

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Seventh Delegated Legislation Committee

DRAFT ARMED FORCES ACT (CONTINUATION)  
ORDER 2017

*Tuesday 28 March 2017*

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**The Committee consisted of the following Members:**

*Chair:* ALBERT OWEN

- |   |  |
|---|--|
| † Churchill, Jo ( <i>Bury St Edmunds</i> ) (Con)                                | † Murray, Mrs Sheryll ( <i>South East Cornwall</i> ) (Con)               |
| † Courts, Robert ( <i>Witney</i> ) (Con)  | † Oswald, Kirsten ( <i>East Renfrewshire</i> ) (SNP)                     |
| † Cox, Mr Geoffrey ( <i>Torridge and West Devon</i> ) (Con)                     | † Penrose, John ( <i>Weston-super-Mare</i> ) (Con)                       |
| † Cummins, Judith ( <i>Bradford South</i> ) (Lab)                               | Perkins, Toby ( <i>Chesterfield</i> ) (Lab)                              |
| † David, Wayne ( <i>Caerphilly</i> ) (Lab)                                      | † Scully, Paul ( <i>Sutton and Cheam</i> ) (Con)                         |
| † De Piero, Gloria ( <i>Ashfield</i> ) (Lab)                                    | † Smith, Mr Andrew ( <i>Oxford East</i> ) (Lab)                          |
| † Eagle, Maria ( <i>Garston and Halewood</i> ) (Lab)                            | † Syms, Mr Robert ( <i>Lord Commissioner of Her Majesty's Treasury</i> ) |
| † Howlett, Ben ( <i>Bath</i> ) (Con)  |  |
| † Kawczynski, Daniel ( <i>Shrewsbury and Atcham</i> ) (Con)                     | Jennifer Burch, <i>Committee Clerk</i>                                   |
| † Lancaster, Mark ( <i>Parliamentary Under-Secretary of State for Defence</i> ) | † <b>attended the Committee</b>  |

## Seventh Delegated Legislation Committee

Tuesday 28 March 2017

[ALBERT OWEN *in the Chair*]

### Draft Armed Forces Act (Continuation) Order 2017

2.30 pm

**The Parliamentary Under-Secretary of State for Defence (Mark Lancaster):** I beg to move,

That the Committee has considered the draft Armed Forces Act (Continuation) Order 2017.

It is a pleasure to serve under your chairmanship, Mr Owen.

The draft order will enable the legislation that governs the armed forces, the Armed Forces Act 2006, to continue in force for a further period of one year until May 2018. This reflects the constitutional requirement under the Bill of Rights that the armed forces may not be maintained without the consent of Parliament. The legislation that provides for the armed forces to exist as disciplined bodies is renewed by Parliament every year. Every five years, renewal is by Act of Parliament—an Armed Forces Act, the most recent of which was the Armed Forces Act 2016. Between the five-yearly Acts, renewal is by annual Order in Council; the draft order is such an order.

The 2016 Act provided for the continuation in force of the 2006 Act until 11 May 2017 and for further renewal thereafter by Order in Council for up to one year at a time, but not beyond 2021. If the 2006 Act is not renewed by Order in Council before 11 May 2017, it will automatically expire.

2.31 pm

**Wayne David (Caerphilly) (Lab):** Diolch yn fawr iawn, Mr Owen. It is a pleasure to serve under your chairmanship.

This is an interesting statutory instrument. The Armed Forces Act 2006 created a single system of law applicable to all three services: the Army, the Royal Air Force and the Navy. As we have heard, that legislation must be renewed by an Act of Parliament every five years, and by an annual Order in Council in the interim. Because the last Armed Forces Act was passed in 2016, the draft order that it is our job to consider will extend the force of the legislation until May 2018.

Why is there a need for an annual review? The Bill of Rights of 1688 states that the Army—and now the RAF and the Royal Navy, too—may not be maintained without the consent of Parliament. The 2006 Act maintains the armed forces as disciplined bodies; without such an Act to require armed forces to obey lawful commands, that stipulation would effectively be removed. Without this statutory instrument, the armed forces would still have allegiance to Her Majesty, but the power of enforcement would be taken away.

I had been hoping that we would not take long to discuss the draft order, but when I learned that it was debated in the other place for no less than five hours,

I thought that we had better have a proper debate, too—I hope Members have brought their sandwiches. However, I had second thoughts, because when I studied the debate in the other place, I found that it was used as an opportunity for general discussion of the armed forces and the change in the configuration of the world they respond to. Understandably, I did not think it appropriate for our debate on the draft order to engage with such big matters, but I will ask the Minister two questions before I sit down.

First, will he clarify the position for offenders under the age of 18? Secondly, I understand that historically the Royal Navy had a distinct disciplinary system, primarily for use at sea, but that the penalties and sanctions that once belonged exclusively to it have now been extended to the Army and the RAF. Is that an appropriate approach to discipline? The three services are very different from each other.

It is not our intention to question the draft order, because we would not want to put the future of our armed forces in jeopardy, but it would be helpful if the Minister responded—if not here, in writing—to those specific points. With those few words, I will sit down.

2.34 pm

**Kirsten Oswald (East Renfrewshire) (SNP):** It is a pleasure to serve under your chairmanship, Mr Owen. Like the hon. Member for Caerphilly, I intend to make only a few brief points.

When I started looking at this issue, I thought it was interesting that, although there is quite a lot of legislation relating to the armed forces, it was quite difficult to find the bits of legislation that actually define what the armed forces are. The 2006 Act sets out some definitions but does not actually state what we are specifically talking about. The closest thing I could find in legislation was a reference in a statutory instrument on overseas territories from 1965, which states:

“Her Majesty’s forces’ means the naval, military or air forces of Her Majesty”.

Looking at that, I reflected on some statements made last year, particularly by the Secretary of State for Defence and the then Prime Minister, about how the armed forces interacted with the conventions that developed in Parliament for troops to be sent into action. That is something we could possibly look at further in respect of the armed forces, although I certainly do not want to cause any problems in our progress today. We should probably give further thought to the ways that technology and the embedding of our forces with other nations’ forces or multinational forces link into that. We also perhaps need to think about issues to do with cyber capability or private companies that provide services that our armed forces link in to.

I am interested to hear the Minister’s comments on that, and I am particularly interested in what the hon. Member for Caerphilly said about offenders under the age of 18. That is something I would be keen to hear more about from the Minister. Notwithstanding all those things, like the hon. Gentleman, I do not intend to do anything other than listen to the Minister’s answers as the order progresses.

2.36 pm

**Mark Lancaster:** I am grateful for the Committee’s clear support. I will deal with those three questions. The first was why the three different services historically had

their own legislation. When the Armed Forces Bill was considered under the last Labour Government, the decision to combine the three service justice systems into a single Act was considered at length. As we look back on that time historically, it has proven to be the correct decision.

I have certainly sensed from the Service Justice Board, which is an ongoing board, that there is no appetite at all to try to disentangle the three services from the single Act. That is always up for consideration, but the next opportunity that Parliament will have to do so will be when we consider the issue again in 2020, after the next general election, with that Bill becoming an Act in 2021. We always have that option, but I sense there is no appetite for it.

On who is covered by the 2006 Act, it is, of course, primarily the three single services—the Royal Air Force, the Army and the Navy. However, I should point out

that certain civilians are covered in certain circumstances, such as civilians who live in an overseas territory with their spouse or other half who is a member of the armed forces, and, indeed, certain service civilians, such as Ministry of Defence employees who are serving overseas. Those distinct categories are covered by the Act.

The final question was about the status of offenders under the age of 18. Special provision is made to safeguard under-18s in the service discipline system, but they are generally dealt with in exactly the same way as others. I should say that there are currently no under-18s in the military corrective training centre at Colchester. Hopefully I have answered the three questions.

*Question put and agreed to.*

2.39 pm

*Committee rose.*





