



House of Commons
Defence Committee

Exposing Walter Mitty: The Awards for Valour (Protection) Bill

Fourth Report of Session 2016–17

*Report, together with formal minutes relating
to the report*

*Ordered by the House of Commons
to be printed 15 November 2016*

HC 658

Published on 22 November 2016
by authority of the House of Commons

The Defence Committee

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Summary

In the years following the First World War, the United Kingdom, amongst other combatant nations, placed protections into law attaching criminal sanctions to the unauthorised and deceitful use of decorations and medals awarded to those returning from that terrible conflict. The provisions remained in force until they were repealed by the Armed Forces Act 2006 and not replaced.

A Private Members Bill has been introduced into the House of Commons to restore these protections to the statute book and is shortly due to receive its Second Reading. We have received evidence that points to a continuing problem with military imposters and it is our view that this specific harm should be countered with specific criminal sanctions. Such sanctions are common in other legal systems around the world and the lack of similar protection in the UK is exceptional.

We make a number of general observations on the nature and content of a Bill seeking to rectify the situation. Any new offences must be clearly defined to ensure that the correct categories of award are brought into scope, and that family members commemorating deceased or incapacitated relatives are not caught by the legislation.

The Committee supports the Private Members Bill and the principles that lie behind it. We look to the Government to endorse it and facilitate the Bill's progress through Parliament.

1 Introduction

1. The Awards for Valour (Protection) Bill, a Private Members Bill sponsored by Gareth Johnson MP, was presented in the House of Commons on 29 June 2016. The summary of the Bill published alongside it at First Reading declares it to be “a Bill to prohibit the wearing or public display, by a person not entitled to do so, of medals or insignia awarded for valour, with the intent to deceive”. The Bill is scheduled to receive its Second Reading on 25 November 2016.¹

2. We decided to examine the thematic and policy issues behind this Private Members Bill, the extent of the problem that it seeks to address, whether acts of deception in relation to military decorations are worthy of criminalisation, and the nature and scope of criminal offences that might be created by the Bill.

3. We held a single oral evidence session on 6 September 2016, taking evidence from Mr Johnson and other expert witnesses to explore some of the themes identified above. As well as receiving written evidence from the Ministry of Defence and the Ministry of Justice, we were pleased to receive written contributions from Service charities who work closely with serving and former members of the Armed Forces and their families. Their perspective on several matters surrounding the legislation has been particularly useful. We are grateful to all who have contributed to this inquiry.

1 HC Deb, 29 June 2016, [col 341](#)

2 Protecting military honours

Introduction

4. Wherever organised armed forces have existed, systems of military honours have usually arisen alongside them to recognise acts of gallantry and distinguished service. The legions of the Roman Republic had by the 1st century BC developed a sophisticated system of honours and awards.² In the United Kingdom, early examples of what we would now call campaign or operational medals were struck on the orders of Elizabeth I to reward the naval commanders who defeated the Spanish Armada, and the first gallantry and distinguished conduct medals were issued by Charles I during the English Civil War.³

5. It was only with the inauguration of the Victoria Cross by Royal Warrant of 29 January 1856 that an award available to all ranks “who have served [the Queen] in the presence of the enemy, and shall have performed some signal act of valour, or devotion to their country” was permanently instituted.⁴ Since then, a number of additional awards for valour and distinguished conduct have been instituted. Not all awards (including the Victoria Cross) are specifically restricted to serving members of the Armed Forces, but even where they are not, the incidence of awards to serving personnel is generally very high.⁵

Protection of decorations and medals prior to the Armed Forces Act 2006

6. Legal protections relating to military dress also have their origin in the 19th century. The Uniforms Act 1894, originally introduced as a Private Members Bill, states that:

It shall not be lawful for any person not serving in Her Majesty’s Military Forces to wear without Her Majesty’s permission the uniform of any of those forces, or any dress having the appearance or bearing any of the regimental or other distinctive marks of any such uniform.⁶

The 1894 Act, which remains in force, is quite narrow in scope and was intended to deal only with the unauthorised wearing of uniforms. It does not mention decorations, or medals. Nor does it cover any matters relating to false representation of entitlement to awards.

7. Specific prohibitions on the unauthorised use of medals appeared during the First World War through regulations issued by the Government under powers contained in the Defence of the Realm Acts. Defence of the Realm Regulation 41 made it an offence for a person to use or wear a decoration or medal without authority (or wear a replica

2 Valerie A Maxfield, *The Military Decorations of the Roman Army*, B.T. Batsford Ltd, London 1981

3 W Augustus Steward, *War Medals and their History*, Stanley Paul and Co., London 1915. Examples of these Elizabethan and Carolean medals are in the collections of the British Museum.

4 *The London Gazette*, 5 February 1856, [No. 21846](#), p 410. See Christopher J Wright OBE and Glenda M Anderson (eds.) *The Victoria Cross and the George Cross: The Complete History - Volume I 1854-1914*, Methuen, London 2013

5 Official guidance on military honours is found in Ministry of Defence Joint Service Publication 761, [Honours and Awards in the Armed Forces](#), October 2016

6 57 & 58 Vict. c. 45, [section 2\(1\)](#)

which closely resembles such a decoration or medal). It also became an offence falsely to represent oneself as a person entitled to wear such a decoration or medal, or to supply decorations or medals to unauthorised persons without lawful authority or excuse.⁷

8. Following the end of the war, the Government put a number of provisions, including Regulation 41, on a permanent statutory footing. In 1919, the then Secretary of War (Rt Hon Winston Churchill MP) set out the argument for this approach:

We know how much all these emblems of gallantry are prized by the country, and it is necessary that they should be protected against fraudulent and spurious use by quite severe penalties, so that the men will be all the more proud of the right to wear them, and will not be misled by others who profit by use of these decorations. We have included all symbols of military prowess, including wound stripes and all decorations, emblems, and medals. We want to make certain that when we see a man wearing two or three wound stripes and a medal, that we see a man whom everybody in the country is proud of.⁸

An offence of similar scope to Regulation 41 was accordingly inserted into the Army Act 1881⁹ as section 156A. The 1881 Act was subsequently replaced by the Army Act 1955 ('the 1955 Act'), and the offences relating to decorations and medals were carried over and enacted as section 197 of that Act.¹⁰

9. The Armed Forces Act 2006 ('the 2006 Act')¹¹ replaced the three separate Service Discipline Acts with a single statute to regulate Service law. However, section 197 of the 1955 Act was not reproduced in the 2006 Act and its provisions were repealed in 2009 when the relevant parts of the 2006 Act were brought into force.¹² As a result, no specific offences now exist relating to the unauthorised wearing, or false representation of entitlement to wear military decorations or medals.

10. The Ministry of Defence (MoD) explained that the reason the offences were not carried over into the 2006 Act was based on a number of problems and uncertainties arising from the way in which section 197 of the 1955 Act had been drafted. Problems included:

- the offences being dependent on decorations being worn or used 'without authority' and uncertainty about the proper source of such authority;
- the absence of specific exceptions for theatrical portrayals or fancy dress; and,
- a lack of clarity over whether the offences applied both to current and to historic decorations, and a view that the need for specific authority was excessive.

7 Defence of the Realm Regulations, Regulation 41, *Manual of Emergency Legislation*, 2nd Edition revised to November 30 1916, HMSO, London 1916

8 HC Deb, 2 April 1919, [col. 1277](#)

9 44 & 45 Vict. c. 58

10 3 & 4 Eliz. 2 c. 18, [section 197](#). An offence with near identical wording appears in the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19, [section 197](#)). The Naval Discipline Act 1957 (5 & 6 Eliz. 2 c. 53) contained an offence relating to the misuse of decorations in [section 31](#), but applied only to those subject to naval discipline.

11 [c. 52 \(2006\)](#)

12 Armed Forces Act 2006 (Commencement No. 5) Order 2009 ([SI 2009/1167](#))

11. Additionally, the MoD argued that “the important element of the offences was to prevent people from making financial or other gain dishonestly by wearing uniform” and that the general offences under the Fraud Act 2006, which potentially attract much more serious penalties, would cover those eventualities. There was also a concern that “an offence based on an intent to deceive which did not involve fraud (for example, where there was no attempt to make a financial or property gain, or cause someone loss) was likely in practice to cause difficult questions of proof”.¹³

12. We do not agree with the justifications provided by the Ministry of Defence for repealing offences relating to the protection of decorations without replacing them. If the offences in the Army Act 1955 were unsuitable to be directly transposed, the Armed Forces 2006 Act should have included new, more workable offences which were well scoped and which incorporated appropriate exceptions.

13. We question the contention that the prevention of a financial or other tangible gain was the most important element of these offences at the time they were drafted. It may have been an important consideration in the 1955 Act, but if the prohibition was intended to be confined to financial or other tangible gains, then it must be questioned why such matters were not specified in the offences. Incidents involving military imposters may arise which do not fall within the ambit of the Fraud Act, and these would go unpunished. As we set out later in our Report, military imposters perpetrate a specific harm that mandates a specific prohibition, rather than relying on offences of more general application.

14. We also disagree that offences involving an intention to deceive which are not related to fraud may raise practical difficulties on questions of proof. Such offences do exist: for example, the offence of police impersonation under section 90 of the Police Act 1996. Therefore, we conclude that the legal concept of deception is sufficiently well established for this not to cause major difficulties.

The position in Service law

15. No offences currently exist in relation to the deceitful or unauthorised use of military decorations and medals by civilians. However, the unauthorised use of uniform, insignia or medals by those subject to Service law can be prosecuted under the offence in section 19 of the Armed Forces Act 2006,¹⁴ relating to acts prejudicial to good order and discipline.

16. Section 19 is a ‘catch all’ disciplinary offence designed to prohibit conduct that does not fall under one of the other more specific disciplinary offences. It can cover a wide range of acts or omissions committed by Service personnel. This has made it difficult to establish how often section 19 has been used to punish acts specifically relating to decorations and medals. The offence is often tried summarily and prosecution statistics are not kept in a way enabling easy identification of charges relating to unauthorised wearing of decorations or medals.

¹³ Ministry of Defence ([AVP0003](#))

¹⁴ c. 52 (2006), [section 19](#)

Incidence of unauthorised and deceitful use of decorations and medals

17. A lack of statistical data also creates difficulty in determining the incidence of the behaviour that the Bill would seek to prevent. Prior to its repeal in 2009, prosecutions under section 197 of the 1955 Act were recorded under categories that grouped data from a number of separate offences.¹⁵ It is therefore not possible to determine the incidence of prosecutions under that section from criminal justice statistics. The Royal British Legion, in written evidence, stated that “in the Legion’s own experience, instances of so-called ‘Walter Mittys’ appear to be rare”.¹⁶ The Royal Air Force Families Federation told us that in its assessment “such instances are quite rare in relation to the number of personnel who have received awards and are entitled to wear medals” and that the problem was “not widespread”.¹⁷

18. Evidence from the Naval Families Federation suggested a different experience. The NFF conducted a brief survey amongst its members, receiving 1,111 responses over four days. 64% of respondents said that they had personally encountered individuals who were wearing medals or insignia that were awarded to someone else, with 16% saying they were not sure. When asked to detail the specific circumstances, 29% of the respondents said that the individual concerned was impersonating a UK Armed Forces veteran, and another 11% identified the individual as impersonating a serving member of the Armed Forces.¹⁸ A further 28% of respondents said that the individual concerned was wearing a deceased relative’s medals—an issue which we consider later in our Report.

19. In oral evidence, the Bill’s sponsor, Gareth Johnson MP, acknowledged that a lack of clear data caused difficulty in determining the scale of the problem. Nonetheless, other sources of information point to a continuing incidence. A combination of reports in the national press, the well-publicised activities of groups dedicated to exposing military imposters, and the anecdotal experience of the Bill’s sponsor points to this conclusion.¹⁹

20. This was also the view of other witnesses with direct experience of the problem. Dr Hugh Milroy, Chief Executive of Veterans Aid, suggested that the practice of unauthorised or deceitful wearing of medals was linked with wider issues surrounding the invention or exaggeration of military service. He suggested that such incidents were “a daily occurrence” and that “we have had no sense of the enormity of it”.²⁰ Edgar Jones, Professor of the History of Medicine and Psychiatry, King’s College London, said that although he sensed that the level of prosecutions under the 1955 Act had been quite low, that may have resulted from the deterrent effect of the offence:

Once it is known that you could be prosecuted, people would think twice about buying medals and wearing them.²¹

15 Ministry of Justice ([AVP0002](#))

16 Royal British Legion ([AVP0001](#))

17 Royal Air Force Families Federation ([AVP0004](#))

18 Naval Families Federation ([AVP0005](#))

19 Q7

20 Q41

21 Q56 [Professor Jones]

21. **The precise level of incidence of the behaviour the Bill aims to prevent is difficult to determine because statistics on previous infringements have not been recorded in a form allowing accurate identification of the relevant offences. The assessment of Service charities in encountering military imposters also seems to vary. There remains however, a body of strong anecdotal evidence that points to military imposters being a continuing problem.**

The harm caused by military imposters

22. When legislating in this area it is important to identify the harm that new offences are intended to prevent. We asked our witnesses to identify the harm caused by unauthorised or deceitful use of medals. Gareth Johnson MP stated:

What this [Bill] endeavours to do is to prevent people, as we have seen before, joining in Remembrance parades, wearing medals, pretending they are courageous when they are not—pretending they are better people than they actually are and seeking to actually get some kind of reward or favour or enhancement in their character as a result [...] I can see how [military imposters] could cause the greatest amount of offence to those people who have maybe lost loved ones in conflict or who have actually received those awards themselves after they have put their lives on the line and some impostor comes in and pretends they are the same as them.²²

In oral evidence, Mr Johnson was challenged on the difference between wearing a set of military medals without entitlement, and wearing an Etonian tie having never gone to Eton. He replied:

I think there is a world of difference between wearing an Old Etonian tie in order to curry favour or for people to see you as better and someone who is trying to claim they have served Queen and country, been courageous, been awarded a medal [...] When [military imposters] carry out behaviour like this, it undermines those people who have actually served Queen and country and have sacrificed and have put their neck on the line for us, and we owe them some protection that they do not currently have.²³

23. When similarly challenged, our other witnesses provided strong arguments in favour of specific protections for military awards. Professor Ian Palmer considered that “anything that smacks of fraud [...] impugns the integrity of the medal, impugns the integrity of the uniform”.²⁴ Dr Milroy commented that “Trust is the key element here [...] I want us to have a bond between the public and the military. If we lose that by our inability to address who veterans are in the 21st century, we have missed a trick”.²⁵ Professor Jones said:

There is harm to the reputation of veterans, because these stories get into the press and they are repeated and coming through on a regular basis. After a while it has an insidious effect on the way the general population views the veteran population.²⁶

22 Q30

23 Q31

24 Q43

25 Q53

26 Q46 [Professor Jones]

24. Both the sponsor of the Bill and the other witnesses took the view that the unauthorised and deceitful use of military decorations and medals is a harm that is worthy of specific criminal prohibition. We support their arguments that such behaviour is not only insulting to the rightful recipients of these awards, but also damages the integrity of the military honours system and the bond of trust and respect between the public and the Armed Forces.

25. The enactment of criminal prohibitions should always merit the most serious consideration. We conclude that there is a tangible and identifiable harm created by military imposters against members of society who should rightly be held in its highest esteem. Therefore, we believe that specific prohibitions to mitigate this harm are justified.

International comparisons

26. The legal codes of a significant number of other countries contain provisions which protect decorations and medals. A table summarising relevant provisions in overseas jurisdictions is included as an Appendix to this Report. Many of these provisions have similar origins to the offences which previously existed in this country in the Army Acts. The equivalent provisions in Australia, Canada and New Zealand, all of which are still in force, were originally enacted during or immediately following the First World War.

27. The recent experience in the United States is instructive in highlighting considerations which ought to be borne in mind when legislating in this area. In 2005 the US Congress passed a Stolen Valor Act²⁷ which considerably expanded the ambit of existing federal offences relating to the unauthorised wearing of, and dealing in, military decorations and medals. A specific offence was created which made it illegal falsely to represent oneself to be entitled to a military decoration or medal, irrespective of whether or not such medals were actually worn. The Act also laid down enhanced penalties for false claims regarding certain higher awards for valour, such as the Congressional Medal of Honor. However, the provisions of the Act were successfully challenged and struck down by the US Supreme Court in *United States v. Alvarez*.²⁸ It was held that the offences prohibiting false representation amounted to an unconstitutional abrogation of the right to freedom of speech and expression under the First Amendment of the United States Constitution.

28. In swift reaction to this case, a new Act was passed by Congress, the Stolen Valor Act of 2013 ('the 2013 Act'),²⁹ which made further amendments to the federal offences to take account of the Supreme Court's ruling and to remove the elements of the offence which were held to be in violation of the First Amendment. False representation with regard to military decorations now comes within the ambit of the offence only if it is done with intent to 'obtain money, property or other tangible benefit', and only where it concerns one of the higher valour awards to which the enhanced penalties apply, rather than any military medal. Alongside the 2013 Act, the US Department of Defense also created an online, publicly searchable database that lists the recipients of higher valour awards, enabling claims by individuals to be instantly and authoritatively verified by members

27 [Public Law 109-437](#), 109th Congress

28 [United States v Alvarez](#), 567 U.S. __ 11-210

29 [Public Law 113-12](#), 113th Congress

of the public.³⁰ This follows from a suggestion by the Court in *Alvarez* that such a tool would make fraudulent representation sufficiently easily discoverable that it would act as a deterrent.

29. Whereas *Alvarez* was specifically concerned with the offences relating to false representation, the position in the United States concerning the physical wearing of medals remains uncertain. As well as amending the scope of the offences relating to fraudulent representation, the 2013 Act also removed the word ‘wears’ from the Federal Code. Litigation is currently ongoing to determine whether placing restrictions on wearing medals to which one is not entitled also violates the First Amendment in the same way as the offences of fraudulent representation which were struck down.³¹ This uncertainty about the constitutionality of ‘stolen valor’ statutes has not prevented several state legislatures from placing similar offences into law.

30. Criminalisation of the unauthorised and deceitful wearing of decorations and medals is commonplace in many other jurisdictions, to such an extent that a lack of similar protection in the United Kingdom can be viewed as exceptional. Other countries have not sought to repeal these longstanding protections and we believe that the anomalous position of the United Kingdom should now be corrected.

31. We recommend that the Ministry of Defence should set out the practicalities of creating an online, publicly-searchable database to record those who are rightful recipients of gallantry and distinguished conduct awards, along similar lines to the database instituted by the US Department of Defense. This would allow authoritative verification of claims to entitlement and act as a deterrent to military imposters, whose deceptions would be liable to swift and accurate exposure.

30 Department of Defense, [Military Awards for Valor site](#)

31 See for example [United States v Swisher](#), US Court of Appeals for the Ninth Circuit

3 Observations

32. We took evidence on the basis of a draft Bill as at 6 September 2016. Its sponsor, Gareth Johnson MP, explained that this was not the final version of the Bill but that he would appreciate the Committee's thoughts on the draft as a basis for discussion. The observations which follow are designed to inform the debate at the Bill's Second Reading and in its later stages.

Scope

33. The military honours system is complex, and care has to be taken to ensure that the Bill can successfully identify the categories of awards which it is seeking to protect. In oral evidence Mr Johnson stated that:

I have tried to narrow [the scope] down to military medals, plus the George Cross, the George Medal and the Queen's Gallantry Medal. That is it. It wouldn't include, for example, a long service medal awarded by the police service.³²

34. In seeking to define the category of 'military medal' in more detail, he further explained:

'Military medal or insignia' means a medal, insignia clasp, ribbon, bar or equivalent, authorised by the monarch in connection with acts or acts of particular service undertaken as a member of the United Kingdom's armed forces.³³

In this construction, the Bill would intend to have within its scope awards identified by the Ministry of Defence in its official guidance³⁴ in the category of 'Armed Forces Operational Gallantry' awards. It would also bring into scope three specific decorations which were identified in oral evidence as 'civilian' awards; the George Cross (GC), George Medal (GM) and Queen's Gallantry Medal (QGM). These are the three highest awards in the official category of 'Non-Operational Gallantry' awards.

35. Relying on a sharp distinction between 'military' and 'civilian' medals could still be potentially problematic. Awards that are characterised in this sense as 'civilian', such as the GC, are also often awarded to members of the Armed Forces, and occasionally in operational circumstances for action not in the face of the enemy. Furthermore, there is also nothing in the statutes of the Victoria Cross, which prevents it being awarded to a civilian, and such awards have occurred in the past, albeit not since the late 19th century.³⁵ The formulation suggested in oral evidence also creates difficulties in relation to awards such as the Air Force Cross, a Non-Operational Gallantry award that would seemingly not be included alongside the GC, GM and QGM.

32 Q3

33 Q13

34 Ministry of Defence Joint Service Publication 761, *Honours and Awards in the Armed Forces*, October 2016

35 There have been five civilian recipients of the Victoria Cross. The most recent was the Reverend James Adams VC, for actions during the Second Anglo-Afghan War in 1879. While Reverend Adams was attached as a chaplain to the Kabul Field Force, he was not a member of the Armed Forces. See *The London Gazette*, August 26 1881, [Numb. 25008. p. 4393](#)

36. This distinction becomes even more difficult when campaign medals are considered. Mr Johnson indicated that he intended that they would be brought into scope.³⁶ Campaign medals can also be awarded to civilians and medals such as the Civilian Service Medal (Afghanistan) are mainly aimed at civilian recipients, although certain members of the Armed Forces are also eligible awardees.

37. Rather than relying on a new definition, a solution could be to list individually all of the awards that were intended to be in scope, either in a Schedule to the Bill which could be amended by statutory instrument, or by reference to an external list. An example of the latter can be found in section 6 of the Inheritance Tax Act 1984 which refers to the Order of Wear in the London Gazette.³⁷

38. Criminal offences need to be properly defined in order to provide certainty about what is being placed on the statute book. Without that certainty, offences may be interpreted by the courts in a way that Parliament did not intend. The rules regarding eligibility within the military honours system are complex and categorising awards is not straightforward.

39. We conclude that those awards to be covered by the Bill should be listed in a Schedule, or by reference to an authoritative external list.

Defences

40. A number of our witnesses emphasised the importance of ensuring that relatives of deceased or incapacitated medal recipients can continue to wear their relations' medals at commemoration events without risk of prosecution.³⁸ Mr Johnson indicated that family members would be doubly protected as they would lack the necessary intention to deceive, as well as being able to avail themselves of a specific defence that will be placed in the Bill.³⁹

41. The term 'family member' must however be defined in terms of the proximity of the relations that it is seeking to include in the defence. It is not a legal term of art with a single definition.⁴⁰ Acts of Parliament which use the term commonly carry a definition of 'family' within them to be used for the purposes of that Act.⁴¹ Mr Johnson suggested in oral evidence that he was minded that this defence should be quite narrow, so that for example a nephew deceitfully wearing medals could not rely on the defence by claiming that they were his uncle's awards.⁴²

36 Qq11, 31

37 Inheritance Tax Act 1984 (c. 51), section 6(1)(1BA)

38 Qq1, 2, 22; Royal British Legion ([AVP0001](#)); Royal Air Force Families Federation ([AVP0004](#)); Naval Families Federation ([AVP0005](#))

39 Q23

40 Edmund Davies LJ in *Holm v RB Kensington & Chelsea* [1968] 1 QB 646, 655, citing *Burt v Hellyer* (1872) LR 14 Eq 160,164: "[family] is a popular and not a technical expression, and may mean several different things".

41 See for example, Immigration Act 1971 (c. 77), [section 5\(4\)](#) or Companies Act 2006 (c. 46), [section 253](#). Contrast these narrower definitions with the more expansive definition that applies to Part IV of the Housing Act 1985 (c. 68) by way of [section 113](#) of that Act.

42 Q23

42. **The inclusion of a defence to ensure that family members representing deceased or incapacitated relations who are recipients of medals is vital, but ‘family member’ must be properly defined to ensure that there is no room for uncertainty or abuse. We suggest that the Bill include a definition of ‘family member’ in order to provide certainty over who will be covered by this category.**

Penalties

43. Mr Johnson indicated that he considered that the appropriate maximum penalty was six months imprisonment or a fine of up to £5,000 at level 5 on the standard scale.⁴³ The rationale behind drafting the penalty in this way was to address three concerns:

- First, the potential for a custodial sentence would ensure that there is no need for a separate power of arrest in the Bill. We note here that, since the removal of the concept of an ‘arrestable offence’ by the Serious Organised Crime and Police Act 2005,⁴⁴ the need for a separate power of arrest would be unnecessary in any event;
- Second, that a level 5 fine on the standard scale would be at a maximum of £5,000. We note here that this upper limit was removed in 2012. Magistrates now have power to issue a fine of any amount for offences where £5,000 was previously the maximum; and,⁴⁵
- Third, that this formulation would ensure that it could be dealt with only in a Magistrates Court. A certain way of doing this would be to have this explicitly stated in the Bill—“This offence is triable only summarily”.

44. **The appropriate level of penalty has clearly been considered in some detail by the Bill sponsor. We are broadly satisfied that the boundaries of penalties proposed—a period of imprisonment not exceeding six months or a fine—are appropriate.**

Considerations on devolution

45. If the territorial extent of the Bill is to extend beyond England, consideration should be given to whether the Bill might encroach on areas of policy that are devolved to the Scottish Parliament, the Welsh Assembly or the Northern Ireland Assembly.

46. Under the Scotland Act, matters relating to “the naval, military or air forces of the Crown, including reserve forces” are reserved matters that are outside of the legislative competence of the Scottish Parliament, as indeed are matters relating to “honours and dignities”.⁴⁶ Moreover, the Explanatory Notes to the Scotland Act state that the reservation relating to defence includes “the creation of offences relating particularly to the armed forces (for example, the unauthorised wearing of military uniforms)”.⁴⁷ We would anticipate that this would also cover the unauthorised wearing of decorations. The National Assembly for Wales currently operates under a conferred powers model, and

43 Qq15–17

44 C. 15 (2005), [section 110](#). As long as the general requirements in [section 24](#) of the Police and Criminal Evidence Act 1984 (ch. 60) are met, a police officer would have power of arrest without a warrant for these offences.

45 Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), [section 85](#)

46 Scotland Act 1998 (c. 46), [Schedule 5](#), para 9(1)(b); para 1(2)(2)

47 [Explanatory Notes to the Scotland Bill](#), relating to Schedule 5, Part I, Paragraph 9: Defence

there are no relevant powers relating to the Armed Forces which have been conferred by Westminster. If the relevant parts of the Wales Bill, which at the time of writing is progressing through its legislative stages in the House of Lords, are not amended, then matters relating to the Armed Forces will be reserved in the same manner as they are in Scotland.⁴⁸ The Northern Ireland Act 1998 makes the “armed forces of the Crown” an excepted matter and beyond the legislative competence of the Northern Ireland Assembly.⁴⁹

47. We are satisfied that the creation of new offences relating to decorations and medals would not encroach upon the legislative competences of the devolved institutions.

European Convention on Human Rights

48. Given the issues that have arisen in the United States in relation to the compatibility of new legislation in this area with rights of freedom of expression, the possibility of a UK statute engaging Article 10 of the European Convention on Human Rights (ECHR) should be briefly considered.⁵⁰

49. The ECHR case of *Donaldson v. United Kingdom*⁵¹ demonstrated that it is possible for the outward wearing of badges or devices to be considered as ‘expression’ for the purposes of Article 10, although emphasis in this case was placed on the device in question being worn as an expression of the applicant’s political views, which may not be so straightforward where medals are concerned. Even where the rights in Article 10(1) are engaged, Article 10(2) sets out the conditions in which it is legitimate for these rights to be restricted, including for the purposes of preventing disorder or crime (such as fraud) or to protect the reputation or rights of others (which could include the legitimate recipients of awards). The inclusion of an intent to deceive as an element of the offence, and the defences relating to family members would also be likely to assist in the legislation passing the Court’s test of proportionality.

50. The case law of the European Court of Human Rights suggests that a successful challenge would be unlikely. This possibility will be reduced further if the Bill is clearly scoped and contains offences which are unambiguous in their application and extent.

48 Wales Bill [HL Bill 63 (2016-17)-EN], [Schedule 1](#), para 9(1)(b); [Explanatory Notes to the Wales Bill](#), para 69

49 Northern Ireland Act 1998 (c. 47), [Schedule 2](#), para 4.

50 European Convention on Human Rights, [Article 10](#). See also Q38.

51 (2011) 53 E.H.R.R. 14

4 Conclusion

51. There is a busy thoroughfare in the Palace of Westminster known as the Medals Corridor which holds an extensive number of gallantry and campaign medals in display cases on its walls. This impressive collection presents a near complete perspective of military honours issued by the Crown over the past two centuries and remains a source of fascination to visitors to Parliament, old and new.

52. The deeds which lie behind these awards represent acts of individual valour and self-sacrifice of the highest order and collectively stand as a testament to the courage and service of HM Armed Forces. It is appropriate that the marks of honour awarded in recognition of such deeds are protected by law.

53. We conclude that the protections sought in the Bill are necessary to safeguard the integrity of the military honours system, to reflect the justifiably strong public condemnation of the deceitful use of military honours, and to ensure that legitimate recipients of these distinguished awards should not have to endure the intrusion of imposters.

54. We support this Bill and are confident that the refinements we suggest in our Report can be addressed either at Second Reading or during the Committee Stage of the Bill. We look to the Government to endorse the Bill and to facilitate its passage through Parliament.

Conclusions and recommendations

1. We do not agree with the justifications provided by the Ministry of Defence for repealing offences relating to the protection of decorations without replacing them. If the offences in the Army Act 1955 were unsuitable to be directly transposed, the Armed Forces 2006 Act should have included new, more workable offences which were well scoped and which incorporated appropriate exceptions. (Paragraph 12)
2. We question the contention that the prevention of a financial or other tangible gain was the most important element of these offences at the time they were drafted. It may have been an important consideration in the 1955 Act, but if the prohibition was intended to be confined to financial or other tangible gains, then it must be questioned why such matters were not specified in the offences. Incidents involving military imposters may arise which do not fall within the ambit of the Fraud Act, and these would go unpunished. As we set out later in our Report, military imposters perpetrate a specific harm that mandates a specific prohibition, rather than relying on offences of more general application. (Paragraph 13)
3. We also disagree that offences involving an intention to deceive which are not related to fraud may raise practical difficulties on questions of proof. Such offences do exist: for example, the offence of police impersonation under section 90 of the Police Act 1996. Therefore, we conclude that the legal concept of deception is sufficiently well established for this not to cause major difficulties. (Paragraph 14)
4. The precise level of incidence of the behaviour the Bill aims to prevent is difficult to determine because statistics on previous infringements have not been recorded in a form allowing accurate identification of the relevant offences. The assessment of Service charities in encountering military imposters also seems to vary. There remains however, a body of strong anecdotal evidence that points to military imposters being a continuing problem. (Paragraph 21)
5. Both the sponsor of the Bill and the other witnesses took the view that the unauthorised and deceitful use of military decorations and medals is a harm that is worthy of specific criminal prohibition. We support their arguments that such behaviour is not only insulting to the rightful recipients of these awards, but also damages the integrity of the military honours system and the bond of trust and respect between the public and the Armed Forces. (Paragraph 24)
6. The enactment of criminal prohibitions should always merit the most serious consideration. We conclude that there is a tangible and identifiable harm created by military imposters against members of society who should rightly be held in its highest esteem. Therefore, we believe that specific prohibitions to mitigate this harm are justified. (Paragraph 25)
7. Criminalisation of the unauthorised and deceitful wearing of decorations and medals is commonplace in many other jurisdictions, to such an extent that a lack of similar protection in the United Kingdom can be viewed as exceptional. Other countries have not sought to repeal these longstanding protections and we believe that the anomalous position of the United Kingdom should now be corrected. (Paragraph 30)

8. *We recommend that the Ministry of Defence should set out the practicalities of creating an online, publicly-searchable database to record those who are rightful recipients of gallantry and distinguished conduct awards, along similar lines to the database instituted by the US Department of Defense. This would allow authoritative verification of claims to entitlement and act as a deterrent to military imposters, whose deceptions would be liable to swift and accurate exposure.* (Paragraph 31)
9. Criminal offences need to be properly defined in order to provide certainty about what is being placed on the statute book. Without that certainty, offences may be interpreted by the courts in a way that Parliament did not intend. The rules regarding eligibility within the military honours system are complex and categorising awards is not straightforward. (Paragraph 38)
10. *We conclude that those awards to be covered by the Bill should be listed in a Schedule, or by reference to an authoritative external list.* (Paragraph 39)
11. The inclusion of a defence to ensure that family members representing deceased or incapacitated relations who are recipients of medals is vital, but ‘family member’ must be properly defined to ensure that there is no room for uncertainty or abuse. We suggest that the Bill include a definition of ‘family member’ in order to provide certainty over who will be covered by this category. (Paragraph 42)
12. The appropriate level of penalty has clearly been considered in some detail by the Bill sponsor. We are broadly satisfied that the boundaries of penalties proposed—a period of imprisonment not exceeding six months or a fine—are appropriate. (Paragraph 44)
13. We are satisfied that the creation of new offences relating to decorations and medals would not encroach upon the legislative competences of the devolved institutions. (Paragraph 47)
14. The case law of the European Court of Human Rights suggests that a successful challenge would be unlikely. This possibility will be reduced further if the Bill is clearly scoped and contains offences which are unambiguous in their application and extent. (Paragraph 50)
15. We conclude that the protections sought in the Bill are necessary to safeguard the integrity of the military honours system, to reflect the justifiably strong public condemnation of the deceitful use of military honours, and to ensure that legitimate recipients of these distinguished awards should not have to endure the intrusion of imposters. (Paragraph 53)
16. We support this Bill and are confident that the refinements we suggest in our Report can be addressed either at Second Reading or during the Committee Stage of the Bill. We look to the Government to endorse the Bill and to facilitate its passage through Parliament. (Paragraph 54)

Appendix

The following table summarises the position regarding legal protections applying to decorations, medals and uniforms in other jurisdictions, using data gathered by the House of Commons Library.⁵²

| Country | Offence | Maximum Penalty (Fine/Imprisonment) |
|----------------|---|-------------------------------------|
| Australia | Fraudulently wearing a medal | AUD\$5,400 / 6 months |
| | Defacing/destroying a service decoration | AUD\$10,800 / 1 year |
| | Falsely representing oneself as returned service personnel | AUD\$5,400 / 6 months |
| Austria | Fraudulently wearing a medal | €220 |
| | Wearing military uniform without permission | €700 |
| Belgium | Fraudulently wearing a medal or a uniform | €1,000 |
| Canada | Unlawful use of military uniforms or medals | CAD\$2,000 / 6 months |
| Croatia | Fraudulently wearing a medal or uniform | Unknown |
| Czech Republic | Wearing medals or decorations not awarded | CZK 3,000 |
| | Wearing a military uniform without permission | CZK 3,000 |
| Denmark | Unlawful use of a military badge or uniform | Unknown fine |
| Estonia | Various offences regarding improper use of medals | 300 fine units or €2,000 |
| | Unlawful use of a uniform or identification of an official | 300 fine units or €3,200 |
| Finland | Wearing a military medal not awarded | Not an offence |
| | Wearing a military uniform without permission | Unknown |
| France | Wearing a medal or decoration without right | €15,000 / 1 year |
| | Wearing a military uniform without permission | €7,500 / 6 months |
| Germany | Illegitimately wearing military medals or decorations | Unknown fine |
| | Wearing a uniform without permission | Unknown fine / 1 year |
| Greece | Civilian fraudulently wearing a military uniform or medal | Unknown fine / 6 months |
| | Military personnel wearing a uniform or medal without entitlement | 1 year |
| Hungary | Wearing medals or decorations without proper authorisation | HUF300,000 / 60 days |
| | Wearing military uniform without permission | Unknown |

52 'Stolen Valour': An international comparison, Commons Briefing Paper [CBP-7750](#), House of Commons Library, October 2016

| Country | Offence | Maximum Penalty (Fine/Imprisonment) |
|---------------|---|-------------------------------------|
| Ireland | Unauthorised use of medals and decorations | IR£20 / 3 months |
| | Unlawful wearing of a military uniform | IR£20 / 3 months |
| Latvia | Wearing a military medal or decoration not awarded | Not an offence |
| | Wearing military uniform without permission | Unknown |
| Lithuania | Wearing a military medal or decoration not awarded | Not an offence |
| | Wearing military uniform without permission | €44 |
| Luxembourg | Unauthorised wearing of uniform or medal | €10,000 |
| Netherlands | Wearing insignia or decoration without permission | Unknown fine / 12 days |
| | Wearing a uniform without permission | Not an offence |
| New Zealand | Offences in respect of military decorations | \$500NZ |
| Poland | Unauthorised wearing of uniform or medal | €235 |
| Portugal | Wearing medals or honours not entitled | Unknown |
| | Illegitimately using a uniform | 6 months |
| | Illegitimately using a uniform (someone in public authority) | 1 year |
| Romania | Unlawfully wearing uniform in fraudulently exercising state authority | 5 years |
| Russia | Illegally wearing state awards (orders, medals etc.) | A warning or a fine |
| | Wearing military uniforms with no right to do so | A warning or a fine |
| Slovakia | Wearing military medals or decorations not awarded | Not an offence |
| | Wearing a uniform without permission | Not an offence |
| Slovenia | Illegitimately wearing a medal or decoration | SIT200,000 |
| Sweden | Falsely wearing a uniform or medal to suggest military service | Unknown fine / 6 months |
| | Penalty if the above caused considerable harm to the public | 2 years |
| United States | Purchasing, selling or trading service medals or badges | Unknown fine / 6 months |
| | Fraudulent claims to hold military decorations or medals | Unknown fine / 1 year |
| | Offences involving Congressional Medal of Honor | Unknown fine / 1 year |
| | Offences involving certain other medals | Unknown fine / 1 year |

Formal Minutes

Tuesday 15 November 2016

Members present:

Rt Hon Dr Julian Lewis, in the Chair

| | |
|-----------------|---------------------|
| Douglas Chapman | Madeleine Moon |
| James Gray | Rt Hon John Spellar |
| Jack Lopresti | Bob Stewart |

Draft Report (*Exposing Walter Mitty: The Awards for Valour (Protection) Bill*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 54 read and agreed to.

Appendix agreed to.

Summary agreed to.

Resolved, That the Report be the Fourth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Tuesday 22 November at 2.30pm.]

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

Tuesday 6 September 2016

Question number

Gareth Johnson MP, Bill Promoter

[Q1–39](#)

Professor Edgar Jones, Professor in the History of Medicine and Psychiatry, King's College London, **Wing Commander (Rtd) Dr Hugh Milroy OBE**, Chief Executive, Veterans Aid, and **Professor Ian Palmer**, Professor of Military Psychiatry

[Q40–62](#)

Published written evidence

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

AVP numbers are generated by the evidence processing system and so may not be complete.

- 1 Ministry of Defence ([AVP0003](#))
- 2 Ministry of Justice ([AVP0002](#))
- 3 Naval Families Federation ([AVP0005](#))
- 4 Royal Air Force Families Federation ([AVP0004](#))
- 5 Royal British Legion ([AVP0001](#))

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2015–16

| | | |
|-----------------------|---|--------------------|
| First Report | Flexible response? An SDSR checklist of potential threats and vulnerabilities | HC 493 (HC 794) |
| Second Report | Shifting the goalposts? Defence expenditure and the 2% pledge | HC 494 (HC 465) |
| Third Report | Beyond endurance? Military exercises and the duty of care | HC 598 (HC 525) |
| Fourth Report | An acceptable risk? The use of Lariam for military personnel | HC 567 (HC 648) |
| First Special Report | Ministry of Defence Annual Report and Accounts 2013–14: Government response to the Committee's Eighth Report of Session 2014–15 | HC 365 |
| Second Special Report | Re-thinking defence to meet new threats: Government response to the Committee's Tenth Report of Session 2014–15 | HC 366 |
| Third Special Report | Decision-making in Defence Policy: Government response to the Committee's Eleventh Report of Session 2014–15 | HC 367 |
| Fourth Special Report | Flexible Response? An SDSR checklist of potential threats and vulnerabilities: Government Response to the Committee's First Report of Session 2015–16 | HC 794 |

Session 2016–17

| | | |
|-----------------------|--|--------------------|
| First Report | Russia: Implications for UK defence and security | HC 107 (HC 668) |
| Second Report | UK military operations in Syria and Iraq | HC 106 |
| Third Report | Restoring the Fleet: Naval Procurement and the National Shipbuilding Strategy | HC 221 |
| First Special Report | Shifting the goalposts? Defence expenditure and the 2% pledge: Government Response to the Committee's Second Report of Session 2015–16 | HC 465 |
| Second Special Report | Beyond endurance? Military exercises and the duty of care: Government Response to the Committee's Third Report of Session 2015–16 | HC 525 |

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|-----------------------|---|--------|
| Third Special Report | An acceptable risk? The use of Lariam for military personnel: Government Response to the Committee's Fourth Report of Session 2015–16 | HC 648 |
| Fourth Special Report | Russia: Implications for UK defence and security: Government Response to the Committee's First Report of Session 2016–17 | HC 668 |