

Legislative Consent Memorandum

Armed Forces Bill

Background

1. This memorandum has been lodged by Angela Constance MSP, Cabinet Secretary for Justice and Home Affairs, in accordance with Rule 9B.3.1(a) of the Parliament's Standing Orders.
2. The Armed Forces Bill was introduced in the House of Commons by the UK Government on Thursday 15 January. The Bill is available on the UK Parliament website via this link: <https://bills.parliament.uk/bills/4065>.

Content of the Bill

3. The Armed Forces Bill renews the Armed Forces Act 2006 for a further five years. The Armed Forces Act 2006 provides the principle statutory framework for maintaining the UK's armed forces, and requires renewal by primary legislation every 5 years. The Bill also amends the provisions of the 2006 Act, in particular, to:
 - Bring UK Government departments and devolved governments into the scope of the existing Armed Forces Covenant Duty. The "Covenant Duty" places a requirement on those to whom it applies to have due regard to particular principles relating to the treatment of members (and former members) of the armed forces. The Covenant Duty currently applies, in Scotland, to local authorities, health and education bodies in relation to specific statutory functions only;
 - Extend the Covenant Duty to public functions exercised in additional policy areas, specifically: childcare, education and training, employment, health and social care, housing, social security benefits, personal taxation, criminal justice, transport, pensions, immigration and citizenship, and Armed Forces compensation;
 - Change the existing Duty from applying to a number of specific statutory duties within the housing functions of the bodies subject to the Duty, to a broader definition applying to all housing-related public functions of the bodies subject to the Duty;
 - Make provision that when exercising a function to which the Covenant Duty applies, the assessment of disadvantage arising for service people from membership of the armed forces is to be assessed by reference to others in comparable circumstances who are not service people;
 - Establish the Defence Housing Service as a key part of the Defence Housing Strategy 2025. Its role is to improve the availability and quality of defence housing, regenerate or develop land used for defence purposes,

support the development of service communities, and promote their continued wellbeing;

- Give defence personnel powers to use approved equipment to detect, prevent and defeat drone-related offences at defence sites;
- Improve victim support in the Service Justice System (SJS) and ensure the SJS is able to protect victims of the most serious offences from further harm;
- Align legislation on public protection for those sentenced to imprisonment by Service Courts for certain serious offences so they are subject to Multi-Agency Public Protection Arrangements in the same way as those in the civilian criminal justice system;
- Extend the remit of the Armed Forces Commissioner to cover the Royal Fleet Auxiliary;
- Replace the Reserve Forces and Cadets Associations with a new national non-departmental public body that will take on its functions;
- Expand the pool of Reserves and enable seamless transfer between regular and reserve forces;
- Enable the Ministry of Defence (MOD) Police to deal with offences that cross national borders;
- Enable service personnel (or civilian personnel subject to service discipline) to be detained when their mental health poses significant risk to themselves or others whilst deployed overseas; and
- Amend the Oil and Pipelines Act 1985 to expand the energy sources and fuels in relation to which the Oil and Pipelines Agency may exercise its defence-related functions.

Provisions which require the consent of the Scottish Parliament

4. The Scottish Government is of the view that the Bill contains provisions which apply to Scotland and alter the executive competence of the Scottish Ministers.

5. Several clauses within the Bill are assessed as requiring the legislative consent of the Scottish Parliament, for the reasons discussed below. The UK Government is in agreement with the requirement for consent for these clauses.

6. The Explanatory Notes for the Bill as introduced indicate the view of the UK Government that additional clauses (clause 6, with part of schedule 3 and clause 43) also require the consent of the Scottish Parliament. Further engagement between the Scottish and UK governments in the period since introduction has resulted in agreement that clause 43 does not require a legislative consent memorandum (LCM). Clause 43 makes provision for the MOD Police to exercise certain powers, equivalent to those of civilian officers of Police Scotland, in Scotland. Provisions relating to the powers of the MOD Police are considered to relate to the reserved

matter of defence, and it is not considered that the provision made by clause 43 would be within the legislative competence of the Scottish Parliament.

7. In relation to clause 6 and schedule 3, further engagement is required between the UK and Scottish governments to seek to agree whether this is subject to a requirement for legislative consent. Should it be agreed that it is so subject, a supplementary LCM would be lodged in the Scottish Parliament to reflect this.

Clause 2 – Armed Forces Covenant

8. This clause extends the existing legal Duty to have due regard to the principles of the Armed Forces Covenant (“the Covenant Duty”) to the Scottish Ministers when exercising public functions in relation to a specified matter. Local authorities, education bodies and health bodies in Scotland are already subject to this Duty in specified areas of health, housing and education, as provided for in sections 343AA to AD of the Armed Forces Act 2006. Clauses 2(1) to (5) of the Bill replace those sections with new sections 343ZA, 343ZAA and 343ZAB. The specified matters subject to the extended Duty are: childcare; education and training; employment; health and social care; housing; social security benefits; personal taxation; criminal justice; transport; pensions; immigration and citizenship; and armed forces compensation.

9. Guidance may be issued by the Secretary of State for Defence in relation to the Covenant Duty. A body subject to the Duty to have due regard to the Covenant principles in exercise of its public functions, will also be under a Duty to have regard to the guidance. The Secretary of State must consult the Scottish Ministers prior to issuing such guidance so far as it relates to devolved functions. The Secretary of State is given a regulation-making power to amend the bodies and functions caught by the Duty. Before doing so, the Secretary of State must consult the Scottish Ministers, insofar that the regulations contain provisions that are within devolved competence. The regulations are subject to the negative procedure. The guidance and regulation-making powers of the Secretary of State are already set out in the Armed Forces Act 2006 (sections 343AE and 434AF respectively; the Bill extends and modifies these powers in line with the extension of the Covenant Duty itself) by virtue of the amendments made by clause 2(6) and (7).

10. The Covenant Duty itself (including in its application to functions exercised in Scotland by Scottish public authorities) is considered by the Scottish Government to relate to the reserved matter of the armed forces given it aims to mitigate against disadvantage to individuals that may arise specifically in connection with their armed forces membership (or former membership). As such, clause 2 is not considered to be within the legislative competence of the Scottish Parliament. However, as clause 2 provides that the Scottish Ministers are to be subject to the Duty, in the exercise of such of their public functions as relate to the specified matters, it is considered to alter the executive competence of the Scottish Ministers. Accordingly, legislative consent is required for this provision.

Clauses 50, 52, 54 and 55 - General Provisions

11. Clause 50 relates to the interpretation of the Bill including definitions of key terms. Clause 52 makes provision as to the extent to which the clauses apply within the UK. Clause 54 makes provision for commencement of the Bill and for transitional provision to be made by subordinate legislation by the UK Government if required. Clause 55 is the short title of the Bill. Legislative consent is required to the extent that each of these clauses apply for the purpose of clause 2, as a provision substantively requiring legislative consent.

Reasons for seeking or not seeking legislative consent

12. Section 28(8) of the Scotland Act 1998 recognises that the UK Government will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament. Devolution Guidance Note 10 states that Bills require the consent of the Scottish Parliament if they contain provisions applying to Scotland and which are for devolved purposes or if they alter the legislative competence of the Scottish Parliament or the executive competence of the Scottish Ministers.

13. As described above, the Scottish Government is of the view that clause 2 of the Bill, along with clauses 50,52,54 and 55 to the extent that they relate to clause 2, alters the executive competence of the Scottish Ministers and consent is required accordingly. The Armed Forces community has a vital role in defence of Scotland and the Scottish Government considers that it should not face disadvantage in accessing the support or services it needs as a result of its service.

Consultation

14. The UK Government has consulted with the Scottish Government and stakeholders prior to the introduction of the Bill to the UK Parliament. However, the Scottish Government did not have sight of the final version of the Bill or the UK Government's finalised devolution analysis prior to the Bill being introduced.

Financial implications

15. There may be additional costs incurred as a result of the Covenant Duty. There is no funding from the UK Government to the devolved governments associated with this Bill and its implementation. This is similar to the Armed Forces Act 2021, which placed a Duty to have due regard to the Covenant principles on local authorities and other bodies in Scotland (that Duty now being extended to central government as discussed above). The UK Government, in its Explanatory Memorandum, identified a potential implementation cost for UK Government departments at somewhere between £307,000 and £1.5 million.

Post EU scrutiny

16. The Scottish Government does not consider this to have any impact on EU alignment.

Conclusion

17. The Scottish Government has supported the principles of the Armed Forces Covenant since its introduction and considers that it underpins its Veterans Strategy and support for the Armed Forces community more widely. As a result, the Scottish Government recommends support for this extension of the Armed Forces Covenant Duty.

Draft motion on legislative consent

18. The draft motion, which will be lodged by the Cabinet Secretary for Justice and Home Affairs, is:

“That the Parliament agrees that the relevant provisions of the Armed Forces Bill, introduced in the House of Commons on the 15 January 2026, relating to Clause 2, 50, 52, 54, and 55, so far as they alter the executive competence of the Scottish Ministers, should be considered by the UK Parliament.”

Scottish Government
February 2026

This Legislative Consent Memorandum relates to the Armed Forces Bill (UK Parliament legislation) and was lodged with the Scottish Parliament on 26 February 2026

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