



Defence Select Committee

From the Chair:

Tan Dhesi MP

Thursday, 14 November 2024

Rt Hon John Healey MP
Secretary of State for Defence
Main Building, Whitehall
London SW1A 2HB

Subject: Armed Forces Commissioner Bill

Dear Secretary of State,

The pages that follow reflect the Committee's initial thoughts on the Bill as introduced. The purpose of this letter is to inform the House's scrutiny of the Bill at second reading. We are publishing it instead of a formal Report given the very limited time available. We had hoped to take account of the views of representatives of those most affected by the Bill in this letter, but the timeframe has not permitted this.

The text in bold on the following pages covers points to which we anticipate Ministers will want to respond during the second reading debate.

The Committee will continue to take an interest in the Bill during its onward passage through Parliament. We have focused here on the broader intent of the Bill, rather than the detailed provisions which will be covered in later stages.

Yours sincerely,

Tan Dhesi MP



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Background

We recognise that the Bill is intended to meet a commitment in the Labour manifesto on “establishing an independent Armed Forces Commissioner to improve service life”. In the King’s Speech, the purpose of the Bill was described as “to establish a statutory Armed Forces Commissioner to act as a strong independent champion for our gallant Armed Forces and their families”. The key questions that follow are:

- How far would the Bill improve service life?
- Is the Commissioner as established by the Bill sufficiently strong and independent to act as an effective champion for the Armed Forces and their families?

We recognise that legislation alone does not solve problems or improve lives: it creates a framework within which these issues can be tackled.

The new Commissioner’s formal role will incorporate that of the existing Service Complaints Ombudsman. Her role is to consider individual service complaints in a set of limited circumstances and to make recommendations based on this work relating to the operation of the service complaints system as a whole.

Service complaints system

Since 2008, the Ombudsman and her predecessor, the Service Complaints Commissioner, have never judged the service complaints system to be efficient, effective and fair. The Bill as it stands makes one change to the service complaints system: it provides for service complaints to be made to people who are not necessarily serving officers in the armed forces (Clause 3). The lack of any other proposed changes to the service complaints system is striking, given the Ombudsman’s repeated findings. Legislative changes are not always the answer, but **the Government should explain what its priorities are for improving the service complaints system itself and why it has brought forward only one change to this system as part of the Bill.**



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Investigations of general service welfare matters

The only significant difference in legislative remit between the new Commissioner and the existing Ombudsman is the power at clause 4 for the Commissioner to conduct investigations into general service matters. A power along these lines has been called for by successive Service Complaints Ombudsmen.¹

The Government should set out how in practice they expect the exercise of the new power under clause 4 to improve service life, if possible with case studies from the past where this power would be likely to have made a difference.

Independence

According to the Government, the German Armed Forces Commissioner provided inspiration for the Bill.² They have been set up explicitly under the German basic law to be separate from and independent of the Executive. The German Commissioner is appointed by and funded by the German Parliament, and their 60 staff are parliamentary staff.

The Bill provides that the UK Commissioner is appointed on the recommendation of the Secretary of State (page 8, line 15) and can be dismissed by the Secretary of State (page 9, line 1). The Commissioner is funded by the Secretary of State (page 10, line 31) and requires the Secretary of State's approval for staffing arrangements (page 10, line 1). The Commissioner's new powers can also be constrained by the Secretary of State (page 3, lines 11 and 16; page 4, line 28).

The Government should explain, given these provisions in the Bill, what they mean when they describe the Armed Forces Commissioner as "independent", and how it can be ensured that the Secretary of State's powers as set out in the Bill will not undermine that independence.

The explanatory notes to the Bill state that the intention is that the House of Commons Defence Committee would be able to conduct a pre-appointment hearing for the Secretary of State's preferred candidate for the role. We welcome this intention but note that, as for all pre-appointment hearings, the outcome would be non-binding.

¹ Defence Committee, The work of the Service Complaints Ombudsman, 24 October 2023; Work of the Service Complaints Ombudsman, 13 October 2020, HC 881 2019-21, q7.

² King's Speech background briefing



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Resourcing

The explanatory notes estimate the annual costs of establishing and maintaining the office of the Armed Forces Commissioner at £4.5-£5.5m. This represents a meaningful increase on the annual budget of the Service Complaints Ombudsman, which over the past three available years appears to have varied between around £1.4m and £2.3m.³ **The Government should explain how it has estimated the Commissioner's resourcing requirements, including staffing assumptions. It should also explain how it will respond if the new Commissioner requests additional resourcing, and whether the Commissioner will be empowered to report the matter publicly if their resourcing requests are not met.**

³ <https://www.scoaf.org.uk/application-forms-factsheets-and-pamphlets/scoaf-annual-reports>