



LEAD MEMBER FOR CHILDREN AND FAMILIES

DECISIONS to be made by the Lead Member for Children and Families and Armed Forces Champion for East Sussex County Council, Councillor Bob Bowdler

TUESDAY, 14 FEBRUARY 2023 AT 10.00 AM

REMOTE MEETING VIA MICROSOFT TEAMS

AGENDA

1. Decisions made by the Lead Cabinet Member on 26/09/2022 (*Pages 3 - 4*)
2. Disclosures of interests
Disclosure by all Members present of personal interests in matters on the Agenda, the nature of any interest and whether the Member regards the interest as prejudicial under the terms of the Code of Conduct
3. Urgent items
Notification of items which the Lead Members consider to be urgent and propose to take at the end of the appropriate part of the Agenda
4. Armed Forces Covenant (*Pages 5 - 42*)
Report by Director of Children's Services.
5. Any urgent items previously notified under agenda item 3

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6 February 2023

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LEAD MEMBER FOR CHILDREN AND FAMILIES

DECISIONS made by the Lead Member for Children and Families, Councillor Bob Bowdler, on 26 September 2022, Remote Meeting via Microsoft Teams

Councillor Wendy Maples spoke on item 4 (see minute 3)

1 DECISIONS MADE BY THE LEAD CABINET MEMBER ON 1 JUNE 2020

1.1 The Lead Member approved as a correct record the minutes of the meeting held on 1 June 2020.

2. REPORTS

2.1 Copies of the reports referred to below are included in the minute book

3. CHILDREN'S SERVICES SUPPORTED ACCOMMODATION FRAMEWORK CALL-OFF CONTRACT EXTENSIONS

3.1 The Lead Member considered a report by the Director of Children's Services regarding the Children's Services Supported Accommodation Framework Call-Off Contract extensions.

3.2 The Lead Member RESOLVED to approve 9-month extensions for 2 Call-Off Contracts under the Children's Services Supported Accommodation Framework as set out the report.

Reason

3.3 The nine-month extensions to Call-Off Contracts under the Supported Accommodation Framework will ensure continuity of provision and stability of placement for care leavers and young people in placement with them at the time the current Call-Off Contracts expire, without any increase in the price per placement, until new contracts can be awarded under a new Approved List (CSAAL).

4. INDEPENDENT FOSTERING AGENCY PLACEMENTS RECOMMISSIONING

4.1 The Lead Member considered a report by the Director of Children's Services regarding the Independent Fostering Agency Placement Recommissioning.

4.2 The Lead Member RESOLVED to:

1. approve the re-commissioning of the provision of Independent Providers of Foster Care Services through a regional Approved List (which is a hybrid between a framework agreement and DPS agreement); and
2. delegate authority to the Assistant Director of Children's Social Care to award providers a place on the Approved List, including all future provider applications that pass the minimum criteria.

Reason

4.3 It is necessary to re-tender these services as the current framework agreement for foster care placements will expire on 31 March 2023. In order to benefit from collaborative working with regional partners, and to build in sufficient time to carry out a fair and transparent procurement process, the process must commence as soon as possible.

Report to: Lead Member for Children and Families and Armed Forces
Champion for East Sussex County Council

Date of meeting: 14 February 2023

By: Director of Children's Services

Title: The Armed Forces Covenant

Purpose: To note the change to the current Armed Forces Covenant arrangements and to agree to sign the updated Armed Forces Covenant.

RECOMMENDATIONS: The Lead Member is recommended to:

- 1) note the change to the current Armed Forces Covenant for East Sussex County Council;
 - 2) agree to the pledges outlined by the East Sussex County Council Armed Forces Covenant document; and
 - 3) sign the updated Armed Forces Covenant
-

1 Background

1.1 The Council is committed to the Armed Forces Community who live and work in East Sussex.

1.2 To demonstrate this ongoing commitment East Sussex County Council (ESCC) plans to apply for Gold Accreditation under the Employers Recognition Scheme, which is administered by the Ministry of Defence (MOD). Cllr Bob Bowdler, the Lead Member for Children and Families, leads this work for the Council and is the Armed Forces Champion for East Sussex. The Gold Accreditation scheme application has enabled the Council to consider how it might re-state its adherence to the Armed Forces Covenant and to review where it might pledge to go further for (ex)service members and their families.

1.3 **The Armed Forces Act 2021** introduced a new requirement for local authorities to pay due regard to the principles of the [Armed Forces Covenant](#) (Appendix 1) when carrying out specific public functions in the areas of housing, healthcare, and education.

The core principles of the Covenant are that all organisations (as defined in s.343AA (3) of the Armed Forces Act 2006 as amended) should have regard to:

- a. The unique obligations of, and sacrifices made by, the armed forces;
- b. The principle that it is desirable to remove disadvantages arising for service people from membership, or former membership, of the armed forces, and
- c. The principle that special provision for service people may be justified by the effects on such people of membership, or former membership, of the armed forces

This is set out in section 343A of the [Armed Forces Act](#) 2021. (Appendix 2).

1.4 ESCC signed The Armed Forces Community Covenant along with District and Borough partners and other local organisations in May 2013. May 2023 marks the month where the Covenant pledges will need to be reviewed and re-signed.

1.5 In the last month, ESCC have been advised by our Regional Employer Engagement Director (MoD) that we will need to draft and sign an East Sussex County Council bespoke

Armed Forces Covenant ahead of applying for Gold Accreditation, as Community Covenants are no longer valid.

1.6 In order to comply with the new processes, ESCC must draft, re-sign and submit a bespoke Armed Forces Covenant by 1 March 2023. Pledges must demonstrate our commitment to the Armed Forces Community and adhere to our responsibilities contained in the Armed Forces Act 2021 whilst linking to the County Council's strategic plans.

2 Supporting information

2.1 To support the drafting of a new Armed Forces Covenant, we have obtained guidance on the style and content from the MoD website. The website includes examples of best practice, a list of suggested pledges, and a template to support the drafting of the required bespoke pledge. These documents can be accessed by following this link: [Useful resources - Armed Forces Covenant](#)

2.2 The draft East Sussex County Council Armed Forces Covenant can be found in appendix 3 to this report.

2.3 There are no financial implications arising from signature of the Covenant; the arrangements in terms of agreed leave for staff linked to the Covenant are already in place.

3. Conclusion and reasons for recommendations

3.1 In order to continue demonstrating support to the Armed Forces Community, and to aim for Gold Accreditation on the Employers Recognition Scheme in 2023, East Sussex County Council will need to re-submit a bespoke Armed Forces Covenant by 1 March 2023.

3.2 The Lead Member for Children and Families and Armed Forces Champion for East Sussex County Council is therefore recommended to: 1) note the change to the current Armed Forces Covenant for East Sussex County Council;

2) agree to the pledges outlined by the East Sussex County Council Armed Forces Covenant document; and

3) sign the updated Armed Forces Covenant

ALISON JEFFERY
Director of Children's Services

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LOCAL MEMBERS

All Local Members

BACKGROUND DOCUMENTS

None

By Louisa Brooke-Holland,
Claire Mills

24 November 2022

The Armed Forces Covenant and status in law

Summary

- 1 Background: The Military Covenant and the Armed Forces Act 2011
- 2 The Armed Forces Covenant, 2011
- 3 The Armed Forces Act 2021
- 4 Appendix one: “Due regard” in other legislation
- 5 Appendix two: Text of the Armed Forces Covenant

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Summary

The Armed Forces Covenant is a statement of the moral obligation which exists between the nation, the Government and the armed forces. It was published in May 2011 and its core principles were enshrined in law, for the first time, in the Armed Forces Act 2011.

The Government is required by the Act to produce an [annual report](#) to Parliament on the Armed Forces Covenant. In doing so, the Secretary of State for Defence must have regard to:

- (a) the unique obligations of, and sacrifices made by, the armed forces;
- (b) the principle that it is desirable to remove disadvantages arising for service people from membership, or former membership, of the armed forces; and
- (c) the principle that special provision for service people may be justified by the effects on such people of membership, or former membership, of the armed forces.¹

These are the core principles of the Covenant.

The Armed Forces Act 2021 introduced a new requirement for some public bodies, including the NHS and local authorities, to pay due regard to the principles of the Covenant when carrying out specific public functions in the areas of housing, healthcare and education. [Statutory guidance](#) was laid in secondary legislation ([the Armed Forces \(Covenant\) Regulations 2022](#)) and was published on 8 November 2022.

During the passage of the Armed Forces Act 2021 the Government resisted calls by opposition parties and military charities to expand this requirement to every area of public policy and to apply it to national government and devolved administrations.

This paper explains what the Covenant is and the changes made by the Armed Forces Act 2021. Section 1 lays out the evolution of the Covenant from an unwritten commitment to a published document. Section 2 explains what the Covenant is and the obligations that flow from it. Section 3 discusses the new requirements set out in the Armed Forces Act 2021 and the debate about the Covenant during the Bill's passage through Parliament. The text of the Covenant can be found in the appendix.

¹ [Armed Forces Act 2011 clause 2](#) (inserts new paragraph 343A into the Armed Forces Act 2006).

1 Background: The Military Covenant and the Armed Forces Act 2011

The section explains how a previously unwritten Military Covenant became a published document, and how its principles became enshrined in law.

1.1 The Military Covenant

Prior to 2011, the Military Covenant existed as an unwritten social and moral commitment between the State and the armed forces that had developed through long standing convention and customs.²

Historically it had been largely associated with the army, although its principles are now applied across all three Services.

The Covenant implied that in return for the sacrifices that service personnel make, the nation has an obligation to recognise that contribution and retains a long-term duty of care toward service personnel and their families.

Concerns that the Covenant was being undermined and that a social gulf between the armed forces and the general public was developing prompted investigations into how to strengthen the Covenant. In 2007, for example, the Royal British Legion established an “Honour the Covenant” campaign.

In 2008 the then Labour Government published a Command Paper entitled: [The nation's commitment: cross-government support for our armed forces, their families and veterans](#).³ The Conservative party and the Liberal Democrats also commissioned reports which fed into their election manifestos.

The Coalition Government's Programme for Government, published in May 2010, subsequently outlined a commitment to “work to rebuild the Military Covenant”, which would build on the measures set out in the 2008 command paper and include the writing of a new Tri-Service Covenant.⁴ In

² [Armed Forces Covenant](#), Commons Library briefing SNO5979

³ [The nation's commitment: Cross government support for our armed forces, their families and veterans](#), Ministry of Defence (MOD), 17 July 2008

⁴ [The Coalition: Our programme for government](#), Cabinet Office, 20 May 2010, p15

June 2010 the Prime Minister indicated that the Military Covenant would be enshrined in law for the first time.⁵

1.2 The Armed Forces Act 2011

The Armed Forces Bill was presented to Parliament on 8 December 2010. One of the main topics of debate was the extent to which the Bill fulfilled the Prime Minister's June 2010 pledge to enshrine the Military Covenant in law.

Initially the Bill required the Secretary of State to present an Armed Forces Covenant Report to Parliament every year on the effect of membership of the Armed Forces on Service personnel, their dependants, and veterans in the UK.

The Armed Forces Covenant was published in May 2011 while the Bill was still making its way through the Commons. The Government amended the Bill to include the key principles that underpin the Covenant and which must be taken into consideration when preparing the Armed Forces Covenant Report.

Members also discussed the scope of the Bill. A Labour amendment that would oblige all public bodies and Ministers, when making policy, to have regard to the same issues that the Secretary of State must also consider in preparing the Armed Forces Covenant report was defeated on division.⁶

Further background on the Bill

All Bill documents and debates relating to the passage of the Bill can be found on the Bill's webpage: [Armed Forces Act 2011](#).

The Commons Library covered the progress of the Bill extensively:

- [Armed Forces Bill \(Bill 122 of 2010-11\)](#), RP10-85, 17 December 2010
- [Armed Forces Bill: Consideration in Committee Stage](#), SN05899, 9 June 2011
- [Amendments to the Armed Forces Bill](#), SN05991, 13 June 2011.
- [Armed Forces Bill: Committee Stage report](#), SN06004, 15 June 2011
- [Armed Forces Bill: Lords amendments](#), SN06083, 3 November 2011

The text of the [Armed Forces Act 2021](#) can be found on legislation.gov.uk.

⁵ ["Military Covenant to be enshrined in law"](#), Ministry of Defence, 25 June 2010

⁶ [Armed Forces Bill: Committee of the Whole House notice of amendments given up to and including Friday 10 June 2011](#). A detailed account of this amendment (new clause 17) can be found in Commons Library paper ["Armed Forces Bill: Committee Stage report"](#), SN06004 and ["Amendments to the Armed Forces Bill"](#), SN05991. The full debate is available via Hansard: [HC Deb 14 June 2011 c674-749](#)

1 About the Armed Forces Act

An Armed Forces Act is required every five years. It is extended on an annual basis by an Order in Council but cannot be extended beyond the five-year period (see for example [the Armed Forces Act \(Continuation\) Order 2021](#)).

The purpose of the Armed Forces Act is to provide the legal basis for the armed forces and the system of military law which exists in the UK. It sets out nearly all the provisions for the system of service law – of command, discipline and justice – that applies to all service personnel wherever they are operating. In the past the Act has also been used to introduce any new measures relating to the armed forces that fall outside the Act’s traditional remit of service discipline.

The Armed Forces Act 2006 was extensive and amounted to a complete overhaul of the legislation relating to military law and Service discipline. Subsequent Acts have amended the 2006 Act. The [Armed Forces Act 2021](#) received Royal Assent on 15 December 2021.

2

The Armed Forces Covenant, 2011

In May 2011 the Government published the first tri-service [Armed Forces Covenant](#).⁷ It took the form of two documents:

- [The Armed Forces Covenant](#) – which sets out, in one short statement, the principles of the Covenant, and provides guidance on what the Government believes it means today.
- [The Armed Forces Covenant: Today and Tomorrow](#) – which sets out the practical measures that the Government was planning to take to support the Covenant. It brought together commitments that had already been made with measures to be implemented in the future.

The Covenant articulates the view that the nation has a moral obligation to members of the Armed Forces community in return for the sacrifices they make. In return, those who serve or have served in the armed forces, and their families, should face no disadvantage compared to other citizens in the provision of public and commercial services. It also states special consideration is appropriate in some cases, particularly for those who have been injured or bereaved.

Those principles were enshrined in law in the [Armed Forces Act 2011](#) (section 2, which inserted section 343A in the Armed Forces Act 2006). The Act places a statutory requirement on the Secretary of State for Defence to provide an annual Armed Forces Covenant report to Parliament each year. In preparing that report, the Defence Secretary must have particular regard to:

- (a) the unique obligations of, and sacrifices made by, the armed forces;
- (b) the principle that it is desirable to remove disadvantages arising for service people from membership, or former membership, of the armed forces; and
- (c) the principle that special provision for service people may be justified by the effects on such people of membership, or former membership, of the armed forces.⁸

⁷ [Armed Forces Covenant](#), Ministry of Defence, 10 January 2013

⁸ Armed Forces Act 2011 clause 2 (inserts new paragraph 343A into the Armed Forces Act 2006).

2.1 Who does the Covenant apply to?

The accompanying guidance states that the whole of the armed forces' community is covered by the Covenant and the obligations and principles which flow from it. The armed forces community includes regular personnel, reservists, veterans, the immediate families of those categories of individual, and the immediate family of those service personnel and veterans who have died.⁹

The Covenant is clear that inclusion in the armed forces community does not confer any legal rights. Nor does it mean identical entitlement to support: "the level of support made available will vary. It will take into account the need for assistance, and may also reflect what an individual has contributed through Service".¹⁰

2.2 Who has signed the Covenant?

The Government encourages local authorities, businesses and charities to sign the Armed Forces Covenant as a way of demonstrating their support for the Armed Forces' community.

Every local authority in Great Britain has signed the Covenant and many have appointed "Armed Forces Champions", who work to ensure Covenant commitments are met.¹¹ The Armed Forces Covenant website provides [guidance on how to deliver the Covenant](#) for local authorities.

Thousands of businesses and charities have also signed the pledge. Gov.uk provides copies of all the [Covenant pledges made by businesses](#), listed alphabetically. A [searchable list of businesses](#) is also provided in an excel spreadsheet, which can be filtered by location, industry and company size.

2.3 Armed Forces Covenant annual reports

The Armed Forces Act 2011 places a statutory requirement on the Secretary of State for Defence to provide an annual Armed Forces Covenant report to Parliament each year.

The Act sets out what the report should cover. Namely, that it should be about the effects or membership, or former membership, of the armed forces on service people, in the fields of healthcare, education and housing;

⁹ [The Armed Forces Covenant](#), p.4

¹⁰ [The Armed Forces Covenant](#), p.4

¹¹ [PQ 36769 \[Armed Forces Covenant\], 22 July 2021.](#)

the operation of inquests; and in other fields as the Defence Secretary may determine.¹²

The annual reports have evolved over the years in terms of both subject areas and layout. Common to each edition is a list of commitments for the year ahead and reflections on measures previously introduced. Each report includes a commentary from the external members of the Covenant Reference Group: the three Service Families Federations, the Royal British Legion and Cobseo, the Confederation of Service Charities.

The [Armed Forces Covenant and Veterans Annual Report 2021](#) was the first to incorporate Veterans into the title, although previous iterations had covered former service personnel. The Government said the report was so titled to reflect it being the product of both the Ministry of Defence (MOD) and the Cabinet Office, which is home to the Office for Veterans' Affairs.¹³

2.4 The Covenant Fund and Covenant Trust

The [Armed Forces Covenant Fund](#) was launched by the MOD in August 2015. It replaced previous funding schemes, including the Covent Community Grant scheme and the LIBOR fund. It provides £10 million per year, funded by the MOD, "to support mutually beneficial projects and programmes being delivered by organisations across the UK in partnership with the Armed Forces Community."¹⁴ Funding has been committed for the next 14 years and the MOD has said it intends for it to be funded in perpetuity.¹⁵

For the first 3 years, the Covenant Fund was based within the MOD. On 1 April 2018 the Armed Forces Covenant Fund became an independent charitable trust: [The Armed Forces Covenant Fund Trust](#). It is registered with the Charity Commission and produces annual reports on its funding.

The Fund has four broad funding themes:

- removing barriers to family life
- extra support after service for those that need help
- measures to integrate military and civilian communities and allow the armed forces community to participate as citizens
- and non-core healthcare services for veterans.¹⁶

¹² Armed Forces Act 2011 343A(2)

¹³ [Armed Forces Covenant and Veterans Annual Report 2021, Ministry of Defence, 15 December 2021](#)

¹⁴ "[Defence Secretary announces Armed Forces Covenant and Veterans Board](#)", MOD, 3 October 2017

¹⁵ Defence Committee, [Armed Forces Annual Report 2017](#), written evidence AFC0001, 17 April 2018, q164

¹⁶ "[Guidance: The Covenant Fund is coming!](#)", MOD 23 July 2015

Within these broad themes, the Fund's priorities change every year.

3

The Armed Forces Act 2021

The Armed Forces Act 2021 introduced a new requirement for some public bodies to pay due regard to the principles of the Covenant when carrying out specific public functions in the areas of housing, healthcare and education.

During the passage of the Bill the Government resisted calls by opposition parties and military charities to expand this requirement to every area of public policy and to apply it to the national government and devolved administrations.

3.1

About the Act

The Government pledged to further incorporate the Covenant into law in the [Queen's Speech 2019](#).

The Armed Forces Bill 2019-21 was introduced in the House of Commons on 26 January 2021 and received Royal Assent on 15 December 2021.

The Act inserts new sections into the Armed Forces Act 2006. These new sections require a specified person or body exercising a relevant housing, education or healthcare function, to have “due regard” to the principles laid out in the Armed Forces Covenant.

These persons and bodies are identified in the Act and include local authorities, schools and post-16 institutions, NHS commissioning boards and clinical commissioning groups and NHS trusts. New sections apply to England, Wales, Scotland and Northern Ireland respectively.

The duty is not expected to be come into effect until the middle of 2022 “at the earliest”, according to Baroness Goldie, Minister of State, MOD.¹⁷

What is “due regard”?

At Second Reading Johnny Mercer, then Parliamentary Under Secretary of State (Minister for Defence People and Veterans), explained the new duty to have due regard was not intended to be specific:

¹⁷ [HL Deb 14 December 2021, c145](#)

The legislation does not mandate specific delivery outcomes or advantageous treatment of the armed forces community.¹⁸

A discussion of “due regard” in other legislation can be found in the appendix.

Secondary legislation: Guidance on due regard

During the passage of the Bill in the Commons, Ministers said statutory guidance would be published to support public bodies in understanding what the principles of the Covenant are and how members of the armed forces may experience disadvantage.¹⁹ The Select Committee on the Armed Forces Bill called for draft statutory guidance to be made available for scrutiny.²⁰

The House of Lords Delegated Powers and Regulatory Reform Committee recommended the guidance be made subject to Parliamentary scrutiny and recommended the affirmative resolution procedure should apply.²¹

The Government duly amended the Bill at Report Stage in the House of Lords to incorporate this recommendation. Introducing the amendments, Baroness Goldie said: “Given the status of the guidance and its importance in supporting the public bodies that will be subject to the duty, these amendments will provide Parliament with a greater opportunity to scrutinise this document before it is issued.”²²

The regulations will also define who constitutes a “relevant family member”, which was another recommendation of the House of Lords Delegated Powers and Regulatory Reform Committee.

Regulation 2 of the [Armed Forces \(Covenant\) Regulations 2022](#) brings into force the statutory guidance supporting the new duty. The Regulations were debated in [Grand Committee of the House of Lords](#) on 18 October 2022, made on 8 November and came into force on 22 November 2022.

The guidance was published alongside the Regulations and is also available on Gov.uk: [Armed Forces Duty Statutory Guidance 2022](#). The guidance is 75 pages long and provides an overview of the duty, including what it is and to whom and when it applies. It discusses the concepts of disadvantage and special provision, before addressing the specific areas of healthcare, education and housing.

The guidance also explains what the Covenant Duty is not:

¹⁸ [HC Deb 8 February 2021 \[Armed Forces Bill\], c54](#)

¹⁹ [HC Deb 8 February 2021 \[Armed Forces Bill\], c54](#)

²⁰ Select Committee on the Armed Forces Bill, [The Armed Forces Bill](#), HC 1281 2019-21, Para 42

²¹ House of Lords Delegated Powers and Regulatory Reform Committee, [Seventh report](#), HL71, 18 October 2021, para.5

²² [HL Deb 23 November 2021 \[Armed Forces Bill\], c777](#)

The Covenant Duty is not prescriptive about the approach a specified body should take in order to comply with their legal obligations. It also does not mandate that any particular conclusions are reached or specific public service delivery outcomes achieved as a result of that consideration. The actions and outcomes that bodies deem appropriate will vary across the country depending on local circumstances.²³

Regulation 3 defines who is a relevant family member in respect of the new duty. Baroness Goldie, the Minister of State, said “a broad approach was taken in this definition” quite deliberately, so it extends beyond immediately family members.²⁴

Definition of “Due Regard”

The [statutory guidance](#) provides the following explanation of due regard:

The Act does not state what a body must do in order to have due regard. How a body meets the Covenant Duty, and how the Duty is reflected in relevant policies or procedures, are therefore matters for the body in question. It is about informed decisionmaking, and means that specified bodies should think about and place an appropriate amount of weight on the principles of the Armed Forces Covenant when they consider all the factors relevant to how they carry out relevant functions. Therefore, specified bodies should ensure that mechanisms are in place that prompt decision-makers to assess how their decision might impact on service users from the Armed Forces Community in scope of the Duty. Bodies might wish to draw on their experience and practice in complying with other similar due regard duties.²⁵

What were the concerns raised by opposition parties and military charities?

During the passage of the Bill, opposition parties and several military charities argued the requirement to have due regard to the Covenant should be expanded to other areas of public policy and to also apply to national and devolved governments.

Charity concerns: The Bill “does not go far enough”

The Royal British Legion and Cobseo, the Confederation of Service Charities, explained their concerns about the limited scope of the Bill to the Select Committee on the Armed Forces Bill. Both said that many areas of vital

²³ [The Armed Forces Covenant Duty Statutory Guidance](#), Ministry of Defence, 8 November 2022

²⁴ [HL Deb 18 October 2022 c199GC](#)

²⁵ [The Armed Forces Covenant Duty Statutory Guidance](#), Ministry of Defence, 8 November 2022, para 1.14

concern to veterans, such as social care, pensions, compensation, employment and benefits were not included in the scope of the Bill. Laura Pett, Head of Public Affairs and Campaigns at the Royal British Legion, said the focus on housing, education and healthcare ignored the interconnectivity of Covenant areas, citing, for example, that housing problems are rarely experienced in isolation to an employment problem. Pett also suggested the focus on the three policy areas risked giving the impression other policy areas were not as important.²⁶

“Based on our collective experience working with the Armed Forces community, the Bill does not go far enough.”²⁹

Open letter from military charities to the MOD, July 2021

Both Pett and General (retired) Sir John McColl of Cobseo also argued strongly in favour of expanding the scope to include central and devolved governments.²⁷

In July 2021 the Legion, Cobseo, other prominent military charities and the service families’ federations jointly wrote an open letter to the MOD articulating these concerns. The letter called on the Government to place the same duty of due regard on the national government and devolved administrations. They also called for the scope to be widened to include employment, pensions, social care, criminal justice and immigration.²⁸

[MPs and Peers criticise the exclusion of central government from the duty](#)

The extent and scope of the duty to have due regard was raised during the passage of the Bill by members of both chambers.

The Shadow Defence Secretary criticised the bill as a “missed opportunity” by being too narrow in its focus and for failing to place a duty on central government.³⁰ Shadow SNP spokesperson for the Armed Forces and Veterans, Carol Monaghan, made similar points, saying the commitment in the Covenant “falls far short” of what it needs to be.³¹

Amendments to achieve such an expansion were defeated on division in the House of Commons at Committee and Report stage.

Members of the Lords [successfully amended the Bill](#) to place the same legal responsibility to have due regard on central government. However, the Government opposed that and it was rejected by the Commons. The Lords eventually withdrew the amendment. Baroness Smith of Newnham was among members of the Lords who repeated their concerns about the lack of

²⁶ Select Committee on the Armed Forces Bill, [The Armed Forces Bill](#), HC 1281 2019-21, Para 25-35

²⁷ Select Committee on the Armed Forces Bill, [The Armed Forces Bill](#), HC 1281 2019-21, Para 25-35

²⁸ [“Response to the Armed Forces Bill”](#), Royal British Legion, July 2021, accessed 30 December 2021. The letter was signed from the Royal British Legion, Poppyscotland, Cobseo, SSAFA, Help for Heroes, Veterans Scotland, Combat Stress, Forces in Mind Trust and the three service families’ federations.

²⁹ [“Response to the Armed Forces Bill”](#), Royal British Legion, July 2021, accessed 30 December 2021

³⁰ [HC Deb 8 February 2021, c59](#)

³¹ [HC Deb 8 February 2021 c58](#)

duty on central government when discussing the [Armed Forces \(Covenant\) Regulations 2022](#).³²

Similar concerns had been raised in 2011

It is worth noting that similar concerns were raised during the passage of the Armed Forces Act 2011. Labour tabled an amendment that would make it an obligation on all public bodies and Ministers, when making policy, to have regard to the same issues that the Secretary of State must also consider in preparing the Armed Forces Covenant report. The amendment was defeated on division.³³

Review in 2023

Leo Docherty, the Minister for Defence People and Veterans, did commit to reviewing the operation of the new duty across the UK and report on the review in the 2023 Covenant annual report, 18 months after the new duty is expected to come into effect. He said the review will consider whether it is beneficial to add to its scope, including whether central Government and any of their functions could be usefully added. An interim update will be given in the 2022 Covenant annual report.³⁴

³² [HL Deb 18 October 2022 c202GC](#)

³³ [Armed Forces Bill: Committee of the Whole House notice of amendments given up to and including Friday 10 June 2011](#). A detailed account of this amendment (new clause 17) can be found in Commons Library paper "[Armed Forces Bill: Committee Stage report](#)", SN06004 and "[Amendments to the Armed Forces Bill](#)", SN05991. The full debate is available via Hansard: [HC Deb 14 June 2011 c674-749](#)

³⁴ [HC Deb 13 December 2021, c817](#)

4

Appendix one: “Due regard” in other legislation

The Public Sector Equality Duty contained in section 149 of the *Equality Act 2010* requires public authorities to have due regard to several equality considerations when exercising their functions. Under section 149 all public authorities must, in the exercise of their functions, “have due regard to the need to” eliminate conduct that is prohibited by the Act. Such conduct includes discrimination, harassment and victimisation related to the protected characteristics. The Act does not identify what is meant by the requirement to “have due regard”. However, case law does provide some assistance in better understanding how public authorities might be expected to fulfil their duties under the Act. One case established six principles, known as the “Brown Principles”:

- decision-makers must be made aware of their duty to have due regard to the identified needs;
- the duty must be fulfilled both before and during consideration of a particular policy, and involves a “conscious approach and state of mind”;
- it is not a question of ticking boxes, the duty must be approached in substance, with rigour and with an open mind, and a failure to refer expressly to the duty whilst exercising a public function will not be determinative of whether due regard has been had;
- the duty is non-delegable;
- the duty is continuing;
- it is good practice for an authority to keep a record showing that it has considered the identified needs.

Further analysis of this, and discussion of other case law in respect to the Equality Act 2010 can be found in Commons Library paper [The Public Sector Equality Duty and Equality Impact Assessments](#), SNO6591, 8 July 2020.

The Government has also used the term in the [Environment Bill 2019-21](#). Under the draft Bill 2018, draft clause 4 had placed a duty on Ministers of the Crown to “have regard” to the policy statement. This was the subject of debate at the time of the draft Bill, with concern that this duty was not strong enough and too narrow in scope. This provision was changed in the Environment Bill ([clause 18](#), which became [clause 19](#) of the Act) to a duty of Minister of the Crown to “have due regard” to the policy statement on environmental principles currently in effect when making policy. The Government’s response to the Environment, Food and Rural Affairs Committee set out why this change was made:

We have strengthened the current duty in the Bill from ‘have regard’ to ‘have due regard’ with the aim of ensuring that the policy statement is used effectively across departments.

Strengthening the duty in this way means that Ministers of the Crown will be required to give fuller consideration to the principles as the policy statement will be given greater weight.³⁵

Further discussion of this can be found in Commons Library [Analysis of the Environment Bill 2019-20](#), CBP8824, 6 March 2020

³⁵ Efra Committee, [Pre-legislative scrutiny of the Draft Environment \(Principles and Governance\) Bill: Government Response to the Committee’s Fourteenth Report of Session 2017–19, First Special Report of Session 2019–20](#), HC 95, 17 Oct 2019, p4

5 Appendix two: Text of the Armed Forces Covenant

The Armed Forces Covenant is as follows:

An Enduring Covenant Between
The People of the United Kingdom
Her Majesty's Government
– and –
All those who serve or have served in the Armed Forces of
the Crown
And their Families

The first duty of Government is the defence of the realm. Our Armed Forces fulfil that responsibility on behalf of the Government, sacrificing some civilian freedoms, facing danger and, sometimes, suffering serious injury or death as a result of their duty. Families also play a vital role in supporting the operational effectiveness of our Armed Forces. In return, the whole nation has a moral obligation to the members of the Naval Service, the Army and the Royal Air Force, together with their families. They deserve our respect and support, and fair treatment.

Those who serve in the Armed Forces, whether Regular or Reserve, those who have served in the past, and their families, should face no disadvantage compared to other citizens in the provision of public and commercial services. Special consideration is appropriate in some cases, especially for those who have given most such as the injured and the bereaved.

This obligation involves the whole of society: it includes voluntary and charitable bodies, private organisations, and the actions of individuals in supporting the Armed Forces. Recognising those who have performed military duty unites the country and demonstrates the value of their contribution. This has no greater expression than in upholding this Covenant.³⁶

³⁶ [The Armed Forces Covenant](#), May 2011, p.1

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Armed Forces Act 2021

2021 CHAPTER 35

Service in the armed forces

8 Armed forces covenant

- (1) AFA 2006 is amended as follows.
- (2) In the heading of Part 16A, omit “Report”.
- (3) After section 343A insert—

“343AA Due regard to principles: England

- (1) In exercising in relation to England a relevant function, a person or body specified in subsection (3) must have due regard to—
 - (a) the unique obligations of, and sacrifices made by, the armed forces,
 - (b) the principle that it is desirable to remove disadvantages arising for service people from membership, or former membership, of the armed forces, and
 - (c) the principle that special provision for service people may be justified by the effects on such people of membership, or former membership, of the armed forces.
- (2) In this section “relevant function”, in relation to a person or body specified in subsection (3), means—
 - (a) a relevant housing function,
 - (b) a relevant education function, or
 - (c) a relevant healthcare function.
- (3) The specified persons and bodies are—
 - (a) a local authority in England;
 - (b) the governing body of a maintained school in England;
 - (c) the proprietor of an Academy in England;
 - (d) a non-maintained special school;

Changes to legislation: There are currently no known outstanding effects for the Armed Forces Act 2021, Section 8. (See end of Document for details)

- (e) the governing body of an institution within the further education sector in England;
 - (f) a special post-16 institution;
 - (g) the National Health Service Commissioning Board;
 - (h) a clinical commissioning group;
 - (i) a National Health Service trust in England;
 - (j) an NHS foundation trust.
- (4) In this section “relevant housing function” means a function under or by virtue of any of the following—
- (a) Part 6 of the Housing Act 1996 (allocation of housing accommodation);
 - (b) Part 7 of the Housing Act 1996 (homelessness: England);
 - (c) Part 1 of the Housing Grants, Construction and Regeneration Act 1996 (grants, etc for renewal of private sector housing);
 - (d) section 1 of the Homelessness Act 2002 (duty of local housing authority in England to formulate a homelessness strategy);
 - (e) section 150 of the Localism Act 2011 (tenancy strategies);
 - (f) regulation 3 of the [Regulatory Reform \(Housing Assistance\) \(England and Wales\) Order 2002 \(S.I. 2002/1860\)](#) (power of local housing authorities to provide assistance), so far as that regulation deals with the provision of financial assistance for a purpose corresponding to any purpose specified in section 23 of the Housing Grants, Construction and Regeneration Act 1996 (disabled facilities grants: purposes).
- (5) In this section “relevant education function” means a function under or by virtue of any of the following—
- (a) the Education Act 1996;
 - (b) Part 3 of the School Standards and Framework Act 1998 (school admissions);
 - (c) section 175 of the Education Act 2002 (duties of local authorities and governing bodies in relation to welfare of children);
 - (d) any provision of Part 3 of the Children and Families Act 2014, so far as it deals with special educational provision.
- (6) In this section “relevant healthcare function” means a function under or by virtue of—
- (a) the National Health Service Act 2006, or
 - (b) any provision of Part 3 of the Children and Families Act 2014 (children and young people in England with special educational needs or disabilities), so far as it deals with health care provision.
- (7) In this section “health care provision” and “special educational provision” are to be interpreted as if this section were in Part 3 of the Children and Families Act 2014 (see section 21 of that Act).
- (8) In this section—
- “Academy” has the same meaning as in the Education Act 1996 (see section 579(1) of that Act);

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“clinical commissioning group” means a body established under section 14D of the National Health Service Act 2006;

“governing body”, in relation to an institution within the further education sector, has the meaning given by section 90 of the Further and Higher Education Act 1992;

“institution within the further education sector” is to be interpreted in accordance with section 91(3) of the Further and Higher Education Act 1992;

“local authority in England” means a county council in England, a district council, a London borough council, the Common Council of the City of London, or the Council of the Isles of Scilly;

“non-maintained special school” means a school which is approved under section 342 of the Education Act 1996;

“maintained school” has the same meaning as in the School Standards and Framework Act 1998 (see section 20 of that Act);

“proprietor”, in relation to an Academy, has the meaning given by section 579(1) of the Education Act 1996;

“special post-16 institution” has the same meaning as in the Children and Families Act 2014 (see section 83 of that Act).

343AB Due regard to principles: Wales

- (1) In exercising in relation to Wales a relevant function, a person or body specified in subsection (3) must have due regard to—
 - (a) the unique obligations of, and sacrifices made by, the armed forces,
 - (b) the principle that it is desirable to remove disadvantages arising for service people from membership, or former membership, of the armed forces, and
 - (c) the principle that special provision for service people may be justified by the effects on such people of membership, or former membership, of the armed forces.
- (2) In this section “relevant function”, in relation to a person or body specified in subsection (3), means—
 - (a) a relevant housing function,
 - (b) a relevant education function, or
 - (c) a relevant healthcare function.
- (3) The specified persons and bodies are—
 - (a) a local authority in Wales;
 - (b) the governing body of a maintained school in Wales;
 - (c) a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006;
 - (d) a Special Health Authority established under section 22 of the National Health Service (Wales) Act 2006, other than a cross-border Special Health Authority;
 - (e) a National Health Service trust in Wales.
- (4) In this section “relevant housing function” means a function under or by virtue of any of the following—

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- (a) Part 6 of the Housing Act 1996 (allocation of housing accommodation);
 - (b) Part 1 of the Housing Grants, Construction and Regeneration Act 1996 (grants, etc for renewal of private sector housing);
 - (c) Part 2 of the [Housing \(Wales\) Act 2014 \(anaw 7\)](#);
 - (d) regulation 3 of the [Regulatory Reform \(Housing Assistance\) \(England and Wales\) Order 2002 \(S.I. 2002/1860\)](#) (power of local housing authorities to provide assistance), so far as that regulation deals with the provision of financial assistance for a purpose corresponding to any purpose specified in section 23 of the Housing Grants, Construction and Regeneration Act 1996 (disabled facilities grants: purposes).
- (5) In this section “relevant education function” means a function under or by virtue of any of the following—
- (a) the Education Act 1996;
 - (b) Part 3 of the School Standards and Framework Act 1998 (school admissions);
 - (c) section 175 of the Education Act 2002 (duties of local authorities and governing bodies in relation to welfare of children);
 - (d) sections 2 to 7 and 9 of the [Learner Travel \(Wales\) Measure 2008 \(nawm 2\)](#);
 - (e) Chapters 2 (individual development plans) and 3 (supplementary functions) of Part 2 of the [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(anaw 2\)](#).
- (6) In this section “relevant healthcare function” means a function under or by virtue of the National Health Service (Wales) Act 2006.
- (7) In this section—
- “cross-border Special Health Authority” means a Special Health Authority which is established under the National Health Service Act 2006 and the National Health Service (Wales) Act 2006 by virtue of—
- (a) paragraph 1(2) of Schedule 2 to the National Health Service (Consequential Provisions) Act 2006, or
 - (b) the power under section 28 of the National Health Service Act 2006 and the power under section 22 of the National Health Service (Wales) Act 2006 being exercised together;
- “local authority in Wales” means the council of a county or county borough in Wales;
- “maintained school” has the same meaning as in the School Standards and Framework Act 1998 (see section 20 of that Act).

343AC Due regard to principles: Scotland

- (1) In exercising in relation to Scotland a relevant function, a person or body specified in subsection (3) must have due regard to—
- (a) the unique obligations of, and sacrifices made by, the armed forces,
 - (b) the principle that it is desirable to remove disadvantages arising for service people from membership, or former membership, of the armed forces, and

Changes to legislation: There are currently no known outstanding effects for the Armed Forces Act 2021, Section 8. (See end of Document for details)

- (c) the principle that special provision for service people may be justified by the effects on such people of membership, or former membership, of the armed forces.
- (2) In this section “relevant function”, in relation to a person or body specified in subsection (3), means—
- (a) a relevant housing function,
 - (b) a relevant education function, or
 - (c) a relevant healthcare function.
- (3) The specified persons and bodies are—
- (a) a local authority in Scotland;
 - (b) a local authority landlord;
 - (c) an integration authority (within the meaning of section 59 of the [Public Bodies \(Joint Working\) \(Scotland\) Act 2014 \(asp 9\)](#));
 - (d) a person or body in their capacity as an appropriate agency for the purposes of section 23 of the [Education \(Additional Support for Learning\) \(Scotland\) Act 2004 \(asp 4\)](#);
 - (e) a Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978;
 - (f) a Special Health Board constituted under section 2 of that Act;
 - (g) the Common Services Agency for the Scottish Health Service.
- (4) In this section “relevant housing function” means a function under or by virtue of any of the following—
- (a) sections 19 to 21 of the Housing (Scotland) Act 1987 (housing lists etc);
 - (b) Part 2 of that Act (homeless persons);
 - (c) sections 1 and 2 (homelessness: strategies and advice) of the [Housing \(Scotland\) Act 2001 \(asp 10\)](#);
 - (d) section 71(2)(e) of the [Housing \(Scotland\) Act 2006 \(asp 1\)](#) (adaptation of a house for a disabled person).
- (5) In this section “relevant education function” means a function under or by virtue of any of the following—
- (a) in Part 2 of the Education (Scotland) Act 1980 (rights and duties of parents and functions of education authorities in relation to individual pupils), sections 28A, 28B, 42 and 51;
 - (b) sections 1 and 2 of the [Standards in Scotland’s Schools etc. Act 2000 \(asp 6\)](#) (provision of school education: right of child and duty of education authority);
 - (c) the [Education \(Additional Support for Learning\) \(Scotland\) Act 2004 \(asp 4\)](#), except sections 15 to 21 of, and Schedule 1 to, that Act;
 - (d) Part 3 (children’s services planning) of the [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#).
- (6) In this section “relevant healthcare function” means a function under or by virtue of the National Health Service (Scotland) Act 1978.
- (7) In this section—

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“local authority in Scotland” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994;

“local authority landlord” has the same meaning as in the [Housing \(Scotland\) Act 2001 \(asp 10\)](#) (see section 11(3) of that Act).

343AD Due regard to principles: Northern Ireland

- (1) In exercising in relation to Northern Ireland a relevant function, a person or body specified in subsection (3) must have due regard to—
 - (a) the unique obligations of, and sacrifices made by, the armed forces,
 - (b) the principle that it is desirable to remove disadvantages arising for service people from membership, or former membership, of the armed forces, and
 - (c) the principle that special provision for service people may be justified by the effects on such people of membership, or former membership, of the armed forces.
- (2) In this section “relevant function”, in relation to a person or body specified in subsection (3), means—
 - (a) a relevant housing function,
 - (b) a relevant education function, or
 - (c) a relevant healthcare function.
- (3) The specified persons and bodies are—
 - (a) the Northern Ireland Housing Executive;
 - (b) the Education Authority established under section 1(1) of the [Education Act \(Northern Ireland\) 2014 \(c. 12 \(N.I.\)\)](#);
 - (c) the Board of Governors of a grant-aided school in Northern Ireland;
 - (d) the Regional Health and Social Care Board established under section 7 of the [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1 \(N.I.\)\)](#);
 - (e) a Local Commissioning Group appointed under section 9 of the Health and Social Care (Reform) Act (Northern Ireland) 2009);
 - (f) a Health and Social Care trust established by virtue of Article 10 of the [Health and Personal Social Services \(Northern Ireland\) Order 1991 \(S.I. 1991/194 \(N.I. 1\)\)](#), other than the Northern Ireland Ambulance Service Health and Social Care Trust.
- (4) In this section “relevant housing function” means a function under or by virtue of any of the following—
 - (a) Articles 22 (house allocation scheme) and 22A (allocation only to eligible persons) of the [Housing \(Northern Ireland\) Order 1981 \(S.I. 1981/156 \(N.I. 3\)\)](#);
 - (b) Part 2 (housing the homeless) of the [Housing \(Northern Ireland\) Order 1988 \(S.I. 1988/1990 \(N.I. 23\)\)](#), except Article 15;
 - (c) Chapter 2 of Part 3 of the [Housing \(Northern Ireland\) Order 2003 \(S.I. 2003/412 \(N.I. 2\)\)](#), so far as that Chapter relates to disabled facilities grants.
- (5) In this section “relevant education function” means a function under or by virtue of any of the following—

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- (a) Article 52 (school transport) of the [Education and Libraries \(Northern Ireland\) Order 1986 \(S.I. 1986/594 \(N.I. 3\)\)](#);
 - (b) in Part 2 (special educational needs) of the [Education \(Northern Ireland\) Order 1996 \(S.I. 1996/274 \(N.I. 1\)\)](#), Articles 6 to 16 and 19 to 20A;
 - (c) Article 16(4) and (5) (admission criteria) of the [Education \(Northern Ireland\) Order 1997 \(S.I. 1997/866 \(N.I. 5\)\)](#);
 - (d) Articles 17 (duty on boards of governors to safeguard and promote the welfare of pupils) and 22 (admission to special schools of children resident outside Northern Ireland) of the [Education and Libraries \(Northern Ireland\) Order 2003 \(S.I. 2003/424 \(N.I. 12\)\)](#).
- (6) In this section “relevant healthcare function” means a function under or by virtue of any of the following, so far as the function relates to health care—
- (a) the [Health and Personal Social Services \(Northern Ireland\) Order 1972 \(S.I. 1972/1265 \(N.I. 14\)\)](#);
 - (b) the [Health and Personal Social Services \(Northern Ireland\) Order 1991 \(S.I. 1991/194 \(N.I. 1\)\)](#);
 - (c) the [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1 \(N.I.\)\)](#).
- (7) In this section—
- “disabled facilities grant” has the meaning given by Article 35(4) of the [Housing \(Northern Ireland\) Order 2003](#);
 - “grant-aided school” means a grant-aided school within the meaning of the [Education and Libraries \(Northern Ireland\) Order 1986](#);
 - “health care” means all forms of health care provided for individuals, whether relating to physical or mental health.

343AE Sections 343AA to 343AD: guidance

- (1) The Secretary of State may issue guidance relating to the duties imposed by sections [343AA\(1\)](#), [343AB\(1\)](#), [343AC\(1\)](#) and [343AD\(1\)](#).
- (2) A person or body specified in subsection (3) of section [343AA](#), [343AB](#), [343AC](#) or [343AD](#) must have regard to any guidance for the time being in force under subsection (1) when exercising a relevant function.
- (3) The Secretary of State may from time to time revise any guidance issued under this section.
- (4) Guidance under this section—
 - (a) may not be issued unless a draft has been laid before Parliament, and
 - (b) comes into force on whatever day the Secretary of State may appoint by regulations.
- (5) Before laying draft guidance under this section before Parliament the Secretary of State must consult—
 - (a) the Welsh Ministers so far as the guidance relates to devolved Welsh functions,

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- (b) the Scottish Ministers so far as the guidance relates to devolved Scottish functions,
 - (c) the relevant Northern Ireland department so far as the guidance relates to devolved Northern Ireland functions, and
 - (d) any other persons the Secretary of State considers appropriate.
- (6) Subsection (4) has effect in relation to any revised guidance.
- (7) Subsection (5) has effect in relation to any revised guidance unless the Secretary of State considers that the proposed revisions to the guidance are insubstantial.
- (8) The Secretary of State must publish the version currently in force of any guidance issued under this section.
- (9) For the purposes of this section a function is a “devolved Welsh function” if—
- (a) it deals with a matter in respect of which functions are exercisable by the Welsh Ministers or the First Minister for Wales, or
 - (b) a provision conferring the function would be within the legislative competence of Senedd Cymru if contained in an Act of Senedd Cymru (assuming that any consent by a Minister of the Crown were given).
- (10) For the purposes of this section a function is a “devolved Scottish function” if—
- (a) it deals with a matter in respect of which functions are exercisable by the Scottish Ministers or the First Minister, or
 - (b) a provision conferring the function would be within the legislative competence of the Scottish Parliament if contained in an Act of that Parliament.
- (11) For the purposes of this section a function is a “devolved Northern Ireland function” if—
- (a) it deals with a matter in respect of which functions are exercisable by a Northern Ireland department, or
 - (b) a provision conferring the function—
 - (i) would be within the legislative competence of the Northern Ireland Assembly, and would not require the consent of the Secretary of State, if contained in an Act of that Assembly, or
 - (ii) is contained in, or was made under, Northern Ireland legislation, and would be within the legislative competence of the Northern Ireland Assembly, and would require the consent of the Secretary of State, if contained in an Act of that Assembly.

343AF Sections 343AA to 343AD: power to add bodies and functions

- (1) The Secretary of State may by regulations—
- (a) amend section 343AA by—
 - (i) specifying additional functions that are to be relevant functions in relation to persons and bodies specified in subsection (3) of that section, or
 - (ii) specifying additional persons or bodies in that subsection;

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- (b) amend section 343AB by—
 - (i) specifying additional functions that are to be relevant functions in relation to persons and bodies specified in subsection (3) of that section, or
 - (ii) specifying additional persons or bodies in that subsection;
 - (c) amend section 343AC by—
 - (i) specifying additional functions that are to be relevant functions in relation to persons and bodies specified in subsection (3) of that section, or
 - (ii) specifying additional persons or bodies in that subsection;
 - (d) amend section 343AD by—
 - (i) specifying additional functions that are to be relevant functions in relation to persons and bodies specified in subsection (3) of that section, or
 - (ii) specifying additional persons or bodies in that subsection.
- (2) In subsection (1) a reference to a provision of this Act includes a reference to that provision as amended by virtue of subsection (1).
- (3) A function specified by virtue of subsection (1)(a)(i), (b)(i), (c)(i) or (d)(i) must be a function under or by virtue of—
 - (a) primary legislation, or
 - (b) retained direct EU legislation.
- (4) A person or body specified by virtue of subsection (1)(a)(ii), (b)(ii), (c)(ii) or (d)(ii) must be a person or body by whom functions are exercisable under or by virtue of—
 - (a) primary legislation, or
 - (b) retained direct EU legislation.
- (5) Nothing in sections 343AA to 343AD limits the fields to which functions added by virtue of subsection (1) may relate.
- (6) The powers conferred by subsection (1) include power to make consequential amendments of any of sections 343AA to 343AE.
- (7) Before making regulations under subsection (1) the Secretary of State must consult—
 - (a) the Welsh Ministers so far as the regulations contain provision that is within Welsh devolved competence,
 - (b) the Scottish Ministers so far as the regulations contain provision that is within Scottish devolved competence,
 - (c) the relevant Northern Ireland department so far as the regulations contain provision that is within Northern Ireland devolved competence, and
 - (d) any other persons the Secretary of State considers appropriate.
- (8) For the purposes of this section a provision is within Welsh devolved competence if it—
 - (a) would be within the legislative competence of Senedd Cymru if contained in an Act of Senedd Cymru (assuming that any consent by a Minister of the Crown were given), or

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- (b) is provision which could be made in subordinate legislation by the Welsh Ministers acting alone.
- (9) For the purposes of this section a provision is within Scottish devolved competence if it—
 - (a) would be within the legislative competence of the Scottish Parliament if contained in an Act of that Parliament, or
 - (b) is provision which could be made in subordinate legislation by the Scottish Ministers or the First Minister.
- (10) For the purposes of this section a provision is within Northern Ireland devolved competence if it—
 - (a) would be within the legislative competence of the Northern Ireland Assembly, and would not require the consent of the Secretary of State, if contained in an Act of that Assembly, or
 - (b) is provision which could be made in subordinate legislation by a Northern Ireland department.
- (11) In this section “primary legislation” means—
 - (a) an Act of Parliament;
 - (b) an Act of the Scottish Parliament;
 - (c) a Measure or Act of Senedd Cymru;
 - (d) Northern Ireland legislation.”
- (4) In section 343B (interpretation of Part 16A)—
 - (a) in subsection (1), in the words before paragraph (a), for “section 343A” substitute “this Part”;
 - (b) subsection (4) is amended as follows—
 - (i) in the definition of “relevant family members”, after “means” insert “such persons as may be prescribed, and for the purposes of section 343A also includes”;
 - (ii) at the appropriate place insert—
 - ““relevant function”, in relation to a person or body specified in subsection (3) of [section 343AA](#), [343AB](#), [343AC](#) or [343AD](#), has the meaning given by subsection (2) of the same section;
 - “relevant Northern Ireland department” means any Northern Ireland department the Secretary of State thinks appropriate;”;
 - (c) after subsection (4) insert—
 - “(4A) In subsection (4) “prescribed” means prescribed by regulations made by the Secretary of State under this subsection.
 - (4B) Before making regulations under subsection (4A) the Secretary of State must consult—
 - (a) the Welsh Ministers so far as the regulations contain provision that is within Welsh devolved competence,
 - (b) the Scottish Ministers so far as the regulations contain provision that is within Scottish devolved competence,
 - (c) the relevant Northern Ireland department so far as the regulations contain provision that is within Northern Ireland devolved competence, and

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- (d) any other persons the Secretary of State considers appropriate.
- (4C) Subsections (8) to (10) of [section 343AF](#) apply for the purposes of subsection (4B) as they apply for the purposes of that section.”
- (5) In section 373 (orders, regulations and rules), in subsection (3), after paragraph (ed) (inserted by section 11) insert—
- “(ee) regulations under [section 343AE\(4\)](#),
 - (ef) regulations under [section 343AF](#),
 - (eg) regulations under [section 343B\(4A\)](#),”.

Commencement Information

- I1** S. 8 not in force at Royal Assent, see [s. 24\(1\)](#)
- I2** S. 8 in force at 1.5.2022 for specified purposes by [S.I. 2022/471](#), [reg. 3](#)
- I3** S. 8 in force at 22.11.2022 in so far as not already in force by [S.I. 2022/1161](#), [reg. 3](#)

Changes to legislation:

There are currently no known outstanding effects for the Armed Forces Act 2021, Section 8.



East Sussex County Council

We commit to uphold the Armed Forces Covenant and support the Armed Forces Community. We recognise the contribution that Service personnel, both regular and reservist, veterans and military families make to our organisation, our community and to the country.

Signed on behalf of:

East Sussex County Council

Signed:

Name: Cllr Bob Bowdler

Position: Lead Member for Children and Families, Armed Forces Champion for East Sussex

Date:



The Armed Forces Covenant

An Enduring Covenant Between

The People of the United Kingdom
His Majesty's Government

East Sussex County Council and _

All those who serve or have served in the Armed Forces of the Crown

And their Families

The first duty of Government is the defence of the realm. Our Armed Forces fulfil that responsibility on behalf of the Government, sacrificing some civilian freedoms, facing danger and, sometimes, suffering serious injury or death as a result of their duty. Families also play a vital role in supporting the operational effectiveness of our Armed Forces. In return, the whole nation has a moral obligation to the members of the Naval Service, the Army and the Royal Air Force, together with their families. They deserve our respect and support, and fair treatment.

Those who serve in the Armed Forces, whether Regular or Reserve, those who have served in the past, and their families, should face no disadvantage compared to other citizens in the provision of public and commercial services. Special consideration is appropriate in some cases, especially for those who have given most, such as the injured and the bereaved.

This obligation involves the whole of society: it includes voluntary and charitable bodies, private organisations, and the actions of individuals in supporting the Armed Forces. Recognising those who have performed military duty unites the country and demonstrates the value of their contribution. This has no greater expression than in upholding this Covenant.

Section 1: Principles of The Armed Forces Covenant

1.1 We, **East Sussex County Council**, will endeavour in our dealings to uphold the key principles of the Armed Forces Covenant, which are:

- *Members of the Armed Forces Community should not face disadvantages arising from their service in the provision of public and commercial services.*
- *In some circumstances special provision may be justified, especially for those who have given the most, such as the injured or bereaved.*

Section 2: Demonstrating our Commitment

2.1 We recognise the value that serving personnel, reservists, veterans and military families bring to our business and to our country. We will seek to uphold the principles of the Armed Forces Covenant, by:

- **Promoting the Armed Forces:** promoting the fact that we are an Armed Forces-friendly organisation, to our staff, customers, suppliers, contractors and wider public.
- **Veterans:** supporting the employment of veterans, recognising military skills and qualifications in our recruitment and selection process.
- **Service Spouses & Partners:** supporting the employment of Service spouses and partners; providing flexibility in granting leave for Service spouses and partners before, during and after a partner's deployment.
- **Reserves:** supporting our employees who are members of the Reserve Forces; granting additional paid/unpaid leave for annual Reserve Forces training; supporting any mobilisations and deployment; actively encouraging members of staff to become Reservists.
- **Cadet Organisations:** supporting our employees who are volunteer leaders in military cadet organisations by supporting flexible working arrangements to attend annual training camps and courses; supporting local military cadet units; recognising the benefits of employing cadets/ex-cadets within the workforce.
- **National Events:** supporting Armed Forces Day, Reserves Day, the Poppy Appeal Day and Remembrance activities.

2.2 We will publicise these commitments through our literature, on staff notices, and on our website, setting out how we will seek to honour them and inviting feedback from the Service community, our staff and our customers on how we are doing.

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