

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fourth Delegated Legislation Committee

DRAFT ARMED FORCES (COURT MARTIAL)
(AMENDMENT) RULES 2024

Wednesday 8 May 2024

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The Committee consisted of the following Members:

Chair: JUDITH CUMMINS

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| † Atherton, Sarah (<i>Wrexham</i>) (Con) | † Lord, Mr Jonathan (<i>Woking</i>) (Con) |
| † Coyle, Neil (<i>Bermondsey and Old Southwark</i>) (Lab) | † Morrissey, Joy (<i>Lord Commissioner of His Majesty's Treasury</i>) |
| † Dines, Miss Sarah (<i>Derbyshire Dales</i>) (Con) | † Murrison, Dr Andrew (<i>Minister for Defence People and Families</i>) |
| † Docherty-Hughes, Martin (<i>West Dunbartonshire</i>) (SNP) | † Nici, Lia (<i>Great Grimsby</i>) (Con) |
| † Evans, Dr Luke (<i>Bosworth</i>) (Con) | † Osborne, Kate (<i>Jarrow</i>) (Lab) |
| † Fletcher, Katherine (<i>South Ribble</i>) (Con) | † Pollard, Luke (<i>Plymouth, Sutton and Devonport</i>) (Lab/Co-op) |
| † Green, Damian (<i>Ashford</i>) (Con) | |
| Hollern, Kate (<i>Blackburn</i>) (Lab) | |
| † Holmes, Paul (<i>Eastleigh</i>) (Con) | Seb Newman, <i>Committee Clerk</i> |
| † Hopkins, Rachel (<i>Luton South</i>) (Lab) | |
| † Jones, Gerald (<i>Merthyr Tydfil and Rhymney</i>) (Lab) | † attended the Committee |

Fourth Delegated Legislation Committee

Wednesday 8 May 2024

[JUDITH CUMMINS *in the Chair*]

Draft Armed Forces (Court Martial) (Amendment) Rules 2024

4.30 pm

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

That the Committee has considered the draft Armed Forces (Court Martial) (Amendment) Rules 2024.

It is a great privilege to serve under your chairmanship today, Mrs Cummins. We have discussed at length in this forum our shared desire to ensure that the criminal justice system and the service justice system are aligned wherever possible. That has been a recurring theme during my tenure as a Minister, and I think that it is something on which we are all agreed. This measure is part of that process. In essence, it brings into the service justice system a small element of the criminal justice system that has been missing since the introduction of the Serious Organised Crime and Police Act 2005.

The statutory instrument before us today is technical in nature. It amends the court martial rules by introducing a new procedure for the court to review sentences under new sections 304D and 304E of the Armed Forces Act 2006, further to the Armed Forces Act 2016. I will begin by briefly providing the primary legislation context. New sections 304A to 304H will create a statutory framework for immunity from prosecution, undertakings restricting the use of evidence, and sentence reductions for offenders who co-operate in investigations and prosecutions. These provisions closely follow those contained in sections 71 to 75 of the Serious Organised Crime and Police Act 2005, which apply to the civilian criminal justice system.

The instrument before us today specifically relates to new sections 304D and 304E. New section 304D provides that a person who has been sentenced by the court martial may have their sentence reviewed to take account of assistance that they have given, or offered to give, to an investigator or prosecutor pursuant to an agreement with the Director of Service Prosecutions. The reviewing court may reduce the sentence in return for the assistance offered or given.

New section 304E allows a sentence to be reviewed to take account of a failure by the person sentenced to give assistance that they have offered to an investigator or prosecutor, and in return for which they have received a sentence that was discounted. If the reviewing court is satisfied that the person knowingly failed to give assistance, it may increase the sentence to take account of that failure. However, it is important to note that the power under new section 304E can only be increased up to a term not exceeding the level that the court indicated would have been the sentence had there been no agreement to provide assistance. In other words, it cannot put the offender in a worse position than they would have been in had they not offered to provide the assistance.

Finally, I would like to mention that both new sections 304D and 304E include a right of appeal to the Court Martial Appeal Court. This allows for any decision

coming out of a sentence review to be appealed by either the offender or the Director of Service Prosecutions. I direct the Committee to the Armed Forces (Appeals Against Review of Sentence) Regulations 2024, which I will soon be laying before Parliament. Those regulations, which will be subject to the negative procedure, will make provision to govern the procedures for such appeals.

4.34 pm

Luke Pollard (Plymouth, Sutton and Devonport) (Lab/Co-op): The Opposition have no major problems with these proposed amendments to the armed forces rules, but I have a few questions for the Minister in relation to them. I think we all agree that we want a service justice system that works effectively, that can investigate and prosecute, and that has outcomes people trust, as well as one in which people can come forward with complaints. In that respect, the amendments that the Minister proposes seem eminently sensible.

My first question relates to the changes proposed to rule 32—persons ineligible for membership—which is on page 3 of the rules. A person is ineligible to serve on a court martial if they served in the same unit as the offender at any point from the commission of the offence, but they might have previously served with that offender in a unit for a long period of time. Is there a point before the commission of the offence when having served in the same unit would also make them ineligible to sit on the court martial? It seems to me that, at some point, there might be a longevity of relationship, and I wonder whether that is captured by any other provision or whether that is an area that the Minister could come back to. Secondly, does the rule include joint operations, where a person may not necessarily be in the same formal unit but might be assigned to work in a collaborative way, in a closely positioned operation and in a joint setting? Does “unit” capture things that are not in a formal regiment or structure but could be in a joint operation?

The new rules on lay members attending the review of sentence proceedings via live link seem entirely logical. Will the Minister set out where there is a minimum requirement for the number of lay members who must attend in person?

Because we do not get too many of these amendments, and the amendments seem eminently sensible, may I also ask why they were not included in the Armed Forces (Court Martial) (Amendment) Rules 2022, which were brought before this House as a result of the Lyons review? Many of the amendments in the draft rules seem to fit with the amendments that were in that previous statutory instrument, so I would be grateful if the Minister could set out what that means.

I agree with the Minister that bringing bits of civilian justice into the service justice system seems a good approach, and that is an opportunity for me to restate Labour’s position that murder, manslaughter and rape committed in the UK should also be included in the civilian justice system.

Finally, I want to make a point about the application of the legislation to Gibraltar. People who have heard me speak on SIs will know this point, but I am increasingly concerned that a body of armed forces legislation seems to apply to armed forces personnel everywhere around the world except Gibraltar, creating quite an application gap in Gibraltar. Has the Minister’s Department done any work to capture that deficit for service personnel

who are serving in Gibraltar? It seems erroneous that, if offences are committed in Gibraltar rather than somewhere else, they are treated in a different and more dated fashion.

4.37 pm

Dr Murrison: I would be very disappointed if the hon. Gentleman had not mentioned MMR or Gibraltar, but there is nothing in the draft rules that alters the situation in respect of either of those things. We will have to disagree on MMR; the arguments for and against are extremely well rehearsed, and he will note the time it takes to convict in the service justice system versus the civilian justice system. Justice delayed is justice denied, and I am comfortable, on balance, that continuing to try those cases through the SJS is appropriate in the interests of justice. Obviously, everything is subject to whatever happens in the future, but, on balance, that will be the position of this Government.

On why the rules have not been brought forward before, I share the hon. Gentleman's disappointment at anything that does not serve our shared intention of

aligning the criminal justice system and the service justice system in a timely fashion. This piece of work has been going on for many years now, and it would have been good had we been able to crack through all of it immediately after the passage of the primary legislation, but these things take time; I am just pleased that this tiny bit of regulatory change is being made now. I must emphasise that the number of cases to which it is likely to apply is pretty small. I do not have figures for how many cases it affects in the criminal justice system, but I am assured that it is a very small number; if that is translated to the service justice system, I suspect that it will be even less.

On members of court martials declaring an interest, any conflicts need to be made clear to the president of the court and dealt with in the normal way. As far as lay members are concerned, that is not the subject of the draft rules but is laid out in primary legislation.

Question put and agreed to.

4.40 pm

Committee rose.

