

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Third Delegated Legislation Committee

DRAFT ARMED FORCES ACT 2006
(AMENDMENT OF SCHEDULE 2) ORDER 2017

Wednesday 24 January 2018

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The Committee consisted of the following Members:

Chair: Ms NADINE DORRIES

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| † Campbell, Mr Alan (<i>Tynemouth</i>) (Lab) | † Morton, Wendy (<i>Aldridge-Brownhills</i>) (Con) |
| † Crabb, Stephen (<i>Preseli Pembrokeshire</i>) (Con) | Onasanya, Fiona (<i>Peterborough</i>) (Lab) |
| † Duguid, David (<i>Banff and Buchan</i>) (Con) | † Timms, Stephen (<i>East Ham</i>) (Lab) |
| † Ellwood, Mr Tobias (<i>Parliamentary Under-Secretary of State for Defence</i>) | † Trevelyan, Mrs Anne-Marie (<i>Berwick-upon-Tweed</i>) (Con) |
| † Glindon, Mary (<i>North Tyneside</i>) (Lab) | † Umunna, Chuka (<i>Streatham</i>) (Lab) |
| † Graham, Richard (<i>Gloucester</i>) (Con) | † Williams, Dr Paul (<i>Stockton South</i>) (Lab) |
| † Harrison, Trudy (<i>Copeland</i>) (Con) | † Wragg, Mr William (<i>Hazel Grove</i>) (Con) |
| † Jones, Gerald (<i>Merthyr Tydfil and Rhymney</i>) (Lab) | Katya Cassidy, Jack Dent, <i>Committee Clerks</i> |
| † Monaghan, Carol (<i>Glasgow North West</i>) (SNP) | |
| † Moore, Damien (<i>Southport</i>) (Con) | † attended the Committee |

Third Delegated Legislation Committee

Wednesday 24 January 2018

[Ms NADINE DORRIES *in the Chair*]

Draft Armed Forces Act 2006 (Amendment of Schedule 2) Order 2017

2.30 pm

The Parliamentary Under-Secretary of State for Defence (Mr Tobias Ellwood): I beg to move,

That the Committee has considered the draft Armed Forces Act 2006 (Amendment of Schedule 2) Order 2017.

It is a pleasure to rise in support of this draft order to amend the Armed Forces Act 2006. I bring the attention of the Chair and the Committee to the Register of Members' Financial Interests—I am a member of the reservists. It is on that note that I will begin, underlining the importance of why discipline is so important in our armed forces and why we need to continue to amend and advance the 2006 Act.

As I hope all hon. Members agree, we in this country can be proud of the professionalism of our armed forces, which is revered and recognised in NATO among our allies, and respected and feared by our adversaries. That professionalism is there because our armed forces are disciplined. The people that sign up to wear the uniform are therefore able to meet the high standards we set for them, and that is reflected in the values that we support and promote throughout the world. If we do not maintain that high standard of discipline, the cohesion of the unit ceases to function as it should do, and we would not be able to operate in the manner in which we wish. Likewise, the responsible commander would not be able to conduct the activities or meet the commitments expected of him or her.

Discipline is therefore crucial. It is arguably different in the world of the armed forces from other areas of life, because if that discipline erodes in any form whatever in the armed forces, the functionality itself changes. Sometimes, because of the isolation in which we place units of our armed forces, the responsibility of any unit commander is arguably higher than in other walks of life. We must therefore give any commander, whether on a ship, in a fighting force on the ground or in a squadron in the sky, the necessary control over the other personnel in the unit to ensure that discipline is retained and maintained at all times.

In that spirit we approach this draft statutory instrument. We are considering an amendment to schedule 2 to the Armed Forces Act 2006. The Act established a single system of service law that applies to the personnel of all three services, wherever in the world they may be operating. The Act provides nearly all the provisions for the existence of a system for the armed forces of command, discipline and indeed justice. It covers matters such as offences, the powers of the service police, and the jurisdiction and powers of the commanding officers and the service courts, in particular the court martial.

The draft order will amend schedule 2 to the 2006 Act. The schedule lists serious offences to which special rules on investigation and charging apply. The offences listed in that schedule are commonly referred to as schedule 2 offences. They include serious disciplinary offences such as mutiny, desertion and serious criminal offences, such as murder, manslaughter and certain sexual offences.

The 2006 Act imposes a special duty on commanding officers with respect to the investigation of allegations of schedule 2 offences and of circumstances that indicate that a schedule 2 offence might have been committed by someone under their command. Under section 113 of the 2006 Act, a commanding officer who becomes aware of such allegations or circumstances must ensure that the service police are aware of them as soon as reasonably practicable. The Act also imposes a duty on members of the service police forces with respect to the investigation of schedule 2 cases.

Under section 116 of the 2006 Act, the service police must refer a case to the Director of Service Prosecutions if they consider that there is sufficient evidence to charge a person with a schedule 2 offence.

The offences listed in schedule 2 include all offences under part 1 of the Sexual Offences Act 2003, except sexual assault, voyeurism, exposure and sexual activity in a public lavatory. There has been much debate in recent years about whether those four offences should be listed in schedule 2. At the heart of those debates was the question of whether a commanding officer should have a role in the investigation of any allegations or circumstances that would indicate to a reasonable person that one of those offences has been, or may have been, committed by a person under their command.

For the avoidance of doubt, I want to make clear what the Armed Forces Act 2006 requires of a commanding officer who becomes aware of allegations of circumstances that indicate that a service offence other than a schedule 2 offence has been, or may have been, committed. That commanding officer may ensure that, as soon as reasonably practical, the matter is reported to the service police. Alternatively, he or she may ensure that the matter is appropriately investigated. An investigation other than by the service police will in some cases be appropriate because service offences include all offences that may be committed by service personnel under the 2006 Act, including the less serious disciplinary offences.

The manual of service law gives special guidance to commanding officers about allegations of the four offences to which I have referred. The manual requires that a commanding officer who becomes aware of an allegation of one of these offences must take legal advice about whether it would be appropriate to call the service police. Access to such advice is available 24 hours a day, seven days a week. The manual also makes it clear that there is a presumption that allegations of such offences will normally be reported to the service police, and the armed forces have policies in place that require all allegations of sexual offences to be referred to the service police. It will rarely be appropriate for the commanding officer not to report an allegation of sexual assault to the service police.

The Committee may recall some of the debates during the passage of the most Armed Forces Act, in 2015 and 2016, about whether the four offences to which I have referred should be listed in schedule 2. Recognising the

importance of the issue, the Government promised to review the situation. That review happened, and my right hon. Friend the Member for Milton Keynes North (Mark Lancaster), now the Armed Forces Minister, announced in November 2016 that the offences of sexual assault, voyeurism and exposure should be included in schedule 2 of the Armed Forces Act 2006. That will mean that a commanding officer who becomes aware of an allegation or circumstances that indicate that any of those offences has been, or may have been, committed, must refer the matter to the service police. As I said, that happens already as a matter of policy, but today's instrument will ensure that it must happen as a matter of law.

Why make today's change? Perceptions about how we fulfil our obligations are just as important as the mechanisms we have in place to do so. We recognise the great courage that it takes to come forward and report a sexual offence, which is precisely why the armed forces have extensive support in place for those who are affected. Steps are being taken to provide better education. Helplines, awareness campaigns and training presentations on sexual consent are helping to ensure that service personnel know how to report concerns and what support is available to them.

Stephen Timms (East Ham) (Lab): I welcome what the Minister is proposing. Could he tell the Committee whether the change affects civilian personnel of the military, for example civilian staff working at a barracks or a military base, or does it affect only uniformed personnel?

Mr Ellwood: As far as I am aware it affects all people under the command of the unit commander.

It is right that the Government have listened to the concerns of Parliament and others to make sexual assault, exposure and voyeurism schedule 2 offences, but for completeness I should also say something about the fourth offence, to which I referred earlier. The offence of sexual activity in a public lavatory is a public order offence, which covers a very wide range of activity including consensual activity. It also applies only to activity in a lavatory to which the public have access, and is therefore likely to be prosecuted as a civilian offence, not a service offence. For those reasons, we do not believe that it would be appropriate to add the offence of sexual activity in a public lavatory to schedule 2.

In conclusion, we are continually looking for ways to enhance our processes and to make sure that the service justice system continues to be relevant and as effective as it can be. That is why we are considering this order today.

2.40 pm

Gerald Jones (Merthyr Tydfil and Rhymney) (Lab): It is a pleasure to serve under your chairmanship, Ms Dorries. The Opposition support this legislation because it makes an important amendment to the 2006 Act, to ensure that sexual assault, voyeurism and exposure are always

investigated by the service police where an allegation is made to a commanding officer.

As the Minister mentioned, the manual of service law already advises officers that they must take legal advice where such an offence is reported to them. There is a presumption that these offences will normally be referred to the service police. Although that might be happening in practice in almost all cases, it is none the less important to put this right in law, not only to ensure that these serious offences are always investigated by service police, but to send a message to those who come forward with allegations that these will always be treated in the same way as other offences under schedule 2.

Hon. Members will be aware that this issue has been debated for some time. I pay tribute to my colleague, the noble Lord Touhig, who proposed an amendment to the 2016 Act to this effect. I also welcome the fact that the Government made it clear in 2016 that it would make the changes that we are debating today.

We are all aware that sexual offences and harassment have had widespread coverage of late. That has meant that people from all walks of life have felt empowered to come forward and report cases of abuse. Of course, as well as ensuring that alleged offences are investigated and handled properly, we must ensure that there is support available for those who come forward, and we must redouble our efforts, through education and training, to underline the clear standards of behaviour that are expected of everybody.

2.42 pm

Mr Ellwood: I will briefly respond, given that there is at least 90 minutes to fill before we conclude.

First, I am very grateful for the Opposition's support. May I, too, pay tribute to Lord Touhig? When he was a Minister in the Ministry of Defence, we sparred on a number of occasions but, where there was cohesion and overlap and understanding of where we wanted to go, we were always able to work together. It is good to see his work being recognised today.

I concur with the hon. Member for Merthyr Tydfil and Rhymney that it is important that the measure sends a powerful message about the seriousness of the offences and how we treat them. I thank all hon. Members for their support, which I hope they will declare today. We have made it clear that there is no place for sexual offences in the armed forces. We have listened to the concerns raised in the House, and I hope the Committee is reassured by the steps we are taking. The armed forces take any allegation of any type of sexual offence very seriously. All allegations are investigated thoroughly and action taken where appropriate. Policies and procedures are in place to ensure that that happens. Adding the offences of sexual assault, voyeurism and exposure to schedule 2 of the Armed Forces Act demonstrates our commitment, and I am grateful for the Committee's support.

Question put and agreed to.

2.43 pm

Committee rose.

