

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT ARMED FORCES (TRI-SERVICE SERIOUS
CRIME UNIT) (CONSEQUENTIAL AMENDMENTS)
(NO. 2) REGULATIONS 2022

DRAFT ARMED FORCES (COURT MARTIAL)
(AMENDMENT) RULES 2022

Monday 21 November 2022

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The Committee consisted of the following Members:

Chair: YVONNE FOVARGUE

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| † Bacon, Gareth (<i>Orpington</i>) (Con) | † Mills, Nigel (<i>Amber Valley</i>) (Con) |
| † Baillie, Siobhan (<i>Stroud</i>) (Con) | † Monaghan, Carol (<i>Glasgow North West</i>) (SNP) |
| Carden, Dan (<i>Liverpool, Walton</i>) (Lab) | † Moore, Damien (<i>Southport</i>) (Con) |
| † Double, Steve (<i>Lord Commissioner of His Majesty's Treasury</i>) | † Murrison, Dr Andrew (<i>Minister for Defence People, Veterans and Service Families</i>) |
| † Eagle, Maria (<i>Garston and Halewood</i>) (Lab) | † Penning, Sir Mike (<i>Hemel Hempstead</i>) (Con) |
| † Eastwood, Mark (<i>Dewsbury</i>) (Con) | † Pollard, Luke (<i>Plymouth, Sutton and Devonport</i>) (Lab/Co-op) |
| † Greenwood, Lilian (<i>Nottingham South</i>) (Lab) | † Smith, Nick (<i>Blaenau Gwent</i>) (Lab) |
| † Jarvis, Dan (<i>Barnsley Central</i>) (Lab) | Kevin Maddison, <i>Committee Clerk</i> |
| Mangnall, Anthony (<i>Totnes</i>) (Con) | |
| † Metcalfe, Stephen (<i>South Basildon and East Thurrock</i>) (Con) | † attended the Committee |

Second Delegated Legislation Committee

Monday 21 November 2022

[YVONNE FOVARGUE *in the Chair*]

Armed Forces (Tri-Service Serious Crime Unit) (Consequential Amendments) (No. 2) Regulations 2022

4.30 pm

Maria Eagle (Garston and Halewood) (Lab): On a point of order, Ms Fovargue. One of the papers before us is an impact assessment which, when I look at it, is about the ban on the provision of maritime transportation and associated services for Russian oil, which does not seem to relate to the statutory instruments before us today. In making his opening remarks, can the Minister clarify whether or not there is an impact assessment for those instruments? The instruments themselves say that no full impact assessment has been prepared. It is useful to have somebody else's impact assessment, but not tremendously helpful to the scrutiny that the Committee is supposed to apply to these instruments.

The Chair: Thank you. I will now call the Minister to move the first motion and speak to both instruments. At the end of the debate, I will put the question on the first motion, then ask the Minister to move the second motion formally.

The Minister for Defence People, Veterans and Service Families (Dr Andrew Murrison): I beg to move,

That the Committee has considered the draft Armed Forces (Tri-Service Serious Crime Unit) (Consequential Amendments) (No. 2) Regulations 2022.

The Chair: With this it will be convenient to consider the draft Armed Forces (Court Martial) (Amendment) Rules 2022.

Dr Murrison: On the point of order, the impact assessment we have been provided with is fascinating—indeed, it could be more fascinating than the subject matter of this debate. However, the explanatory notes to the statutory instruments state:

“A full impact assessment has not been prepared for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.”

There is no impact assessment, but it is nice to see this particular impact assessment, as it looks very interesting indeed.

There are two statutory instruments for the Committee to consider.

Maria Eagle: The explanatory notes say that

“A full impact assessment has not been prepared for this instrument”,

which suggests that some kind of work has been done on the impact. Is the Minister able to give the Committee a copy of what impact has been assessed—not a full one, but a partial one?

Dr Murrison: I think this might be a matter of semantics, but I can tell the hon. Lady that no impact assessment has been published or produced. I hope that is satisfactory,

and I hope that in my remarks, I will be able to clarify why that is and reassure her that there is no need for such an exercise, if that is of any help.

The first of the SIs we are debating today is to establish the tri-service serious crime unit; the second deals with changes to court martial rules in the service justice system. The first SI makes a minor consequential amendment to regulation 8(1) of the Armed Forces Regulations 2009, which in turn was made under the Armed Forces Act 2006. That change is required to support the establishment of the defence serious crime unit, otherwise known as the DSCU. It does so by ensuring that the new Provost Marshal and service police personnel of that tri-service unit are governed by the same legislation as the existing three single-service Provosts Marshal and single-service police forces.

The instrument amends regulation 8(1) to include any reports prepared by, or provided to, the tri-service crime unit to be provided to a person's commanding officer when referring that person's case to the Director of Service Prosecutions. This is not new; it is simply something that has arisen as a consequence of the creation of the defence serious crime unit. Although this is only a minor and consequential amendment, the original set of regulations it amends is subject to the affirmative procedure, meaning that this SI must also follow that procedure.

Nick Smith (Blaenau Gwent) (Lab): Page 3 of the explanatory memorandum—item 10, “Consultation outcome”—says that there was “no formal consultation”. It does, however, say that

“A range of stakeholders have been consulted”,

so could the Minister say what the Provosts Marshal said by way of response?

Dr Murrison: I saw the Provost Marshal of the defence serious crime unit last week, and the regulations have been worked up by, among others, the Provost Marshal's service. As I will go on to explain, although I hope it is not controversial, the Armed Forces Act 2021 establishes something quite new and innovative and, as a consequence of the Lyons and Henriques reports, a unit for serious crime. The Provost Marshal, among others, was consulted in the process of drawing up the Armed Forces Act and the regulations that stem from it, which we are debating today. They have not arisen *de novo*. They are the result of widespread consultation to make sure we get this right. I will come on to this later, but they align what happens in defence more closely with what happens in civilian policing and prosecutorial institutions. I hope that that helps the hon. Gentleman.

I will provide an update on what is happening in the formation of the DSCU if it is of interest to the Committee. A lot of this will not be new to the Committee, but it is worth covering it. Those who were involved in the Armed Forces Act will be familiar with it. Nevertheless, it is important that the Committee is apprised of where we are with the organisation that is about to be stood up.

The Armed Forces Act set out a framework for the establishment of a tri-service serious crime unit for service police and enabled the appointment of a new Provost Marshal. Under the direction of the new Provost Marshal, who was appointed in January and whom I

met last week, the MOD has undertaken the necessary prep work for the new tri-service unit to become operational next month. The work has focused on the structure and resourcing of the DSCU and has included the establishment of a defence serious crime command—a strategic command headquarters for the DSCU based at Southwick Park, Fareham, which is home to the Defence School of Policing and Guarding. It has been operational since April.

The defence serious crime command will sit outside the single-service chain of command, ensuring operational independence, giving greater reassurance to victims and building trust in service justice. It will provide strategic direction to the DSCU, allowing the unit to focus on the delivery of serious crime policing. One strategic aim is to improve the capability of defence to deal with the most serious offences. Reservist service police, the majority of whom are civilian police officers, will be better utilised, lending their experience and knowledge, in keeping with a general trend in the use of reservists, which I commend to the Committee, while fessing up that I am myself a reservist.

For staff joining the DSCU, external placements with Home Office police forces will be used, and there will be a continued focus on building single-area specialisms as part of career development. That will be supported by the adoption of civilian policing qualifications in accordance with College of Policing and National Police Chiefs' Council guidance. I hope right hon. and hon. Members have spotted a theme in benchmarking best practice and ironing out the potential for discrepancies, to which I am committed.

Maria Eagle: It is very welcome news that the unit is about to be stood up next month. Can the Minister give the Committee an idea of what the staffing capacity will be? It is good to have the unit, but it has only a couple of people and has to wait for embedded reservists to be trained up. That might not be as effective as we would wish, so can he give us an idea of its budget and staffing capacity?

Dr Murrison: The thing will be stood up on 5 December. I confess I have not visited it yet, but I intend to do so very soon. It will have very senior service policemen plus support staff. I cannot give the hon. Lady a figure, but it will be pretty comprehensive. It will include reservists because they are in large part civilian policemen. Although some police choose to join the reserves and become something completely different, the bulk of them continue to serve as police. There is no question of training them up; they are trained already, and the flow of expertise is the other way round, that is to say, from the reservist police to the defence serious crime unit. That comes back to my earlier remark about the need to ensure that we have a level playing field, and that best practice in the service criminal justice sector and the civilian criminal justice sector are broadly speaking the same. I have no reason to suppose that they are not, and Henriques, and before him Lyons and Murphy, suggested that they are.

Nevertheless, it is important that the two sectors operate more or less on the same level, and in particular that some of our service police are exposed to College of Policing disciplines. That is one of the intentions behind the formation of the unit. There will be training—

that is ongoing—but I would not want to suggest to the hon. Member for Garston and Halewood that we need to train people specifically for this task. For the most part, they will be doing this already. It is just that we are standing up this separate unit to deal with serious crime. That recommendation stems directly from Lyons, Murphy and Henriques. I hope that that is of some help.

Sir Mike Penning (Hemel Hempstead) (Con): Does the Minister agree that it was excellent news that a former Policing Minister changed the rules so that serving police officers could serve in the reserves, and bring that expertise across—not that I, a former Policing Minister, would have any knowledge of that?

Dr Murrison: My right hon. Friend knows a lot about the issue; indeed, he is too modest, and I entirely agree with the point that he makes. In the time that it has taken him to make his intervention, my extremely good officials have told me that the answer to the question from the hon. Member for Garston and Halewood is approximately 370, which is good. There is significant resource being put into this. I look forward to meeting some of them when I visit Southwick Park very shortly.

Nigel Mills (Amber Valley) (Con): I am glad to see the Minister back in position. He has had more comebacks than Frank Sinatra, but I hope that he is in post for a decent time. I think the purpose of regulations is to require the new tri-service police force to provide a copy of any reports to the commanding officer of those accused of serious crimes. That does not sound very similar to how civilian police forces operate. Will the Minister explain that requirement and what advantages it has? Is there any risk that the person might be tipped off, and that that might hamper the investigation?

Dr Murrison: I thought that somebody might ask that, so I asked my officials before coming to Committee. This is a consequential statutory instrument, which simply replicates what is currently the practice under the Armed Forces Act 2021. Without it, the new defence serious crime unit would not be doing the things that service police are already doing. One could argue that commanding officers should not be provided with reports about people under their command. However, in the 2021 Act and its predecessor, the Armed Forces Act 2006, Parliament decided that such a report should be provided. That is the reason we are doing this now, and changing primary legislation is not the function of this Committee. I am sorry if that is an unsatisfactory response to my hon. Friend, but I am very pleased he asked the question because, as I said, I had asked the same.

I think that the Committee will be interested in the victim and witness care unit, which will be set up under the DSCU. The unit will deliver support to victims and witnesses of crime. The unit is being developed in consultation with specialist external organisations, such as the Survivors Trust and the office of the Victims Commissioner, and is expected to be fully operational in early 2023. The regulations deliver on the recommendations of the Henriques review, and mean that the Ministry of Defence will be in a stronger position to respond to serious crime. We will be able to combine resources and specialist skills across the single

[Dr Murrison]

services under one unit, and will provide an independent, more effective and collaborative approach to policing across defence. I will seek to provide further updates after the DSCU has become fully operational and, in particular, after I have visited in the near future, which I look forward to.

Dan Jarvis (Barnsley Central) (Lab): I welcome the points that the Minister is making. I think I am right in saying that the Government have said that the DSCU will be independently inspected by His Majesty's inspectorate of constabulary. The Minister will know, as I do, that every branch of the armed forces takes seriously the issue of how their performance is evaluated and how they can seek to do things better in future. Can the Minister confirm that there will be an independent inspection? If that is the plan, does he envisage that the findings of the independent inspection, when it takes place at some point in the future—I am mindful that the unit has not even been set up yet—will be published?

Dr Murrison: Yes, I anticipate that this will be dealt with in exactly the same way as for any other constabulary, if that is helpful. I will move on to the second statutory instrument that we are debating, the Armed Forces (Court Martial) (Amendment) Rules 2022, because I am quite sure that they will be of interest to the Committee. The SI consists of the changes to the rules that apply to courts martial that were contained in schedule 1 to the Armed Forces Act 2021, with three of the four changes implementing recommendations from the Lyons review of the service justice system.

The first rule change implements Lyons's recommendation that a six-member board should be required if the offence is a schedule 2 offence. These are serious offences, such as grievous bodily harm, which must always be referred to service police for investigation rather than being dealt with by a commanding officer, or that carry a maximum penalty of more than two years' imprisonment. His Honour Shaun Lyons found that there was widespread agreement that the five-member boards, which currently try schedule 2 offences and offences carrying a maximum term of over seven years' imprisonment, should be increased in size to six and reach qualified majority verdicts, rather than a simple majority verdict in which at least five of the six members have agreed.

His Honour Shaun Lyons also recommended that those boards try schedule 2 offences and offences carrying a maximum of over two rather than seven years' imprisonment. He recommended that smaller boards, which will continue to consist of three or four members, should try all other cases and deal with sentencing in all cases where the defendants have pleaded guilty, as they do now. We accept this recommendation, which will allow the three-member boards to focus on the great majority of the service disciplinary offences contained in the Armed Forces Act 2006 and the less serious criminal offences that would normally be heard in the magistrates court in a civilian criminal justice system. Six-member boards will deal with the relatively small number of disciplinary offences that carry a sentence of over two years' imprisonment, such as assisting the enemy or mutiny, as well as criminal conduct that would

normally be tried in the Crown Court. We do not anticipate that lowering the threshold for when a six-member board is required—when the offence attracts a punishment of more than two years—will place an untenable resource burden on the single services, since the existing pools of personnel provided for court martial service are sufficient to meet the new requirement. However, we will monitor the situation for the first 12 months after introduction and consider whether any adjustments to the approach outlined might be required.

The second rule change has its background in the pandemic that occurred during the covid pandemic, which highlighted the concern that three-member boards hearing cases lasting several days can be vulnerable to the unexpected loss of one member of the board. To deal with this, the Armed Forces Act 2021 gave judge advocates the power to add a fourth member to a three-member board.

Maria Eagle: Can the Minister tell the Committee how many cases were delayed as a consequence of the loss of a member of a three-member board?

Dr Murrison: I cannot, but the judge has discretion to decide whether the court martial board should be stood down or whether it should continue regardless. I will elaborate on that later.

Judge advocates will have wide discretion to appoint an additional member whenever they feel that it is necessary in view of the expected length or location of the proceedings. This approach is closely based on the existing rule, which currently allows up to two additional members to be appointed in cases that are expected to last more than 10 days, or more than five days in the case of trials being heard outside the UK and Germany.

The third rule change implements Shaun Lyons's recommendation that there must be a mechanism to cope with the death, sickness or other absence of a member occurring during a trial, which would reduce a six-member board to five members. This reflects section 16 of the Juries Act 1974, under which the default position is that a Crown court trial continues despite the loss of up to three jurors, but the judge can instead choose to discharge the jury, which touches on the point that the hon. Lady made in her intervention. The new rule gives judge advocates the power to direct that proceedings with a four or six-member board should continue

“in the interests of justice”

despite the loss of a member, and this direction can be made at any point after all the members have been sworn in.

The final rule change implements the provision in the Armed Forces Act 2021 to allow personnel at other ranks 7, or OR-7, to sit as members of a court martial. These are senior non-commissioned officers at chief petty officer, staff or colour sergeant, and flight sergeant or chief technician level. This was another recommendation made by Shaun Lyons. Currently, only officers and warrant officers can be members of a court martial, and, unlike a jury in a Crown court, the members assist the judge advocate in sentencing. Sentencing within the service justice system has a number of purposes, not least punishment, deterrence and the maintenance of discipline. OR-7 ranks have the experience and

understanding of command and rank, and they are well placed to be involved in the sentencing exercise, which is something in which civilian jurors do not participate.

Maria Eagle: I am extremely grateful to the Minister for giving way; he is being very generous. He is referring to the SI implementing a number of recommendations of the Lyons review. My memory of it is that it made a recommendation to move the prosecution of serious crimes committed in the UK, such as murder, manslaughter and rape, from the military courts to the civilian courts, but the SI is not doing that. I think the Government rejected that recommendation. Will the Minister tell us why that was and whether anything has changed in the interim?

Dr Murrison: I think we had this conversation on 31 October during the urgent question. The Government take the view that service justice is best discharged using the current arrangements, and Henriques appeared to be comfortable with that. Although I suspect that the hon. Lady will not like the answer, it is felt that the status quo is probably acceptable at the moment, and Henriques has certainly opined favourably on the quality of justice dispensed by the current mechanism. As we discussed on 31 October, there are no current plans to change that, but as with everything, matters are kept under review.

We need to ensure that the quality of justice being dispensed using the parallel justice system is commensurate with, and equal in quality to, that which is dispensed in the wider civilian criminal justice system. From my remarks today, I hope it is clear that my view is that we should ensure that, wherever we can, we have systems with a great deal of overlap—that is to say that one can check off against the other—to assure ourselves that what is being done in one system is not radically different from what is being done in the other, and that the quality of justice dispensed is not different.

I will continue talking about the rationale for extending eligibility for board membership to OR-7s. Doing so will mean that the single services have a wider pool of experienced personnel to draw on, and we will support the new rule to increase the representation of women on court martial boards, which was debated in Committee on 26 October. It may also reduce the burden on officers required on boards where the defendant is of an other rank. The existing rule about all members being senior to the defendant is unchanged, meaning that OR-7 personnel will only be able to serve on boards hearing cases where the defendant is of the same, or a lower, rank.

To sum up, three of these four rule changes were recommended to the Department by Shaun Lyons, a highly respected retired senior Crown court judge. The other rule change reflects a sensible business continuity measure for three-member boards—that is, the additional member to cover the unexpected loss of one of them.

Nick Smith: The Minister is being very generous with his time. Coming back to his earlier point about seeking consistency of outcomes, why has the Minister not adopted the proposal of the Government-commissioned Henriques review that the deputy Provost Marshal of the DSCU ought to be a civilian?

Dr Murrison: I am grateful for the hon. Gentleman's intervention. The first reason is that service police have a jurisdiction overseas that civilian police do not, which it is usually done on the basis of status of forces agreements that allow service police to do things that civilians cannot; the second is the rigour of some of the locations in which our servicemen and servicewomen operate. On consideration, bearing in mind that the Government have accepted the overwhelming majority of Lyons and Murphy, and of Henriques, it was felt reasonable to continue to appoint a service policeman as the deputy.

To come back to the point I made earlier, there is a considerable amount of civilian interplay with the new serious crime unit because of the employment, by design, of reservists who are policemen. The effect of the changes we are making following the Armed Forces Act 2021 is to increase the amount of civilian interplay with the service criminal justice system, if that is of any comfort to the hon. Gentleman.

I hope that I have explained both of these statutory instruments to the satisfaction of the Committee, and that Members will be able to accept the steps that we have taken in the interests of service justice: ensuring that there are checks and balances on what we do in defence, and making sure that what we do in defence passes muster compared with what is done in the wider criminal justice system in this country. I commend the regulations to the Committee.

4.57 pm

Luke Pollard (Plymouth, Sutton and Devonport) (Lab/Co-op): It is a pleasure to serve under your chairmanship, Ms Fovargue, and I am grateful to the Minister for setting out the SIs and answering so many of my colleagues' questions about them. It is good to see him in his place, even if it does mean that I have lost my co-chair of the all-party parliamentary group on the National Trust, who will be replaced in due course. I warn the Minister that the last time my hon. Friend the Member for Blaenau Gwent and I served on a statutory instrument Committee together and I said good things about the Minister, the hon. Member for Wrexham (Sarah Atherton), she was sacked only hours later. It was sad to see her go, so I will be careful about how positive I am about the Minister today, because I would like him to stay in his place a little longer.

I think everyone in this House agrees that our service personnel deserve a system that is able to investigate and prosecute crime effectively, but there have been clear challenges to that system, and clear holes that have appeared over the past couple of years. It is good that the Government are looking at this issue, because there are serious flaws in our service justice system that need to be looked at. We need only to have read the news over the past few months and seen the lived experiences of many of our service personnel, especially women, to realise that it is not just the execution of justice at the end of a criminal inquiry, but a culture within our armed forces, that has enabled many of the most serious offences to be covered up and sidelined, or not get the attention that they should have done from commanding officers and peers within our armed forces. It is welcome that a journey has started, but more still needs to be done.

[Luke Pollard]

Reform is needed, and Labour will not be opposing either of the statutory instruments. However, I have a number of questions that I would like to ask the Minister, the first of which is about the Armed Forces (Tri-Service Serious Crime Unit) (Consequential Amendments) (No. 2) Regulations 2022. It is right that each branch of our armed forces has a service police that investigates crimes, and I put on record my thanks to the highly motivated staff for the work that they do. I am concerned that reports and investigations into many of our service police forces have found that personnel cannot be considered proficient in investigating serious crime due to their lack of experience. That is the conclusion reached by the Government's commissioned review from 2020, conducted by the former chief constable of Merseyside Police, Sir Jon Murphy.

Labour welcomed the provision for the tri-service serious crimes unit during the passage of the Armed Forces Bill, and we note that the extension in today's statutory instrument is a step in the right direction. I do have concerns, though, about the capacity of the defence serious crimes unit to do enough to remedy the legitimate concerns that we and service personnel have about restoring trust. It is in that spirit that I am going to ask questions of the Minister.

My first question is about staffing and resourcing of the defence serious crimes unit. I note that in his reply to my hon. Friend the Member for Garston and Halewood the Minister made the case that it would be 370 personnel. That is a sizeable commitment and is very welcome. I would be grateful if the Minister could set out where the expertise is coming from within that 370 personnel and where those personnel are being drawn from. Are they simply being transferred from other service policing, or is there a specific form of recruitment that the Department has undertaken to find the gaps in expertise and fill them with some of those 370 people?

Will the Minister set out what the unit's annual budget will be and, importantly—because we are in an era where the Defence Secretary has accepted annual real-terms cuts in the defence budget—could he set out whether the budget that the defence serious crimes unit will have will be the same this year, next year and every year until the end of this spending period? Having 370 personnel sounds good now, but if that is to be cut by the same proportion as the day-to-day cuts to the armed forces that we are seeing from the Government, that figure will be lower at the end of the spending review period. Will the Minister tell us what the staff capacity will be when the unit opens next month? Is 370 the establishment figure that the Department is aiming for, or will it be 370 people at their desks, operational, by the time it opens in December?

In relation to civilian expertise, we all recognise that there are pockets of expertise in our armed forces, but also in civilian policing. Finding ways to share expertise is really important. The Government have said that the DSCU will have access to civilian expertise, a promise that must be kept in light of the expertise deficit that was found in the Murphy review. The Murphy review also said that short, informal training placements are no good. Can the Minister confirm, when he talks about adding civilian expertise to the defence serious crime unit, the length of the embedding expected of

reservists? Murphy highlights that short placements will neither benefit the overall operational capacity of the DSCU nor help the individual who is placed.

I agree with my hon. Friend the Member for Blaenau Gwent about the recommendation of the Henriques review that the deputy Provost Marshal should be a civilian. I note that when this instrument was debated in the Lords, and the question was raised, the Minister replied that the embedding of reservists who are police officers in the Home Office police forces will be a way of adequately coping with the lack of civilian oversight, and will bring in more civilian expertise.

I want to test the Minister on the precariousness of the Ministry of Defence relying on the availability of reservists who are civilian police officers with relevant experience. Those people are really important. It is a welcome change that police officers can serve as reservists in our armed forces, but we should be drawing from the with the relevant expertise. I want to understand from the Minister how many of our reservists, on a tri-service basis, have police expertise in investigating serious crimes.

Sir Mike Penning: On a point of clarity, I think the hon. Member will find that we are not talking just about reservists from the 43 authorities that come under the Home Office. It will be British Transport police, nuclear police, port police and others—that is where this expertise will come from, not only from the Home Office.

Luke Pollard: I am grateful for that intervention. That is useful to know. In relation to where the specific expertise comes from within those forces—the Home Office and other forces—we need to understand how many of the 370 will be reservists and how many will come with specific experience, because there is a big difference between drafting in a reservist with many years of experience as a traffic officer and drafting in a reservist with many years of experience of investigating serious crimes, particularly serious sexual offences. I would be grateful if the Minister spelled that out, because the backfilling of the expertise that we need seems a bit woolly.

Paragraph 7.1 of the draft explanatory memorandum says that specialist investigative support will be provided to the DSCU. Can the Minister expand on what he means by specialist investigative support when it comes to additional civilian expertise? Who will that come from and on what basis? What expertise will be provided, or will it be commissioned on an ad hoc basis depending on each investigation? What budget will be allocated for it? With the addition of specialist investigative support and the embedding of reservists, the Government are seemingly putting a lot of weight on cavalry coming over the hill to resource the unit, rather than the expertise being built and trained in establishment figures every day. I would be grateful if he set out what he means by that in particular.

I would also be grateful if the Minister said what he means by embedding reservists. Is that on a case-by-case basis? Is it a formal drafting or a secondment? Will police officers who are reservists be moved into the posting? Will those individuals be given much choice about it, and how will that work? I want it to work; my concern is that a lot of emphasis is seemingly being put

on something that we cannot quite understand the true extent of. I would be grateful if he set out what that will look like. Will he also set out the seniority of the civilian officers he expects to be embedded, and how they will be managed? Will it be part of the normal structure, or will there be another structure? Will a minimum threshold of training and expertise in handling serious crime be required to be embedded, or will the qualification simply be that of being a police officer in one of the forces, and being a reservist and having passed the necessary training?

In response to the initial intervention by my hon. Friend the Member for Garston and Halewood, the Minister said that there has been no impact assessment, but given the heavy reliance that the Ministry of Defence is placing on reservists it seems to me that some work will have been done to look at the overall capacity and availability of personnel to fill that role. I am not quite convinced by the argument that no impact assessment or work has been done to provide that information, because if it has not been done there is a real risk that it may not work, despite the Government's good intentions.

I welcome the Minister saying that he would like more of the process to be aligned with civilian processes. That is a good principle, notwithstanding the unique environment in which many of our armed forces operate, but he also said that the DSCU command, as well as being operationally independent, will look at civilian policing qualifications for DSCU officers, I imagine to try to get greater experience and expertise across from civilian police forces. That seems welcome. Is there a similar ambition for service police? I am working on the expectation that many of the 370 personnel in the DSCU will be drawn from service police forces. Is it the intention that the training in civilian police qualifications will happen when they are moved into the DSCU, or will there be an attempt to match that qualification on to the DSCU feeders, which will be the individual services' policing operations? It would help to look at that when ironing out discrepancies, as the Minister talked about.

The final thing that I want to understand regarding the DSCU is gender balance. The Minister was right that, when we discussed a previous statutory instrument about personnel not only on courts martial and other boards but in investigations, there was a discussion on the gender mix and the experience that can be brought to bear. That is especially true when we are looking at the large number of crimes against women in our armed forces. It is about ensuring that those who prosecute offences have appropriate lived experience, for the sake of the victims of those offences. Will the Minister set out the expectation for the gender balance in the overall unit, and whether there will be any specialist trained officers or personnel in that unit who will deal with serious sexual offences, if they will be investigated?

The hon. Member for Barnsley Central raised an important point on inspection, and I want to probe the Minister a bit further on that. It was said in the Lords debate on this SI that the DSCU would be

“independently inspected by His Majesty's Inspectorate of Constabulary and Fire & Rescue Services”—[*Official Report, House of Lords*, 8 November 2022; Vol. 825, c. 566.]

but the Minister did not concretely say that the findings would be published publicly. He says they will be published

in the usual way, but I would be grateful if he could commit to them being publicly published, so that people can look into them.

On the extent of the scrutiny and inspection, section 104 of the Murphy review says that all three service police have

“an arrangement whereby from time to time they negotiate with HMICFRS as to what they consider they should be inspected upon. This arrangement could be regarded as ‘cosy’ and does not exist in civilian policing”

where

“Chief Constables have no say in when they are inspected or on what subject.”

Will the Minister set out whether the same cosy relationship will apply in the case of the DSCU inspection regime, or whether it will be sufficiently different? If the Minister is making the case that civilian policing and the operation of the DSCU should be parallel, such a cosy relationship should not be allowed with the DSCU—or, indeed, with the service police.

The Minister said that the SI had been introduced because of the Armed Forces Act 2021. That was three or four Ministers ago, and it has taken a long time for these small but important changes to be brought forward. Will he set out what other changes from the Act we are still waiting for? The reforms are moving at a snail's pace. He will know about the regularity of armed forces Acts, and I do not want him to get to another one before many of the provisions from the last one are implemented. That means having a clear timetable for implementing the provisions.

The Minister said that the DSCU's victim and witness care unit would be operational by early 2023. Will he set out more detail about the timetable for that and what will happen in the meantime? That may be only a few months away but, knowing Government timetables and what “shortly” sometimes means, I know that early 2023 could be at any point in 2023. Getting some specifics on the timetable is important to build trust.

I turn to the Armed Forces (Court Martial) (Amendment) Rules 2022. Labour will support these rules at the end of the debate, but I would be grateful if the Minister could provide answers to a few questions. They are worth asking, and they complement the discussions that many of us in this room had only a few weeks ago on the most recent SI on service policing.

The court martial system is one part—an important part—of our service justice system, but for service personnel, veterans and the public to have confidence in the whole system, every part of it must work properly. The prosecution of serious crimes in the service justice system is not working as well as it should. The conviction rate for rape cases tried under court martial was just 9% between 2015 and 2020, whereas the figure in civilian courts is 68% for parallel charges. If we look at the quality of justice, as the Minister suggested we do, we see a gaping divide between the expected outcomes in service justice on the prosecution of rape cases, compared with those in civilian justice.

Sir Mike Penning: This is a very difficult comparison. The Crown Prosecution Service decides which cases go forward, and its bar for that, particularly in rape and sexual assault cases, is very high. It wants to have confidence that it will win the case. There is no Crown

[Sir Mike Penning]

Prosecution Service here, so, as former Victims Minister, I find the comparison of like for like slightly difficult to accept.

Luke Pollard: I am grateful for that intervention, because it allows me to challenge the Minister. If we are seeking to provide greater continuity between service justice and civilian justice, we need to question why those large gaps exist. Is the decision on whether to try a case based on the threshold of evidence presented in that case, or is it about the outcomes of the procedures within the justice system? We have a parallel justice system, and unless someone has been through it or operated in it, there is little public awareness of military justice compared to civilian justice. Notwithstanding what the right hon. Member for Hemel Hempstead has said, I think it is fair to try to understand what gaps exist to challenge the quality of justice.

The point was made well by my hon. Friend the Member for Garston and Halewood about which recommendations of the Lyons review the Minister has decided to accept. In our last SI discussion, I asked the hon. Member for Wrexham, who was sitting in the Minister's seat at the time, about the recommendations for moving manslaughter, murder and rape from military courts to civilian courts. That recommendation was made in not only the Lyons review but the Defence Committee report that the former Minister drafted when she was on that Committee, to which more than 4,000 serving women and veterans contributed. The Government opposed the amendments on moving manslaughter, murder and rape and other sexual offences when we debated the Armed Forces Act last year.

If we are to look at the two systems in parallel and consider which is most effective, I am not convinced that the argument has been made as to whether we should be looking at simply defence of a system or at defence of an outcome. If we are to look, as the Minister has invited us to do, at the quality of justice and the quality of outcomes for murder, manslaughter and rape, we should perhaps look at that in relation to where this sits.

The Chair: I remind the hon. Gentleman that we are talking about the court martial rules. We are perhaps going a little off scope here.

Luke Pollard: I am grateful for that advice. If we are to look at court martial for serious offences, we need to look at whether things should be in the military system or should be dealt with via the civilian system, but I will go with your ruling on this one, Ms Fovargue.

If we are talking about courts martial, I invite the Minister to look again at the make-up of military panels. He mentioned the provisions for what should happen if a member were to become sick or otherwise indisposed and therefore not able to look at a case. Something that was heavily debated in relation to our last statutory instrument was the gender balance of those court martial panels—the provision brought forward was for a woman to be on the panel. Will the Minister set out whether the gender balance of the court martial panel would need to be looked at if the woman was

disposed of by illness or other things? Will the guidance that his Department provides cover whether the gender balance of a depleted court martial board should be a reason for a trial to be re-resourced? What guidance will be provided?

I turn to the capacity of the service justice system to deal with the changes proposed in the statutory instrument. Dropping the level from seven to two seems logical. Looking at the number of personnel needed on a panel, the changes proposed seem to make sense. Will the Minister set out whether the increased numbers that would be required fit within the estimates of available personnel, and how those estimates were made, given that the Government have made no impact assessment? I am not convinced that without any work being done, it is sufficient for the Minister to say, "It will all be fine on the day," when he has told this Committee that no impact assessment has been made. What assurances can the Government provide that the expansion of six-member boards will not contribute to a backlog in hearings? What assessment has been made of that?

Will the Minister look at the territorial extent of the regulations? As set out in paragraph 4.1 of the explanatory memorandum, the regulations deal with the United Kingdom, the Isle of Man and the British overseas territories, except Gibraltar. The Minister has probably been told by his officials that I ask this question fairly regularly. It seems that we are building up a large deficit of updated regulations that apply to Gibraltar. In the past, it has been said that is because the Gibraltar regiment sits outside the rules, which is an argument that I can understand. However, that does not apply to UK armed forces stationed in Gibraltar.

Will the Minister set out whether alternative provisions apply to Gibraltar for UK personnel stationed or based there, whether those provisions apply to the Gibraltar regiment or UK armed forces personnel stationed at a base in Gibraltar separately, and how the improvements being offered by the SI apply to UK armed forces personnel in Gibraltar? It seems that there is a deficit in relation to Gibraltar. It says in the territorial application—I say this for those who are following online; I am sure the debate makes good listening—that there is an ability for this to apply to courts martial held around the world. I understand that it does, but I would be grateful if the Minister could set that out.

Finally, in our last debate on these statutory instruments, it was obvious that there was a lot of cross-party interest from Members of all parties. However, there was not a huge amount of experience in defence justice. I suggested that the fantastic armed forces parliamentary scheme, which is co-ordinated between the Armed Forces Parliamentary Trust and the Ministry of Defence, could look at a component relating to defence justice. The previous Minister said that she would take that up. I would be grateful if the Minister who has taken her place could also look at that.

Although there are many parallels between defence justice and civilian justice, the approaches are very different. Some of the assumptions about how justice is delivered in our armed forces are sufficiently different that an introductory session into defence justice would make a useful addition to the experience provided to Members of Parliament in the AFPS.

5.22 pm

Sir Mike Penning: The Committee will be pleased to know that I do not want to detain them for very long. I should declare my entry in the Register of Members' Financial Interests; I am the director of a law firm, even though I am not legally trained.

It is for the Minister to defend many of the points raised by the shadow Minister. However, as the former armed forces Minister—I have a lot of former ministerial titles—may I defend reservists? Many of the comments from the shadow Minister were about reservists' experience. Modern armed forces around the world cannot operate without reservists. Those reservists can come under myriad different contracts. When I went to Afghanistan and Iraq, most of the American troops that I bumped into on a daily basis were reservists in some form. I used to be a reservist myself, but I am too old now—fortunately, for the armed forces.

The skills that reservists bring into the armed forces are often replicated inside the armed forces, but they often bring in skills that would be difficult for the armed forces to hold on to in terms of capacity. For that reason, it is a bit like when medics in our armed forces train inside the NHS, because we just cannot do that in military hospitals in the way that we used to many years ago.

Different contracts will be brought in, and it will be right for this specialist unit to bring in those skills—whether that is under a six-month or a two-year contract for a reservist is entirely up to the unit and the armed forces reserve to decide. But those skills are vital. I listened carefully to the shadow Minister. I am very proud of our armed forces. We could not have done what we have done around the world in peacekeeping terms without them. I recently visited Cyprus and the UN troops there, and our troops were reservists. That is very important.

Secondly, on the College of Policing, it is fantastic news that other police forces in this country that are not part of the 43 territorial police forces can make use of skills, training and qualifications from the College of Policing, because that never would have happened before.

Luke Pollard: I am grateful to the right hon. Member for giving way. Reservists do a brilliant job, and the blended force that we have between regulars and reserves is really important. The point I was making is that having the—

The Chair: Order. Can we curtail the debate on reservists? I think that is out of scope. We all appreciate that we are talking about the composition of the board and this statutory instrument on courts martial, so I think we need to curtail the debate on reservists and move back within scope.

Sir Mike Penning: On a point of order, Ms Fovargue. There are two statutory instruments here. One is about the court martial board and the other is about a specialist police unit inside the armed forces that has reservists in it. Naturally, I will go along with whatever you say, but I think that is what the hon. Member for Plymouth, Sutton and Devonport and I were trying to help with.

The Chair: I am quite happy to talk about the serious crime unit, but I think we were straying into wider territory.

5.25 pm

Dr Murrison: I am very grateful, Chair, and my right hon. Friend's insights into these matters are very valuable indeed.

I am also grateful to the hon. Member for Plymouth, Sutton and Devonport, who speaks for the Opposition. He has asked a lot of questions that I will do my best to answer. If I do not give him satisfactory responses, I am more than happy to write to him.

I also thank the hon. Gentleman in relation to his comments about my hon. Friend the Member for Wrexham. Although she served for only a very brief time, I think she made an impact, particularly in relation to her report on women in the armed forces, which we debated on 31 October. I will not rehash that debate here today—I think we gave that subject a fairly good airing—and some of the points that the hon. Gentleman has made today were probably dealt with then.

It is important, just for context, to insist that this measure is a consequence of Henriques and Lyons, and their comprehensive review of this piece of service justice. We have genuinely attempted to incorporate their significant recommendations. I believe that the result is an improved service justice system, and I am convinced that the defence serious crime unit will be part of that.

It is also important to say that this unit is made up of elements of service police drawn from across the three services. I think that the Henriques' concern was that we did not have a specific unit to deal with serious crime. We have seen reflections of that in civilian policing, too, with an increasing concentration of expertise to deal with crimes of a particular nature, especially when those crimes are serious.

In a sense, that is what we are doing here today. We are drawing together into one organisation the elements of service police who deal with serious crime, and I think that right hon. and hon. Members will understand the advantages and focus it will bring to the most serious three crimes in particular.

That said, it is important to put this matter into some sort of perspective because, in general, our service population is pretty law-abiding and does not engage in the sorts of crimes that we are chiefly concerned with today. Nevertheless, when such crimes happen, they need to be dealt with properly and in a way that is comparable to the way they are dealt with in civilian life.

May I deal with the point about reservists? Reservists are going to be important in this process for the reason that I have explained. They will be drawn from all elements of policing. We have very little control over that, in fact. It depends on our ability to recruit and retain reservists which, Ms Fovargue, I am certain you would call me out of order if I were to dilate on now.

However, reservists will be in addition to the 370. Regarding the length of time that they will serve at any one time, of course that will be in accordance with the reservists' terms and conditions of service. The hon. Member for Plymouth, Sutton and Devonport will know that reservists are being used more and more these days in our armed forces. I recently came back from the Falklands, for example, where I saw, much to my surprise, reservists providing something like a third of manpower. I think that is extraordinary; I was not

[Dr Murrison]

anticipating that at all. Very often, they are on three or four month-contracts, as it were, depending upon their civilian commitments.

I suspect that chief constables across the land would be rather concerned if their officers were disappearing for three or four months. Nevertheless, I anticipate that the service police will utilise their 24-day-a-year standard reserve commitment, and perhaps a little more depending on their agreement with their service and their civilian employer. The important point to make is that these reservists contribute now to service policing and will continue to do so in this new unit, but I hope in a rather more focused way.

On training, it is important to say that the constituents of the defence serious crime unit are already service police. They are trained, and in the main they do a good job. Under the Provost Marshal for serious crimes, the unit will focus its training more than is the case at the moment to ensure that College of Policing suggestions and guidance are carried out, and more courses will be provided to those who deal with serious crime from among that cadre. I hope the hon. Member for Plymouth, Sutton and Devonport welcomes that.

Like the hon. Gentleman, I have an affection for Gibraltar. He is right that there appears to be a bit of an incongruity with the Royal Gibraltar Regiment and the Falkland Islands Defence Force—perhaps another could be cited. The Armed Forces Act applies to British forces everywhere, including Gibraltar. It applies to the Royal Gibraltar Regiment when it is operating with British armed forces with regular reservists from the UK. It is important to make that point. Otherwise, Gibraltar law is by and large commensurate with that which applies to the UK.

Luke Pollard: I am grateful to the Minister for clarifying that point. That is not what the explanatory memorandum says, however. It says:

“The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom, the Isle of Man and the British overseas territories (except Gibraltar).”

It explicitly says that it does not include Gibraltar. I hope the Minister is correct, but if he is, the wording of the explanatory memorandum may need to be revisited.

Dr Murrison: The Armed Forces Act covers British forces everywhere, including Gibraltar. It applies to the Royal Gibraltar Regiment if it is operating with British armed forces. Otherwise, it does not in the same way, but the Gibraltar Government have ensured that their legislation covers pretty much the same ground. I know it is untidy, but that is the reality of it—[*Interruption.*] Well, I am telling the hon. Gentleman what the situation is, and I hope he will accept that. He may wish to write to me, and if he wants me to write to him to clarify it further, I am more than happy to do that.

We are not relying on reservists in the defence serious crime unit, but we believe that, as elsewhere in defence, they will bring important value added to what we do. Obviously, that will evolve over time.

The hon. Gentleman asked what ranks are involved. Again, we are reliant on who the reservists are and who is tempted to join them. I obviously proselytise for them

all the time, but we have to work with what we have got. That means that there will be a mixture of uniformed police and detectives, and we have to try to accommodate that as best we can. The hon. Gentleman will be delighted to hear that we will provide training where necessary to ensure that nobody in the reserve cadre is exposed to tasks for which they are not properly trained or equipped.

The hon. Gentleman perfectly reasonably asked about the budget. I will have to write to him, I am afraid, but he will have drawn from what I have said that, because the unit is constituted from officers from across defence, there will be a saving in those parts of defence, which will be translated to this unit. It is perfectly reasonable for him to ask about the additional costs that will be occasioned by setting up the unit, and I will write to him on that.

The hon. Gentleman suggested that no cavalry is about to charge over the hill. Again, I want to caution him. I do not want to give the wrong impression about service justice as it is. We have put a lot of effort into getting very senior judges to look at service justice and, in general, it is felt to be fit for purpose. The European Court of Human Rights, for example, has opined on the matter and has said encouraging things, although there is never any room for complacency. I think that the terminology, although I appreciate that it is well meant, is perhaps inappropriate. We are trying to improve the current situation and, in particular, enact the Henriques recommendations as much as possible.

On His Majesty’s inspectorate of constabulary and fire and rescue services, I would expect those findings to be published in exactly the same way as the publication of any other Home Office constabulary findings. I would refute the suggestion of a cosy relationship, and, if I find evidence of it, I will certainly deal with it, because that is not the way, in my experience, that His Majesty’s inspectorate of constabulary usually operates.

On the delay in the setting up of the victim and witness care unit, obviously, I would like it to be set up as soon as possible. I think that “early in the new year” does mean, “early in the new year”. I do not think that there is much plasticity in that, but I am absolutely resolved that this thing should be set up properly. That is why we are consulting with the Survivors Trust and the Victims’ Commissioner’s office in the hope that we can set it up as soon as may be.

However, I am sure the hon. Member for Plymouth, Sutton and Devonport will agree that we do not want to set this up, only for it to go off half-cocked; I want it to be done proper. Certainly, authorities such as the Victims’ Commissioner ensure that what we end up having will be something that will pass muster when it is compared with its civilian equivalents. I hope that gives the hon. Gentleman the reassurance that he seeks.

The hon. Gentleman asserted that the prosecution of service crime is not working. Again, I just want him to be a little bit careful, because his suggestion is that the system is broken. I do not believe that is the case. In fact, we appear to be getting through cases more rapidly than our beleaguered civilian criminal justice system at the moment.

Conviction rates for rape—again, we covered this on 31 October—range from 4% to 75% on an annual basis over the past decade. Those figures are interesting, and, possibly, are the result of the relatively low numbers

involved and so, to an extent, might be artefactual. However, what does appear to be the case, and the hon. Gentleman will know this full well, because he will have got briefing notes, just like me, is that we refer more cases to the prosecuting authority than is the case in civilian life.

The reasons for that are complicated. We will see how this develops over time, but one reason might be that awareness of the unacceptability of this, among the service population, is being heightened. I do not want to be complacent, but I am hoping that our efforts towards zero tolerance are working. If so, I would expect the referral rate to be as it is. I think that it might be an indication, although it is always easy, with data, to draw the wrong conclusions.

The fact of the matter is that more cases are referred than in civilian life, and you can deduce, Ms Fovargue, that that means that cases that would not have been referred in civilian life are being referred through the service justice system, and that, when they get to the prosecutor—because we want commonality between civilian and service life—proportionately more of those are not successful.

I think that would be one reasonable conclusion to draw but, because of the relatively small numbers, I think we need to be cautious about drawing conclusions. However, in all of this—running through it like a vein through a block of granite, I hope—is an insistence that we need to do better when dealing with serious crime, in the round, and particularly with sexual offences, as we know full well from what we have seen in the media recently.

On who should have jurisdiction, it is important to note that the final decision is always made by the civilian authority. In areas of doubt, a protocol, which is currently being worked up, will determine whether a civilian or service prosecutor has jurisdiction. However, if there is any doubt or disagreement, the civilian prosecuting authority will have the final say. Also—this has not been mentioned so far, but it is important to say—there is always recourse, ultimately to the Supreme Court. I think it is clear that there is a big interplay between both systems. I would encourage that, and think it will get greater over time. Indeed, everything that we have debated, from the 2021 Act through to these regulations, would underpin that.

The hon. Member for Plymouth, Sutton and Devonport asked what happens when women are disposed of. I am sure he did not mean to say that, but I know what he means. In other words, what happens when the woman on a court martial board has to stand down, through illness or for whatever reason? The answer to that question is that the judge has discretion. He has to weigh what is in the interests of justice. If he feels that the court martial board should be stood down and reconstituted, he will do that. He may think that the court martial board should continue, presumably because

it has gone through a great deal of the evidence and is a long way through the process; he may take the view that the interests of justice are best served by the board continuing.

In respect of the new rules on the number of members and whether that will create a disproportionate burden on defence, I do not believe that it will; I think that the benefits far outweigh the costs. However, we plan to keep it under review over the next 12 months to see how it goes. The fact of the matter is that we are extending this to OR-7s. In my parlance, that is chief petty officers; in others', it is staff sergeants, colour sergeants, and so on. That will increase the cadre of people and, bluntly, the experience and expertise of court martial boards.

Going through the list of things that the hon. Gentleman raised, it is important to make it clear that specialist capabilities, such as forensics, will be provided more or less as they are now, from the Service Police Crime Bureau. I think that the hon. Gentleman was concerned about where the specialist input comes from. Again, we are simply translating what we have at the moment but focusing it under the new unit.

I wonder whether I have missed anything out. I think that I have addressed most of the hon. Gentleman's points, unless he wants to come at me again. I hope very much that I have answered his points. If he has anything more, I would be more than happy to—

Luke Pollard: The armed forces parliamentary scheme.

Dr Murrison: The hon. Gentleman knows full well that that is not a matter for me. However, I am very sure that the defence serious crime unit will be more than happy to have a relationship with the armed forces parliamentary scheme, which is run by my excellent hon. Friend the Member for North Wiltshire (James Gray) and is a very fine organisation that has benefited a great deal of right hon. and hon. Members. I will be amazed if it does not take an interest in this. Indeed, I hope very much that it will choose to visit Southwick Park and see the new unit after 5 December, when it is stood up.

Question put and agreed to.

Resolved,

That the Committee has considered the draft Armed Forces (Tri-Service Serious Crime Unit) (Consequential Amendments) (No. 2) Regulations 2022.

DRAFT ARMED FORCES (COURT MARTIAL) (AMENDMENT) RULES 2022

Resolved,

That the Committee has considered the draft Armed Forces (Court Martial) (Amendment) Rules 2022.—(*Dr Murrison.*)

5.43 pm

Committee rose.

