.¹⁹⁷ The Bill establishes the Service Civilian Court to replace the Standing Civilian Court.¹⁹⁸ Mr Morrison, MoD’s Director of Legislation, explained that, following consultation with the Services, it was found that many of the disciplinary offences, such as insubordination to a superior officer, were not used in relation to civilians.¹⁹⁹ The Bill will limit the disciplinary offences with which civilians can be charged, and will remove the distinction between civilians accompanying the Armed Forces overseas in peacetime, and those accompanying the Armed Forces on active service, the definition of which has been problematic and broadly has no application other than in respect of civilians.²⁰⁰ The MoD supplementary memorandum explains that:

The Armed Forces Bill dispenses with the current two-tiered application of Service law to civilians accompanying the armed forces, and replaces it with a single system that will apply all the time, whether the armed forces are on active service or not. The Bill describes such civilians as subject to service discipline.²⁰¹

We are content with the provisions in the Bill that remove the anomalous two-tier approach to civilians subject to Service discipline.

107. The application of Service law to civilians was an issue of particular interest during our visit to Cyprus, where three jurisdictions—local Cypriot, Sovereign Base Area and Service law—apply to different individuals depending on who they are and their geographical location. Cyprus is an important base for the United Kingdom’s Armed Forces. The situation in Cyprus is more confused than in Germany, the other location where there are substantial numbers of civilians who will be subject to this legislation. There are anomalies in the legal situation in the Sovereign Base Areas, and as regards the Service police and Sovereign Base Area police. MoD provided us with supplementary material explaining the application of Service law to civilians in Cyprus.²⁰² The memorandum highlights difficulties that have arisen:

195 Q 719

196 *Ibid.*, see also Annex Volume II, 28 March 2006, col 98

197 See Ev 199–201

198 Q 784, see Explanatory Notes to the Armed Forces Bill, page 91.

199 Q 59

200 Clause 360 introduces Schedule 13 which sets out the provisions relating to civilians subject to service discipline.

201 Ev 143

202 Ev 133–134

UK based civil servants (and their families) are subject to Service law while they are in Cyprus, if they work in a capacity “connected with” the armed forces. This clearly covers UK based civil servants working for British Forces Cyprus, but the position is less clear in the case of those working for the Sovereign Base Areas Administration. The administration is separate from British Forces Cyprus, but is “connected with” the presence of British Forces.

Similarly, a locally employed civilian working for British Forces Cyprus is subject to Service law, but (because of the uncertainty of the words “connected with”, referred to above) the effect of the legislation is not so clear in relation to locally employed civilians working for the Sovereign Base Areas Administration.²⁰³

The memorandum goes on to note that in practice, Service jurisdiction is not exercised over civil servants working for the Sovereign Base Areas Administration, nor is it asserted over local residents.²⁰⁴

108. We urge the Government to consider how the legal situation, applying to Service personnel and civilians subject to Service discipline in Cyprus, might be clarified.

109. It was clear during our visit to Cyprus that civilians subject to service discipline, including both Service families and civil servants, were not well acquainted with their position under the law. **We recommend that MoD ensure that civilians who are to be subject to Service discipline are provided with clear and accessible guidance as to their position under the law.**

203 Ev 134

204 *Ibid.*

6 Redress of complaints and Service inquiries

Complaints procedure

110. The majority of the Bill's provisions relate to imposing discipline. The provisions on redress of complaints in Clauses 330 to 333 provide for a new mechanism for involving the upper tiers of the chain of command in resolving complaints. We focused on the more serious complaints that can arise relating to the treatment of an individual, such as bullying or harassment. MoD provided us with information about non-statutory action being taken to improve redress of grievance and welfare services.²⁰⁵ The starting point for the Armed Forces in cases of redress is to seek the solution at the lowest possible level in the chain of command. Mr Miller explained MoD's view:

Seeking to resolve that seems to us to be something which is best dealt with through the chain of command initially and through the Defence Council panel if an earlier resolution cannot be achieved.²⁰⁶

111. Mr Miller told us that the majority of complaints are relatively trivial.²⁰⁷ Mr Salvetti, a civilian lawyer specialising in redress cases, notes in his written evidence that on occasion he has advised a Service man or woman that it would be more appropriate to resolve the issue within the chain of command.²⁰⁸ However, he also notes that there is a general lack of understanding and knowledge of the procedures, both among those bringing the complaint and those responsible for resolving it. His written evidence states:

Generally, at lower levels the Chain of Command is neither interested to support individuals nor, indeed, at lower levels does anyone appear to have sufficient or detailed knowledge. I have also discovered from time to time that, in fact, those that should or ought to be providing help and support within the Chain of Command are not prepared to do this either on the basis that it is too much trouble or, alternatively, that they do not want to become 'tainted' with the procedures which will, inevitably, go higher through the Chain of Command to 1 star/2 star or above.²⁰⁹

A Service Complaint Panel

112. The Bill includes provisions for the establishment of a Service Complaint Panel.²¹⁰ The composition of the panel is set out in the Bill, including the provision that would allow the Secretary of State to appoint an independent member in certain circumstances. According

205 Ev 130–131

206 Q 465

207 Q 729; see Q 259

208 Ev 153

209 *Ibid.*

210 Clause 331 enables the Defence Council to delegate all or some of its responsibilities for dealing with complaints to a Service Complaint Panel.

to the explanatory notes to the Bill, that power is likely to be exercised for complaints involving bullying or harassment.²¹¹ The MoD memorandum states:

The inclusion of an external, independent member on a Service Complaint Panel will be appropriate in cases where it is important to ensure that an issue is considered by a person who is external to the Services and MOD. In such cases, an independent member should increase confidence in the system.²¹²

113. We debated, during the Standing Committee phase of our proceedings, the benefit those changes would bring to the Armed Forces.²¹³ Witnesses from the Deepcut & Beyond group did not consider that the proposals would be sufficient to satisfy the need for independent involvement. Furthermore, independent involvement at the Service Board level was considered to be too far removed from the level at which most complaints are considered. Mrs Farr, founder of Daniel’s Trust and a member of Deepcut & Beyond, told us “... it needs changing right at the bottom, not at the top”.²¹⁴

114. Mr Salvetti did not consider the proposals for an independent member on the Service Complaint Board to be necessary in all cases.²¹⁵ He concluded that, “it is important to have something but probably at a higher level and certainly not down at the bottom levels of redress where that is normally dealt with”.²¹⁶ Mrs Antrobus, of WRVS, told us that:

I think there is a great danger that the more people who are put into the system the more the chain of command’s authority—and we are talking about a military environment—is diluted. I think it is important that that is still maintained without frightening anybody off about being able to come and complain.²¹⁷

115. SSAFA Forces Help emphasised its “absolute support for the need to preserve the integrity of the Service chain of command”, but said that claims “that military capability and good order will be threatened by such independent participation” were overstated. Indeed, SSAFA Forces Help considered it likely that the chain of command’s ability to resolve complaints would be “significantly enhanced by appropriately informed independent participation”.²¹⁸

116. We welcome the establishment of the Service Complaint Panel as a mechanism to consider complaints at the highest level. The changes proposed in the Bill will allow complaints to reach this level more swiftly and will provide the Service Complaint Panel with the power to grant redress as it sees fit. The addition of an independent voice in appropriate circumstances is also welcome.

211 Explanatory notes to the Armed Forces Bill, page 112, see also Ev 132

212 Ev 132

213 Annex Volume II, 29 March 2006, 131–134

214 Q 661

215 Q 257

216 Q 257, see Q 300 [Commodore Branscombe]

217 Q 284

218 Ev 157

117. Few complaints are likely to reach the level of the Service Complaint Panel. The Armed Forces continuous attitude surveys consistently indicate that actual levels of bullying are higher than reported levels, and that Service personnel do not report complaints because they do not believe they will be resolved.²¹⁹ For example, in a recent Army continuous attitude survey 35% of respondents chose not to complain of unfair treatment, discrimination, harassment or bullying because they “did not believe anything would be done...”²²⁰ The same percentage of recipients did not complain because they “believed such a step would adversely affect...” their career.²²¹

118. Mr Miller explained that there were a number of initiatives at the unit level to improve the handling of complaints. He referred to proposals to improve the support for those who make a complaint, and introducing mediation at the unit level.²²² He conceded:

... more worrying is the possibility that people feel for some reason that it is not appropriate or not worth their while to lodge a complaint.²²³

119. The question that MoD and the Armed Forces need to address is whether the discrepancy between the level of bullying and harassment suggested by the Services’ continuous attitude survey and the few cases of bullying and harassment that reach the Service Board level is due to the satisfactory resolution of those complaints at lower levels in the complaints process. If that is not the case, MoD must look again at the problem of ensuring that Service personnel feel able to make a complaint and that it will be dealt with fairly.

120. In evidence to us, Mr Salvetti said that there was little understanding of the present system. He told us that “many Service personnel have no knowledge of the system even as it exists at the moment”.²²⁴ His point was echoed by Commodore Branscombe, who told us that the problem is “access, transparency and awareness of the redress of complaints [are] not good in general”.²²⁵ Witnesses from WRVS and SSAFA Forces Help confirmed that there was a lack of understanding about the process.²²⁶

121. We are clear that there is a need for robust and timely redress of complaints. A wide range of circumstances may be covered by the redress system, from relatively trivial matters through to the most serious abuses of bullying and harassment. MoD has, as a result of the various reviews undertaken into training, provided additional resources to improve the accessibility of the complaint procedures. We are not convinced that this is sufficient, and we note that the Government has said that they will consider the need for further changes.

219 See for example HC (2004–05) 63-II, pages 296–301 and HC (2004–05) 63-I, paras 267–274 for discussion on level of bullying at initial training establishments.

220 Armed Forces Continuous Attitude Surveys, Army, December 2004–April 2005.

221 *Ibid.*

222 Q 725

223 Q 729

224 Q 257

225 Q 269

226 Qq 279–281

A military complaints commissioner

122. We considered the need for a military complaints commissioner during our formal consideration of the Bill.²²⁷ The Defence Committee in the last Parliament recommended an independent military complaints commission.²²⁸ Similar approaches have also been advocated by Deepcut & Beyond and others.²²⁹ The role of the independent commissioner would be to provide an alternative route to the chain of command for those seeking redress.²³⁰ Some witnesses questioned whether independent involvement would be detrimental. SSAFA Forces Help’s written evidence recommended that independent participation was suitable “ideally [...] at all levels” of the redress of grievance process, and that the Service Board “is too inaccessible, and in practice relatively rarely attained”.²³¹

123. Padre Olliff, chaplain at Pirbright training camp, told us that he supported an independent system because he had “seen complaints that have not been handled properly within the system”. He supported the separation of the Commanding Officer’s responsibilities for operational matters and administrative matters.²³² Mr Salvetti’s view was that an ombudsman approach, if applied across the broad range of redress, could lead to greater delays.²³³

124. The Deepcut Review undertaken by Nicholas Blake QC contains several recommendations that impinge on the redress of grievance procedures.²³⁴ The Minister for the Armed Forces, in his statement on the Deepcut Review, told the House of Commons that:

We now need to look at every one of Mr Blake’s 34 detailed recommendations to see how they should best be taken forward to address the weaknesses identified as quickly and as effectively as possible. [...] and the Bill gives us the opportunity to implement any changes deemed appropriate.²³⁵

The Review recommends the establishment of an independent military complaints procedure.²³⁶ We have not considered Mr Blake’s recommendations in detail, and note that, in relation to the functions of an ombudsman, there is some distance between his recommendations and the Defence Committee’s proposals, particularly in relation to the relationship between the ombudsman and the Director of Service Prosecutions. During the Standing Committee phase of our deliberations, the Minister confirmed that the Government would have to examine Mr Blake’s recommendations in detail, and

227 Annex Volume II, 29 March 2006, cols 113–131

228 Defence Committee, Third Report of Session 2004–05, *Duty of Care*, HC 63, paras 421–427; see also Defence Committee, *The Armed Forces Bill*, paras 5–12.

229 Ev 158, 167–169, 181–182, 187

230 See Ev 167–169, 192–193, and Defence Committee, *Duty of Care*, paras 421–427 for a discussion of the sorts of powers an independent ombudsman or commissioner would require.

231 Ev 157

232 Q 288

233 Q 259

234 *Blake Review*, See Recommendations 20, 21, 22, 23, 25, pages 397–400

235 HC Deb, 29 March 2006, col 855

236 *Blake Review*, Recommendation 26, page 403

undertook that MoD would review the proposals for a military complaints commissioner “in the light of Mr Blake’s report”.²³⁷

125. We remain unconvinced that an Ombudsman is the appropriate way to deal with problems with redress of complaint. Similarly, a Commissioner, as some on the Committee have suggested as an alternative, would not, in our view, serve the sort of purpose required. Nevertheless, we believe there is scope to deal with grievances more effectively, particularly those involving cases of alleged bullying. In our view, the overriding need is to draw a clear distinction between the proper exercise of discipline in a military context and incidents which cross over the line into abuse or bullying. We recognise that there is a delicate balance to be struck.

126. We note the fact that MOD has an anti-bullying policy. Consistent with the provisions elsewhere in the Bill, it should be developed on a tri-Service basis. However, we recognise that a policy of this kind can only be enforced if there are people designated to make sure that it is applied in appropriate individual cases.

127. We understand that Parliament, the Government and the Services will need time to digest and consider the Deepcut Review undertaken by Nicholas Blake QC, and we would not want proposals to be introduced hastily. We think it inappropriate to make recommendations on the issues on which Mr Blake commented prior to the Government response to the Deepcut Review. We doubt that the Government response will be swift enough to result in amendments to the Bill.

128. Space in the legislative timetable is at a premium. If MoD does want to make further changes to the redress of grievance procedures that require primary legislation but is unable to make the necessary amendments to this Bill, we urge the Government’s business managers to allow time for the necessary legislation to be considered as soon as possible.

129. In written evidence, MoD explains that the redress of grievance procedures will be subject to “annual assessment by an independent reviewer, who would report directly to the Secretary of State”.²³⁸ Mrs Jones explained that the reviewer would be a “completely external person with an appropriate background [who] will look in particular at the way the process is operating”.²³⁹ She told us that the reviewer

... will have the ability to look at any cases that have been considered during a year. He will not be able to re-open those cases but he will be able to review the process to see that it is working properly, in a timely fashion, fairly and effectively.²⁴⁰

We welcome the establishment of an independent reviewer for the Armed Forces redress of complaint procedures.

237 Annex Volume II, 29 March 2006, col 129

238 Ev 133

239 Q 732

240 *Ibid.*

Daniel's Trust

130. We were impressed by the evidence from Mrs Farr and Mrs Langford about their work with Daniel's Trust, which primarily helps Service personnel who are experiencing difficulties, often related to bullying and redress of complaint, within the Armed Forces.²⁴¹ Mrs Farr told us that she set up the trust in memory of her son who died at ITC Catterick. She explained that

... families and young soldiers started contacting us, asking for help with problems they were having with the Army, families whose sons had died, young soldiers that were being bullied and other issues that they were experiencing with the Army. [...] I felt if I could help other families and other young soldiers who are experiencing problems, then that is what I intend to do.²⁴²

131. Members of the Trust have visited senior officers at ITC Catterick. Mrs Farr said that she had discussed with senior officers at ITC Catterick why soldiers contacted the Trust rather than using the procedures in place within the military. She told us that the officers could not provide an explanation.²⁴³

132. It was clear that the effectiveness of the Trust's approach hinged on the combination of an independent person to whom Service personnel could turn to without fear, and on the ability of members of Daniel's Trust to communicate their concerns directly to senior commanders at ITC Catterick.²⁴⁴ Other welfare organisations, such as the WRVS, emphasised the importance of direct links with Commanding Officers and the chain of command.²⁴⁵

133. We acknowledge the success of Daniel's Trust. Its success depends on the relationship between those receiving the complaint and individual Commanding Officers. It may not be possible to apply this model more widely, but, we urge MoD to be open to such ad hoc independent involvement.

Armed Forces Federation

134. During the Standing Committee phase of our deliberations, we debated proposals for an Armed Forces Federation, which have been developed on Service-related internet talk boards.²⁴⁶ Collective complaints are not permitted in the military, as they constitute mutiny.²⁴⁷ Mr Salvetti told us that he had been involved in cases in which several members of the Armed Forces had a complaint relating to the same issue, and that being unable to

241 Ev 172–173; see also "Joining Forces to Stop Bullies" *The Northern Echo*, 28 December 2005, p 4

242 Q 631

243 Q 640

244 See Qq 677, 675, 640, 643, 648, 651, 653

245 Q 271

246 Annex Volume II, 30 March 2006, cols 207–214; See Army Rumour Service, website, <http://www.arrse.co.uk> and "Angry soldiers demand 'trade' federation: Courts martial and equipment failures fuel rank and file discontent" *The Guardian*, 26 January 2006, p 1; "Soldiers plan federation to fight for their rights; New body will represent all the services" *The Glasgow Herald*, 13 January 2006, p 1

247 See Ev 182, Qq 260–262

make a joint complaint was a difficulty.²⁴⁸ However, he was not convinced that a ‘trade union’ approach was appropriate for the Services, rather he considered Service personnel needed “... better knowledge and better representation in terms of what they are doing, and better access to legal advice”.²⁴⁹

135. General Walker, Chief of the Defence Staff, dismissed the idea of a federation. He said: “I do think it would be something that weakened the chain of command” and he gave an example of why he did not support the proposal:

When I was commanding in Bosnia, one of the battalions of one of the nations, and I will not tell you which one, laid down its arms because, it said, the pay deal was not right, so they put their arms down. Do you really see British Armed Services doing that? That is the sort of trouble you get into when there is a representative body who are fighting back at home, your soldiers are at the front and they do not appear to be achieving.²⁵⁰

136. The Steering Group for a British Armed Forces Federation responded to General Walker’s evidence, stating that its proposals “specifically rule out any questions of any kind of industrial action or insubordination in any circumstances”.²⁵¹ During our visits, we found that Service men and women, including relatively senior officers, were not opposed to the proposal, although they felt ill-informed as to the precise nature of the proposed organisation and its functions and powers.²⁵²

137. During the Standing Committee phase of our deliberations it was argued that a Federation might be able to address genuine concerns among Service personnel. However, the Minister argued: “There are sufficient avenues for soldiers, sailors and airmen to express their views on matters that affect their service or welfare”.²⁵³ He added that “... we are not complacent, and continual monitoring allows us to improve and shape policy to the best advantage of the Services”.²⁵⁴

138. Senior military commanders expressed strong opposition to the proposal for an Armed Forces Federation. There was some support in the Committee for the proposal but currently, there is no clear consensus as to whether or not any specific form of collective representation is either necessary or desirable. Some Members believed it was not an issue that can be left in abeyance permanently and believed MoD should undertake a review of the situation with a broad process of consultation covering all Services and ranks at the earliest possible opportunity. Others disagreed.

248 Q 261

249 Q 264

250 Qq 410, 404–405

251 Ev 190

252 See Ev 190–191 for a ‘Draft 10 point summary’ of the proposals.

253 Annex Volume II, 30 March 2006, col 213

254 *Ibid.*

Service inquiries

139. Currently the Services have a range of internal inquiry mechanisms. The Bill will replace them with a single Service inquiry format, which will have a firm statutory basis and greater powers.²⁵⁵ The intention is to make the inquiry process more efficient and effective. Commodore Fraser explained, for example, that currently Naval inquiries are established on a prerogative rather than statutory basis and that the changes in the Bill will provide for witnesses being summoned to attend, and giving evidence under oath.²⁵⁶ **We are content with the proposals in the Bill to harmonise internal Armed Forces inquiries and to provide them with greater powers.**

140. The Defence Committee in the last Parliament recommended that there should be a presumption that next of kin should be able to attend Boards of Inquiry.²⁵⁷ MoD maintains that there should be no presumption for next of kin to attend such inquiries, although they are sometimes admitted. MoD officials explained that a Board of Inquiry is an internal process convened for Service reasons to determine how a serious incident happened and why, and to make recommendations to prevent a recurrence.²⁵⁸ The Board does not apportion blame. Commodore Fraser told us that:

They were always intended as very much an internal inquiry to be set up very quickly indeed and quite deliberately to make sure that you had got the facts [...] you want absolute candour from your witnesses and you want to be able to move as quickly as you possibly can because the whole idea is to learn lessons and then put those lessons into effect straightaway before any other processes.²⁵⁹

141. MoD argued that the presence of next of kin could lead to witnesses being less frank in their evidence, and therefore hampering the Board's work.²⁶⁰ **We note that inquests and civilian courts are able to conduct their affairs satisfactorily with next of kin present. We do not believe that next of kin should be excluded on the basis that their presence will inhibit witnesses from providing the fullest evidence.**

142. MoD explained that there in some circumstances it would be difficult to enable next of kin to attend because an inquiry would need to convene very quickly, often in remote, or dangerous, overseas locations.²⁶¹ That view was reinforced during our visits to Cyprus, Oman and Iraq where Commanding Officers provided us with examples of inquiries that had had to proceed very quickly.

143. The previous Defence Committee, SSAFA Forces Help and Deepcut & Beyond have been critical of MoD policy not to provide a presumption that next of kin may attend

²⁵⁵ Clause 337 permits the Secretary of State to make regulations for inquiries to be held in prescribed circumstances. Subsection (4) enables regulations to include similar provisions to section 35 of the Inquiries Act 2005, which provides for sanctions to be imposed for non-compliance with an inquiry panel.

²⁵⁶ Q 478

²⁵⁷ Defence Committee, *Duty of Care*, paras 341–344, Defence Committee, *Tri-Service Armed Forces Bill*, paras 90–97. See also Ev 158, 171–172

²⁵⁸ Qq 479 ff

²⁵⁹ Q 479

²⁶⁰ Qq 491 ff, 750

²⁶¹ Qq 487 ff

Boards of Inquiry. Mr Blake’s Deepcut Review also recommends that there be a presumption that next of kin attend Boards of Inquiry. SSAFA Forces Help observed in its written evidence that, subject to a valid reason for exclusion:

... attendance by next of kin should be allowed as a matter of course.

This would not only help the families come to terms with their loss, but also, in demonstrating compassionate openness, restore trust and confidence in the MOD system.²⁶²

In her evidence to the Committee, Mrs Farr said that she knew of several instances in which families were allowed to attend. She explained that:

At the last board of inquiry at Catterick the parents were notified when the board of inquiry was taking place. The soldier’s ex-wife and his current partner were allowed to attend and his parents who were in Germany had a video link set up to their hotel room for them to give evidence.²⁶³

Mr Gray told us that:

There is a total inconsistency with boards of inquiry. Some families are totally excluded and do not even know when the board of inquiry is going on. Some families have been included by video link to allow them to watch the proceedings. Some families are given the full board of inquiry in a decent and respectful way. Other families have had to travel to service stations to rendezvous with an Army officer who has then handed the board of inquiry over. I personally think that families should be allowed to sit in on boards of inquiry.²⁶⁴

144. MoD witnesses explained the level of contact with families on boards of inquiry.²⁶⁵ Air Commodore Hughesdon said that:

We do try to help people through their obvious desire to understand what has gone on and as part of that, in a similar way to the Army, we have continual briefing of next of kin through dedicated appointed officers...²⁶⁶

Brigadier Andrews told us that the Army had established an aftercare and incident support cell, whose staff “maintain close contact with the family that has been affected by an incident of death or serious injury”.²⁶⁷

145. MoD expressed concern that inquiries might be delayed if there was a statutory presumption of right for next of kin to attend. MoD witnesses added that delays could occur because members of the inquiry might feel obliged to alter times and locations of

262 Ev 158

263 Q 685 [Mrs Farr]

264 *Ibid.* [Mr Gray]

265 Qq 480–487

266 Q 487

267 Q 755, see also Ev 201

hearings to accommodate next of kin.²⁶⁸ During the Standing Committee phase, the Minister said:

Mr Blake's report made some recommendations about next of kin and boards of inquiry. Clearly, we will have to examine his recommendations in detail. [...] Again, I give an undertaking that we will return to the matter as soon as we can. I recognise that it might not be possible for us to come to some conclusions before the Committee reports to the House, but I will expect the subject to come up on Report, and I aim to have some responses at that stage.²⁶⁹

146. Given the specific and urgent nature of some Service inquiries, it is difficult for there always to be a presumption that next of kin will be entitled to attend. Nevertheless, for inquiries into, for example, an unexplained death in a training establishment, where the difficulties of location and timing do not exist, we would wish the inquiry to look sympathetically on the wishes of next of kin to attend.

147. We recommend that guidance for Service inquiries advises that next of kin not be excluded as a matter of routine. We are not persuaded by the argument that the presence of next of kin would impede the inquiry's ability to conduct its affairs, so long as those attending are fully aware of the purpose, limitations and powers of the inquiry.

268 Q 750

269 Annex Volume II, 30 March 2006, col 143

7 Amendments and Renewal

Amendments made to the Bill

148. In the course of our proceedings we made a considerable number of amendments to the Bill, many of which were of a technical nature, reflecting the immense complexity of legislation that impinges on the Armed Forces. We were alerted to two substantive omissions in the Bill, which were corrected by amendments we made during our Standing Committee phase.

149. SSAFA Forces Help raised the issue of child protection.²⁷⁰ In its written evidence, it explains that:

... the existing provisions at Section 111 of the 1991 Armed Forces Act relating to the powers of Commanding Officers and other responsible persons in overseas commands to authorise child protection orders overseas does not appear in the current Armed Forces Bill.²⁷¹

Several media organisations submitted evidence relating to an apparent lacuna in the Bill that would prevent an appeal against a decision to place reporting restrictions on a court martial.²⁷² MoD accepted the need for both these changes and tabled amendments which the Committee agreed to. **We are grateful to those who alerted the Committee to these deficiencies in the Bill, and to the Government for its willingness to propose appropriate amendments.**

Renewing and amending the legislation

150. Service Law is currently renewed every five years by primary legislation and in each intervening year by Order in Council. Clause 371 of the Bill as introduced by the Government contained provision for quinquennial renewal but omitted the requirement for annual renewal by delegated legislation. The constitutional basis for this practice has been noted and supported by successive Armed Forces Bill Select Committees and Defence Committees.²⁷³ The Defence Committee report on the Bill concluded:

The rationale for removing the requirement for annual renewal is not clear. [...] We do not believe Parliament should agree to cede this aspect of its control over the nation's Armed Forces to the Executive, particularly at a time when military law and discipline are of considerable political concern.²⁷⁴

270 Qq 301 ff

271 Ev 158

272 Ev 187–189

273 See Report from the Select Committee on the Army Act and Air Force Act, Session 1953–54, HC 223; and evidence thereto. Special Report from the Select Committee on the Armed Forces Bill, Session 2000–01, HC 154-I, Erskine May (8th Edition), pp 611–612; Erskine May (14th Edition), p 706, Defence Committee, *Armed Forces Bill*, paras 13–17, Defence Committee, *Tri-Service Armed Forces Bill*, paras 116–124

274 Defence Committee, *Armed Forces Bill*, paras 15–16

151. The Chief of the Defence Staff, General Sir Michael Walker, told us that he supported quinquennial review, but said that:

Insofar as the annual renewal goes, it seems to me that there is nothing particular to be gained by an annual review. After all, the Armed Services are constantly on the lips in both Houses and five years seems to be a suitable sort of period for that to happen.²⁷⁵

Mr Miller was more circumspect when we discussed annual renewal with him. He said that annual renewal had been included in the original Service Discipline Acts, but he explained:

... there have been developments since then and the level of parliamentary engagement with the Armed Forces is such that there is now a regular debate on personnel matters, for example. The Select Committee on Defence has become a much more established part of the system from when this was last considered and there is a whole range of other ways in which these issues can be aired in a parliamentary context.²⁷⁶

152. We received a memorandum from the Leader of the House arguing against annual renewal on the basis that the historical protections in the Bill of Rights, that require annual legislative approval for a standing Army, were ‘outmoded’, and that Parliament had other opportunities to consider issues relating to the Services. The memorandum acknowledges the special function of the Armed Forces, but asks:

... is their position in the life of the modern state and of modern society special in a way which means that they need a different legislative process? Is there a basis for service discipline legislation to be regarded any differently from other calls on the legislative programme?²⁷⁷

The Leader made it clear, however, that the Government was prepared to listen to our views on the issue of annual renewal. **The Government proposed an amendment reinstating the annual renewal provisions, and we have made this change to the Bill.**

153. We are particularly concerned that, as the legislation will make considerable changes to the military justice system, Parliament should have an opportunity to watch closely how those changes work in practice. We welcome the Government’s willingness to listen to the arguments adduced in the Committee and its readiness to provide the necessary amendment to reinstate annual renewal of Service discipline legislation.

154. One of the difficulties that MoD faces is ensuring that Service Discipline legislation keeps pace with developments. Annual renewal by statutory instrument does not provide an opportunity to make amendments. If changes are required before the next quinquennial Armed Forces Bill, they could be included in other appropriate Bills, such as Home Office criminal justice legislation, which appears frequently in the legislative timetable. **We urge the Government’s business managers to ensure that MoD has an opportunity in the**

275 Q 384

276 Q 468

277 Ev 174

legislative timetable to bring forward any changes required to military discipline legislation in a timely manner.

Conclusions and recommendations

1. We commend the Government for bringing forward a motion that has enabled us to meet in public to conduct our formal consideration of the Bill. (Paragraph 5)
2. We strongly support the Select Committee approach adopted for the consideration of the Bill. This approach may not be appropriate for all Bills, but was invaluable for this one. We recommend that the Government considers this procedure for other legislation, in addition to future Armed Forces Bills. (Paragraph 6)
3. We urge the Government to provide more detail on the proposals that will be included in subordinate legislation and how they will work before the House of Commons completes its consideration of the Bill. (Paragraph 10)
4. We believe that the Armed Forces are distinct from other parts of society and that the work they undertake on the nation's behalf requires a separate system of Service law. (Paragraph 14)
5. Appreciating and understanding the military context is essential to the administration of justice in the Services. (Paragraph 17)
6. The importance of the military context is most apparent when considering the hostile and dangerous situations that Service personnel can encounter on operational deployment. However, Service law must be equally applicable in operational and non-operational environments, and the military context is also important in non-operational environments. (Paragraph 19)
7. Service law needs to be framed in such a way that operational effectiveness is supported. It should protect Service personnel when they are conducting operations and provide an appropriate framework for justice if they act outside the law. Service men and women should have confidence in the system and know that if they act within the law they will be supported by the chain of command and that if they act outside the law they will face justice. That confidence will be provided only by clarity. (Paragraph 26)
8. We do not consider operational effectiveness to be constrained by current rules of engagement although there may be circumstances in which Service personnel would be constrained in acting against new threats that are emerging. We urge MoD to ensure that rules of engagement and their associated training keep pace with the threats now faced by Service personnel on deployment. (Paragraph 28)
9. We were impressed by the level of judgment and self-restraint that Service personnel are asked to exercise in complying with their rules of engagement. Rules of engagement relating to the use of force should be sufficiently flexible to enable Service personnel to protect themselves and others without risk of legal consequences. (Paragraph 30)

10. We have received no evidence to suggest that the recent changes to the military justice system made as a result of judgments in the European Court of Human Rights have been detrimental to Service personnel. (Paragraph 32)
11. Human Rights legislation and challenges to the military legal system in the European Court of Human Rights do not place Service personnel at greater risk: they provide additional protection by strengthening the military justice system. (Paragraph 33)
12. We note the concerns of Service personnel about the role of the media and support calls for the media to provide more balanced and accurate coverage of the work of the Armed Forces on deployment. (Paragraph 35)
13. We recognise the thinking behind and welcome the establishment of a tri-Service system of military justice. Not all operations or military establishments will be tri-Service, but that is the direction in which the Armed Forces are moving, and the pace of change is swift. The Armed Forces will need to assess how the proposals in the Bill might impinge on the culture of each Service. (Paragraph 41)
14. We are content with the proposals for aligning the jurisdiction and powers of punishment of Commanding Officers of the three Services. (Paragraph 43)
15. We were impressed by the positive response to the Army's revised administrative action procedures, and we recommend that they should be reflected across the other Services. (Paragraph 45)
16. We are content with the provisions that set out the Commanding Officer's duty to inform the Service police. MoD should ensure that, in addition to the provisions in the Bill, guidance makes it clear that incidents are reported promptly to the relevant police force. (Paragraph 48)
17. We emphasise the importance of Commanding Officers exercising their responsibilities to inform the prosecuting authorities of any relevant mitigating factors and the context in which events occurred. (Paragraph 50)
18. We welcome the fact that the mechanisms for support of the accused are under review. (Paragraph 51)
19. The majority of the Committee do not consider that the removal of the Commanding Officer's power to dismiss serious cases will undermine his central command and disciplinary role in a unit. Commanding Officers to whom we have spoken were not resistant to the changes which the Bill makes. The Committee recognises the importance of retaining the integrity of the chain of command but there were reservations among some Members on the potential risk to the chain of command by the removal of the Commanding Officer's powers to dismiss serious cases, especially on active operations. (Paragraph 56)
20. Those we spoke to during our visits in the United Kingdom and abroad expressed confidence in the shooting incident policy, which they considered provided assurance and confidence for the soldiers in the front line. (Paragraph 59)

21. Criticism of investigations in Iraq should be considered in the light of the extremely difficult environment in which the Special Investigation Branches are operating. Those who advise Iraqi civilians not to co-operate with police investigations in order to pursue compensation claims do a disservice both to their prospective clients and to the Armed Forces. We deplore this practice. We are therefore drawing this aspect to the attention of the Law Society and the Bar Council, inviting them to consider whether touting for business in this way represents an acceptable professional practice on the part of those subject to their respective regulation. (Paragraph 62)
22. We welcome the announcement that Her Majesty's Inspectorate of Constabulary will inspect the Royal Military Police's Special Investigation Branch. Such an inspection regime will raise standards in the Special Investigation Branch and raise public confidence in its work. We recommend the HMIC inspection regime is extended to the rest of the Royal Military Police and the other two Service police forces. (Paragraph 65)
23. We welcome the general principle of applying the provisions of PACE to the military system where appropriate, and accept that it is not necessary to set out those provisions in the Bill. (Paragraph 68)
24. Parliament must have scrutiny of the detailed provisions in secondary legislation, rules and guidance that will implement PACE-like provisions in the military system. (Paragraph 69)
25. We recognise the merit of bringing the tri-Service system under a single prosecuting authority. (Paragraph 70)
26. Whilst we appreciate the difficulties involved in defining military experience in statute, we do consider it important for the Director of Service Prosecutions to have had military experience. (Paragraph 73)
27. We are content that the Attorney General, as the Government's principal legal adviser, will retain an advisory and superintendent role in respect of the new Director of Service Prosecutions. (Paragraph 75)
28. We welcome the enhancements introduced by the Judge Advocate General to improve the efficiency of courts martial and reduce delay in the system. (Paragraph 77)
29. We support the establishment of the standing court martial. However, officers told us during our visits in the United Kingdom and abroad that sitting on a court martial panel can be disruptive. We urge MoD to ensure that a flexible approach is taken to the appointment of court martial panels. (Paragraph 79)
30. We recommend that the Government ensures that the necessary legislation is implemented to allow for the use of video links in Service courts. (Paragraph 81)
31. We consider it appropriate for responsibility for the administration of military courts to remain in MoD. (Paragraph 82)

32. We are content to retain panels of three for cases equivalent to those tried in Magistrates' Court and of five for those more serious cases equivalent to those tried in a Crown Court. The Minister urged us not to put the size of the court martial panel on the face of the Bill. (Paragraph 84)
33. We recommend that for cases that involve technical issues specific to a particular Service, such as navigation offences, the panel should be from the same Service as the accused. We agree with the Chief of the General Staff and the First Sea Lord that there should be a presumption for single service panels unless there is good reason for mixed panels. We recognise that there will be circumstances when a mixed panel is considered appropriate. In such cases it should be appointed with the senior member, and the majority of members, coming from the same Service as the accused. (Paragraph 86)
34. We believe that guidance to Judge Advocates should continue to emphasise the desirability of courts martial reaching unanimous decisions whenever possible. But we do not believe that the Bill should impose a requirement of unanimity. (Paragraph 92)
35. We accept the arguments for extending the jurisdiction of courts martial so that they may consider serious cases. However, we note that, unless there is a specific need to try such cases by court martial, public confidence may be better served by their being tried, as now, in the civilian system. (Paragraph 94)
36. We accept MoD's argument that it would be inappropriate and unnecessary for the accused to have a right to elect to be tried in the civilian courts rather than at court martial. (Paragraph 97)
37. We consider it essential for Judge Advocates to have a military understanding. (Paragraph 98)
38. We encourage the Department for Constitutional Affairs to ensure that Judge Advocates have access to all the appropriate training, particularly in relation to forensic evidence. (Paragraph 99)
39. We consider it essential that the lay members of the court martial panel are involved in sentencing in order to provide Service context to those deliberations. We are therefore not persuaded that it would be beneficial for the Judge Advocate to sentence alone. (Paragraph 102)
40. We consider that the presence of the Judge Advocate to guide the panel on its sentencing role should be sufficient protection to ensure that no extraneous material is considered by the panel in its deliberations, which the accused has not had an opportunity to comment on. (Paragraph 103)
41. We urge MoD to pursue the possibility of providing a 'slip rule' for courts martial. (Paragraph 105)
42. We are content with the provisions in the Bill that remove the anomalous two-tier approach to civilians subject to Service discipline. (Paragraph 106)

43. We urge the Government to consider how the legal situation, applying to Service personnel and civilians subject to Service discipline in Cyprus, might be clarified. (Paragraph 108)
44. We recommend that MoD ensure that civilians who are to be subject to Service discipline are provided with clear and accessible guidance as to their position under the law. (Paragraph 109)
45. We welcome the establishment of the Service Complaint Panel as a mechanism to consider complaints at the highest level. The changes proposed in the Bill will allow complaints to reach this level more swiftly and will provide the Service Complaint Panel with the power to grant redress as it sees fit. The addition of an independent voice in appropriate circumstances is also welcome. (Paragraph 116)
46. The question that MoD and the Armed Forces need to address is whether the discrepancy between the level of bullying and harassment suggested by the Services' continuous attitude survey and the few cases of bullying and harassment that reach the Service Board level is due to the satisfactory resolution of those complaints at lower levels in the complaints process. If that is not the case, MoD must look again at the problem of ensuring that Service personnel feel able to make a complaint and that it will be dealt with fairly. (Paragraph 119)
47. We are clear that there is a need for robust and timely redress of complaints. A wide range of circumstances may be covered by the redress system, from relatively trivial matters through to the most serious abuses of bullying and harassment. MoD has, as a result of the various reviews undertaken into training, provided additional resources to improve the accessibility of the complaint procedures. We are not convinced that this is sufficient, and we note that the Government has said that they will consider the need for further changes. (Paragraph 121)
48. We remain unconvinced that an Ombudsman is the appropriate way to deal with problems with redress of complaint. Similarly, a Commissioner, as some on the Committee have suggested as an alternative, would not, in our view, serve the sort of purpose required. Nevertheless, we believe there is scope to deal with grievances more effectively, particularly those involving cases of alleged bullying. In our view, the overriding need is to draw a clear distinction between the proper exercise of discipline in a military context and incidents which cross over the line into abuse or bullying. We recognise that there is a delicate balance to be struck. (Paragraph 125)
49. We note the fact that MOD has an anti-bullying policy. Consistent with the provisions elsewhere in the Bill, it should be developed on a tri-Service basis. However, we recognise that a policy of this kind can only be enforced if there are people designated to make sure that it is applied in appropriate individual cases. (Paragraph 126)
50. We understand that Parliament, the Government and the Services will need time to digest and consider the Deepcut Review undertaken by Nicholas Blake QC, and we would not want proposals to be introduced hastily. We think it inappropriate to make recommendations on the issues on which Mr Blake commented prior to the

Government response to the Deepcut Review. We doubt that the Government response will be swift enough to result in amendments to the Bill. (Paragraph 127)

51. Space in the legislative timetable is at a premium. If MoD does want to make further changes to the redress of grievance procedures that require primary legislation but is unable to make the necessary amendments to this Bill, we urge the Government's business managers to allow time for the necessary legislation to be considered as soon as possible. (Paragraph 128)
52. We welcome the establishment of an independent reviewer for the Armed Forces redress of complaint procedures. (Paragraph 129)
53. We acknowledge the success of Daniel's Trust. Its success depends on the relationship between those receiving the complaint and individual Commanding Officers. It may not be possible to apply this model more widely, but, we urge MoD to be open to such ad hoc independent involvement. (Paragraph 133)
54. Senior military commanders expressed strong opposition to the proposal for an Armed Forces Federation. There was some support in the Committee for the proposal but currently, there is no clear consensus as to whether or not any specific form of collective representation is either necessary or desirable. Some Members believed it was not an issue that can be left in abeyance permanently and believed MoD should undertake a review of the situation with a broad process of consultation covering all Services and ranks at the earliest possible opportunity. Others disagreed. (Paragraph 138)
55. We are content with the proposals in the Bill to harmonise internal Armed Forces inquiries and to provide them with greater powers. (Paragraph 139)
56. We note that inquests and civilian courts are able to conduct their affairs satisfactorily with next of kin present. We do not believe that next of kin should be excluded on the basis that their presence will inhibit witnesses from providing the fullest evidence. (Paragraph 141)
57. Given the specific and urgent nature of some Service inquiries, it is difficult for there always to be a presumption that next of kin will be entitled to attend. Nevertheless, for inquiries into, for example, an unexplained death in a training establishment, where the difficulties of location and timing do not exist, we would wish the inquiry to look sympathetically on the wishes of next of kin to attend. (Paragraph 146)
58. We recommend that guidance for Service inquiries advises that next of kin not be excluded as a matter of routine. We are not persuaded by the argument that the presence of next of kin would impede the inquiry's ability to conduct its affairs, so long as those attending are fully aware of the purpose, limitations and powers of the inquiry. (Paragraph 147)
59. We are grateful to those who alerted the Committee to substantive omissions in the Bill, and to the Government for its willingness to propose appropriate amendments. (Paragraph 149)

60. The Government proposed an amendment reinstating the annual renewal provisions, and we have made this change to the Bill. (Paragraph 152)
61. We are particularly concerned that, as the legislation will make considerable changes to the military justice system, Parliament should have an opportunity to watch closely how those changes work in practice. We welcome the Government's willingness to listen to the arguments adduced in the Committee and its readiness to provide the necessary amendment to reinstate annual renewal of Service discipline legislation. (Paragraph 153)
62. We urge the Government's business managers to ensure that MoD has an opportunity in the legislative timetable to bring forward any changes required to military discipline legislation in a timely manner. (Paragraph 154)

ANNEX

Visit to the Military Corrective Training Centre, Colchester—28 February 2006

Command and unit briefing with Lieutenant Colonel Richard Holroyd, Commandant, Major R G Corcoran, Deputy Commandant, WO1 (RSM) M W Smith, Regimental Sergeant Major, and Captain Mick J Whitehead, Adjutant.

Tours of the Education Centre, C Block, A Company, Gymnasium and Training Wing, and Receptions and Welfare departments.

Visit to Cyprus, Oman and Iraq, 6–10 March 2006

Cyprus

Command briefing at Headquarters, British Forces Cyprus from Mr John Stainton, Administrative Secretariat, and Lieutenant Colonel Mark Wenham R ANGLIAN, Staff Officer 1 Joint 5 (Plans and Policy).

Briefing on military justice from Lieutenant Colonel Nicholas Mercer AGC(ALS), Staff Officer 1 Legal (Army) and Wing Commander S Rawlinson CLA (RAF).

Briefing on the Sovereign Base Areas legal system from Mr John Hudson, Attorney General and Legal Adviser (AGLA).

Informal discussions with Service personnel and civilians subject to Service law.

Briefing on the Cyprus Joint Police Unit.

Oman

Briefing from Her Majesty's Ambassador, Dr Noel Guckian OBE.

Informal discussions with officers and other ranks.

Briefing and informal discussions with members of the RAF police.

Tour of the base.

Command briefing from Wing Commander Tony Toner.

Iraq

Background and introduction briefing from Lieutenant Colonel Nick Clapham, Comd Legal and Squadron Leader Andy Davies, 2I/C JSUB.

Briefing on the military police from Captain Gordon Laing, OC SIB.

Command briefing at HQ MND(SE) from the General Officer Commanding, Major General John Cooper.

Umm Qasr

Briefing from Captain Morgan, Commander of Naval Transitional Team.

HMS Bulwark

Lunch hosted by Commander Andy Aspden.

Tour of HMS Bulwark and informal discussions with members of the ship's company.

Briefing from Captain Clive Johnstone, Commanding Officer HMS Bulwark.

Briefing from Commodore Bruce Williams OBE, Commander Task Force 58.

Informal discussions with members of the crew of the HMS Bulwark.

Basra

Briefing at HQ 7 Armd Bde with Brigadier Patrick Marriot, Comd 7 Armd Bde, followed by informal discussions with officers and other ranks.

Informal discussions with RAF, Joint Helicopter Forces and members of the Territorial Army.

HQ MND(SE)

Informal discussions with the General Officer Commanding, Major General John Cooper, Brigadier Patrick Marriott, Comd 7 Armd Bde, Lieutenant Colonel Nick Clapham, Comd Legal, Captain Jo Howard, Staff Officer 3 Legal, Squadron Leader Andy Davies 2I/C JSUB, and Captain Gordon Laing, OC SIB.

Dinner with British forces personnel.

Visit to 1st Battalion Coldstream Guards, Victoria Barracks, Windsor—13 March 2006

Briefing with Commanding Officer 1st Battalion Coldstream Guards, Lieutenant Colonel George Waters.

Informal discussions with members of the 1st Battalion Coldstream Guards.

Proceedings of the Committee

Tuesday 20 December 2005

Members Present:

Mr Simon Burns	Mr Kevan Jones
Mr David Burrowes	Robert Key
Mr Alan Campbell	Mr Michael Moore
Ben Chapman	Bob Russell
Mr George Howarth	Jim Sheridan
Mr Gerald Howarth	Mr Don Touhig

Declaration of Interests

Members disclosed their interests pursuant to the resolution of the House of 13 July 2005. For details of the declarations see the Annex.

Election of Chairman

Mr George Howarth was called to the Chair.

Future programme

The Committee considered this matter.

[Adjourned till time and date to be decided by Chairman]

ANNEX

Declarations of Interests

BAIRD, Vera (Redcar)

2. Remunerated employment, office, profession etc

Occasional cases as Queen's Counsel remunerated by the Legal Services Commission.

6. Overseas visits

18-26 November 2004, to the Falkland Islands on a parliamentary visit, paid for by the Falkland Islands Government, who also paid the fare from Falkland Islands to Argentina on 26 November for lecture. (Subsistence in Argentina and return fare to UK on 1 December paid by British Council). (*Registered 24 January 2005*)

BURNS, Simon (West Chelmsford)

2. Remunerated employment, office, profession etc

Fees from House Magazine for speeches to their "Westminster Explained" seminars. (*Up to £5,000*)

6. Overseas visits

3-7 January 2005, to Jordan, to meet the King, Government ministers and Members of Parliament to discuss Middle East peace process. Flight and accommodation paid for by the Jordanian Government. (*Registered 8 January 2005*)

24-29 November 2005, to UAE, paid for by the Government of UAE.

BURROWES, David (Enfield, Southgate)

2. Remunerated employment, office, profession etc

Consultant to Shepherd Harris and Co, Enfield, as a solicitor-advocate.

4. Sponsorship or financial or material support

Donation to constituency party received from Tory Golfing Society. (*Registered 5 September 2005*)

CAMPBELL, Alan (Tynemouth)

6. Overseas visits

18-26 November 2004, to the Falkland Islands. Travel and accommodation paid for by the Government of the Falkland Islands. (*Registered 22 March 2005*)

CHAPMAN, Ben (Wirral South)

6. Overseas visits

16-19 November 2004, to the Turkish Republic of Northern Cyprus. Air fares and a substantial part of the internal costs were met by the Government of the Turkish Republic of Northern Cyprus. (*Registered 22 November 2004*)

1-4 June 2005, to China, to participate in British Airways' inaugural flight to Shanghai on 1 June. Flights and two nights' accommodation provided by British Airways. (*Registered 9 June 2005*)

HOWARTH, George (Knowsley North and Sefton East)

2. Remunerated employment, office, profession etc

Parliamentary adviser to the William Hill Organisation. (*£25,001-£30,000*)

HOWARTH, Gerald (Aldershot)

2. Remunerated employment, office, profession etc

Parliamentary adviser to the Consumer Credit Association of the United Kingdom, which is the trade association representing the majority of businesses in the home credit industry. (*£5,001-£10,000*)

Consultant to Aircraft Zone Limited; executive jet charter brokers.

4. Sponsorship or financial or material support

Contribution towards the provision of research facilities for the Conservative frontbench defence team from Sir John Beckwith CBE. *(Registered 9 November 2004)*

Donation to my constituency party from Mr Malcolm Young of the Wilke Group, property developers. *(Registered 11 October 2005)*

5. Gifts, benefits and hospitality (UK)

28 June 2005, my wife and I were invited on board a tall ship to celebrate the bicentenary of the Battle of Trafalgar and attend the fleet review by HM The Queen, by Mr Timothy Beardson. *(Registered 11 October 2005)*

6. Overseas visits

18 January 2005, to Toulouse to attend the launch of the Airbus A380. Flights and transport provided by Airbus UK. *(Registered 28 January 2005)*

JONES, Kevan (Durham North)**6. Overseas visits**

24-28 July 2005, to Washington DC, to meet congressional and business interests and British diplomats, to discuss UK/US defence trade, especially current technology transfer issues and UK/US defence policy. My flights and accommodation were paid for by the UK Defence Forum. *(Registered 19 August 2005)*

22-24 August 2005, to Norway, on defence issues. Flights to Norway and accommodation paid for by Scandef. UK flights paid for by Northern Defence Industries. *(Registered 6 October 2005)*

8-11 September 2005, to Gibraltar for National Day. Flights and accommodation paid for by the Government of Gibraltar. *(Registered 6 October 2005)*

24-29 November 2005, to UAE, paid for by the Government of UAE.

KEY, Robert (Salisbury)**2. Remunerated employment, office, profession etc**

Consultant to Certis Europe. *(£5,001-£10,000)*.

6. Overseas visits

13-15 February 2005, to Finland, to visit Olkiluoto power station and the Parliament in Helsinki, sponsored by the Nuclear Industry Association. *(Registered 17 February 2005)*

McCARTHY-FRY, Sarah (Portsmouth North)**4. Sponsorship or financial or material support**

Provision of website maintenance and update services by Southern Co-operatives Limited, Fareham.

6. Overseas visits

8-9 October 2005, to Frascati, Italy, to attend launch event for Cryosat, UK science led climate change satellite. Accommodation paid for by European Space Agency; travel paid for by EADS Astrium Ltd. *(Registered 26 October 2005)*

MOORE, Michael (Berwickshire, Roxburgh and Selkirk)

4. Sponsorship or financial or material support

Donation to my constituency party from Trustees of the Jedforest Liberal Club (exempt Trust created 1985 by Tom Burnham).

RUSSELL, Bob (Colchester)

9. Registrable shareholdings

Magdalen Hall Company Limited; company formed to facilitate the purchase of (a) the former St. Mary Magdalen Church Hall, Colchester, by Colchester Liberal Democrats

SHERIDAN, Jim (Paisley and Renfrewshire North)

6. Overseas visits

17-22 February 2005, to Saudi Arabia for cultural exchange, paid for by Government of Saudi Arabia. *(Registered 20 May 2005)*

3-10 August 2005, to Nigeria to examine poverty and the impact of the oil companies on the local environment. The costs of the trip, including flights and accommodation, were met by Shell International Limited. *(Registered 23 August 2005)*

TOUHIG, Don (Islwyn)

Nil.

Thursday 12 January 2006

Members Present:

Mr George Howarth in the Chair

Vera Baird

Mr Simon Burns

Mr Alan Campbell

Mr Gerald Howarth

Mr Kevan Jones

Robert Key

Sarah McCarthy-Fry

Mr Michael Moore

Bob Russell

Jim Sheridan

Mr Don Touhig

Administrative Matters

Ordered, That the public be admitted during the examination of witnesses unless the Committee otherwise orders.

Resolved, That the Committee is content to publish the uncorrected transcripts of oral evidence on the internet.

Forward Programme

The Committee considered this matter.

Resolved, That the Committee take evidence from Ministry of Defence officials.

Visits

Resolved, That the Committee visit Cyprus, Oman and Iraq on 6–10 March 2006, and that the Chairman seek the approval of the Liaison Committee.

Resolved, That the Committee visit the Military Corrective Training Centre, Colchester on Tuesday 28 February 2006, in connection with its inquiry into the Armed Forces Bill.

Formal Consideration of the Bill

The Committee considered this matter.

[Adjourned till Thursday 19 January at 9.30am]

Thursday 19 January 2006

Members Present:

Mr George Howarth in the Chair

Mr Simon Burns

Mr David Burrowes

Mr Alan Campbell

Mr Gerald Howarth

Mr Kevan Jones

Robert Key

Sarah McCarthy-Fry

Mr Michael Moore

Mr Don Touhig

Future Programme

The Committee considered this matter.

Oral Evidence

Mr Julian Miller, Director General of Service Personnel Policy, Mrs Teresa Jones, Head of the Armed Forces Bill Team, Mr Humphrey Morrison, Director of Legislation, Commodore Robert Fraser, Director of Naval Legal Services, Brigadier Stephen Andrews, Director of Personal Services (Army), and Air Commodore Paul Hughesdon, Director of Personnel Policy (RAF), Ministry of Defence gave oral evidence.

[Adjourned till Thursday 26 January at 9.30am]

Thursday 26 January 2006

Members Present:

Mr George Howarth in the Chair

Vera Baird	Mr Kevan Jones
Mr Simon Burns	Robert Key
Mr David Burrowes	Sarah McCarthy-Fry
Mr Alan Campbell	Bob Russell
Ben Chapman	Jim Sheridan
Mr Gerald Howarth	

Future Programme

The Committee considered this matter.

Oral Evidence

Judge Jeff Blackett, Judge Advocate General; Air Vice-Marshal Rick Charles, Royal Air Force Prosecuting Authority, Captain Bernard Davis, Naval Prosecuting Authority, Major General David Howell, Army Prosecuting Authority, Mr Julian Miller, Director General of Service Personnel Policy and Mr Humphrey Morrison, Director of Legislation, Ministry of Defence gave oral evidence.

[Adjourned till Wednesday 1 February at 9.30am]

Wednesday 1 February 2006

Members Present:

Mr George Howarth in the Chair

Vera Baird	Mr Gerald Howarth
Mr Colin Breed	Mr Kevan Jones
Mr Simon Burns	Robert Key
Mr David Burrowes	Bob Russell
Ben Chapman	Mr Don Touhig

Declaration of Interests

Mr Breed disclosed his interests pursuant to the resolution of the House of 13 July 1992. For details of the declarations see the Annex.

Future Programme

The Committee considered this matter.

Oral Evidence

Mr Gilbert Blades, Mr Justin Hugheston-Roberts, Mr James Mason and Mr Geoffrey Salvetti, Association of Military Court Advocates; Commodore Paul Branscombe and Mrs Kate Burgess, SSAFA Forces Help, Mrs Morag Antrobus and Mrs Denise Murphy (WRVS), and Padre Roland Olliff, Senior Chaplain, Army Training Regiment, Pirbright gave oral evidence.

[Adjourned till Thursday 9 February at 9.30am]

ANNEX**BREED, Colin (Cornwall South East)****2. Remunerated employment, office, profession etc**

Lay Associate Member of General Medical Council. Received expenses relating to meetings and work undertaken in that role. (*Up to £5,000*)

Thursday 9 February 2006

Members Present:

Mr George Howarth in the Chair

Vera Baird	Mr Kevan Jones
Mr Simon Burns	Sarah McCarthy-Fry
Mr David Burrowes	Bob Russell
Mr Alan Campbell	Jim Sheridan
Mr Gerald Howarth	Mr Don Touhig

Future Programme

The Committee considered this matter.

Resolved, That the Committee take evidence from General Sir Michael Walker, Chief of the Defence Staff, and Ministry of Defence officials on Thursday 16 February.

Resolved, That the Committee take evidence from the Service police on Wednesday 1 March.

Oral Evidence

Admiral Lord Boyce GCB OBE; Admiral Sir Jonathon Band KCB, Chief of the Naval Staff and First Sea Lord, General Sir Mike Jackson GCB CBE, Chief of the General Staff and Air Chief Marshal Sir Jock Stirrup GCB, Chief of the Air Staff gave oral evidence.

[Adjourned till Thursday 16 February at 9.30am]

Thursday 16 February 2006

Members Present:

Vera Baird	Mr Kevan Jones
Mr Colin Breed	Robert Key
Mr Simon Burns	Sarah McCarthy-Fry
Mr David Burrowes	Bob Russell
Mr Alan Campbell	Jim Sheridan
Mr Gerald Howarth	Mr Don Touhig

In the absence of the Chairman, Robert Key was called to the Chair.

Future Programme

The Committee considered this matter.

Resolved, That the Committee take evidence from Deepcut & Beyond on Thursday 2 March.

Oral Evidence

General Sir Michael Walker, Chief of the Defence Staff; Mr Julian Miller, Director General of Service Personnel Policy, Mrs Teresa Jones, Head of the Armed Forces Bill Team, Mr Humphrey Morrison, Director of Legislation, Commodore Robert Fraser, Director of Naval Legal Services, Brigadier Stephen Andrews, Director of Personal Services (Army) and Air Commodore Paul Hughesdon, Director of Personnel Policy (RAF), Ministry of Defence gave oral evidence.

[Adjourned till Wednesday 1 March at 9.30am]

Tuesday 28 February

Visit to the Military Corrective Training Centre

Mr Colin Breed, Mr David Burrowes, Mr Kevan Jones and Bob Russell visited the Military Corrective Training Centre in Colchester in connection with its inquiry into the Armed Forces Bill, in accordance with the decision of the Committee on 12 January.

Wednesday 1 March 2006

Members Present:

Mr George Howarth in the Chair

Vera Baird	Mr Kevan Jones
Mr Colin Breed	Robert Key
Mr Simon Burns	Sarah McCarthy-Fry
Mr David Burrowes	Bob Russell
Mr Alan Campbell	Jim Sheridan
Mr Gerald Howarth	

Future Programme

The Committee considered this matter.

Resolved, That the Committee visit the 1st Battalion Coldstream Guards at Victoria Barracks, Windsor in connection with its inquiry into the Armed Forces Bill on Monday 13 March.

Oral Evidence

Mr Robert Rooks, Director General of Security and Safety, Ministry of Defence, Brigadier Colin Findlay, Provost Marshal (Army), Group Captain Edward Scaplehorn, Provost Marshal (RAF) and Commander David Price, Provost Marshal (Navy) gave oral evidence.

[Adjourned till Thursday 2 March at 9.30am]

Thursday 2 March 2006

Members Present:

Mr George Howarth in the Chair

Vera Baird	Mr Kevan Jones
Mr Colin Breed	Robert Key
Mr Simon Burns	Sarah McCarthy-Fry
Mr David Burrowes	Bob Russell
Mr Alan Campbell	Mr Don Touhig
Mr Gerald Howarth	

Future Programme

The Committee considered this matter.

Resolved, That the Committee take evidence from Ministry of Defence officials on Wednesday 15 March.

Oral Evidence

Mrs Lynn Farr, Mr Geoff Gray and Mrs Norma Langford, Deepcut & Beyond and Professor Brice Dickson, Professor of International and Comparative Law, Queen's University, Belfast gave oral evidence.

[Adjourned till Wednesday 15 March at 9.30am]

Monday 6 March–Friday 10 March

Visit to Cyprus, Oman and Iraq

Mr Colin Breed, Mr Simon Burns, Mr David Burrowes, Mr George Howarth, Mr Gerald Howarth, Mr Kevan Jones, Sarah McCarthy-Fry, Bob Russell and Jim Sheridan visited Cyprus, Oman and Iraq in connection with its inquiry into the Armed Forces Bill, in accordance with the decision of the Committee on 12 January.

Monday 13 March

Visit to 1st Battalion Coldstream Guards, Victoria Barracks, Windsor

Mr Colin Breed, Mr David Burrowes, Mr Kevan Jones and Sarah McCarthy-Fry visited the 1st Battalion Coldstream Guards at Victoria Barracks, Windsor in connection with its inquiry into the Armed Forces Bill, in accordance with the decision of the Committee on 1 March .

Wednesday 15 March 2006

Members Present:

Mr George Howarth in the Chair

Vera Baird

Mr Colin Breed

Mr David Burrowes

Mr Alan Campbell

Mr Kevan Jones

Robert Key

Sarah McCarthy-Fry

Bob Russell

Jim Sheridan

Mr Don Touhig

Oral Evidence

Mr Julian Miller, Director General of Service Personnel Policy, Mrs Teresa Jones, Head of the Armed Forces Bill Team, Mr Humphrey Morrison, Director of Legislation, Commodore Robert Fraser, Director of Naval Legal Services, Brigadier Stephen Andrews, Director of Personal Services (Army) and Air Commodore Paul Hughesdon, Director of Personnel Policy (RAF), Ministry of Defence gave oral evidence.

[Adjourned till Thursday 16 March at 9.30am]

Thursday 16 March 2006

Members Present:

Mr George Howarth in the Chair

Vera Baird	Mr Kevan Jones
Mr Colin Breed	Robert Key
Mr Simon Burns	Sarah McCarthy-Fry
Mr David Burrowes	Bob Russell
Mr Alan Campbell	Jim Sheridan
Mr Gerald Howarth	Mr Don Touhig

Formal consideration of the Bill and Heads of Report

The Committee considered this matter.

[Adjourned till Monday 20 March at 2.00pm]

Monday 20 March 2006

Members present:

Mr George Howarth, in the Chair

Vera Baird	Mr Gerald Howarth
Mr Colin Breed	Mr Kevan Jones
Mr Simon Burns	Robert Key
Mr David Burrowes	Sarah McCarthy-Fry
Mr Alan Campbell	Jim Sheridan
Ben Chapman	Mr Don Touhig

The Committee deliberated.

Resolved, That the Armed Forces Bill be now considered.

Ordered, That—

- (1) the proceedings shall be taken in the order shown below

Clauses 1 to 53; Schedule 1; Clauses 54 to 113; Schedule 2; Clauses 114 to 163; Schedule 3; Clauses 164 to 168; Schedule 4; Clauses 169 to 180; Schedule 5; Clause 181, Schedule 6; Clauses 182 to 205; Schedule 7; Clauses 206 to 271; Schedule 8; Clauses 272 to 275, Schedule 9; Clauses 276 and 277; Schedule 10; Clauses 278 to 345; Schedule 11; Clauses 346 to 351; Schedule 12; Clauses 352 to 360; Schedule 13, Clauses 361 to 368, Schedules 14 and 15; Clauses 369 to 375; Remaining proceedings on the Bill.—(*Mr Don Touhig*.)

Clause 1.

Amendment (16) proposed. —(*Mr Gerald Howarth*.)

Question proposed, That the Amendment be made:—Amendment, by leave, withdrawn.

Another Amendment (17) proposed. —(*Mr Gerald Howarth*.)

Question proposed, That the Amendment be made:—Amendment, by leave, withdrawn.

Clause agreed to.

Clauses 2 and 3 agreed to.

Clause 4.

Amendment (26) proposed. —(*Mr Gerald Howarth*.)

Question proposed, That the Amendment be made: —Amendment, by leave, withdrawn.

Clause agreed to.

Clauses 5 to 15 agreed.

Clause 16.

Amendment (27) proposed. —(*Mr Gerald Howarth*.)

Question proposed, That the Amendment be made: —Amendment, by leave, withdrawn.

Clause agreed to.

Clause 17.

Amendment (3) proposed. —(*Mr Gerald Howarth*.)

Question proposed, That the Amendment be made: —Amendment, by leave, withdrawn.

Clause agreed to.

Clause 18

Amendment (5) proposed. —(*Mr Gerald Howarth.*)

Question proposed, That the Amendment be made: —Amendment, by leave, withdrawn.

Clause agreed to.

Clauses 19 to 23 agreed to.

Clause 24.

Amendment (9) proposed. —(*Mr Gerald Howarth.*)

Question proposed, That the Amendment be made: —Amendment, by leave, withdrawn.

Clause agreed to.

Clauses 25 to 34 agreed to.

Clause 35.

Amendment (29) proposed —(*Mr Gerald Howarth.*)

Question proposed, That the Amendment be made: —Amendment, by leave, withdrawn.

Clause agreed to.

Clauses 36 to 50 agreed to.

Clause 51.

Amendments (31 and 32) made.

Clause, as amended, agreed to.

Clauses 52 and 53 agreed to.

Schedule 1 agreed to.

Clauses 54 to 66 agreed to.

Ordered, That further consideration of the Bill be now adjourned.—(*Mr Alan Campbell.*)

[Adjourned till Wednesday 22 March at 9.30am

Wednesday 22 March 2006

Members present:

Mr George Howarth, in the Chair

Vera Baird

Mr Simon Burns

Mr David Burrowes

Mr Alan Campbell

Ben Chapman

Mr Kevan Jones

Robert Key

Sarah McCarthy-Fry

Bob Russell

Jim Sheridan

Mr Don Touhig

The Committee deliberated.

Resolved, That the Armed Forces Bill be now considered.

Ordered, That—

The Order of the Committee [20th March 2006] be amended in line 2, leave out ‘113, Schedule 2, Clauses 114’ and insert ‘112, Clauses 117 to 127, Clause 113, Schedule 2, Clauses 114 to 116, Clauses 128’. —(*Mr Don Touhig.*)

Clauses 67 to 76 agreed to.

Clause 77.

Amendment (154) proposed. —(*Mr David Burrowes.*)

Question proposed, That the Amendment be made: —Amendment, by leave, withdrawn.

Clause agreed to.

Clauses 78 to 85 agreed to.

Clause 86.

Amendment (33) made.

Clause, as amended, agreed to.

Clauses 87 to 112 agreed to.

Clauses 117 to 126 agreed to.

Ordered, That further consideration of the Bill be now adjourned.—(*Mr Alan Campbell.*)

[Adjourned till Tuesday 28 March at 9.30am

Tuesday 28 March 2006

[Morning sitting]

Members present:

Mr George Howarth, in the Chair

Mr Simon Burns	Robert Key
Mr David Burrowes	Sarah McCarthy-Fry
Mr Alan Campbell	Bob Russell
Ben Chapman	Jim Sheridan
Mr Gerald Howarth	Mr Don Touhig

The Committee deliberated.

Resolved, That the Armed Forces Bill be now considered.

Clause 127 agreed to.

Clause 113 agreed to.

Schedule 2 agreed to.

Clauses 114 and 115 agreed to.

Clause 116.

Amendment (30) proposed. —(*Mr Gerald Howarth.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 5	Noes, 5
Mr Simon Burns	Mr Alan Campbell
Mr David Burrowes	Ben Chapman
Mr Gerald Howarth	Sarah McCarthy-Fry
Robert Key	Jim Sheridan
Bob Russell	Mr Don Touhig

Whereupon the Chairman declared himself with the Noes.

Clause agreed to.

Ordered, That further consideration of the Bill be now adjourned.—(*Mr Alan Campbell.*)

[Adjourned till 5pm]

Tuesday 28 March 2006

[Afternoon sitting]

Members present:

Mr George Howarth, in the Chair

Vera Baird

Mr Simon Burns

Mr David Burrowes

Mr Alan Campbell

Ben Chapman

Mr Gerald Howarth

Sarah McCarthy-Fry

Bob Russell

Jim Sheridan

Mr Don Touhig

Clauses 128 to 141 agreed to.

Clause 142.

Amendments (34 and 35) made.

Clause, as amended, agreed to.

Clauses 143 to 154 agreed to.

Clause 155.

Amendments (36 and 37) made.

Clause, as amended, agreed to.

Clauses 156 to 158 agreed to.

Clause 159.

Amendment (157) proposed. —(*Ben Chapman.*)

Question proposed, That the Amendment be made: —Amendment, by leave, withdrawn.

Clause agreed to.

Clauses 160 and 161 agreed to.

Clause 162.

Amendments (38 and 39) made.

Clause, as amended, agreed to.

Clause 163 agreed to.

Schedule 3.

Amendments (54 and 55) made.

Schedule, as amended, agreed to.

Clause 164.

Amendment (40) made.

Clause, as amended, agreed to.

Clauses 165 to 168 agreed to.

Schedule 4 agreed to.

Clauses 169 to 180 agreed to.

Schedule 5 agreed to.

Clause 181 agreed to.

Schedule 6 agreed to.

Clauses 182 to 205 agreed to.

Schedule 7 agreed to.

Clauses 206 to 270 agreed to.

Clause 271.

Amendment (158) proposed. —(*Mr Gerald Howarth.*)

Question proposed, That the Amendment be made: —Amendment, by leave, withdrawn.

Clause agreed to.

Schedule 8.

Amendments (56 to 61) made.

Schedule, as amended, agreed to.

Clauses 272 to 274 agreed to.

Clause 275.

Amendments (41 and 42) made.

Clause, as amended, agreed to.

Schedule 9 agreed to.

Ordered, That further consideration of the Bill be now adjourned.—(*Mr Alan Campbell.*)

[Adjourned till Wednesday 29 March at 9.30am

Wednesday 29 March 2006

Members present:

Mr George Howarth, in the Chair

Vera Baird

Mr Simon Burns

Mr David Burrowes

Mr Alan Campbell

Mr Kevan Jones

Robert Key

Sarah McCarthy-Fry

Bob Russell

Jim Sheridan

Mr Don Touhig

The Committee deliberated.

Resolved, That the Armed Forces Bill be now considered.

Clauses 276 and 277 agreed to.

Schedule 10 agreed to.

Clauses 278 to 325 agreed to.

Clause 326.

Amendments (43 and 44) made.

Clause, as amended, agreed to.

Clauses 327 to 331 agreed to.

Clause 332.

Amendment (160) proposed. —(*Vera Baird*.)

Question proposed, That the Amendment be made: —Amendment, by leave, withdrawn.

Clause agreed to.

Clauses 333 and 334 agreed to.

Ordered, That further consideration of the Bill be now adjourned.—(*Mr Alan Campbell*.)

[Adjourned till Thursday 30 March at 9.30am

Thursday 30 March 2006

Members present:

Mr George Howarth, in the Chair

Vera Baird	Mr Gerald Howarth
Mr Colin Breed	Mr Kevan Jones
Mr Simon Burns	Robert Key
Mr David Burrowes	Sarah McCarthy-Fry
Mr Alan Campbell	Jim Sheridan
Ben Chapman	Mr Don Touhig

The Committee deliberated.

Resolved, That the Armed Forces Bill be now considered.

Clause 335.

Amendments (45 and 46 made) made.

Another Amendment (172) proposed. —(*Mr David Burrowes.*)

Question proposed, That the Amendment be made: —Amendment, by leave, withdrawn.

Other Amendments (47 to 49) made.

Clause, as amended, agreed to.

Clause 336 agreed to.

Clause 337

Amendment (162) proposed. —(*Vera Baird.*)

Question proposed, That the Amendment be made: —Amendment, by leave, withdrawn.

Clause agreed to.

Clauses 338 to 345 agreed to.

Schedule 11 agreed to.

Clauses 346 to 351 agreed to.

Schedule 12.

Amendments (62 to 73) made.

Schedule, as amended, agreed to.

Clauses 352 to 354 agreed to.

Clause 355.

Amendment (175) proposed. —(*Mr Gerald Howarth.*)

Question proposed, That the Amendment be made: —Amendment, by leave, withdrawn.

Clause agreed to.

Clauses 356 to 360 agreed to.

Schedule 13 agreed to.

Clauses 361 and 362 agreed to.

Clause 363.

Amendment (166) made.

Clause, as amended, agreed to.

Clause 364.

Amendment (163) made.

Clause, as amended, agreed to.

Clause 365.

Amendment (50) made.

Clause, as amended, agreed to.

Clauses 366 and 367 agreed to.

Clause 368.

Amendments (51 and 52) made.

Clause, as amended, agreed to.

Schedule 14.

Amendments (74 to 107) made.

Schedule, as amended, agreed to.

Schedule 15.

Amendments (108 to 151) made.

Schedule, as amended, agreed to.

Clause 369 agreed to.

Clause 370.

Amendments (164, 165 and 167) made.

Clause, as amended, agreed to.

Clause 371.

Amendments (168 to 170) made.

Clause, as amended, agreed to.

Clause 372.

Amendment (171) made.

Clause, as amended, agreed to.

Clause 373 agreed to.

Clause 374.

Amendment (53) made.

Clause, as amended, agreed to.

Clause 375 agreed to.

A Clause (NC12)—(*Mr Don Touhig*)—brought up, read the first time and second time, and added.

A Clause (NC 13)—(*Mr Don Touhig*)—brought up, read the first time and second time, and added.

A Clause (NC 14)—(*Mr Don Touhig*)—brought up, read the first time and second time, and added.

A Clause (NC 3)—(*Mr Gerald Howarth*)—brought up, and read the first time.

Question proposed, That the Clause be read a second time: —Clause, by leave withdrawn.

A Clause (NC 9)—(*Mr David Burrowes*)—brought up, and read the first time.

Question proposed, That the Clause be read a second time: —Clause, by leave withdrawn.

A Clause (NC 15)—(*Mr David Burrowes*)—brought up, and read the first time.

Question proposed, That the Clause be read a second time: —Clause, by leave withdrawn.

A Clause (NC 23)—(*Mr Kevan Jones*)—brought up, and read the first time.

Question proposed, That the Clause be read a second time: —Clause, by leave withdrawn.

A Clause (NC 30)—(*Mr Gerald Howarth*)—brought up, and read the first time.

Question proposed, That the Clause be read a second time: —Clause, by leave withdrawn.

A Clause (NC 36)—(*Mr Gerald Howarth*)—brought up, and read the first time.

Question proposed, That the Clause be read a second time: —Clause, by leave withdrawn.

Schedule (NS 1)—(*Mr Don Touhig*)—brought up, read the first and second time, and added.

Schedule (NS 2)—(*Mr Don Touhig*)—brought up, read the first and second time, and added.

[Adjourned till Wednesday 19 April at 9.30am]

Wednesday 19 April 2006

Members Present:

Vera Baird	Sarah McCarthy-Fry
Mr Alan Campbell	Bob Russell
Mr Gerald Howarth	Jim Sheridan
Mr Kevan Jones	Mr Don Touhig
Robert Key	

In the absence of the Chairman, Robert Key was called to the chair.

Armed Forces Bill

The Committee considered this matter.

[Adjourned till Tuesday 25 April at 9.30am]

Tuesday 25 April 2006

Members present:

Mr George Howarth, in the Chair

Vera Baird	Mr Kevan Jones
Mr Colin Breed	Robert Key
Mr Simon Burns	Sarah McCarthy-Fry
Mr David Burrowes	Bob Russell
Mr Alan Campbell	Mr Don Touhig
Mr Gerald Howarth	

Armed Forces Bill

The Committee considered this matter.

Draft Special Report (Armed Forces Bill), proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Special Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 31 read and agreed to.

Paragraph 32 read as follows:

Mr Morrison, MoD's Director of Legislation, told us that none of the proposals in the Bill had been introduced to ensure compliance with Human Rights legislation and that the proposals in the Bill were compliant with European Convention on Human Rights, but he was clear that he expected further challenges to the system. He explained that the changes to the military justice system made following challenges in the European Court of Human Rights, for example those leading to the introduction of an independent prosecuting authority, had strengthened the system for Service personnel accused of an offence. **We have received no evidence to suggest that the recent changes to the military justice system made as a result of judgements in the European Court of Human Rights have been detrimental to Service personnel.**

Amendment proposed, at the end, insert "**However, we did not consider this issue in detail and take the view that a bill dealing with the disciplinary arrangements of Her Majesty's Armed Forces which is deemed consistent with ECHR requirements should not be subject to threats of further challenge. Annual renewal will enable Parliament to fulfil its duty towards our Service men and women by providing them with the necessary protection.**".—(*Mr Gerald Howarth.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 3

Mr Simon Burns
Mr David Burrowes
Mr Gerald Howarth

Noes, 6

Vera Baird
Mr Alan Campbell
Mr Kevan Jones
Sarah McCarthy-Fry
Bob Russell
Mr Don Touhig

Paragraph agreed to.

Paragraph 33 read as follows:

Human Rights legislation and challenges to the military legal system in the European Court of Human Rights do not place Service personnel at greater risk: they provide additional protection by strengthening the military justice system.

Motion made and Question put, That the paragraph be disagreed to.—(*Mr Gerald Howarth.*)

The Committee divided.

Ayes, 3

Mr Simon Burns
Mr David Burrowes
Mr Gerald Howarth

Noes, 6

Vera Baird
Mr Alan Campbell
Mr Kevan Jones
Sarah McCarthy-Fry
Bob Russell
Mr Don Touhig

Paragraphs 34 to 140 read and agreed to.

Paragraph 141 read as follows:

MoD argued that the presence of next of kin could lead to witnesses being less frank in their evidence, and therefore hampering the Board's work. **We note that inquests and civilian courts are able to conduct their affairs satisfactorily with next of kin present. We do not believe the next of kin should be excluded on the basis that their presence will inhibit witnesses from providing the fullest evidence.**

Amendment proposed, in line 4, leave out from beginning to the end of line 5 and insert "**However, we accept the MoD's arguments that the presence of next of kin may well inhibit witnesses and undermine the purpose of the inquiry.**".—(*Mr Gerald Howarth.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 3

Mr Simon Burns
Mr David Burrowes
Mr Gerald Howarth

Noes, 5

Vera Baird
Mr Alan Campbell
Mr Kevan Jones
Sarah McCarthy-Fry
Bob Russell

Paragraph agreed to.

Paragraphs 142 to 146 read and agreed to.

Paragraph 147 read as follows:

We recommend that guidance for Service inquiries advises that next of kin not be excluded as a matter of routine. We are not persuaded by the argument that the presence of next of kin would impede the inquiry's ability to conduct its affairs, so long as those attending are fully aware of the purpose, limitations and powers of the inquiry.

Motion made and Question put, That the paragraph be disagreed to.—(*Mr Gerald Howarth.*)

The Committee divided.

Ayes, 3

Mr Simon Burns
Mr David Burrowes
Mr Gerald Howarth

Noes, 5

Vera Baird
Mr Alan Campbell
Mr Kevan Jones
Sarah McCarthy-Fry
Bob Russell

Paragraphs 148 to 154 agreed to.

Annex [Visits] agreed to.

Resolved, That the Report be the Special Report of the Committee to the House.

Several papers were ordered to be appended to the Minutes of Evidence.

Ordered, That the Appendices to the Minutes of Evidence taken before the Committee be reported to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No.134.

Ordered, That the Chairman do make the report to the House.

Ordered, That the Armed Forces Bill, as amended, be reported to the House.

List of witnesses

Thursday 19 January 2006

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Mr Julian Miller, Director General of Service Personnel Policy, **Mrs Teresa Jones**, Head of the Armed Forces Bill Team, **Mr Humphrey Morrison**, Director of Legislation, **Commodore Robert Fraser**, Director of Naval Legal Services, **Brigadier Stephen Andrews**, Director of Personal Services (Army) and **Air Commodore Paul Hughesdon**, Director of Personnel Policy (RAF), Ministry of Defence

Ev 1

Thursday 26 January 2006

Judge Jeff Blackett, Judge Advocate General

Ev 18

Air Vice-Marshal Rick Charles, Royal Air Force Prosecuting Authority, **Captain Bernard Davis**, Naval Prosecuting Authority, **Major General David Howell**, Army Prosecuting Authority, **Mr Julian Miller**, Director General of Service Personnel Policy and **Mr Humphrey Morrison**, Director of Legislation, Ministry of Defence

Ev 27

Wednesday 1 February 2006

Mr Gilbert Blades, Solicitor-Advocate, **Mr Justin Hugheston-Roberts**, Solicitor-Advocate, **Mr James Mason**, Barrister and **Mr Geoffrey Salvetti**, Solicitor, Association of Military Court Advocates

Ev 35

Commodore Paul Branscombe and **Mrs Kate Burgess**, Soldiers, Sailors, Airmen and Families Association (SSAFA) Forces Help, **Mrs Morag Antrobus** and **Mrs Denise Murphy**, Women's Royal Voluntary Service (WRVS) and **Padre Roland Olliff**, Senior Chaplain, Army Training Regiment, Pirbright

Ev 45

Thursday 9 February 2006

Admiral the Lord Boyce GCB OBE, former Chief of Defence Staff, member of the House of Lords

Ev 52

Admiral Sir Jonathon Band KCB, Chief of the Naval Staff and First Sea Lord, **Air Chief Marshal, Sir Jock Stirrup GCB**, Chief of the Air Staff and **General Sir Mike Jackson GCB CBE**, Chief of the General Staff

Ev 58

Thursday 16 February 2006

General Sir Michael Walker GCB CMG CBE, Chief of the Defence Staff

Ev 67

Mr Julian Miller, Director General of Service Personnel Policy, **Mrs Teresa Jones**, Head of the Armed Forces Bill Team, **Mr Humphrey Morrison**, Director of Legislation, **Commodore Robert Fraser**, Director of Naval Legal Services, **Brigadier Stephen Andrews**, Director of Personal Services (Army) and **Air Commodore Paul Hughesdon**, Director of Personnel Policy (RAF), Ministry of Defence

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Mr Robert Rooks, Director General of Security and Safety, Ministry of Defence, **Brigadier Colin Findlay**, Provost Marshal (Army), **Group Captain Edward Scaplehorn**, Provost Marshal (RAF) and **Commander David Price**, Provost Marshal (Navy)

Ev 86

Thursday 2 March 2006

Mrs Lynn Farr, **Mr Geoff Gray**, and **Mrs Norma Langford**, Deepcut & Beyond and **Professor Brice Dickson**, Professor of International and Comparative Law, Queen's University, Belfast

Ev 103

Wednesday 15 March 2006

Mr Julian Miller, Director General of Service Personnel Policy, **Mrs Teresa Jones**, Head of the Armed Forces Bill Team, **Mr Humphrey Morrison**, Director of Legislation, **Commodore Robert Fraser**, Director of Naval Legal Services, **Brigadier Stephen Andrews**, Director of Personal Services (Army) and **Air Commodore Paul Hughesdon**, Director of Personnel Policy (RAF), Ministry of Defence

Ev 113

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5	His Honour Judge Jeff Blackett, Judge Advocate General	Ev 145
6	His Honour Judge Jeff Blackett, Judge Advocate General	Ev 149
7	Gilbert Blades	Ev 150
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