

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fourth Delegated Legislation Committee

DRAFT ARMED FORCES ACT
(CONTINUATION) ORDER 2020

Monday 9 March 2020

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The Committee consisted of the following Members:

Chair: SIR DAVID AMESS

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| † Aldous, Peter (<i>Waveney</i>) (Con) | † Evans, Dr Luke (<i>Bosworth</i>) (Con) |
| † Baker, Duncan (<i>North Norfolk</i>) (Con) | † Jones, Gerald (<i>Merthyr Tydfil and Rhymney</i>) (Lab) |
| † Benton, Scott (<i>Blackpool South</i>) (Con) | Kyle, Peter (<i>Hove</i>) (Lab) |
| † Brereton, Jack (<i>Stoke-on-Trent South</i>) (Con) | Mahmood, Shabana (<i>Birmingham, Ladywood</i>) (Lab) |
| † Browne, Anthony (<i>South Cambridgeshire</i>) (Con) | † Mercer, Johnny (<i>Minister for Defence People and Veterans</i>) |
| † Bryant, Chris (<i>Rhondda</i>) (Lab) | † Twist, Liz (<i>Blaydon</i>) (Lab) |
| † Colburn, Elliot (<i>Carshalton and Wallington</i>) (Con) | † Whitley, Mick (<i>Birkenhead</i>) (Lab) |
| † Davies, Gareth (<i>Grantham and Stamford</i>) (Con) | |
| † Docherty, Leo (<i>Aldershot</i>) (Con) | Leoni Kurt, <i>Committee Clerk</i> |
| † Docherty-Hughes, Martin (<i>West Dunbartonshire</i>) (SNP) | † attended the Committee |

Fourth Delegated Legislation Committee

Monday 9 March 2020

[SIR DAVID AMESS *in the Chair*]

Draft Armed Forces Act (Continuation) Order 2020

6 pm

The Minister for Defence People and Veterans (Johnny Mercer): I beg to move,

That the Committee has considered the draft Armed Forces Act (Continuation) Order 2020.

What a pleasure it is to serve under your chairmanship, Sir David. This is my first Delegated Legislation Committee as a Minister, and I am immensely excited to be here. I think we have a lot of time—something like two hours—so I will go through the legislation.

We have a small, but crucial piece of parliamentary business to conduct: our annual consideration of the legislation governing the armed forces, the Armed Forces Act 2006. Before I turn directly to the annual continuation of the 2006 Act, let us not forget that our armed forces are without a doubt one of this country's foremost and precious institutions, being held in the highest regard throughout the world as a benchmark of military excellence to which other nations aspire. Let us never forget the men and women of the armed forces who serve and have served us so well, whether at home or further afield.

This nation owes much to our armed forces and the admirable qualities they espouse: bravery, discipline, professionalism, unflinching and steadfast loyalty to duty and a strong moral compass to do all that we ask of them. Those noble qualities and adherence to duty are all too frequently tested in the most challenging and varied of environments and circumstances. Our servicemen and women therefore deserve our due respect for the manner in which they continue to maintain such high standards and professionalism.

We owe a huge debt of gratitude to our armed forces, who perform exceptional feats to protect this country in incredibly difficult circumstances. To support them, we will bring forward legislation to deal with vexatious claims. We will further strengthen the basis of the armed forces covenant, because we are absolutely committed to supporting all in our armed forces community.

Today, we busy ourselves with the continuation of the armed forces themselves. The order will keep in force the Armed Forces Act 2006 for a further year, to the end of 11 May 2021. As I will explain, that reflects the constitutional requirement under the Bill of Rights 1688 that a standing army, and by extension the Royal Navy and the Royal Air Force, may not be maintained without the consent of Parliament.

Let us not forget that the armed forces cannot exist without the annual consent of Parliament. This is an opportunity for us, in this Committee, to record our thanks by permitting the armed forces to continue for another year. Yearly renewal is rooted in the Bill of

Rights. That historical context forms the basis for why the legislation, which provides for the armed forces to exist as disciplined bodies, is renewed by Parliament every year.

None the less, it is important that I explain the legislation that governs the renewal. Every five years, renewal is by an Armed Forces Act of Parliament. The most recent was in 2016. There must be another before the end of 2021. Between each five-yearly Act, annual renewal is by Order in Council. The draft order we are considering is such an order. The Armed Forces Act 2016 provides for the continuation in force of the 2006 Act until the end of 11 May 2017 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 11 May 2020, it will automatically expire. If the 2006 Act expires, the legislation that governs the armed forces and the provision necessary for their maintenance as disciplined bodies would cease to exist. That would have serious repercussions, as the 2006 Act sets out nearly all the provisions for the existence of a system for the armed forces of command, justice and, above all, discipline. It creates offences and provides for the investigation of alleged offences, 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. Offences under the 2006 Act include any criminal offence under the law of England and Wales, and those that are peculiar to service, such as misconduct towards a superior officer and disobedience of lawful commands.

If the 2006 Act were to expire, the duty of members of the armed forces to obey lawful commands, and the powers and procedures under which that 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. Members of the armed forces would still owe allegiance to Her Majesty, but Parliament would have removed the power of enforcement. After all, service personnel do not have contracts of employment, and so have no duties as employees. Their obligation is essentially a duty to obey lawful commands. The 2006 Act also provides for other important matters for the armed forces, such as their enlistment, pay and redress of complaints.

The continuation of the 2006 Act is essential for the maintenance of discipline wherever service personnel are serving in the world. Discipline in every sense is fundamental and underpins the existence of our armed forces and their success, whether at home, supporting emergency services and local communities, as demonstrated during the recent flooding in Yorkshire and other parts of the country; protecting Britain's fishing fleet and industry—her waters, as well as her shores—actively safeguarding the world's main waterways and escorting ships to deter the scourge of modern piracy; playing their part to counter terrorism or to combat drug smuggling and people trafficking; distributing vital humanitarian aid; continuing the war on terror by assisting and building capacity with partner nations to defeat the likes of Daesh in Iraq or Syria and Boko

Haram in Nigeria; or maintaining our presence in the Baltic and northern Europe to strengthen our Euro-Atlantic security.

In short, we owe the brave men and women of our armed forces a sound legal basis for them to continue to afford us their vital protection. I hope that hon. Members will support the draft order. I am grateful to colleagues for their support.

6.6 pm

Gerald Jones (Merthyr Tydfil and Rhymney) (Lab): It is a pleasure to serve under your chairmanship, Sir David. Her Majesty's armed forces represent this country across the world, fighting to liberate civilians from the scourge of trans-national terrorist organisations, providing vital training to other nations, serving on peacekeeping missions, and stepping in to provide humanitarian relief in the wake of hurricanes and other disasters. More importantly, they stand ready to defend our country day and night. I know that we are all, across the Committee, immensely proud of and grateful to our armed forces personnel, and the Opposition will support the draft order. I am sure that that comes as no great surprise.

I wish to press the Minister for greater detail on several matters concerning our armed forces. First, I wish to touch on some operational issues. We know about the Government's deploying 250 troops to the United Nations peacekeeping mission in Mali, following the end of the South Sudan mission. More than 40 French personnel have lost their lives since troops were deployed to Mali in 2013 on a separate French-led mission. Some 200 soldiers from the UN mission have also died over the same period; indeed, the UN mission in Mali is often referred to as the most dangerous peacekeeping mission in the world. It is important that Parliament can scrutinise the Government on those obligations. I will not ask the Minister to update the Committee this evening, but will he at least commit to a debate in the House on this issue in the near future, so that Parliament has an opportunity to scrutinise properly the Government's decision?

With regard to the ongoing integrated review, I wish to touch on armed forces' numbers, and the alarming downward trend in each of the services. In 2010, there were 102,000 regulars in the Army, 40,000 in the RAF, and 35,500 in the Royal Navy. Now they are all substantially smaller. The Army and the RAF have been cut by 25% each, and the Navy is down nearly 20%. The trajectory is quite worrying—every single service has fallen over the last 10 years. It is no surprise that the Government have removed the 82,000 regular Army personnel commitment from their manifesto.

Indeed, there have been reports of further cuts to the Army in the integrated review. Perhaps the Minister could outline whether the integrated review will seek to cut the Army further. He may suggest that it is too early, given that the review is expected to be published in the autumn, but the issue is of such fundamental importance, and I know he understands that. We really must know whether such cuts are planned.

I will touch briefly on retention. The steady decline in satisfaction with service life is a significant worry. The proportion of all personnel reporting satisfaction with service life in general was 60% in 2010. In 2019, it had fallen to 46%. As well as its being wrong in principle for

the majority of personnel to feel unsatisfied with service life, we simply cannot afford to have servicemen and women choosing to leave the forces because of their view of service life. Will the Minister set out what plans he has to deal with that?

The Opposition have previously expressed our concern about the future accommodation model, and the possibility that it may be used to push more personnel and their families into the private rented sector, with all the associated uncertainty and added cost. Research from the Army Families Federation has highlighted a number of flaws in the information provided on the future accommodation model. Some 48% of respondents said that they have received no information about it at all, with only 2% saying that they had received a great deal. Most of the information has come from the AFF, as opposed to the Ministry of Defence or the chain of command. Uncertainty around the future accommodation model was a feature of the AFF's comments on previous covenant reports. Will the Minister commit to doing much more to make personnel and families aware of the changes, particularly as the future accommodation model is now in the pilot stage?

We have not been updated on progress in relation to the defence estate for more than a year. It is particularly urgent given that troops will return from Afghanistan within 14 months, following the recent deal. Our troops and local communities need to be kept updated. Again, will the Minister update the Committee on progress with regard to the defence estate? As I said, we will support the draft order, but we would be grateful for some comments on the points that I have raised.

6.11 pm

Chris Bryant (Rhondda) (Lab): It is a great delight to see you in the Chair, Sir David, not least because I think you were here when the legislation was introduced. I do not mean the Bill of Rights 1688, obviously; I mean the 2006 Act. I remember it because we were both in the Chamber on Report and on Third Reading, which was quite contentious at the time, because the Act includes substantial measures on desertion and absence without leave. Those were highly contentious issues in the aftermath of the Iraq war. I remember very clearly the current Leader of the Opposition and shadow Chancellor being the most irritating people in the Chamber. I have a slight anxiety that they may go back to that position in a year's time, when we get to the next round of legislation.

The Minister slightly understates the danger of not passing the draft order: the danger is that it would be illegal for the British Government to hold any form of armed forces—certainly an Army, because that is what is specified in the Bill of Rights, but I would have thought, by extension, any form of armed forces—for the United Kingdom. Of course it is important that the draft order is agreed.

I must say, however, that it is a slightly odd process that successive Governments have decided on to arrive at the piece of paper before us today. The 2006 Act presumed that there would be a 2011 Act, then a 2016 Act and a 2021 Act, and that they would be more or less the same as the original Act, with some bits added. However, in 2011 the Government decided that they would instead insert into the 2006 Act a first clause that said that we could keep on doing it by annual motions, by Order in Council, until the end of 2021.

[Chris Bryant]

Personally, I do not think that that really counts as the House of Commons granting consent to the continuation of the armed forces. The vast majority of Members will have absolutely no idea that we are in this Committee Room tonight or have any idea about the debate. I think that is a shame, not because I want to hinder the Government, but because our armed forces frankly deserve, at least once a year, a debate on the Floor of the House in which we decide, as Parliament, that we will positively affirm our support for our armed forces, rather than this kind of up-in-my-lady's-boudoir affair. [Interruption.] The Whip woke up at that point.

We have a strange system to explain to any ordinary member of the armed forces. I am sure that when the Minister was informed that this was the process that he would have to explain tonight, he was slightly flummoxed by it. The 2006 Act did important things. For a start, it meant that all the services were treated in the same way in legislation from the beginning. It brought in, as I said, measures to do with desertion and absence without leave, but more importantly it made sure that no member of the armed forces could suffer double jeopardy, which was always a danger under the previous law. A member of the armed forces could sometimes be tried in a court martial and then also in the common courts of the land.

There is one other issue, and there is a sadness about the fact that we are dealing with it in this way. Like many other Members, I worry about vexatious claims being brought against members of the British armed forces long after the events took place. This is not an easy issue to resolve. I remember that when I was a Minister in the Foreign and Commonwealth Office for about five minutes, we faced the tough problem of trying to bring back serious war criminals from countries in the Balkans and make sure that they saw justice. Just having allowed years to pass was not a good enough reason for us not to want to bring them to justice.

The obvious danger is that if we as a country end up effectively outlawing any kind of claim against the British armed forces, we are saying to other armed forces in other parts of the world that are much less picky about these matters that they can do whatever they want. In a sense, the fact that we still deal with this issue in this way is a lost opportunity. However, I of course support some of the Minister's endeavours, and particularly his endeavour tonight. I add that I am still waiting for my meeting with him about acquired brain injury.

6.16 pm

Martin Docherty-Hughes (West Dunbartonshire) (SNP): It has been mentioned that there would be no armed forces if we did not have this discussion and debate tonight. I think we would still have the Atholl Highlanders, which—as the Minister will know—happens to be the oldest private army in Europe. As a Scottish constituency Member, I think it is important to say that while the Bill of Rights did not cover Scotland until 1707, I agree with the principle of civilian oversight of the armed forces and the role of civilian parliamentarians in maintaining that oversight through the parliamentary process. As the son, uncle and brother of people in the armed forces, I am happy to say that.

There are a couple of issues regarding culture within the armed forces that the Minister may want to touch on—issues that I consistently raised when he and I were both on the Select Committee on Defence—which relate to recruitment and why younger people may or may not be joining the armed forces. The Opposition spokesperson has already mentioned accommodation, and I would also look to the Danish model, where all parties have made common cause to support long-term funding for the armed forces over a six-year period. That gets full support in the Danish Parliament as a model for funding the armed forces and creating an improved culture within them.

Finally, I say one thing with which the Minister probably will not agree. One way to change that culture may be to treat members of the armed forces as the equals of other employees across this country by giving them an armed forces representative body. However, I will certainly support the motion.

6.18 pm

Johnny Mercer: If it is not out of order to answer the points in reverse, I will do so. Some really interesting points have been made, which I will speak to in turn.

First, the hon. Member for West Dunbartonshire will know that I am as much of a cheerleader for civilian oversight of the military as he is. In any functioning democracy, it is important for that to be enforced, as Obama did in 2012 when I was serving in Afghanistan: he re-emphasised the control of civilian oversight over the military, which is pivotal to everything we do. It will not be news to the hon. Gentleman that I am not a huge fan of having some sort of union within the armed forces. That is not because I do not believe in the rights of individuals who serve; we work very hard to try to understand how to improve their lives and the offer that we make them. However, I think serving is fundamentally different, but I am always open to a conversation about these things. A modern armed forces should reflect a modern Britain.

I have yet to meet the hon. Member for Rhondda about traumatic brain injury, for which I apologise; I confirm that we will be meeting within the next couple of weeks. It is an important subject, and I pay tribute to him for his work in bringing it to people's attention.

On vexatious claims, the line is very clear: if someone commits a criminal offence in uniform, they will be prosecuted. Nobody will want to prosecute them more than I will, as the Minister for Defence People who has been charged with ending the ridiculous process of vexatious claims. The inability to hold ourselves to account in every battlefield that we have faced over the past 15, 20 or 50 years has led to a mass market of claims and investigations into people who, most of the time, have done absolutely nothing wrong except for, in the eyes of prosecutors, serving their country. The Government have made it absolutely clear that we will put an end to the industry of claims.

I can confirm that, on 18 March, I will present a Bill that fulfils the Prime Minister's manifesto commitment to act within 100 days. It is designed to tackle the vexatious nature of the claims system that has sprung up in recent years and continues to blight the lives of some of our most special people, but there will never be a blank cheque or a diminution of standards in the way

the UK military behave on operations, or in the opportunities to hold the Government to account. It is simply a question of narrowing the aperture through which human rights lawyers, who go on to commit fraud, exploit the situation and build business empires off the back of operations that the British Army and military conduct. The Bill will be presented on 18 March, and I look forward to it.

To someone who has never done this before, it seems odd that we just sit here and read out a bit of paper, and then the armed forces continue for another year. We anticipate a Bill later this year. The Government have made it clear that some reforms need to take place within the armed forces, and we have also talked about how we will legislate on the armed forces covenant so that no person in this country can be disadvantaged because of their military service. That will be part of the Bill, and I anticipate its being introduced later this year.

I will address in turn the comments of the hon. Member for Merthyr Tydfil and Rhymney. Mali is another operation that the UK military look forward to taking part in in our global fight to empower nations in that part of the world to defeat terrorism and keep this country safe. There will be plenty of opportunities to engage with and debate, both in public and in the House, the UK's foreign policy, but I will not go into further detail at the moment, for obvious reasons.

On the number of people who serve, we in this country have to get away from a numbers argument. As a Minister, I will always advocate more people coming to serve, because it is the best thing that young people can do. The thing that defines the military, however, is not the number of people or the proportion of GDP we spend on it, but whether it can meet the threat that we are up against in defending this nation and the way of life that we are so lucky to enjoy. As war becomes more automated, as we develop unmanned vehicles and as our ability to keep people safe and defend this nation continues to improve, it will inevitably lead to a requirement for fewer personnel in modern warfare.

I can assure hon. Members that, on this watch and under this Government, our military's capabilities will never decrease, but only continue to improve. Depending on how many people we need to do that, our military

will be manned accordingly. There was no intention to drop the 82,000 target from the manifesto. We just need to get away from talking about the strength of our military purely in numbers of personnel.

Retention is a huge challenge, possibly our biggest at the moment. We are doing much better on recruitment; we have met our targets two months early for this year through to April, which is a significant achievement by the team, to whom I pay tribute. That is an extraordinary achievement in a time of peace. There is undoubtedly a challenge in retention. The Secretary of State, the Prime Minister and I have made it clear that we will not tolerate any more denuding of the offer to people who are serving, including on pay, welfare, accommodation and families. We face a challenge, but we are well aware that retention is an issue and are working hard on it every day.

The future accommodation model is a big opportunity for those in the military to own their own home earlier and have a degree of independence that people serving 20 years ago did not want. We are currently running a pilot that has been extremely popular where it has been available. We have more work to do to communicate what FAM is and what it means for families.

At the moment, there is a narrative about veterans and we are up against the clock to get the legislation through, but a family member is as important as any other person in the defence family. The armed forces covenant says clearly that no servicemen or their families should be disadvantaged by their military service, and the Government are absolutely committed to following through on that.

I hope that I have answered the questions that were raised. I anticipate and look forward to an armed forces Bill later this year. We have a lot of work to do, but I encourage hon. Members to look at 18 March as a seminal moment when we can finally start to put an end to the ridiculous process of vexatious claims, and build on everything else that we are doing.

Question put and agreed to.

6.27 pm

Committee rose.

