

# ARMED FORCES COVENANT – PROPOSED LEGISLATION

## THE ARMED FORCES COVENANT

- The Armed Forces Covenant is not about advantaging members of the Armed Forces Community. It is a promise by the nation ensuring that those who serve or who have served in the Armed Forces, and their families, are treated fairly, and will not be disadvantaged in accessing public services by their military service. It also allows for special provision for those who have sacrificed the most, such as the bereaved and injured.
- MOD is the lead Department in central Government. As many of the levers for supporting the Armed Forces Community sit with other Government Departments, the Devolved Administrations and Local Authorities, MOD works closely with them and others in the public, charitable and private sectors to deliver the Covenant.
- The Armed Forces Act 2006 sets out the requirement for the Secretary of State for Defence to lay a report before Parliament annually to cover the effects of membership, or former membership, of the Armed Forces on Service People in the fields of healthcare, education and housing. The 2020 Report was published in December 2020.
- The Armed Forces Covenant applies throughout the UK. It is delivered across all sectors of society, including the core areas of healthcare, education and housing, which are devolved. As such, its implementation is shaped by local and regional factors and jurisdictions, to optimise local support.
- The Covenant, in its current form, has been in operation for nearly ten years, during which time significant progress has been made to improve the lives of Armed Forces personnel, veterans and their families. Since 2011, over 6,000 organisations and every local authority in Great Britain have made pledges to support the Armed Forces Community.
- Covenant delivery is supported by the £10M per year Armed Forces Covenant Fund administered by the Armed Forces Covenant Fund Trust, an independent grant-making body with charitable status. More than 700 grants for local projects have been awarded in support of the Armed Forces. Its funding programmes for 2020/21 included an additional £6M fund for Armed Forces charities and Community Interest Companies supporting service personnel, Veterans and their families affected by Covid-19.
- Every Local Authority in Great Britain has signed the Covenant and over 6,050 commercial organisations have pledged support. To date, a total of 354 predominantly private sector organisations hold the Defence Employer Recognition Scheme Gold Award for pledging, demonstrating and advocating support to Defence and the Armed Forces Community and aligning their values with the Armed Forces Covenant.

## COVENANT LEGISLATION

- As stated in the government's manifesto pledges and in the Queen's Speech, the Armed Forces Covenant will now be further incorporated into law to help prevent disadvantage faced by the Armed Forces Community due to the unique nature of service in the Armed Forces.
- The Covenant, in its current form, has been in operation for nearly ten years, and while good procedures and initiatives have been put in place by service providers, the Government is concerned that some members of the Armed Forces Community still face disadvantage when accessing public services. This is often caused by a lack of awareness of the Covenant and the unique nature of service in the Armed Forces.
- The Government therefore proposes to introduce legislation to increase awareness of – and, in turn, improve the delivery of – the Covenant in those key areas that are fundamental to a good life, while retaining the ability of local service providers to honour the Covenant in the best way to suit local needs.

## AIMS OF THE PROPOSED LEGISLATION

- The aim of new legislation is to increase awareness among service deliverers and policy makers of the unique obligations and circumstances facing the Armed Forces Community, and to build understanding of how these can affect their requirements of, and ability to access, key public services.
- By embedding this understanding in public sector decision-making via a new statutory duty to have due regard to the Covenant, this legislation will help improve overall delivery of public services in relation to the Armed Forces Community.

## HOW THE PROPOSED LEGISLATION WILL WORK

### ***What***

- The focus of the proposed legislation will be on local and regional service provision, covering those aspects of public housing, education and healthcare that are most likely to affect serving and former members of the Armed Forces and their families.
- Reflecting three of the areas covered by existing Armed Forces Covenant legislation, these three strands of policy also comprise the foundation of successful lives and are commonly raised areas for concern by members of the Armed Forces Community.
- The proposed legislation will impose a new duty on relevant public bodies, when exercising certain aspects of their public functions, to have due regard to:

1. the unique obligations of, and sacrifices made by, the Armed Forces;
  2. the principle that it is desirable to remove disadvantages arising for service people from membership, or former membership, of the Armed Forces; and
  3. the principle that special provision for Service People may be justified by the effect on such people of membership, or former membership, of the Armed Forces.
- The new Duty will require those who are subject to it to consider the Armed Forces Community when developing policy, procedures and making decisions in the specified policy areas, taking the three principles set out above into consideration.
  - The proposals will also give the Secretary of State for Defence delegated powers, with appropriate checks and balances, and following consultation with stakeholders, to amend the primary legislation in order to add other public bodies and other functions in different areas. Where the exercise of such powers will affect devolved areas, there will be a requirement on the Secretary of State to consult with the Ministers in the relevant devolved administration(s).

## **Who**

- The new Duty will apply to relevant public bodies exercising specified public functions in the education, healthcare and housing sectors.
- The private sector is not in scope. Where relevant functions have been contracted out to private companies, the public body responsible for managing the contract will be subject to the proposed legislation and will need to ensure that policies and processes of the contractor are compliant.
- The specified bodies must have due regard to the three principles set out above when exercising relevant functions that may affect the Armed Forces Community.
- The Armed Forces Community includes serving members and veterans and families.

## **How**

- The overall aim of the proposed legislation, and accompanying statutory guidance, is to increase awareness among public authorities of the Armed Forces Covenant and the unique obligations and circumstances of the Armed Forces Community. In turn, it is expected that better awareness will lead to improved public-service delivery for members of the Armed Forces Community.
- While no new enforcement mechanism is planned, new statutory guidance will publicise existing complaints procedures and, where relevant, the appropriate

Ombudsman offices. Where any issue cannot be otherwise resolved, enforcement of compliance is by way of judicial review, in accordance with standard public law principles.

- The new Duty will sit alongside any other duties to which the relevant body is subject and should not run counter to any other existing legislation.
- The proposed legislation will not mandate specific public service delivery outcomes or advantageous treatment of the Armed Forces Community. It is designed to ensure that the relevant decision-makers consider the issues facing the Armed Forces Community in these key areas that impact upon their day-to-day lives.
- Those public bodies in scope will be supported by statutory guidance published after discussion with Covenant partners across government, devolved administrations, the Armed Forces Community, and the Service charity and welfare sectors
- The proposed legislation will also be supported by training tools, advice and wider guidance aimed at the public bodies in scope, to ensure that they have easy access to the information they require.

## **DUE REGARD MEASURES**

- Under the new Duty, those public bodies in scope will be required to have 'due regard' to the three principles of the Armed Forces Covenant when formulating policy and taking decisions in specified areas.
- The requirement will be similar to other duties to have due regard already in operation, such as the Public Sector Equality Duty. As with those existing duties, we will not be defining in legislation exactly how the requirement to have due regard can be met. But accompanying statutory guidance, which public bodies will be required to take into account, will provide advice and examples of best practice to indicate how bodies might comply with the duty. There is a large body of existing case law on the meaning of a duty to have due regard, with which most of the bodies subject to this duty will be familiar.
- In addition, guidance will include information to help relevant public bodies understand how Service life can impact on members of the Armed Forces Community, and their ability to access public services. It will be by taking such information into account in their decision-making that public bodies will be able to demonstrate that they have had the necessary due regard to the principles of the Covenant.