

PARLIAMENTARY DEBATES

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OFFICIAL REPORT

Seventh Delegated Legislation Committee

DRAFT ARMED FORCES (COVENANT)
REGULATIONS 2022

DRAFT ARMED FORCES (SERVICE COURT RULES)
(AMENDMENT) (NO. 2) RULES 2022

Wednesday 26 October 2022

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The Committee consisted of the following Members:

Chair: HANNAH BARDELL

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|---|---|
| † Afriyie, Adam (<i>Windsor</i>) (Con) | † Jones, Gerald (<i>Merthyr Tydfil and Rhymney</i>) (Lab) |
| † Anderson, Stuart (<i>Wolverhampton South West</i>) (Con) | † Monaghan, Carol (<i>Glasgow North West</i>) (SNP) |
| † Atherton, Sarah (<i>Parliamentary Under-Secretary of State for Defence</i>) | † Morris, Anne Marie (<i>Newton Abbot</i>) (Con) |
| Bradshaw, Mr Ben (<i>Exeter</i>) (Lab) | † Pollard, Luke (<i>Plymouth, Sutton and Devonport</i>) (Lab/Co-op) |
| Burgon, Richard (<i>Leeds East</i>) (Lab) | † Smith, Nick (<i>Blaenau Gwent</i>) (Lab) |
| † Eastwood, Mark (<i>Dewsbury</i>) (Con) | † Timpson, Edward (<i>Eddisbury</i>) (Con) |
| † Hall, Luke (<i>Thornbury and Yate</i>) (Con) | † Tomlinson, Justin (<i>North Swindon</i>) (Con) |
| † Harris, Carolyn (<i>Swansea East</i>) (Lab) | † Walker, Mr Robin (<i>Worcester</i>) (Con) |
| † Huddleston, Nigel (<i>Lord Commissioner of His Majesty's Treasury</i>) | Yohanna Sallberg, Niamh McEvoy, <i>Committee Clerks</i> |
| | † attended the Committee |

Seventh Delegated Legislation Committee

Wednesday 26 October 2022

[HANNAH BARDELL *in the Chair*]

Draft Armed Forces (Covenant) Regulations 2022

2.30 pm

The Parliamentary Under-Secretary of State for Defence (Sarah Atherton): I beg to move,

That the Committee has considered the draft Armed Forces (Covenant) Regulations 2022.

The Chair: With this it will be convenient to consider the draft Armed Forces (Service Court Rules) (Amendment) (No. 2) Rules 2022.

Sarah Atherton: It is a pleasure to serve under you, Ms Bardell. This is my first outing as a Minister, so I will rely on your guidance and the lenience and tolerance of the Opposition.

The armed forces covenant is a promise by the nation that those who serve or have served in the armed forces, and their families, will be treated fairly. It aims to ensure that they will not be disadvantaged in accessing public and commercial goods and services as a result of their service. It also allows for special provision, when justified, for those who have sacrificed the most, such as the bereaved and the severely injured.

In the 11 years since the Government put the armed forces covenant on a statutory footing, we have seen excellent work across the UK in support of our armed forces community. However, there remain concerns that some members of the armed forces and their families continue to experience disadvantage when accessing public services, particularly as they move around the country. Evidence suggests that that is largely due to a disparity in the level of awareness of the covenant among local service providers. It is this disparity in awareness that will be rectified through the Armed Forces Act 2021 via the introduction of guidance for relevant statutory bodies. In doing so, we will have successfully delivered a key manifesto commitment to further incorporate and strengthen the armed forces covenant in law, and ensured that the covenant has a firm platform to continue to flourish in the future.

The main focus in the guidance is the introduction of due regard. We designed the new duty under the covenant around the principle of due regard as a means of building greater awareness. The duty of due regard recognises that statutory bodies are required to adhere to similar “due regard” duties already in place, such as the public sector equality duty, so they will be familiar with how to meet such obligations. As with those existing duties of due regard, we will not prescribe in legislation exactly how the requirement to have due regard must be met. The duty does not mandate any specific outcomes, and statutory bodies will already have processes in place to meet similar existing obligations, so we do not consider that this duty will impose any significant additional costs on these agencies.

By obliging the statutory bodies responsible to consider the needs of the armed forces community when developing policy and making decisions in the key areas of health, housing and education, the duty will naturally raise awareness of the covenant and its principles. That, in turn, will help to ensure that members of the armed forces community are treated fairly and not disadvantaged when engaging with statutory agencies responsible for the delivery of health, housing and education. Those three areas have been identified as being of most concern to the service community, and they will act as a starting point.

The regulations implement key provisions of the new duty of due regard by bringing into force supporting statutory guidance under regulation 2. When exercising relevant public functions, agencies must have regard to this guidance. The purpose of the statutory guidance is to help the bodies understand what is required of them under their new obligations. It does that by explaining the principles of the covenant and how and why members of the armed forces community may experience disadvantage, and by providing good examples of removing, mitigating and preventing disadvantage.

Over the last two years, in order to ensure that the statutory guidance would be fit for purpose, we consulted our key stakeholders. Discussions were held with representatives from local service providers, Government Departments, the devolved Administrations, service charities, families federations and the relevant ombudsmen. We engaged with more than 200 individuals representing their organisations, and their views have been essential in ensuring that the guidance is robust, practical and, perhaps most importantly, useful to users.

The completed draft guidance was also subject to a formal consultation. The Government consulted the devolved Administrations of Northern Ireland, Scotland and Wales; local authorities across the United Kingdom; the NHS, including NHS trusts and health boards, agencies and commissioning groups; service charities and families federations; subject matter experts; and, more importantly, members of the armed forces community itself. As a result, only minor changes were made to the statutory guidance, focusing on ensuring that it was as clear as possible to users.

The covenant principles relate to disadvantage faced by servicepeople, including the relevant family members of service personnel and veterans. Regulation 3 defines who is a relevant family member in respect of the new duty. We have taken a broad approach in the definition, as a family group may look very different depending on circumstances, and those outside of what might traditionally be defined as a family may well be impacted by service life—for example, separated spouses with children. Where family members are affected, it is usually due to their cohabitation with, or dependency on, service personnel. That has been used as the basis for the definition, which extends beyond the immediate family members.

The definition, therefore, in addition to partners and children, includes wider family and bereaved family members, where such a cohabitation status or dependency on the service member exists. It also includes those who have parental responsibilities under section 3 of the Children Act 1989. By more clearly identifying the groups impacted by service life, we will assist public bodies to better understand to whom they might have due regard, and so meet their obligations under the new

duty. The guidance and the definition of relevant family members will therefore be key tools in raising awareness of the issues faced by those in our armed forces community, and will help to promote better outcomes for them when accessing key public services.

We must, however, look to the future. The other vital element in our approach rests with the new powers granted to the Secretary of State by the 2021 Act to add new functions or bodies to the scope of the duty, to ensure that it can effectively adapt to the changing needs and concerns of the armed forces community. We are engaging with Government officials and covenant stakeholders to establish an open and transparent process by which possible additions to the new duty can be thoroughly considered by the Secretary of State. Potential additional functions will be assessed against clear and robust criteria that have been established and agreed with covenant stakeholders.

During the passage of the 2021 Act, we committed to conduct a review into whether central Government should be included in the scope of the duty, and to report on its findings in the 2023 covenant annual report. The review will consider the role of the UK Government and devolved Administrations in conducting the functions already in scope of the duty. It will also consider the extent to which they currently consider the covenant principles, and the benefits and costs of bringing them into scope. As is good practice, a second review will be undertaken to consider the effectiveness and impact of the duty within five years of its coming into force. In order to enable a meaningful assessment to be made, we must give the duty time to embed. It must be in force for at least 12 to 18 months to allow time for its effects to emerge and be properly assessed.

Where issues concerning compliance with the duty are raised, we expect the vast majority of complaints to be resolved through existing complaints procedures, including relevant ombudsmen where appropriate. Judicial review remains the appropriate means of ultimate recourse when challenging non-compliance by a public body with its legal obligations. While the duty cannot mandate public bodies to keep specific records, best practice would suggest that this be done, in addition to the record keeping processes already in existence for service users. That is all highlighted in the statutory guidance.

I ask hon. Members to consider that the covenant is only one element of our work to improve the lives of those in our armed forces community. There are many initiatives to ensure that our people are not disadvantaged. These include, but are not limited to, our service personnel, veterans and their families. There is a raft of initiatives, including: the defence holistic transition policy; the schools admission code; the service pupil premium; the creation of the armed forces covenant fund trust, which supports 700 covenant initiatives and spends around £10 million per year on projects such as the armed forces families fund; the strategy for veterans; the strategy for families; the mental health and wellbeing strategy; the defence accommodation strategy; the future accommodation model; the forces help to buy scheme; and the cost of living package. The duty and its supporting guidance will be a key tool, now and in the future, in promoting better outcomes for our armed forces community.

Let me turn to the draft Armed Forces (Service Court Rules) (Amendment) (No. 2) Rules 2022. The statutory instrument consists of three changes to the rules that

apply to the service courts. First, it will introduce an overriding objective for the service courts. Secondly, it will give the Director of Service Prosecutions responsibility for warning prosecution witnesses of trial dates. Finally, it will increase the representation of women on court martial boards.

The first measure implements one of the recommendations of the service justice system review carried out by His Honour Shaun Lyons and Sir Jon Murphy. That recommendation was to introduce an overriding objective, equivalent to that used in the civil and criminal courts in England and Wales. It applies to the court martial, the service civilian court and the summary appeal court. The overriding objective is that cases are dealt with “justly”. That encompasses considerations such as the need to acquit the innocent, convict the guilty, and ensure that cases are dealt with efficiently and swiftly. It includes treating all participants with politeness and respect, and respecting the interests of victims and witnesses and keeping them informed of the progress of the case. In addition, the overriding objective for the service courts includes a reference to the need to maintain the operational effectiveness of His Majesty’s forces. Maintaining operational effectiveness is a key difference between the service justice system and the civilian criminal justice system.

The second measure implements another recommendation from the Lyons-Murphy review. It amends the current rules on notifying witnesses, giving the Director of Service Prosecutions, rather than the Military Court Service, responsibility for warning prosecution witnesses of the time and location of the proceedings at which they are required to give evidence. This change will improve the speed and efficiency for witnesses making arrangements and attending the court martial process. It will align the practice of the service courts with the civilian criminal court system for England and Wales, where that role is performed by the Director of Public Prosecutions.

Finally, new rule 34A in the court martial rules requires a court administration officer to ensure that each court martial board includes at least one servicewoman.

Nick Smith (Blaenau Gwent) (Lab): I wish the Minister best of luck in her new role.

I have been looking through the explanatory memorandum and two things have occurred to me. First, point 10, on page 3, under the heading “Consultation outcome”, says that there was no consultation for this proposal. However, it does say that there was engagement with a range of stakeholders, including the Judge Advocate General and the Military Court Service. Will the Minister please tell us their main feedback points?

Secondly, there is a big emphasis on page 2 of the explanatory memorandum on the recruitment of lay members. That sounds great, but how will those lay members be recruited?

Sarah Atherton: On the hon. Member’s second point, if he waits a little longer, I will go into the details of how we recruit. However, I can say something that is not in my speech: the existing strategy is to have two pools, one of men and one of women, but that is to be stopped, and from January we will have one pool of lay members who are serving personnel of warrant officer and above—OR-7 grade and above. A female will be

[Sarah Atherton]

selected from that, and the rest go into the pool to be picked out randomly. I will discuss that a little more later in my speech.

The Judge Advocate General and senior military personnel are happy with that provision. You might expect them to be. We have engaged with them and made any amendments necessary before I brought it before you today—

The Chair: Order. I remind Members to speak through the Chair and not directly to each other.

Sarah Atherton: I am sorry, Ms Bardell.

At this stage, I declare an interest. This measure has its origins in a House of Commons Defence Committee report, “Women in the Armed Forces: From Recruitment to Civilian Life”—the result of an inquiry that I chaired. In the Government response to the report, the Ministry of Defence undertook to carry out work on increasing the representation of women on our court martial boards related to sexual offending. I am pleased that the MOD listened, and this measure goes further by ensuring that women will be better represented on boards dealing with all types of case.

Owing to the lower number of women compared with men serving in the armed forces, the chances of a woman being selected at random from the pool nominated by each of the services to serve on a court martial board are significantly lower than those of a woman being randomly selected to serve on a jury in the civilian system. In fact, the existing process of board selection means the probability that it will generate an all-male board is 14% for the Army, and 23% for the Navy and the Air Force. This measure seeks to redress that imbalance and better reflect society.

Rather than being left to chance that a woman will be randomly selected from the pool of nominees, the change will ensure that there will always be at least one woman on every board, bringing the constitution of the courts martial closer to that of juries in the civilian criminal justice system. While the measure will mean women are slightly more likely to be selected for a court martial board, I reassure the Committee that the impact it will have on women who serve in our armed forces has been considered carefully as part of our public sector equality duty. No concerns were expressed.

The impact will not result in women being treated less favourably than men given the small numbers involved. The total number of women that will be required to populate all three services’ boards is 192. That is an increase of 48 more women per year than currently, and is 4.2% of the population of women eligible to sit on a court martial board, due to rank and seniority requirements. The total number of men required to populate the three services’ boards will remain largely unchanged at 672, which is 1.7% of the population of men eligible to sit on a court martial board.

Additionally, service on a board lasts only about two weeks and is a normal part of the duties of any senior non-commissioned or commissioned officer. It can be useful experience for future command, as commanding officers play a role in the service justice system.

We believe that increasing the representation of women on court martial boards will ensure that they are always part of the decision-making process in the service justice system. That will better reflect our society and reinforce the important role of servicewomen in the justice system. I commend the draft instruments to the Committee.

2.48 pm

Luke Pollard (Plymouth, Sutton and Devonport) (Lab/Co-op): It is good to see you in your place, Ms Bardell.

I welcome the Minister to her first statutory instrument Committee on the Front Bench. I hope that the Prime Minister was listening to her speech because, having sat through an enormous number of statutory instrument Committees since I was elected in 2017, it is good to hear a Minister on top of their brief and able to speak beyond the words given to them by officials. That is welcome, and I hope that the Minister stays in her place if any reshuffle comes her way. At a time of such severe international difficulties, we need good people who know our military and can make good decisions.

Labour will oppose neither of the draft statutory instruments. They both move in the right direction. However, I have a few questions and a few points to make. A number of Opposition colleagues have participated in the armed forces parliamentary scheme, as I know have Government Members, which gives parliamentarians an opportunity to look at service life. Indeed, I have just returned from Estonia, where I saw the amazing work of the King’s Royal Hussars and 2 Rifles in defending our allies there. We need to make sure that the systems put in place are suitable for not only service personnel but, importantly, their families. I know that the Minister has an interest in defence families, which is a fresh injection into the way the Ministry of Defence works, and I wish her the best of luck with that. I will ask a few questions about defence families, but I encourage the Minister and all parliamentarians to fully participate in that scheme if possible.

The AFPS could benefit from a slight tweak. At the moment, the three basic courses do not include a module on defence justice. Given the important role that defence justice plays for our service personnel and the confidence that we must have in defence justice, the ability for parliamentarians to have a passing understanding of how the defence justice system differs from the civilian system and why there is a difference would not only aid Committees such as this in scrutinising legislation, but would help us to understand daily service life.

Carol Monaghan (Glasgow North West) (SNP): I thought the hon. Member was going to add the experience of women. Although the Minister has done a huge amount of work on the issue, that would be another useful addition to the parliamentary scheme, so that parliamentarians could sit down and hear, behind closed doors, the true lived experience of women in the armed forces.

Luke Pollard: I am grateful for that intervention, and I agree. It is quite refreshing to see the freedom that service personnel have to speak to parliamentarians on visits, and experiences of sexual violence within the forces, which the Minister will know about from her time on the Defence Committee, are very relevant to what we are discussing today.

I will first talk about the covenant regulations and then move on to service justice. We need to recognise that it is not just our service personnel, their families and people who have served in the past who need to have a robust armed forces covenant that is as effective as possible. Across the country, there are some locations—Plymouth is one—that do the armed forces covenant very well. There are other locations where the armed forces covenant sits gathering dust on a shelf, and the ability to make sure it is truly implemented and lived is a challenge that still has not been fully met.

I would like the Minister to consider important ways in which the covenant could be strengthened. One of those is the extension of the covenant beyond education, healthcare and housing to include other areas of central Government activity—employment, social care, pensions, compensation and benefits, to name but a few. Our service personnel, veterans and their families should not incur unfair disadvantage in any walk of life, and the importance of the armed forces covenant as a principle needs to be extended to all public bodies.

There is a second area where this SI could seek to go a little further. Despite the Minister mentioning the 2023 review of the covenant, there are still no plans for the covenant to apply to central Government, including the Ministry of Defence itself. It is worth taking a moment to consider that omission. If the armed forces covenant is to be real, and if service personnel, their families and veterans are to have confidence in it, the Ministry of Defence must lead by example. I would like to see Ministers, including the Minister here today, put more effort into making sure that happens.

A whole host of service charities, including the Royal British Legion, Help for Heroes and the Confederation of Service Charities, have expressed concern that central Government do not have a duty under the covenant. In terms of the duties under the covenant, it is fine for this place to put additional responsibilities on local government—which has a lot of responsibilities already, but not the resources to go with them—but the Government need to walk the walk if they are to talk the talk, and that means applying these duties to central Government as well. This is not a small point. National Government oversee many policy areas that service personnel experience difficulties with, so they should have clear, measurable duties under the covenant to deliver for personnel, their families and veterans.

Satisfaction with service life has dropped below 50%, according to the Government's own figures, which should worry Members on both sides of the House. I seek not to make a party political point; we need to make sure that we increase morale among our armed forces personnel if we are to retain their skills and experience, and honour our obligations as, in effect, employers. There are still clear failings when it comes to housing, healthcare, social care and other issues.

As we approach Remembrance week, attention will naturally turn to how the covenant is implemented, and rightly so. As parliamentarians, we should not only ask questions publicly, but challenge constructively in private and ask when it will apply and whether the 2023 review of the covenant will include consideration of its greater applicability to central Government. I am afraid 2023 is already too late.

Let me turn to the draft Armed Forces (Service Court Rules) (Amendment) (No. 2) Rules 2022. The Minister will know, because she and I have spoken about this

many times, that the Labour party stands four-square with our armed forces and backs the Government's effort in Ukraine to support our NATO allies, but we do need to make sure that we get all aspects of service life right. Although the rules are a step in the right direction, I have some questions about how we can make sure that they are delivered appropriately.

It is entirely sensible to introduce the overriding objective that the Minister has set out for courts martial and to give the Director of Service Prosecutions responsibility for warning prosecution witnesses of trial dates. Those were pragmatic recommendations from the Lyons review, which we welcome.

Likewise, it is welcome that the statutory instrument will ensure that there is at least one woman on the board of each court martial in circumstances where there are lay members on the court. A normal board will have between three and seven people, so it is a step in the right direction to have one woman there, but I would like to have a greater sense that we are moving towards balance. We need to see more women in our armed forces full stop, but the explanatory memorandum could have shown a greater sense of the direction of travel that Ministers wish to take. I would be uncomfortable with the idea that it is good enough that there is a woman on the board and that some additional women may, although not necessarily, be provided by the shuffle that the Minister explained. We need a sense of the direction of travel.

I encourage the Minister, in the implementation of the SI, to look at how the language can be tweaked to make sure we have greater representation, which is particularly important when the board considers cases that include servicewomen or situations in which a servicewoman has been affected as a victim. The lived experience of the people who are judging someone and making decisions on their career and on prosecution should have an element of familiarity with the experiences of either the person on trial or the witnesses and victims.

Some Government statements on upholding military justice are still more rhetoric than reality. I wish to put on the record the Government's rejection of the headline recommendation of the Lyons review that murder, manslaughter and rape should be prosecuted in civilian rather than military courts when the offences are committed in the UK, with the Attorney General able to rule otherwise in exceptional cases.

It is a shame that the Government have chosen not to adopt fully the proposal—the headline recommendation—but it is more than disappointing, because the Minister may not have listened to her own recommendations. I do not wish to embarrass her, but last year she co-authored a Defence Committee report on women in the armed forces that argued that the Government should remove court martial jurisdiction over cases of rape and cases of sexual assault with penetration, as well as for cases of domestic violence and child abuse. I know the Minister has been in post for only a short time, but I encourage her to continue to provide challenge within the Ministry of Defence in respect of why the full recommendation was not included in the statutory instruments before us and on how quickly the change will come. Will she set out whether any work on that is in train in the Ministry of Defence?

There is a litany of reasons why this issue is important, including serious backlogs, investigators missing obvious lines of inquiry and the unnecessary retraumatisation

[*Luke Pollard*]

of victims. Let me give the Committee two examples taken from the written evidence submitted by the Centre for Military Justice to the Defence Committee inquiry on women in the armed forces. In one case in which a servicewoman reported an alleged sexual assault, the Service Prosecuting Authority accidentally revealed the victim's home address to the alleged assailant by sending to the alleged perpetrator a letter intended for the victim. That is clearly unacceptable. In another case, where a servicewoman reported sexual assault, court martial transcripts show that a judge advocate remarked of the

“quite appallingly bad police investigation...how stupid was it not to interview the people who were at the scene”.

There is still work to be done, and I encourage the Minister to look at whether that recommendation can be brought back.

It is unsurprising that the recent service justice system policing review said:

“The Service Police do not investigate enough serious crime to be considered proficient”.

That makes a clear distinction between service policing and the civilian role. We must understand the particular demands, stresses and secrecy that may apply in a military environment, and have examples of where that should not apply and where the expertise and familiarity of civilian policing could produce better results for victims and greater confidence in the justice system. The numbers speak for themselves. Ministry of Defence figures show that from 2015 to 2020, the conviction rate for rape cases tried under courts martial was just 9%. Recent data shows that the conviction rate was 59% for similar cases that reached a civilian court. We know that prosecution rates for rape are far too low in civilian courts, but that comparison shows a problem.

I would be grateful if the Minister answered a number of questions. First, my hon. Friend the Member for Blaenau Gwent made a point about the explanatory memorandum. I am afraid that if the Minister is to serve on Delegated Legislation Committees with me, she will need to know that I, too, read the explanatory memorandums quite closely. I am interested in why the territorial extent of the regulations includes United Kingdom overseas territories but not Gibraltar. Considering the large UK military presence in Gibraltar, why is that particular overseas territory excluded from the regulations? Are the provisions replicated elsewhere, or is a separate statutory instrument needed to deal with Gibraltar's specific legal jurisdiction?

I am not a fan in impact assessments of the phrase “no, or no significant, impact”

because I believe that those are two very different things. I know that it is not the Minister's fault, and that officials who write such explanatory memorandums must use the house style, but there is a difference between no impact and no significant impact. When looking at the impact of any SI, it is unhelpful to have those blurred together.

My final question is about the quite helpful expansion of what a “family member” means in the SI. As someone who believes that families should be at the heart of our community but that we should not specify what a family is because each of our families is different and

each is loved by the people within them, I was interested to see how the Government have laid out what a family is and what a relation is. When a service person has a foster child, or when there is one in a defence family, I think that would be included within the broader remit, but I would be grateful if the Minister confirmed it for the record.

May I politely challenge the use of the language “of the full blood or of the half blood or by marriage”

in the Bill? There is language that, as parliamentarians, we should encourage movement away from. When we talk about the “full blood” or the “half blood”, it suggests that some children have a legitimacy that is different from that of adopted children, for instance. I encourage the Minister to look at whether in future SIs that type of language can be retired.

Edward Timpson (Eddisbury) (Con): I am pleased that the hon. Member has raised the issue of family make-up, especially when fostering is involved, as well as adoption. Of course, there is also special guardianship. That is another area that we need some clarity on, to ensure that it is not missed out in the definition.

Luke Pollard: I am grateful for that intervention. We want the rules around service life to better reflect the way the world is. Having come from a service family myself—my old man was a Royal Navy officer—I recognise that the family that I grew up in was very different from the families that were on the marry estate on either side of us. The regulations must adopt the full range. That speaks to the need for us to develop a better understanding of what defence families are like. Parliamentarians and the Ministry of Defence have a good understanding of service personnel and an increasing understanding of veterans, though there is more work to be done there, but defence families are often a bit of an afterthought.

I mean that in a constructive way, to encourage the Minister to challenge the Ministry of Defence further about whether that language could be updated—even if it is strictly defined by primary legislation elsewhere—and replaced with more inclusive language that reflects how service families are structured in real life. I know that she feels passionately about this and takes such concerns seriously.

I wish the Minister the best of luck in her role. We need people with experience and expertise in the Ministry of Defence at this difficult time, and I hope that she stays there for quite some time to come—until she is replaced by a Labour Member in due course.

3.5 pm

Carol Monaghan: I congratulate the Minister on her role. All of us who have had interactions with her over the last few years know that her appointment is well deserved, and we look forward to working with her in her new position.

We have discussed many times in similar debates the fact that the covenant remains very much a statement of intention without the required statutory teeth, and it is difficult to see how the regulations will change that. The big issues in the regulations are housing, education and healthcare, and I will say a couple of words about them. The hon. Member for Plymouth, Sutton and Devonport has just spoken about the changing nature of service families. Bearing in mind that we are looking at the

principle of “no disadvantage”, there must also be some recognition that service families are not necessarily wives, that they are not necessarily at home looking after children, and that they are not necessarily in service accommodation. Often, they are living in their communities, and often they are husbands, partners or whatever else—there can be many different iterations of the new modern family. Sometimes, that is not captured when we look at the principle of “no disadvantage” and how we can support those families in a different environment.

I want to make a small point on education. For the last few years, Glasgow schools—I speak about them because I am a Glasgow MP, but others may know of this happening elsewhere—have asked on registration forms for an indication of whether parents are serving personnel or veterans. That is really important and allows schools to put different accommodation in place where required. I think that would be a really simple addition to schools that would not require a huge amount of funding, but would allow these families to be identified more effectively.

The Minister said that there would be no requirement for additional funding as a result of the regulations. We had a lot of discussion about this a number of years ago. If we are asking local authorities to put in place more accommodation—not just housing, but more recognition of what service personnel and their families require—there has to be a financial element. We cannot just expect local authorities that are already struggling to pick up all the slack. That is particularly the case for local authorities that are close to bases, where a lot of service personnel will move into and out of the local area. It would be useful for the Minister to say something in her response about funding for local authorities.

Many issues are not covered by the regulations. They do not cover pay or how personnel can campaign on pay-related issues. There is nothing about providing proper representation for serving personnel, in the way that many of our NATO allies do. Importantly, personnel in certain countries are able to express concerns outwith their chain of command, so that it does not cause problems for them. It would be good to see how we are going to put in place such an opportunity for service personnel, if we do not have proper representation for them.

It is good that LGBT veterans are now able to respond to the independent review. I encourage the Minister and the Government to listen carefully and to respond quickly, because for many decades many of those veterans have been living with the result of what happened to them. They need some resolution. We know that there is an issue to be dealt with quickly.

I also want to mention accommodation and housing, in particular for veterans. Many veterans have additional needs because of their service, including disability. I mention the work of the Scottish Government in mitigating the bedroom tax: if veterans need an additional room for equipment they require, they are not expected to shell out additional money. It would be good to hear whether the Minister is to take any action to replicate the work of the Scottish Government.

Moving to service justice, the SNP’s position is that serious cases of sexual assault, rape or gender-based violence should be processed and tried in civilian courts, rather than in the service justice system. The Minister

spoke about the representation of women on the court martial boards, but a minimum of one woman is not enough. There has to be far greater representation if we are looking at the issue.

The Centre for Military Justice gave some evidence to the Defence Committee stating that the outcomes of rape and other sexual assault cases heard in military courts are much lower compared with civilian courts. The then Secretaries of State for Home Affairs and for Justice—the right hon. Member for Witham (Priti Patel) and the right hon. and learned Member for South Swindon (Sir Robert Buckland)—both talked about how they were deeply ashamed of the rape conviction rate. The Minister has spoken up extensively on behalf of women personnel, but it would be good to hear of some strengthening and of such cases being heard in civilian courts, rather than military courts.

To give some figures, of 48 rape trials at court martial in 2017, only two resulted in a conviction. In 2018, the number of rape cases fell dramatically, and I think we can understand why when the conviction rate is so low: there were only 10 cases, resulting in just three convictions. In 2019, 15 cases resulted in only three convictions.

That is not good enough, and the signal it gives to female personnel is not the message that we should be giving. We should be saying: “We will listen to this case. It will be heard fairly.” It should not only be heard, but investigated first of all by people with expertise—particular expertise of dealing with rape or sexual abuse. Having that specific expertise goes beyond what we can expect of military police and investigators in the military to have; it has to be done by the professionals who have such expertise.

Accused service members going through a court martial are allowed to introduce evidence of their good character. If I were the victim and hearing evidence of the accused’s good character, it would sound to me as if that somehow negated their poor behaviour. We have to be careful about the messages. In short, we seem to be saying: “If you are an excellent soldier, it doesn’t matter so much if you are a violent felon.”

I would also like to hear a bit about child recruits aged 16 and 17. According to MOD figures, 22 such recruits at the Army Foundation College were victims of sexual abuse last year. What has been done about that and to ensure that child protections and safeguarding are in place for youngsters?

Both SIs are steps in the right direction, but what sort of evaluation has the Minister planned? Will action be taken as a result of increased numbers of rape trials, for example? People need to understand that there will be a more effective system in place. Finally, I know that the Minister has the interests of personnel—particularly female personnel—at heart, and I look forward to working with her over the next few years.

3.16 pm

Sarah Atherton: If I forget some of the questions that you have just asked me, please let me know and I will answer them.

I will start with the questions from the hon. Member for Plymouth, Sutton and Devonport. I will write to you about the term “half blood”—it sounds a bit Harry Potter-esque, doesn’t it? I agree that language needs to

[Sarah Atherton]

be changed, and we need to put the victim at the centre of all policies that the MOD looks into. I will get back to him on that one.

A lot of us here have been in service—I draw on my own service experience and service networks, as do many others in this room—and many of us have also taken part in the excellent armed forces parliamentary scheme, which is quite practical in outlook. I absolutely agree that it would be quite interesting and informative to learn about the service justice system and courts martial, and—to extend this to the point made by the hon. Member for Glasgow North West—about procurement, the covenant, service charities, and the representation of women and black, Asian and minority ethnic people in our military. I am happy to row in behind you to get that sorted out with the armed forces parliamentary scheme.

I will cover both questions about murder, manslaughter and rape in the military courts. You obviously know that I have a vested interest in that, and I will pursue it from my position as Minister. On the back of the recommendations in the Defence Committee's "Women in the Armed Forces" report and those of the Lyons-Murphy review, the MOD has introduced a raft of measures, and I have made note of a few of them.

We have removed the chain of command from complaints of a sexual nature. We have instigated a defence serious crime unit, which will come into effect early next year; a service police complaints commissioner, who is soon to be appointed; a victims unit within the defence serious crime unit; and a protocol on concurrent jurisdiction to see where best to trial rape cases—I will watch that carefully to see how it progresses. Obviously, it has to bed in before we can look at the evidence, but you will appreciate that I have an interest in that area.

The Chair: Order. Will the Minister remember to speak through the Chair?

Sarah Atherton: I am sorry, Ms Bardell. We have a newly appointed provost marshal. I am very keen for victims to be at the centre of all the policies as our service families go forward.

Carol Monaghan: It is good to hear that accusations of rape can be taken out of the chain of command, but who will victims be able to raise their concerns with? Will that particular person be properly trained to deal with crimes of that nature?

Sarah Atherton: If there is an allegation of rape, the service personnel can now go to the civilian police; granted, it does not happen that often, because of the institution of the MOD, but they can and do have that option now. The list I gave is all about training the service police and the investigators about what to do properly. A lot of these policies and procedures in the service justice system are now aligned with the civilian justice system, which we hope will increase and maintain the speciality of serving police.

Carol Monaghan: I thank the Minister for that, but I will push her a little further. In the civilian police, there are people specifically trained to deal with such allegations; they do not deal with a wide range of allegations. It

would be useful to know that that is the same in the military; that there are people specifically trained to deal only with these types of allegations, and that people would interact with somebody who has that expertise.

Sarah Atherton: There is already a system in place. Victim officers are assigned to cases such as this, but I identified in my report the fact that sometimes they were good and sometimes they were not; there was a training programme to ensure that everyone reached an acceptable level. They are assigned someone to help them through the process.

The Chair: I remind Members that this aspect, while incredibly important and pertinent, is out of the scope of the legislation. For the benefit of everybody here—because it is an important discussion—I urge the Minister to take it up separately with Members and ensure that they have the answers they seek.

Sarah Atherton: I will get back on track, Ms Bardell, and return to the armed forces parliamentary scheme. I would like to see more women on the court martial, but we have only 12% women at the moment. There is a raft of measures that have gone in to try and help recruitment and retention of women in the armed forces, not only with regard to what I have said about when things go wrong but with terms and conditions for uniform and body armour. The culture issue will be addressed, but it will take time. We will see more women in the military—I am confident of that—and as a consequence we will see more women in the court martial system.

Luke Pollard: Is it possible for the Minister to publish the data, on an annual basis, of how many men versus women are on the boards? It would be useful to be able to see the change. The stats that the Minister gave earlier were useful, but seeing the direction of travel on an annual basis as part of normal MOD reporting could be helpful. Is that something she would consider?

Sarah Atherton: Yes. One thing I did not mention is that the intention is to review this after a year to look at its success, and to ensure that women are on the boards. If there are operational requirements as to why someone has to be withdrawn, that is something we need to keep an eye on. I will write to the hon. Member to see if we can do it on an annual basis, rather than just at the 12-month mark; hopefully we will see more women on the court martial board.

Duty of due regard will be reviewed. It is a starting block; when it was introduced, it was always a starting block. It will be reviewed with regard to the devolved administration involvement and the central Government. If the requirement is there to include these statutory agencies and if there is a requirement to extend the scope to other fields outside health education, we will do so, but we need evidence to say that that is necessary first.

Let me turn to Gibraltar. The Gibraltarian regiment is a civilian-raised regiment, and does not come under the definition of the UK regular forces. It falls outside the Armed Forces Act, but if it wants to be included it can write to the MOD and request that; that is not a problem.

Luke Pollard: May I press the Minister on that point? She is right about the Gibraltar regiment, but for non-Gibraltar regiment personnel stationed in Gibraltar—there are UK service personnel outwith that regiment—this legislation, according to the territorial extent, would not apply. Is that her understanding? That regiment and the additional personnel we have there seem to be dealt with differently.

Sarah Atherton: That is a fair point. I will get back to the hon. Member on that.

Families extend to foster children and special guardianships. I reiterate that the definition of an extended family goes outside the scope of the Armed Forces Act, because we recognise that it needs to be more encompassing. Again, we will keep an eye on that.

In response to the hon. Member for Glasgow North West, LGBT is not quite in scope, but I will say quickly that Lord Etherton is undertaking a review. We need to right some wrongs, and I will look into that. Murder, manslaughter and rape have been mentioned—again, slightly outwith. The independent pay review body will report in spring, but at the moment the armed forces have the highest salaries they have had in 20 years. A cost of living package is in place to support them going forward. I am conscious that we will also be looking at our BAME community. I will work with representatives to ensure that they are not outside what

we are focusing on, and that they are included in how we go forward with the transformation and modernisation of the military.

The hon. Lady also mentioned children going into schools. Children already receive a service pupil premium, but some work is going on as to how beneficial that is and whether we can do more to help service families as they move around the country and abroad. The Army Foundation College Harrogate is an exceptional college, taking in a lot of young people from all sorts of diverse backgrounds and educating them to a higher level than when they joined. It also educates them in future military life. There have been some issues—it would be wrong to say that there had not been—and I will look into them. I think that is everything.

Question put and agreed to.

Resolved,

That the Committee has considered the draft Armed Forces (Covenant) Regulations 2022.

**DRAFT ARMED FORCES (SERVICE
COURT RULES) (AMENDMENT) (NO.2)
RULES 2022**

Resolved,

That the Committee has considered the draft Armed Forces (Service Court Rules) (Amendment) (No. 2) Rules 2022.—(*Sarah Atherton.*)

3.27 pm

Committee rose.

