

## Military law in action—the Armed Forces Act 2016

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**Public Law analysis: The Armed Forces Act 2016 (AFA 2016) received Royal Assent on 12 May 2016. Hassan Baig, barrister at 4 Breems Buildings, takes a closer look at AFA 2016 and explains its key provisions and how it differs from its predecessors.**

### Original news

Armed Forces Act 2016, LNB News 13/05/2016 82

*Drug and alcohol testing may now be undertaken on service personnel following accidents, without the need for suspicion that the person may have committed an offence. The new legislation also makes provisions regarding, among other things, investigation and charging of service offences, suspended sentences of service detention and war pensions committees.*

### Briefly, can you explain the background to the legislation?

Since 1689 Parliament has had to pass legislation to maintain the existence of a standing army, this is usually every five years.

The Armed Forces Act 2006 (AFA 2006) combined service discipline into a single act, rather than requiring three separate acts for each of the armed forces. Furthermore, it introduced the service prosecuting authority, which is a relatively independent tri service organisation that is outside the normal military chain of command and subject to the superintendence of the attorney general.

### What are the key provisions of AFA 2016? Are there any significant changes from the previous legislation, including AFA 2006?

AFA 2016 renews AFA 2006 until 2021. Currently, AFA 2006 only gives a power to a commanding officer to provide a preliminary test for alcohol or drugs only when there is suspicion that an offence may have been committed. However, AFA 2016 extends that power to allow for tests to be required following any accident involving a ship or an aircraft (or any other serious accident) without any requirement to suspect an offence has been committed.

AFA 2016 also allows the service police to refer certain cases directly to the director of service prosecutions for a charging decision rather than go via the commanding officer. This simplifies the existing system and will hopefully reduce the time taken from a complaint being made and the case being heard in court. Furthermore, there is a power for the director of service prosecutions to bring a charge in certain circumstances.

Other important provisions of AFA 2016 are as follows:

- o the operational period of a suspended sentence of service detention is extended to a maximum period of two years
- o the director of service prosecutions is authorised to grant immunity from prosecution, in certain circumstances, to offenders in return for information or evidence they may have—this provision allows for the mirroring of the civilian criminal justice system and the military justice system and in essence follows the similar provisions in the Serious Organised Crime and Policing Act 2005
- o AFA 2006 is extended to cover the Isle of Man and British Overseas Territories (currently except Gibraltar)
- o section 146(4) of the Criminal Justice and Public Order Act 1994 is repealed, which allowed homosexual acts to be a reason for discharging servicemen and women from the armed forces—this remained on the statute books despite the abandonment of the policy preventing homosexuals from serving in the armed forces in 2000
- o the remit of the War Pensions Committees is extended to include having functions with regards to the compensation schemes relating to injuries and death which occur while in service
- o parity is created between Ministry of Defence (MoD) firefighters (including service firefighters), granting them

the same powers as their counterparts in the civilian fire and rescue services when dealing with emergencies—including having the power to enter premises using force (if necessary), closing roads and regulating traffic. It also creates an offence to obstruct an MoD firefighter acting in an emergency. AFA 2016 also brings some working practices in line with that of the civilian counterparts, eg exemptions in relation to drivers' hours, parking in or on footpaths and using loudspeakers

### **Do you have any predictions for the next five years for the armed forces and military law?**

Reflecting on where military criminal justice is going, I find it surprising that there are two separate systems for servicemen and women in the UK. I personally think it would be best for the service courts to have primacy over any allegation of criminal misconduct. Sentencing options are greater in the service courts and also reflect the seriousness of offences within the service context. I have also found that the manner in which witnesses are treated can make the giving of evidence less traumatic before the military courts, it should be noted that the military courts regularly use technology in the provision of witnesses being able to give evidence. At present the venue of where a case could be dealt with generally depends on if the service police conduct the investigation or if it was conducted by the civilian police.

*Hassan Baig's main practice areas include criminal prosecution and defence, military and service law, and proceeds of crime. He regularly appears before the Crown Court, court-martial, and magistrates' courts.*

*Interviewed by Kate Beaumont.*

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