



House of Commons
Defence Committee

**Armed Forces Bill:
Government Response
to the Committee's
First Report of Session
2005–06**

**Fourth Special Report of Session
2005–06**

*Ordered by The House of Commons
to be printed 28 March 2006*

HC 1021
Published on 30 March 2006
by authority of the House of Commons
London: The Stationery Office Limited
£0.00

The Defence Committee

The Defence Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Ministry of Defence and its associated public bodies.

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Powers

The committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via www.parliament.uk.

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at:

www.parliament.uk/parliamentary_committees/defence_committee.cfm

Committee staff

The current staff of the Committee are Philippa Helme (Clerk), Richard Cooke (Second Clerk), Ian Rogers (Audit Adviser), Stephen Jones (Committee Specialist), Adrian Jenner (Inquiry Manager), Sue Monaghan (Committee Assistant), Sheryl Dinsdale (Secretary) and Stewart McIlvenna (Senior Office Clerk).

Contacts

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Armed Forces Bill

The Defence Committee published its First Report of Session 2005–06 on the Armed Forces Bill on 8 December 2005, as House of Commons Paper No. 747. The Government's response to this report was received on 27 March 2006. This is appended below.

Appendix: Government Response

Letter from Don Touhig MP, Parliamentary Under-Secretary of State for Defence, to the Chairman of the Committee

I am writing in response to the Defence Committee's first report of session 2005–06 of 8 December 2005, on the subject of the Armed Forces Bill. I am very sorry for the delay in doing so.

The Defence Committee's report covered two issues: the introduction of an independent element into the system for dealing with complaints by members of the armed forces; and the annual renewal of the service discipline legislation by order in council subject to the affirmative resolution procedure.

Both of these were covered during the second reading debate, following which the Bill was assigned to an ad hoc select committee for detailed consideration. I shall set out in the following paragraphs where we stand at present on the two issues and what we hope to achieve in the Bill, but both are now with the select committee for consideration as part of the process of detailed scrutiny. I expect it will be some time before they are finally resolved. I am pleased that you will be able to keep in touch with progress on these and other issues in the Bill by virtue of the overlap of membership between the two committees.

Complaints by armed forces personnel

Under the present arrangements, a member or former member of the armed forces who believes he has been wronged in any matter relating to his service may exercise his right to make a complaint. Detailed procedures are laid down in Queen's Regulations. Under those regulations the complainant must submit a complaint within three months of the day on which the matter complained of occurred, generally to his commanding officer, who will investigate and grant any redress that seems to him necessary and which is within his power. If the commanding officer refuses or is unauthorised to grant the complainant the full redress sought, he must give the complainant a full explanation and, if the complainant requests, refer the matter to a higher authority: ultimately, a matter may be referred to the Defence Council. If he remains dissatisfied, a complainant who is an officer may also require the Defence Council, through the Secretary of State, to make a report to the Queen in order to receive her directions. Certain grievances, including those concerning alleged discrimination, may also be submitted to employment tribunals once the complainant has begun the service redress process.

This system is easily understood and is widely drawn, enabling a Serviceman to raise a grievance on any matter relating to his service and, if it is not resolved to his satisfaction, for the grievance to be put before successively higher levels in the chain of command until it ultimately reaches one of the Service Boards, or the Queen in the case of officers. But the process can be slow, especially if the matter has to go to one of the Service Boards, which have a small number of members all of whom have other and heavy responsibilities. The successive layers of the chain of command do not always add greatly to the value of the process, especially if there is no power to grant redress at these levels.

We believe that the complaints system should be easy to understand and readily accessible; it should be operated by people who are familiar with Service life; it should be swift and fair to all, capable of delivering effective remedies, and capable of allowing the chain of command to deal initially with the complaint if it is able to do so satisfactorily but able thereafter to provide a recourse that is sufficiently independent of the chain of command to be objective and to command the confidence of those concerned.

In accordance with these principles, we are seeking to provide that a complainant could raise a grievance as now, generally with his commanding officer, and that that grievance could subsequently be dealt with by higher authority if the latter was in a position to grant the redress sought. If full redress was not granted, the complainant could ask that the matter be referred to the Defence Council. Some complaints would be dealt with by the Defence Council, as they are now, and for example might include complaints against decisions made by a Service Board or against a decision made by a very senior officer. Most complaints, however, would be considered by service complaint panels appointed by and exercising powers delegated from the Defence Council. These panels would consist of two or more members, at least one of whom must be a senior officer.

Officers would retain the right to have a matter referred to Her Majesty, if a decision on the complaint is taken by the Defence Council.

Although the service complaint panels would be independent of the complainant's chain of command, we believe that for certain types of complaint it will be important to provide a power to require the appointment of a person who is independent of the armed forces and the civil service. Such appointments would be made by the Secretary of State. We have proposed that an independent member should be included on the service complaint panel in cases that involve improper behaviour such as: unlawful discrimination or harassment on the grounds of gender, religion or belief, or sexual orientation; bullying; or dishonesty and other improper, unprofessional or biased behaviour.

We also intend to provide for the new complaints system to be subject to annual assessment by an independent reviewer, who would report directly to the Secretary of State. No statutory powers are required to provide for this appointment. Ministers have agreed proposals to appoint an external, independent reviewer to examine the effectiveness, timeliness and fairness of the complaints system by examining a number of cases. It might take a little time to appoint the reviewer and so, as an interim measure, the Defence Internal Audit organisation has agreed to carry out a review of the redress process. This will be a very positive move towards our intention to appoint the external reviewer.

Alongside improvements to the complaints process, we recognise the importance of providing support to all service personnel, particularly those who might wish to raise a grievance. An ongoing welfare review will therefore bring tangible improvements to a range of welfare processes through clearer definition of policy, better sharing of best practice, quality assurance, and enhancements to current services.

In summary, we intend to retain key elements of the system for handling service complaints: its availability to all service personnel; the ability to raise any grievance related to service; and the opportunity for the commanding officer to resolve grievances. But we also plan to modernise and improve the system by: reducing the number of stages before

the matter is considered at Defence Council level; providing for complaint panels that in most cases will exercise the functions of the Defence Council, and which should result in swifter decisions; and by providing for a wholly independent member to be included on complaints panels in certain cases.

Renewal of service legislation

The Government has made it clear during oral evidence on 2 February 2005 related to scrutiny of the proposals for the Bill and during the second reading debate on 12 December 2005 that we would listen to views on the question of renewal of service law. The current arrangement for annual renewal by Order in Council and five-yearly renewal by primary legislation has not been examined for some thirty years and there are different opinions about the extent to which nowadays the frequency and type of renewal needs to be prescribed.

The Bill does not seek to remove the constitutional requirement that Parliamentary consent is required to the existence of a standing army, although it does seek Parliament's agreement to the exercise of this control as regards armed forces legislation on a five-yearly, rather than annual, basis. Nor does the Bill disturb the relationship between the Armed Forces and the Sovereign. Indeed, the relationship remains vitally important to both. But there are also good practical and presentational arguments for retaining five-yearly renewal of the Armed Forces Bill once enacted, rather than making it a permanent statute. The Select Committee on the Armed Forces Bill has heard evidence to this effect, most recently from the Chief of Defence Staff on 16 February.

The position on annual renewal through the Continuation Orders is rather different. It was last considered in 1976 when the then Government proposed their abolition. The Select Committee examining that Bill acknowledged that the annual Continuation Orders had been agreed by the Commons without debate in a number of years preceding 1976, but added that "the possibility of debating once a year the Discipline Acts does provide a safeguard, and does ensure that in any year where there is concern about their application there may be a debate on that specific matter".

Since 1976 the importance of the debates in the Commons has further decreased: they have been held in Standing Committee since 1994, rather than in the Chamber. Although the debates have provided an opportunity for Ministers to provide updates on developments in Service discipline such as reactions to European Court of Human Rights judgements and progress on the Armed Forces Bill, these could have been done equally effectively through other means such as a Ministerial written statement. And of course the Orders do not provide an opportunity to amend service law as is sometimes supposed.

When last considered in 1976, annual one-day debates on each of the three services and the two-day debate on the Defence Estimates came out of Opposition time. Today there are a number of Parliamentary opportunities to raise Service discipline issues. Since 1982 annual debates on the Armed Forces have come out of Government time and since 1997 the debates have been themed to focus on specific areas including one on Service personnel. Discipline issues could be raised in any of these debates, although none has been in the last two years. There are also opportunities for debates in Westminster Hall or an adjournment debate on a Service discipline issue to be initiated by Members at any time.

The power and organisation of Select Committees has also changed since 1976. The new Select Committee structure introduced in 1979 gives the Defence Select Committee significantly greater powers than its predecessor to examine discipline matters amongst others.

In summary, the scope for the further consideration of Service discipline issues has greatly increased since the requirement for Continuation Orders was last considered and the provisions for renewal in the Bill reflect this position

The select committee on the Bill has considered oral and written evidence on this subject. We are due to discuss the relevant Clause next week and I have reiterated to colleagues on the committee that we will listen carefully to what they have to say on this issue.

25 March 2006