

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fifth Delegated Legislation Committee

DRAFT ARMED FORCES ACT
(CONTINUATION) ORDER 2018

Tuesday 20 March 2018

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The Committee consisted of the following Members:

Chair: MR LAURENCE ROBERTSON

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| † Bridgen, Andrew (<i>North West Leicestershire</i>) (Con) | † Heald, Sir Oliver (<i>North East Hertfordshire</i>) (Con) |
| † Cadbury, Ruth (<i>Brentford and Isleworth</i>) (Lab) | † Lopresti, Jack (<i>Filton and Bradley Stoke</i>) (Con) |
| † David, Wayne (<i>Caerphilly</i>) (Lab) | † McGovern, Alison (<i>Wirral South</i>) (Lab) |
| † Debonnaire, Thangam (<i>Bristol West</i>) (Lab) | † Morton, Wendy (<i>Aldridge-Brownhills</i>) (Con) |
| † Dhesi, Mr Tanmanjeet Singh (<i>Slough</i>) (Lab) | Spellar, John (<i>Warley</i>) (Lab) |
| Elliott, Julie (<i>Sunderland Central</i>) (Lab) | † Trevelyan, Mrs Anne-Marie (<i>Berwick-upon-Tweed</i>) (Con) |
| † Ellwood, Mr Tobias (<i>Parliamentary Under-Secretary of State for Defence</i>) | † Western, Matt (<i>Warwick and Leamington</i>) (Lab) |
| † Fysh, Mr Marcus (<i>Yeovil</i>) (Con) | |
| † Goldsmith, Zac (<i>Richmond Park</i>) (Con) | Jack Dent, <i>Committee Clerk</i> |
| † Hart, Simon (<i>Carmarthen West and South Pembrokeshire</i>) (Con) | † attended the Committee |

Fifth Delegated Legislation Committee

Tuesday 20 March 2018

[MR LAURENCE ROBERTSON *in the Chair*]

Draft Armed Forces Act (Continuation) Order 2018

8.55 am

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 (Continuation) Order 2018.

It is a pleasure to serve under your chairmanship, Mr Robertson. It is important that we debate this order, and I am delighted that we have a full 90 minutes in which to do justice to this important subject. I hope that all hon. Members have got their own copies of the Armed Forces Act 2006, to which I will make regular reference.

The draft order we are considering today is to continue in force the Armed Forces Act 2006 for a further period of one year, until 11 May 2019. The legislation which governs the armed forces is renewed by Parliament every year. This reflects the constitutional requirement under the Bill of Rights 1688—

Sir Oliver Heald (North East Hertfordshire) (Con): Hear, hear.

Mr Ellwood: It declared:

“That the raising or keeping a standing Army within the Kingdome in time of Peace unlesse it be with Consent of Parlyament is against law”.

As we hear from my right hon. and learned Friend in his support for the Bill of Rights, it is an important and iconic document that set the tone for the advancement of democracy in our country. It sits alongside the Magna Carta and the Act of Settlement as being important landmarks as we established the balance of power between the monarchy; the state—the people; Parliament; and, indeed, the armed forces. It is right that we reflect on the background to this, because it is from here that we enjoy the privilege and right of maintaining a standing army within the context of the law, going all the way back to 1688.

Of course, that was some time ago. Today’s Committee might be interested to know how we got here today. A Defence Select Committee report, published on 8 December 2005, said:

“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”—

100 years ago. The report continued:

“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.”

That practice continues. However, a change was proposed by the Ministry of Defence in the Armed Forces Bill of 2005. That Bill did not make any provision for annual renewal but that was resisted by the Defence Committee and the Committee that considered the 2005 Bill. The Ministry of Defence amended the Bill accordingly; that Bill became the Armed Forces Act 2006. The 2006 Act provides nearly all the provisions for the existence of a system for the armed forces of command, discipline and justice, which applies at all times wherever in the world members of the armed forces are serving.

As I have said, the legislation that governs the armed forces is renewed by Parliament every year. Every five years there is an Armed Forces Act. The most recent is the Armed Forces Act 2016; the next will be in 2021. The primary purpose of these five-yearly Acts is to renew the legislation which provides for the armed forces to exist as disciplined bodies—currently the Armed Forces Act 2006.

Between the five-yearly Acts, the legislation is renewed by an annual Order in Council. That is what we are considering in draft today: we call it the continuation order.

The Armed Forces Act 2016 provides for the continuation in force of the Armed Forces Act 2006 until 11 May 2018 and for further renewal thereafter by Order in Council for up to a year at a time, but not beyond 2021.

If the Armed Forces Act 2006 is not renewed by Order in Council before the end of 11 May 2018, it will automatically expire. The central effect would be that the provisions necessary for the maintenance of the armed forces as disciplined bodies would cease to exist.

The 2006 Act creates offences and provides for the investigation of alleged offences and the arrest, holding in custody and charging of individuals accused of committing an offence, and for them to be dealt with summarily by their commanding officer or tried in the court martial. It provides so that members of the armed forces can be investigated, tried and punished for any criminal offence under the law of England and Wales, wherever in the world the offence might be committed. It also provides for offences that are peculiar to service in the armed forces, mainly relating to discipline, such as misconduct towards a superior officer and disobedience to lawful commands.

Perhaps the clearest example of the effect of expiry of the 2006 Act would be that the duty of members of the armed forces to obey lawful commands, and the powers and procedures under which this duty is enforced, would no longer have effect. Commanding officers and the court martial would have no powers of punishment for failure to obey a lawful command or other disciplinary or criminal misconduct. It is true that members of the armed forces would still owe allegiance to Her Majesty the Queen, but Parliament would have removed the power of enforcement, which comes from the Bill of Rights itself.

The obligation of members of the armed forces is essentially a duty to obey to lawful commands; they have no contracts of employment and so no duties as employees.

The 2006 Act also provides for several other important matters for the armed forces, such as for their enlistment,

pay and redress of complaints. With that explanation, I hope that hon. Members will be satisfied and will be inclined to support the draft continuation order.

9.1 am

Wayne David (Caerphilly) (Lab): It is a pleasure to serve under your chairmanship, Mr Robertson.

I was a history teacher a number of years ago, and I used to teach my pupils about the Glorious Revolution of 1688 and the Bill of Rights. I explained to them—accurately, I think—that the revolution and the Bill that followed saved England from the power-seeking of James II and secured the development of our constitutional monarchy and freedom of religion and of civil liberty and established the course of the development of the rule of law.

I did not fully appreciate at that time the true significance of the weighty tome that the Minister has in front of him. I did not fully realise then—I do now—that Parliament has to decide annually, and every five years by an Act of Parliament, that the armed forces should continue and that discipline should be maintained, as the Minister outlined. Given the significance of the draft order, there is absolutely no doubt in my mind that all Members from all parts of the House will give it their full and rapturous support, realising how necessary it is.

The 2017 continuation order prompted a five-hour debate in the other House last year. It seems that peers took the opportunity to debate a whole raft of issues related to the defence of our country. I understand that the draft order has not yet been debated in the other place this year, but I suspect that, when it is, there will be more quite long speeches. Indeed, I am tempted to make a long speech myself, but I realise that, at five to nine on a Tuesday morning, when Members are not overly enthusiastic, it would not go down too well. *[Interruption.]* There is dissent. I will confine myself to simply asking a straightforward question of the Minister about the nature of the armed forces and the development of discipline therein.

As we know, the armed forces constantly evolve to meet the new threats that this country faces. Indeed, the nature of the armed forces, with the increase of technology, requires a different kind of person to be in the armed forces and a different kind of commitment, which also implies that a different kind of discipline is required. Will the Minister will take this opportunity to explain to Members how he sees the nature of discipline in our armed forces being maintained in a modern context? With that question and those few words, the Opposition give our full support to the draft order.

9.4 am

Mr Ellwood: I was expecting other hon. Members to seek your attention, Mr Robertson, but in the absence of that I am delighted to respond to the hon. Member for Caerphilly. I would be delighted to continue this debate for a further five hours, but I suspect others may have plans.

Mr Tanmanjeet Singh Dhesi (Slough) (Lab): While we all appreciate the eloquence of the Minister and my hon. Friend the Member for Caerphilly, this is not the time for long speeches. We all wholeheartedly support this motion.

Mr Ellwood: I absolutely concur with that. The hon. Member for Caerphilly asked about two aspects, the first of which is the importance of discipline in the armed forces. That is the reason why this must come to the fore. We do change the rules on a five-year term. The requirements we expect from those wearing a uniform is different from those in civilian street. A captain on a ship away from UK shores has to know that he or she has the powers to maintain discipline on that ship, indeed, to imprison people if necessary, and to ensure that the crew and personnel are able to work as coherently and effectively as possible.

The element of trust in the armed forces—I say this from my own experience—is at a different level than is found in civilian street. I do not want to judge: others might feel differently. Companionship and comradeship comes of individuals having to rely on each other. They need to know that they can impeccably trust each other, they can leave their kit out, they can leave documents out and they can support each other. When these things go awry or are tested in some way—I have seen instances of this—a court martial will come down harshly on something that seemed quite trivial, simply because it is the integrity of individuals, who need to lean on each other in extreme circumstances, that binds a unit to be able to function as effectively as possible.

Discipline in every sense of the word is fundamental to the existence of our armed forces and to their success. More than that, it also reflects who we are as a nation. When we speak in this House about our hard and soft power, about standing up as a force for good across the world, we should ask who it is that we actually put in harm's way. It is those in uniform. The standards and professionalism that they express and illustrate is a reflection of our standards. Their commitment, duty and reputation means that they are respected by our allies and feared by our foes. It is because of that high standard of rule of law that we can speak with authority at the United Nations Security Council, in NATO and on other senior platforms across the world. If those standards were to drop and ill-discipline were to creep in, we would not have that reputation that allows us to speak with such gravitas and professionalism across the world.

While I appreciate that this is a statutory instrument and it is a continuation order that we come together to agree every year, what we are actually doing is confirming an important bond, that sense of duty that our armed forces actually have, and the place it holds within Parliament and Government. I hope I have answered the hon. Gentleman's questions. He talked about his time as a history teacher and the Glorious Revolution. That was absolutely a fundamental document in spelling out the direction of travel for our nation. The Bill of Rights, the Act of Settlement and other changes that came in avoided further revolutions. It is for another day, but it was interesting to read that the Bill of Rights also included the right to bear arms, something that we have managed well—in this country at least—through longevity, unlike other countries around the world. On that controversial note, I had better sit down.

Question put and agreed to.

9.9 am

Committee rose.

