Armed Forces Bill: Lords Amendments

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Section International Affairs and Defence Section

The *Armed Forces Bill* passed to the House of Lords in June 2011 (HL Bill 76 2010-12). Second reading took place on 6 July, while the Committee stage took place over 6 and 8 September 2011. Report Stage in the Lords took place on 4 October 2011. No amendments to the Bill were passed during those initial Lords stages.

However, six amendments to the Bill were agreed at Third Reading which took place on 10 October, including several tabled or supported by the Government. Those amendments largely related to the Armed Forces Covenant, although one also examined the issue of Commonwealth medals.

The Bill was returned to the Commons for consideration (Bill 232) on 19 October. Five of those amendments were agreed to, although the amendment relating to medals was not agreed following a division of the House.

The Bill subsequently returned to the Lords and was considered on 26 October. The Lords agreed not to push for the amendment and the Bill was passed. The *Armed Forces Act 2011* received Royal Assent on 3 November 2011.

Contents

1 Relevant Library Briefings

The following Library briefings are relevant to the passage of the *Armed Forces Bill* thus far:

- Library briefing SN06004, *Armed Forces Bill: Committee Stage Report*
- Library briefing SN05991, *Amendments to the Armed Forces Bill*
- Library briefing SN05979, *Armed Forces Covenant*
- Library briefing SN05899, *Armed Forces Bill: Consideration in Select Committee*
- Library Research Paper RP10/85, *Armed Forces Bill,* 17 December 2010

2 Amendments at Lords Third Reading

Contrary to normal Parliamentary procedure agreement was reportedly reached that votes on issues debated on Report would not be taken until Third Reading. Therefore many of the amendments agreed at Third Reading were also substantially debated in previous stages of the Bill.

2.1 Clause 2 – Armed Forces Covenant

Positioning of clause 2 in the revised Armed Forces Act

During the Commons Committee of the Whole House the Government introduced a number of amendments to clause 2 of the Bill, relating to the Armed Forces Covenant. Specifically those amendments introduced four new subsections to clause 2 setting out the key principles

that underpin the Covenant, which was published in May 2011, and which must be taken into consideration when preparing the Armed Forces Covenant Report. The amendments recognise in particular the unique obligations of, and sacrifices made, by the Armed Forces and the principle that they should not be disadvantaged by that service.

During the Second Reading of the Bill in the House of Lords Lord Craig first raised concerns over the text of clause two being introduced into the *Armed Forces Act* as Section 359A. In doing so, it would place those provisions relating to the Armed Forces Covenant in a part of the Act that dealt with miscellaneous provisions and next to a Section (359) that provided a statutory pardon to those personnel executed for disciplinary offences during the First World War. In that debate Lord Craig commented:

> Clause 2 is entitled "Armed forces covenant report". Its wording is to be inserted after Section 359 of the 2006 Act as new Section 359A. Section 359 of the 2006 Act is one of a number of sections towards the back of the Act listed as "Miscellaneous". Section 359's title is eye-catching: "Pardons for servicemen executed for disciplinary offences: recognition as victims of First World War". They were veterans, but is this the best place that the drafters can find for the covenant section? Is this not an unfortunate juxtaposition for the requirement to report on the covenant, a covenant to which the Prime Minister and many members of the Government have given their strong support? I invite the Government to think again about the placing of this amendment. Appearances can be important. These sections would be listed next to each other in the table of contents of the Act. What about Part 14, titled "Enlistment, terms of service etc"? Why not insert here a new heading-"Armed Forces covenant"-and put the wording of Clause 2 after Section 339 of the 2006 Act, numbering it Section 339A?[1]

This position was also supported by Lord Ramsbotham.

During the Committee Stage of the Bill Lord Craig introduced an amendment to make the provisions for the Armed Forces Covenant, part 339A of the *Armed Forces Act*, which would make it part of the Act relating to enlistment and terms of service (Part 14).

While expressing support for the overall sentiment of repositioning this clause in the Act, the Parliamentary under Secretary of State, Lord Astor, rejected the idea of making it a section under Part 14 as “we see the annual report and the Armed Forces covenant itself going far beyond enlistment and terms of service”. He went on to state:

> I had hoped that we could arrange a printing change, such that the new provision was inserted into the 2006 Act at new Section 353A, under its own italic "Armed forces covenant report" cross-heading. As the noble and gallant Lord said, I wrote to the noble and gallant Lord, Lord Craig, in these terms. I thought that we had a deal.
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> Regrettably, I have now been advised that the Public Bill Office has declined to make the proposed change in printing points, having originally said that it was acceptable. Nevertheless, I reassure the noble and gallant Lords that there is no significance in the current proposed location next to Section 359. The two provisions are unrelated but are both properly categorised as "miscellaneous". No relationship is implied by their positioning. Therefore, I do not consider that there is a major issue about the correctness or appropriateness of the new section.[2]

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1 HL Deb 6 July 2011, c289

2 HL Deb 6 September 2011, GC18

In response Lord Craig suggested that while he was prepared to withdraw his amendment in Committee, he would return to this issue at a later date if the Government did not move its own amendment changing the position of clause 2.[3]

Indeed, Lord Craig moved a further amendment during Report stage in a bid to give the Armed Forces Covenant greater prominence in the revised Act. He argued that:

> It seems both mean and hypocritical to speak so strongly of support for the covenant and then to park the single statutory reference to it at the tail end of the 2006 Act and a group of miscellaneous sections that wind up the end of Part 17 of the second group of parts also entitled "Miscellaneous".
>
> Is not the covenant worthy of more than that, worthy of its own part in the revised 2006 Act? I hope that on reflection, and given the need to improve the wording and thrust of Clause 2, the Minister will agree to table an amendment at Third Reading. If not, I fear that all the Minister's briefs are headed, "Resist" as the Government seek to steamroller this Bill through without having to return it to the Commons. Surely on a Bill of this non-partisan nature, and with the opportunity to review and revise the Armed Forces Act only once every five years, the Government must take note and accept the need for some revision of the Bill as it now stands.[4]

Lord Astor confirmed that the Government would reflect on this issue and return to the Public Bill office to discuss options. Once again Lord Craig withdrew his amendment.

With the subsequent support of the Government, Lord Craig moved an amendment at Third Reading that would make the provisions of clause 2 an entirely new part of the *Armed Forces Act* (Part 16A, section 343A). In introducing his amendment Lord Craig stated:

> The issue is one that I first raised at Second Reading last July. I felt strongly that Clause 2, dealing with the military covenant, was not getting the visibility and treatment that its importance to all service personnel, to veterans and to their families-a very large constituency-deserved.
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> The Prime Minister and other senior Ministers have repeatedly stressed the high esteem in which they hold the Armed Forces and said that they were determined to give formal recognition to this as part of the law of the land. However, the Bill before the House inserts a single clause giving meaning to those sentiments at the tail end of ad hoc and miscellaneous provisions of the Armed Forces Act 2006. Regrettably, it will follow immediately after Section 359, which deals with pardons for servicemen executed for disciplinary offences in World War I.
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> There was a stark mismatch between the fine sentiments of the Ministers and the derisory legislative approach intended. I argued for a special part of its own for the covenant in the Act to emphasise and reflect the importance of this government initiative.
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> The collusion of noble Lords who support me in this amendment demonstrates that a very satisfactory outcome has been reached-albeit after some hesitation by the Government. This amendment inserts Clause 2 as a new stand-alone Part 16A of the 2006 Act. This far more adequately reflects the importance of this new legislative initiative of the Government.[5]

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3 HL Deb 6 September 2011, GC22
4 HL Deb 4 October 2011, c1024
5 HL Deb 10 October 2011, c1325

Amendment 1 was subsequently agreed.

Content and Scope of the Armed Forces Covenant Report

Throughout Second Reading and the Committee and Report stages several Peers raised concerns over the content and scope of the Armed Forces Covenant Report. Reflecting previous debate in the Commons, several Peers called for the scope of the report to be expanded to make it a statutory provision for the Secretary of State to report on issues such as pensions and support for reservists; while others questioned the ability of the Secretary of State to report on many issues for which he has no direct ministerial responsibility, particularly in relation to veterans. Several amendments were thus tabled by Peers seeking to make provision for the devolved assemblies and other relevant Government Ministers to make a statement in the Armed Forces Covenant report on issues directly within their remit. As Baroness Taylor observed:

> There is another very important reason for writing into the Bill the responsibilities of Ministers in other departments. Unless their names are on the face of the Bill, we will not get the maximum buy-in, commitment and drive from those departments to meet the obligations that we know Ministers in the MoD want to see and, I think, the rest of us want to see as well.[6]

Calls were also made for the External Reference Group, now referred to as the Covenant Reference Group, to be consulted well in advance of the compilation of the annual report, thereby allowing them to act in an audit capacity, and for their observations on the Covenant report to be published.

In responding to these observations Lord Astor made a number of commitments during the Report Stage with respect to preparing the Armed Forces Covenant report. He stated:

> I should like to place on record the Government's commitment to taking a number of specific actions in preparing the annual report on the Armed Forces covenant. We recognise the concern that the Bill that does not include a provision that will oblige the Secretary of State to cover any matters relating to the Armed Forces covenant beyond the fields of healthcare, education and housing, and that it does not oblige him or her to engage with any other parties in exercising his or her judgment in what issues to cover. Our intention is for the report to be wide ranging, based on consultation and drawing on the input of an objective and expert group, the Covenant Reference Group [...]
>
> I can inform your Lordships' House today that the Government will commit themselves to going beyond the specific provisions of the Bill in two ways. The first relates to covering the effects of service beyond the fields of healthcare, education and housing. The Secretary of State must remain responsible for the final decision on what the report should address, although he or she will draw on the results of consultation in this respect. Nevertheless, I confirm that the Secretary of State, when considering what will be covered, will have regard to the full range of topics that were identified as being within the scope of the Armed Forces covenant when we published it on 16 May.
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> Secondly, the Secretary of State has already stated in another place that he will publish alongside the annual report any observations that external members of the external reference group-now the covenant reference group-wish to make on that report. I can confirm today that, in addition, we undertake to consult the external members of the covenant reference group at an earlier stage on the issues that the

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6 HL Deb 4 October 2011, c1049

> Secretary of State should address. The Secretary of State will confirm in the annual report that he or she has done this [...]
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> I should like to add a third commitment. Several noble Lords have argued that because the Defence Secretary is not directly responsible for delivering many of the services that are likely to be discussed in the annual report, there is a danger of accountability becoming confused. Your Lordships wish to be absolutely clear as to which parts of the Government have participated in the process of preparing the report and what position they have taken. My ministerial colleagues and I have already indicated that the Secretary of State will consult widely and will identify the source of the evidence and opinions that we include in the report.
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> We have also noted that the annual report will be laid before Parliament on behalf of and with the approval of the whole of government. I can nevertheless go further by giving an undertaking that the Secretary of State will consult all UK government departments with a significant role in the delivery of services to serving personnel, veterans and their families, and the three devolved Administrations. In the annual report he or she will confirm that they have consulted other government departments and the devolved Administrations and will identify the contributions which they have made in the published report. This Government cannot commit their successors but I have described the processes which will be followed during the period in which we expect the annual report on the Armed Forces covenant to establish itself as a key instrument for holding the Government to account.[7]

Indeed, at Third Reading the Government tabled a number of amendments to clause 2 which were intended to clarify the role that Ministers and other Departments, aside from the MOD, would have in contributing to the Armed Forces Covenant report (Amendments 3-5 as they now appears in the Lords Amendments to the Armed Forces Bill).

As Lord Astor noted in the Third Reading debate:

> If the amendments are approved, the Defence Secretary would be under an obligation to obtain the views of the relevant government departments on the matters covered in the annual report, and to seek those of the relevant devolved Administrations. He will be required to set out those views in full, or to summarise them in the annual report. In the case of a summary, he will need to obtain the department's agreement to any summary.
>
> We have accordingly responded to requests from several noble Lords to bring forward proposals of our own on the subject. I am very grateful to officials in the department and elsewhere who have been able to get the amendments ready in time for the House to consider them this afternoon. When we come to the amendments later, I hope that the noble Baroness, Lady Taylor, and her colleagues and the noble Lord, Lord Empey, will accept that the three amendments in my name and that of my noble friend Lord Wallace meet the aims of their own amendments. I also hope that they will accept that the formulation that we have adopted fits better into Clause 2 and reflects the legislative conventions by avoiding references to other Secretaries of State.[8]

Amendments 4 and 5 merely remove subsections 7-9 of clause 2, which set out the definitions applicable to the Armed Forces Covenant report, including those to whom its provisions apply, and replace them with a new section 343B to the Act which makes reference to 'relevant' Government departments and devolved assemblies.

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7 HL Deb 4 October 2011, c1036-8
8 HL Deb 10 October 2011, c1326

However, the Government rejected the proposals to put prior consultation with the Covenant Reference Group or the publication of the group's observations on a statutory basis. Lord Astor argued that to do so would give the reference group a statutory basis, would limit the Armed Forces Covenant report from examining issues that may arise later in the process, and that to be specific and prescriptive about the functions, membership and powers of the group would "prevent it evolving over time to meet new circumstances".[9]

Inquests

Baroness Finlay also tabled an amendment (amendment 2) to make provision for the operation of inquests to be included in the list of issues which the Secretary of State is statutorily obliged to report on. Speaking to this amendment at Report Stage Baroness Finlay argued:

> My amendment would cover those currently serving who have died in action or on other aspects of active service; those who have died in training, who sadly constitute a significant number each year; and previous serving personnel who have now left the services but whose death for whatever reason is referred to a coroner. The Minister spoke of the relevance of the report to the issues of the day, and indeed about year-to-year variation in what may be a priority. I suggest that death is always relevant and will always remain a priority with those who have been bereaved, however small or large the numbers are. The amendment will never-one scarcely uses the word "never"-fall from being pertinent year on year.
>
> My amendment does not incur additional expenditure, because the data are being collected and collated anyway and will be brought together in the annual report. There are data on the epidemiology of the pattern of deaths and on post-mortem findings. There are variations in verdicts, particularly narrative verdicts, and there would be much merit in pooling all those together. I am not asking for new and additional work, other than the work that is being collected. However, by putting it all together in one place, there will be an annual report which I suggest year on year could become quite an important historic document for monitoring trends and patterns, and for making sure that vigilance does not drop back over time.
>
> I suggest that, in the absence of a chief coroner, this is particularly needed. It has strong support from the Royal British Legion, which, as the House knows, has felt very strongly about the conduct of inquests. The health report aspects certainly will capture much of the research that is going on, and will capture the psychological and psychiatric sequelae where those data are collected as well as physical problems. The importance of research has already been alluded to by the noble Lord, Lord Kakkar, but it will not capture those who fall outside such monitoring. The one thing that will be caught is their deaths, because death is a universal end-point.
>
> The amendment is about the "operation of inquests", not the "conduct of inquests". Therefore, it is very broad and allows that freedom to which the Minister referred in needing to report on the pertinent issues of the day. Currently, the quarterly ministerial statements on military inquests are produced and are providing very important data. They are extremely interesting and are especially interesting if read one after another. However, I suggest that they will not always be produced. When we are no longer in the current theatres of war, it is much more than likely-I would have thought it is inevitable-that they will no longer be produced. There will be a decision that they are

[9] HL Deb 4 October 2011, c1038

> no longer needed. It would be very sad if they were to fall altogether, whereas an annual report could be incorporated into the report we are discussing today.[10]

That position was supported by a number of Peers including Lord Rosser who stated:

> I do not share the view that the Government can reject the amendment in quite the way that they did when it was discussed in Committee. We are likely to be involved in Afghanistan for a few more years and, sadly, the issue of inquests will continue to be high on the agenda for some time. In addition, numbers of serving personnel die on active service but not overseas, so it may be optimistic to believe that a time will come when inquests need not be covered in the annual Armed Forces covenant report. However, since we have an Armed Forces Bill every five years, if it was felt that the operation of inquests was no longer an issue of concern in five years' time or at some later date, this perfectly reasonable amendment could be removed in the next or a subsequent Armed Forces Bill. I hope that the Minister will feel able to give a more sympathetic response to the amendment than was the case in Committee.[11]

Viscount Slim also made the point that "to those who wish-as we all wish and hope-that there is no requirement for inquests one day in our lives, I would merely say that history shows that since the end of World War II there has only been one year that a British serviceman has not been killed in action".[12]

Baroness Finlay returned to this issue at Third Reading, supported by Lord Ramsbotham, the Lord Bishop of Wakefield, Baroness Dean and Lord Rosser. In response to the amendment the Government argued:

> Noble Lords are well aware that the Ministry of Defence does not and cannot have total control of the process. Inquests and coroners are independent of government. In so far as the Government provide a legislative framework for inquests that is a matter for the Ministry of Justice. Of course the Ministry of Defence has an interest in ensuring that inquests are effective and that they understand the military context. However, it would be wrong in principle for the Ministry of Defence to take on a general legislative responsibility to report every year on the operation of the inquest process [...]
>
> I accept the noble Baroness's point that inquests can yield information about the long-term effects suffered by those who have been in a theatre of war and been injured. However, it seems that the point here is not that there should be a legal obligation to cover inquests in every report, but that we should ensure that we use the information that comes from inquests in our analysis of healthcare problems. In this respect, inquests should be a recognised source of information for those healthcare issues that the reports address. However, only where there is an Armed Forces issue about them should inquests be the focus of a covenant report themselves [...]
>
> I believe that, for the reasons I have set out, there is no need for the legislation to refer to the operation of inquests.[13]

The amendment was subsequently put to a vote. It was agreed on division by a vote of 210 to 186 and ordered to stand as part of the Bill.

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10 HL Deb 4 October 2011, c1043
11 ibid, c1045
12 HL Deb 4 October 2011, c1046
13 ibid, c1334-5

2.2 Commonwealth Medals

Background to the Award of Medals

The granting of honours and decorations has long been considered a prerogative power of the Sovereign, exercised with the advice of the Government.[14]

The process by which a British medal is instituted has been in place for many years. In the case of a campaign medal, the Commander-in-Chief of a particular campaign may make a recommendation for an award if they consider that service in that theatre, or under particularly rigorous circumstances, justifies the institution of a medal. That recommendation is passed to senior military officers who, if they are in agreement, submit the case to the Chief of the Defence Staff (CDS). If CDS approves the proposal the Secretary of State for Defence submits the case to the Committee on the Grant of Honours, Decorations and Medals, which is often referred to as the HD committee, through the Ceremonial Officer at the Cabinet Office. Following agreement by the HD committee, the case is then submitted to The Sovereign for approval. This process can take up to two years.

Since the end of the World War Two the HD committee has maintained a policy whereby it will not consider the institution of awards and medals for service given many years earlier or the institution of awards and medals for a theatre of operation which has already been recognised, what is commonly referred to as "double medalling". On the issue of non-retrospection, the HD Committee considered that it could not put itself in the place of the Committee making the original decision who would have been able to take into account the views of the Government and other interested parties at the time.[15]

In February 2002 the HD committee met to discuss this policy of non-retrospection. The committee concluded that its policy would remain in force and that consideration would not be given to cases where service had taken place more than five years previously.

In a Written Answer on 24 July 2002 the then Parliamentary under Secretary of State, Dr Lewis Moonie, stated:

> The Government considers it important to respect the principle that where there is a clear, demonstrable decision taken within five years of a campaign that a General Service Medal should not be awarded, that decision should not be reopened.[16]

That position was reiterated by the Government in December 2010:

> It is long-standing policy that awards will not be approved for events or service that took place more than five years before initial consideration, or in connection with events that took place in the distant past. The rule is understood to have been laid down in the time of King George VI. It is based on the considered view that those closest to the activities in question are those best able to judge the appropriateness or otherwise of honours and decorations...[17]

There have, however, been a number of exceptions to this rule made over the years. In 2003, for example, the Government announced that an exception to this rule had been approved with respect to those veterans who had served in the Suez Canal Zone between

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14 Ministry of Justice, *The Governance of Britain: Review of the Executive Royal Prerogative Powers: Final Report*

15 http://www.veterans-uk.info/medals/instituted.html

16 HC Deb 24 July 2002 c1106W

17 HL Deb 13 December 2010, c106WA

1951 and 1954. Exception has also been granted to a number of medals conferred by foreign governments. Most notably permission was granted in 1994 for the Russian 40th Anniversary of Victory Medal to be awarded to veterans of the allied Arctic convoys;[18] while in early 2006 the Government announced that exceptions had been made with respect to the award of the Pingat Jasa Malaysia (PJM) medal, although veterans in receipt of that medal are not allowed to wear it.

Further information on the PJM is available in Library Briefing SN/IA/3914 (intranet only).

Rules Governing the Acceptance and Wearing of Foreign Medals
The Rules Governing the Acceptance and Wearing of Foreign Orders, Decorations and Medals were originally contained in the *Foreign and Commonwealth Orders Regulations 1969*. They have since been re-issued, in more detail, and a copy has been placed in the Library of the House (ref: MGP 05/2687).

In summary, those rules set out the following principles and guidelines:

- No UK citizen may accept and wear a foreign award without The Sovereign's express permission.
- Permission for a UK citizen to accept an award offered by a foreign state will only be considered if the award recognises specified services rendered to the interests of that foreign state.
- Permission to accept a foreign award will not be given if a UK award for the same service has been, or is expected to be, awarded.
- Requests made in respect of services rendered more than five years previously, or in connection with events in the distant past (e.g. commemorative awards), will not be considered.
- Each request will be considered on a case-by-case basis. Approval of a similar application in the past does not imply that permission will automatically be granted.
- Approval will only be considered for awards given by Heads of State or Government recognised as such by The Sovereign. It will not be considered for foreign awards conferred by private societies or institutions, with the exception of international organisations such as the UN, NATO or the EU.

Permission to accept and wear a foreign award will be granted on either:

- An unrestricted basis – allowing the award to be worn on any occasion.
- A restricted basis – allowing the award to be worn only on particular occasions associated with the foreign state that conferred it.

However, unrestricted permission will only be considered for foreign awards conferred for services under the following circumstances:

[18] It should be noted that approval for the award of the Russian 50th Anniversary of Victory Medal was subsequently denied in 1995.

- Relating to saving, or attempting to save, a life.[19]

- By any member of the UK Armed Forces or other UK official on exchange, loan or attachment to a foreign state who is involved in a military operation or emergency on behalf of that state.

- By any member of the UK Armed Forces serving in a UK unit within a bi-lateral force under the command of another country who renders special service to the country's forces in a military operation or emergency.

- In military operations under the auspices of an international organisation such as the UN or NATO.

The granting of restricted permission will also only be considered in the case of foreign awards conferred in the following circumstances:

1. On the occasion of, and in connection with a State or official visit by a Head of State or Government.

2. In connection with a State visit by The Sovereign.

3. To members of Special Missions when The Sovereign is represented at a coronation, wedding or funeral or other similar occasion; or on any Diplomatic Representative when specially accredited to represented The Sovereign on such occasions.

In all other circumstances permission (unrestricted or restricted) will not be granted to Crown servants generally; to Heads or other members of HM Diplomatic or Consular establishments abroad; and senior officials, whether military or civilian, visiting foreign states.

Applications by a foreign government to confer a medal must be sought in the first instance from the Honours Secretariat at the Foreign and Commonwealth Office. The Secretariat, in conjunction with the Ceremonial Secretariat of the Cabinet Office through the Committee on the Grant of Honours, Decorations and Medals will then take the decision on whether to seek approval from The Queen.

On the whole approval for the conferral of a foreign medal is rarely given and any foreign medals that are conferred are generally acknowledged to be regarded as 'keepsakes' and are not intended to be worn.[20]

Lords Debate and Amendment

During the Lords Committee Stage of the Bill, Lord Touhig initiated a debate on the issue of the granting of honours and decorations to the Armed Forces. The main thrust of his argument was that the current Honours and Decorations Committee, which is a non-ministerial sub-committee of the Cabinet Office which advises HM The Queen on the award of medals, should be replaced by a Committee appointed by the Secretary of State, and importantly one that has a legislative basis. In introducing his amendment Lord Touhig commented:

> The system by which advice on honours is given to the sovereign has existed for some decades and needs to be overhauled. I have come to this conclusion having for some

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19 This includes medals issued by life saving societies and institutions, although any medals conferred must be worn on the right breast and not the left.

20 Further information is available in Library briefing SN02880, *Medal Campaigns*

> years now tried to understand how the HD committee reached a decision to advise Her Majesty the Queen that 35,000 veterans of the Malaysian campaign can accept the Pingat Jasa Malaysia Medal from the King of Malaysia but must not wear it-accept it but must not wear it. To deny our servicemen the right to wear the PJM was an unfair and cruel act by the committee, and I have attempted by way of Parliamentary Questions and freedom of information requests to lift the blanket of secrecy surrounding this decision. All my efforts have been thwarted, and a veil of secrecy descends on Whitehall.[21]

This position was supported by a number of Peers, including Lord Craig who also questioned whether the granting of honours was indeed a matter for the Royal Prerogative as it is the non-ministerial HD Committee that advises the Queen, rather than the relevant Ministers.[22] Indeed, on the issue of the ability of recipients of the Pingat Jasa Malaysia medal to accept but not wear the award, Lord Craig also introduced an amendment in Committee that sought to make provision for all medals awarded by Commonwealth governments, including the PJM, to be worn without restriction. He argued:

> Modern operational conflicts are taking place all over the globe, often with allies-particularly Commonwealth allies-involved. Should a Commonwealth country that British Armed Forces personnel have assisted in a matter of national importance to that country wish to recognise that help with the award of a medal, it would be that much more appreciated by both donor and recipient if there were a presumption of acceptance and wear before such an award were proposed. I suggest in my amendment that this might be confined-at least for the present-to Commonwealth country awards. I hope that the Minister will not accept any advice that it would be invidious to make a distinction between medals awarded by a Commonwealth as opposed to anon-Commonwealth country. The purpose of my amendment is indeed to give precedence to the Commonwealth, not to diminish it [...]
>
> I do not believe that accepting and wearing a medal awarded by a Commonwealth country in any way belittles the national medal that may also have been awarded. Surely the acceptance and wearing of a Commonwealth medal alongside a national one adds to, rather than detracts from, the importance or significance of the latter. It serves to emphasise the contribution made by that individual and the recognition of the efforts that he or she has made. Is this not the time to review and change the long-standing but frequently overruled policy rules that were drawn up in a very different age?[23]

Lord Touhig's amendment on the creation of a replacement for the HD Committee was withdrawn in Committee with Lord Touhig's acknowledgement that the amendment was "born out of frustration – more from despair – over the way that the HD committee has handled the Pingat Jasa Malaysia medal issue".[24]

Lord Craig's amendment on Commonwealth medals more specifically was re-introduced, however, at Report Stage and at Third Reading.

Third Reading Amendment

In re-introducing his amendment at Third Reading (amendment 6 of the agreed Lords amendments), Lord Craig stated:

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21 HL Deb 8 September 2011, GC90
22 HL Deb 8 September 2011, GC93 and GC102
23 HL Deb 8 September 2011, GC92-3
24 HL Deb 8 September 2011, GC101

> As I made clear in my remarks at Report and Committee stages, the current arrangements are not satisfactory. This is not so much a criticism of individuals but of a process that is no longer-to use that popular phrase-fit for purpose [...]
>
> The Minister, in answering my points at Report, said that the effect of my then amendment would be to end the broadly consistent approach across government. The words "other Crown servants" in the current amendment deal with that objection.
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> The Minister's next point was that a problem would be created by establishing a separate principle that applied to medals offered by the Governments of Commonwealth nations, as opposed to those offered by other allies. He said that it would not be easy to justify to non-Commonwealth allies or members of our Armed Forces why we would generally decline the offer of a medal from them, while readily accepting a medal offered by a Commonwealth nation. Surely, that misunderstands this amendment, and I note too the mindset or default opinion which is expressed in the words "would generally decline the offer".
>
> On the one hand, my amendment would facilitate, without recourse to any archaic HD committee rules, the acceptance and wearing of Commonwealth medals. That would be set down in statute. Until the rules are changed, as I believe that they should be, the treatment of other friendly nations or international organisations would be, as now, unchanged, apart from explaining to them that the new Commonwealth arrangement was approved by Parliament and had received Royal Assent. I do not see that causing any greater diplomatic difficulty than already exists, as the Minister asserted, and almost certainly a good deal less, even without any changes to the HD committee rules. Those rules, or the way in which they are applied by officials, seem designed to deter as far as possible any foreign offer. That approach must surely merit thorough re-examination.[25]

Again the amendment was supported by several Peers, including Lords Ramsbotham, lord Touhig, and Lord Palmer.

Throughout the Lords stages the Governments position on this amendment has remained consistent. Although not expressly mentioning the Royal Prerogative, the Government made it clear that the award of medals was a decision for the Sovereign, while also highlighting that the granting of medals, including the decisions taken on the PJM and other campaign medals, is currently subject to a Government review. That review is expected to be published shortly.

At Third Reading Lord Astor summed up the Government's position thus:

> The position of the Government on the fundamentals of how the system should work remains the same as that of the last Government, when in 2007 the HD committee considered for a second time the Pingat Jasa Malaysia medal. It is the same position as has been held by every previous Government since King George VI established the HD committee.
>
> The foundations of this position are quite simple. First, when British citizens, whether civilian or military, carry out their duties to the sovereign and their country, it is for the sovereign to decide on the award of honours for that service.
>
> Secondly, the advice given to the sovereign about the grant of honours should be consistent across government-expert and, so far as is possible, dispassionate. Decisions on whether to reward service should not be made in the glare of public

[25] HL Deb 10 October 2011, c1340-41

debate or potential party political argument about the wider political context in which that service was given.

Lastly, there should be consistency in our response to the wishes of all states, foreign or Commonwealth. In particular, our response to all our allies and friends should be consistent. I do not pretend that absolute consistency has been, or can always be, maintained. Sometimes exceptions are, and no doubt will be, made. But it is nearly always when exceptions are made that unfairness or anomalies are likely to occur.

The amendment would have two direct effects. First, it would lay down for the future a new rule about medals-that those awarded a Commonwealth medal shall be entitled in all circumstances to wear it. Secondly, it would apply this rule to Commonwealth medals awarded in the past. These include, as the amendment specifies, the PJM medal.

In doing so, the amendment would also have a number of indirect effects. By overturning past decisions that have been made on Commonwealth medals, it would establish the precedent that Parliament may overturn-and after any length of time-any decision of the sovereign as the fount of honour. Her decision is needed on the full details of what is proposed, as to both the acceptance and the wearing of medals. The amendment would overturn, specifically, past decisions on Commonwealth cases. I need hardly say that it is Her Majesty who is Head of the Commonwealth, not Parliament.

It would establish a further precedent that Parliament is able to lay down and change the rules which are to be applied to decisions on the acceptance of honours from foreign and Commonwealth states. It would assert that Parliament can do so in a way which alters the fundamentals that I have described of the existing arrangements, such as the need for a basically consistent approach to awards by all friendly and allied states.

Equally profound in its implications is the argument that must underlie this amendment-that decisions on the award of honours, and whether to change decisions previously made, are better made in the emotive and often party political atmosphere of parliamentary consideration, than with the detached and largely non-party political approach envisaged in the arrangements set up by King George VI. I believe that it would be wrong in principle for this House to lead the way towards such a new approach to the award of honours. As to the particular new rule that the amendment would put in place, I simply point out that it would create a different principle for the wearing of medals awarded by Commonwealth nations from that which applies to those awarded by other allies [...]

It would not be easy to justify to non-Commonwealth allies, or to those individuals whom they wish to reward, why the United Kingdom had decided to treat their awards on a fundamentally different basis from those offered by a Commonwealth nation.

That does not mean that I do not attach a special value to our membership of the Commonwealth and to our connections with its members. They are of the greatest importance, historically, culturally and constitutionally. But I do not believe that the creation of the distinction which this amendment would make between our Commonwealth and other friends is the way to reflect our respect for the Commonwealth.

Neither does it mean that I do not understand the force of the points that have been made in these debates about particular cases, and about the way that the process works, or is perceived to work. I have therefore instructed Ministry of Defence officials to consider the process by which advice about the institution of medals and the

> acceptance of foreign awards in respect of military service is put together, considered and submitted to Her Majesty.
>
> As I explained on Report, this work will also consider the way that decisions are promulgated. My officials will ensure that they have the benefit of the views of the current chiefs of staff and they will discuss the issue with HD committee members. They will then consider whether any advice should be given to Her Majesty about the need to review the process and to make changes. Once my officials have reported back to me, I shall report the outcome to Parliament through a Written Ministerial Statement. I aim to do so before the end of the year.

On the issue of the PJM specifically Lord Astor went on to state:

> I shall put in hand, through my officials, representations to members of the HD committee about these issues, with a request that their advice to Her Majesty is to consider again whether those who have been awarded the medal should be permitted to wear it. Again I shall report the outcome to Parliament through a Written Ministerial Statement, and I aim to do so before the end of the year.

He concluded by cautioning against setting a precedent for Parliament to overturn the decisions taken by Her Majesty on the award of medals, and by implication what is a long established prerogative power:

> for the reasons that I have explained, I do not believe that it would be right, in order to improve the system, for Parliament to overturn Her Majesty's decisions or to establish a precedent for laying new rules. Such an approach would not in my view support the essential merits and aims of the existing system, or support Her Majesty in carrying out her role as the fount of honour.
>
> For those reasons, I cannot support the noble and gallant Lord's proposed amendment, and I would urge noble Lords to reflect extremely carefully before starting down the road it represents.

Lord Craig called however for the view of the House to be established and therefore pushed the amendment to a Division.

That amendment was agreed by a vote of 208 to 194. Amendment 8 was subsequently ordered to stand as part of the Bill.

3 Consideration of the Amendments

The Commons considered the Lords amendments on 19 October 2011. Amendments 1-5, relating to the Armed Forces Covenant, were agreed without debate.

After a short debate amendment 6, relating to Commonwealth Medals, was put to a vote. That amendment was subsequently defeated by a vote of 263 to 210.[26] The Armed Forces Bill (Reasons Committee) stated that:

> The Commons disagree to Lords Amendment No.6 for the following Reason:
>
> Because it is not appropriate for Parliament to legislate on matters relating to medals.[27]

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[26] Division 370, Session 2010-12

[27] Votes and Proceedings 19 October 2011

Upon return to the House of Lords the decision was taken not to push for the amendment to be included in the Bill and therefore the legislation was passed. The *Armed Forces Act 2011* subsequently received Royal Assent on 3 November 2011.