



House of Commons
Defence Committee

Armed Forces Bill

First Report of Session 2005–06

Report, together with formal minutes

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The Defence Committee

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Committee staff

The current staff of the Committee are Philippa Helme (Clerk), Richard Cooke (Second Clerk), Ian Rogers (Audit Adviser), Adrian Jenner (Inquiry Manager), Lis McCracken (Committee Assistant), Sheryl Dinsdale (Secretary) and Stewart McIlvenna (Senior Office Clerk).

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Summary

The Armed Forces Bill was introduced in the House of Commons on 30 November 2005. The Bill consolidates the Service Discipline Acts into a single piece of legislation that will be subject to five-yearly renewal. This report draws attention to two issues of concern.

First, the Government's promised independent element in the complaints system is inadequate. The Bill does not include sufficient detail for an extensive analysis of the proposals, but the changes appear not to go far enough. Our predecessor Committee set out a model for an independent military complaints commission—we urge Government to bring forward new proposals which will satisfy the principal requirements of that model.

Second, the Government proposes to remove the requirement for Parliament to approve the annual renewal of the Service Discipline Acts. We reject that proposal, which would diminish Parliament's right to exercise control over the Armed Forces, which is central to our constitution, and call on the Government to amend the Bill.

1 Introduction

1. The Armed Forces Bill, introduced in the House of Commons on 30 November 2005, replaces and consolidates the three existing Service Discipline Acts (SDA). The SDA provide statutory authority for the UK's system of military law and require renewal by primary legislation every five years.¹ This Armed Forces Bill differs from its predecessors in that it harmonises and consolidates the system of military law into a unified and cohesive Tri-Service system, which was recommended by the 1998 Strategic Defence Review.²

2. Following Second Reading it is proposed that the Bill will be committed to a specially appointed select committee, which will take evidence on the substance of the Bill, scrutinise the detail of the legislation, and make such amendments as it thinks necessary.³

3. Previous Defence Committees have contributed to parliamentary scrutiny of military law both through their own inquiries and through overlapping membership with the ad hoc Armed Forces Bill select committees. In the last Parliament, our predecessor Committee produced a report on the draft Tri-Service Armed Forces Bill.⁴ At that stage, there was no draft text for the Committee to consider and that inquiry was based on a memorandum provided by the Ministry of Defence (MoD) covering the Government's intentions for certain parts of the Bill. The Committee's report covered a range of issues including the renewal process and the method of scrutinising the Bill.⁵ Our predecessor Committee also considered issues relevant to the Bill during its inquiry into Duty of Care. In particular, the report of that inquiry, published in March 2005, recommended the establishment of an independent military complaints commission.⁶

4. This report is intended to draw the attention of the House to two issues prior to the Second Reading of the Bill: the degree of independence in the complaints process proposed by the Government; and the Government's proposal to remove the requirement for annual renewal of the legislation. Given the limited time available for us to produce this report, we have focussed on these two important issues rather than attempting an extensive critique of the legislation, or following up all of the issues considered by our predecessors. We trust that the House and the Armed Forces Bill select committee will have an opportunity to range more widely over the Bill; and will keep the work of the previous Defence Committee in mind during scrutiny of this legislation.

1 The Armed Forces Bill 2005, Bill 94, replaces the three Service Discipline Acts—Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957. Before 1955 the Army and Air Force Acts were subject to annual renewal by Act of Parliament. Since 1961 the Army and Air Force Acts have been renewed by primary legislation every five years and renewed annually in the intervening years by secondary legislation approved in draft by both Houses of Parliament. The Naval Discipline Act which was originally a permanent act was put on the same basis as the other two in 1971.

2 Ministry of Defence, *The Strategic Defence Review, Supporting Essays*, 1998, p 9–11.

3 Previous quinquennial Armed Forces Bills have been committed to an ad hoc select committee with the power to amend the Bill. See, for example, Special Report from the Select Committee on the Armed Forces Bill, Session 2000–01, HC 154-I.

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

5 *Ibid*, paras 116–124.

6 Defence Committee, Third Report of Session 2004–05, *Duty of Care*, HC 63-I, see paras 411–427.

2 An independent military complaints mechanism

5. In the Armed Forces, complaint and redress procedures are based firmly on the chain of command. Generally, complaints are dealt with at the lowest level possible, and progress, if not resolved, up the chain of command. If a complaint is not resolved at the level of commanding officer it may progress to a Service Board.⁷

6. Evidence to our predecessor Committee during its inquiry into Duty of Care suggested that the existing system was failing some Service personnel. That Committee was told that, particularly in the Army, officers were not considered approachable. That reluctance to discuss issues with officers, including officers specifically tasked with providing ‘pastoral’ care, reduced the likelihood that complaints would be made. The Committee also noted that in some cases Service personnel would wish to make a complaint against their superiors and this further reduced the likelihood of a complaint which would be heard in the first instance by the chain of command.⁸

7. Our predecessors’ inquiry considered duty of care issues, such as bullying and harassment. The Committee made it clear that it did not envisage its recommendations relating to grievance mechanisms applying beyond those types of complaint.⁹ MoD is proposing a package of measures to improve the Services’ response to duty of care issues.¹⁰ Few of those measures appear in the Bill as they do not require primary legislation.

8. In its report on *Duty of Care*, the previous Defence Committee recommended the establishment of an independent complaints commission and set out the general responsibilities and powers of such a commission. The crucial elements of the commission are that:

- it is independent of the Armed Forces and MoD;
- its recommendations would be binding;
- it would have the power to look at past cases; and
- it would have access rights to all documentation and persons.¹¹

9. In response to our predecessors’ report, the Government stated:

[We] Accept that there is a case for introducing an independent element to the complaints system: there are different models for this, in this country and abroad,

7 A complaint will formally pass to the Defence Council, whose functions in this respect will usually be discharged by the Service Boards (the Admiralty Board, the Army Board and Air Force Board).

8 See for example HC (2004–05) 63-I, paras 169–184, 278–284, 288–309 for discussion of the difficulties surrounding Service personnel, particularly trainees, making complaints.

9 HC (2004–05) 63-I, para 425.

10 See the Government’s response to The House of Commons Defence Committee’s Third Report of Session 2004–05, *Duty of Care*, Cm 6620.

11 HC (2004–05) 63-I, paras 423–427.

and their implications need detailed examination. We will carry out this work ahead of the introduction of the Armed Forces Bill planned for later this year.¹²

The Bill as introduced to the House by the Government includes provisions that establish a service complaint panel.¹³ The panel would consider a “service complaint”, which is defined as a complaint made by a current or former member of the Armed Forces, who believes that he has been “wronged in any matter relating to his service”.¹⁴ A service complaint panel’s powers are derived from the Defence Council, which will appoint the panel’s members except in certain cases when the Secretary of State for Defence may appoint an independent member. From the information on the face of the Bill it appears that MoD’s promised “independent element in the complaints system” consists of a single voice on the panel. It appears that complaints could either reach the service complaint panel once the existing process through the chain of command has been exhausted, or if requested by the complainant.¹⁵

10. Many of the details about how the panel would work are to be set out in regulations to be made by the Secretary of State for Defence rather than being on the face of the Bill. For example, regulations will set out:

- the definition of a service complaint; and
- the time limits imposed on making a complaint; and
- the circumstances in which an independent member would be appointed to the panel.

Although MoD provided some detail relating to the service complaints panel, such as suggesting that an independent member would be appointed when the panel considers a complaint relating to bullying and harassment, it remains very difficult to judge at this stage the full effect of the Government’s proposals.¹⁶ But it is clear that the Government has rejected the main principles of our predecessor Committee’s recommendations—the Bill does not provide for a mechanism to deal with complaints that is truly independent of the chain of command.

11. The establishment of the service complaint panel may introduce, in limited circumstances, an independent voice in the consideration of complaints but we do not believe that is sufficient. We urge the Government to table amendments to strengthen the degree of independence in its proposals and to meet the requirements of the previous Defence Committee’s recommendations. If it does not, we urge the Armed Forces Bill select committee to express a clear view on the inadequacy of the Bill as introduced and to amend the Bill accordingly.

12. We recommend that MoD publish the secondary legislation relating to the Armed Forces Bill, in draft if necessary, to inform the select committee’s scrutiny of the Bill.

12 Cm 6620, para 3. See also “MoD Signals Cultural Change in Armed Forces Training” Ministry of Defence Press Release 138/2005, 12 July 2005.

13 Armed Forces Bill, clauses 331 and 332 [Bill 94 (2005–06)]

14 *Ibid*, clause 331

15 *Ibid*, clause 330 (4)

16 See Appendix, letter to the Chairman from the Secretary of State for Defence.

3 Annual renewal

13. Clause 371 of the Bill relates to the duration and renewal of Service Discipline legislation. The clause restates the requirement for quinquennial renewal of the Acts by primary legislation, but does not continue the current practice of annual renewal in the intervening years by Order in Council approved in draft by both Houses of Parliament.

14. The annual renewal of Service Discipline legislation, which the Bill proposes to remove, is part of the constitutional arrangements, which have their roots in the turbulent relationship between Parliament and the Crown in the 17th century.¹⁷ Parliament's control of the Armed Forces is exercised through annual authorisation of Armed Forces' funding, numbers of serving personnel, and disciplinary legislation. The history of these arrangements for parliamentary control is well documented.¹⁸

15. In its report on the Tri-Service Bill, our predecessor Committee concluded that the mechanism of annual renewal should continue.¹⁹ The constitutional basis for that conclusion is well understood. The rationale for removing the requirement for annual renewal is not clear. There is little benefit to the business managers in the House of Commons in removing a delegated legislation standing committee debate once a year, and the annual debates in the House of Lords have, we understand, provided a widely welcomed opportunity for a focussed debate on discipline and military law.²⁰

16. We believe the House should be aware of this significant proposal to end annual renewal of Service Discipline legislation, which will diminish democratic accountability of the Armed Forces. 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.

17. We urge the Government to reverse its proposal to end annual renewal of Service discipline legislation by tabling the necessary amendments at Committee stage.

17 Since 1689 the House of Commons has passed an annual vote setting limits on army numbers. The passing of this vote became an established part of the work of the Committee of Supply. Prior to 1955, that vote, when reported from the Committee of Supply and agreed to by the House, gave rise to an annual Act authorising the system of army discipline and the preamble to such Acts referred to the limits on numbers. The same practices were adopted in respect of the Royal Air Force following its creation. In 1955 the direct relationship between discipline for land forces and parliamentary control over their numbers was severed by new provision for armed forces discipline acts subject to annual renewal by secondary legislation and quinquennial review and renewal through primary legislation.

18 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. Until 1879, the relevant Act for the Army was the annual Mutiny Act and there was also a Marine Mutiny Act relating to the regulation and discipline of the marines while on shore. The Army Discipline and Regulation Act 1879 made permanent provision for army discipline, subject to renewal by an annual Army Act.

19 HC (2004–05) 64, para 121.

20 See Stg Co Deb, Fifth Standing Committee on Delegated Legislation, Naval Discipline Act 1957 (Remedial) Order 2004 and Army, Air Force and Naval Discipline Acts (Continuation) Order 2004, 29 April 2004; Stg Co Deb, Sixth Standing Committee on Delegated Legislation, Draft Army, Air Force and Naval Discipline Acts (Continuation) Order 2003 and Draft Armed Forces (Review of Search and Seizure) Order 2003, 25 June 2003. See HL Deb, 7 July 2005, Col GC77; HC Deb, 12 May 2004, Col 363.

Conclusions and recommendations

1. The establishment of the service complaint panel may introduce, in limited circumstances, an independent voice in the consideration of complaints but we do not believe that is sufficient. We urge the Government to table amendments to strengthen the degree of independence in its proposals and to meet the requirements of the previous Defence Committee's recommendations. If it does not, we urge the Armed Forces Bill select committee to express a clear view on the inadequacy of the Bill as introduced and to amend the Bill accordingly. (Paragraph 11)
2. We recommend that MoD publish the secondary legislation relating to the Armed Forces Bill, in draft if necessary, to inform the select committee's scrutiny of the Bill. (Paragraph 12)
3. We believe the House should be aware of this significant proposal to end annual renewal of Service Discipline legislation, which will diminish democratic accountability of the Armed Forces. 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. (Paragraph 16)
4. We urge the Government to reverse its proposal to end annual renewal of Service discipline legislation by tabling the necessary amendments at Committee stage. (Paragraph 17)

Appendix

Letter to the Chairman from the Secretary of State for Defence

I think we all support the idea that there is some overlap of membership between the Defence Select Committee and the ad hoc select committee that will consider the Bill. But I thought it would be helpful to set out how the Bill reflects our thinking on two matters on which your predecessor committee made specific recommendations in their reports published in March this year, namely the redress of complaints procedure and renewal of Service law.

There are several models for introducing an independent element to the wider complaints system. An independent complaints body, or Ombudsman, is one of several possible models. Our aim is to have a complaints system that is right for the way our Armed Forces operate: that is fair, transparent, effective and prompt, and in which both the chain of command and the individual Service person can have confidence. We are considering the most appropriate way forward. You will see in the Armed Forces Bill provision for a redress panel that will consider complaints on behalf of the Defence Council, and which, it is intended, will speed up the complaints process. The panel will comprise a minimum of two members. It will always include a senior officer and may also include a civil servant. The panel will be independent of the chain of command. But the Bill provides for membership of the panel to include also, for complaints of a specified nature, an independent, external member. We see this approach being perhaps particularly relevant when the panel is considering complaints that relate to bullying and harassment.

Outside the Bill, we anticipate a range of further measures to improve the complaints process particularly in relation to bullying and harassment. We have yet to take final decisions on the overall package of measures under consideration but I shall of course ensure that we share our proposals with your Committee as soon as we are in a position to do so.

On the second issue the Bill provides as a starting position for Service law to remain subject to renewal on a five yearly basis by primary legislation, but not for annual renewal by Order in Council. On consideration we were not attracted to more frequent renewal by primary legislation as your predecessor committee proposed. But we recognise this might be a matter where the select committee will want to come to its own view when it looks at the Bill as a whole. We have not closed our mind on this issue and look forward to engaging proactively with the select committee at the appropriate time.

2 December 2005

Formal Minutes

Tuesday 6 December 2005

Members present:

Mr James Arbuthnot, in the Chair

Mr Colin Breed
Mr David Crausby
Linda Gilroy
Mr Dai Havard

Mr Kevan Jones
Robert Key
Mr Desmond Swayne

The Committee deliberated.

Draft Report [*Armed Forces Bill*], proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 17 read and agreed to.

Summary agreed to.

Ordered, That the following Paper be appended to the Report: [*Letter to the Chairman from the Secretary of State for Defence*].

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

[Adjourned till Tuesday 13 December at Ten o'clock

Reports from the Defence Committee

Session 2005–06

First Special Report

Iraq: An Initial Assessment of Post Conflict
Operations: Government Response to the
Committee's Sixth Report of Session 2004–05

HC 436