

# A GUIDE TO THE NEW ARMED FORCES COVENANT LEGISLATION

## THE ARMED FORCES COVENANT

- The Armed Forces Covenant is a promise by the nation that those who serve or who have served in the Armed Forces, and their families, will be treated fairly and will not be disadvantaged in accessing public and commercial goods and services as a result of 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 850 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. Funding programmes for the 2021/22 financial year include the £6m *Sustaining Support for Armed Forces Communities* programme, which will provide funding for existing charitable projects that help the Armed Forces Community, but which need short-term support to continue, as a result of the impact of COVID.

## COVENANT LEGISLATION

- The Armed Forces Covenant is being further incorporated into law, as part of the Armed Forces Bill 2021, to help prevent disadvantage faced by the Armed Forces Community due to the unique nature of service in the Armed Forces.
- While good procedures and initiatives have been put in place by service providers over the last ten years, 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.
- This legislation is designed 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.
- The Armed Forces Bill 2021 is making its way through Parliament at the moment. We anticipate that the new Covenant legislation will come into force in 2022.

## AIMS OF THE LEGISLATION

- The aim of new legislation is to increase awareness among service providers and policymakers 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 principles of the Covenant, the legislation is expected to help improve overall delivery of public services for the Armed Forces Community. It will help raise the floor – not set the ceiling – for delivery of the Covenant across the UK.

## HOW THE LEGISLATION WILL WORK

### *What*

- The focus of the legislation is 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. Refer to the table at the back of this pack for a full list of the bodies and functions in scope.
- The legislation will introduce a new duty on relevant public bodies, when exercising certain aspects of their public functions, to have due regard to the three principles of the Armed Forces Covenant. These are:
  1. Recognising the unique obligations of, and sacrifices made by, the Armed Forces.

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2. That it is desirable to remove disadvantages arising for service people from membership, or former membership, of the Armed Forces.

3. 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 consciously consider the Armed Forces Community when developing policy and making decisions in the specified policy areas, taking the three principles set out above into consideration.
- The legislation will also give the Secretary of State for Defence powers to broaden the scope of the Duty to include other bodies and functions in the future, following consultation with stakeholders. This will be kept under review as the new Duty is implemented. 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. Refer to the table at the back of this pack for a full list of the bodies and functions in scope.
- 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 Armed Forces Community includes serving members and veterans and families.

### **How**

- In our experience, disadvantage in service delivery most frequently occurs through a lack of understanding of the unique obligations and circumstances of the Armed Forces Community. That is why the aim of this legislation is to build awareness among service providers of the Covenant's principles and the Armed Forces Community.
- But where public bodies are still not living up to the Covenant's principles, complaints may be pursued through existing complaints procedures or, where relevant, an appropriate Ombudsman. Where the issue cannot otherwise be resolved, enforcement of the new Duty may be pursued through judicial review.
- The new Duty will sit alongside any other duties to which the relevant body is subject and should not run counter to any other legislation.
- The legislation does not mandate the provision of specific services for the Armed Forces Community, nor does it mandate any particular delivery outcomes. It is designed to ensure that the relevant decision-makers consider the issues facing the Armed Forces Community in these key areas that affect their day-to-day lives.

- The Duty is deliberately flexible, to ensure local authorities and service providers retain the ability to take decisions on service delivery that are right for their local context and circumstances.
- 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.
- They will also be supported by training tools, advice and wider guidance, ensuring 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. 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. As with those existing duties, we will not be defining in legislation exactly how the requirement to have due regard can be met.
- Accompanying statutory and wider guidance will include information to help relevant public bodies better understand the principles of the Covenant, and 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 due regard to the principles of the Covenant.

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INDICATIVE LIST OF PUBLIC BODIES AND FUNCTIONS IN SCOPE (SUBJECT TO CHANGE)

Nation	Sector	Bodies in scope	Duties in scope	What these mean (summary)
<p><b>England</b></p>	<p><b>Education</b></p>	<ul style="list-style-type: none"> <li>• Local Authorities</li> <li>• Governing bodies of maintained schools</li> <li>• Proprietors of Academies</li> <li>• Non-maintained special schools</li> <li>• Governing bodies of further education institutions</li> <li>• Special post-16 institutions</li> </ul>	<ul style="list-style-type: none"> <li>• the Education Act 1996</li> </ul>	<p>Establishes the statutory system of education, general functions of LAs, duties for various types of schools, establishes and covers SEND – both in terms of assessments and special schools. Covers curriculum, admissions, attendance.</p>
			<ul style="list-style-type: none"> <li>• Part 3 of the School Standards and Framework Act 1998 (school admissions)</li> </ul>	<p>Looks at admissions, including arrangements, number of places and appeals.</p>
			<ul style="list-style-type: none"> <li>• s175 of the Education Act 2002 (duties of local authorities and governing bodies in relation to welfare of children)</li> </ul>	<p>Governing bodies and LAs of maintained schools and FE colleges to make arrangements to ensure that their functions are exercised with a view to safeguarding and promoting the welfare of children.</p>
			<ul style="list-style-type: none"> <li>• any provision of Part 3 of the Children and Families Act 2014, so far as it deals with special educational provision</li> </ul>	<p>SEND identification, EHCP authority joint work, reviews, co-operation and appeals.</p>

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	<p><b>Healthcare</b></p> <ul style="list-style-type: none"> <li>• Local Authorities</li> <li>• NHS Commissioning Board</li> <li>• CCGs</li> <li>• National Health Service Trusts</li> <li>• NHS Foundation Trusts</li> </ul>	<ul style="list-style-type: none"> <li>• the National Health Service Act 2006</li> </ul>	<p>Sets out the structure of the National Health Service in England and general functions of each public body, incl. NHS Commissioning Board, CCGs, NHS Trusts and Foundation Trusts. Promote the NHS constitution, improve services, effectiveness, patient choice and involvement, reduce inequalities, provision of services, administration and management, property, finance etc. Looks at medical, dental, ophthalmic &amp; pharmaceutical aspects.</p>
		<ul style="list-style-type: none"> <li>• 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</li> </ul>	<p>SEND identification, EHCP authority joint work, reviews, co-operation and appeals.</p>
		<p><b>Housing</b></p> <ul style="list-style-type: none"> <li>• Local Authorities</li> </ul>	<ul style="list-style-type: none"> <li>• Part 6 of the Housing Act 1996 (allocation of housing accommodation)</li> <li>• Part 7 of the Housing Act 1996 (homelessness: England)</li> <li>• Part 1 of the Housing Grants, Construction and Regeneration Act 1996 (grants, etc for renewal of private sector housing)</li> </ul>

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			<ul style="list-style-type: none"> <li>• s1 of the Homelessness Act 2002 (duty of local housing authority in England to formulate a homelessness strategy)</li> </ul>	Duty of local housing authority in England to formulate a homelessness strategy.
			<ul style="list-style-type: none"> <li>• s150 of the Localism Act 2011 (tenancy strategies)</li> </ul>	LHAs to prepare and publish tenancy strategy looking at policies of kinds of tenancies granted, circumstances in which they would give kinds of tenancies, term lengths and granting further tenancies on the coming to end of a tenancy.
			<ul style="list-style-type: none"> <li>• reg3 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 s23 of the Housing Grants, Construction and Regeneration Act 1996 (disabled facilities grants: purposes)</li> </ul>	<p>For the purpose of improving living conditions in their area, a local housing authority may provide, directly or indirectly, assistance to any person for the purpose of enabling him to acquire, adapt, repair, demolish and construct replacement accommodation.</p> <p>Caveat - so far as that regulation deals with the provision of financial assistance for a purpose corresponding to any purpose specified in s23 of the Housing Grants, Construction and Regeneration Act 1996 (reasons for granting DFGs e.g. access to accommodation or room, shower, food prep etc.)</p>
<b>Wales</b>	<b>Education</b>	<ul style="list-style-type: none"> <li>• local authority in Wales</li> <li>• governing body of a maintained school in Wales</li> </ul>	<ul style="list-style-type: none"> <li>• the Education Act 1996</li> </ul>	Establishes the statutory system of education, general functions of LAs, duties for various types of schools, establishes SEND – both in terms of assessments and special schools. Covers curriculum, admissions, attendance.
			<ul style="list-style-type: none"> <li>• Part 3 of the School Standards and Framework Act 1998 (school admissions)</li> </ul>	Looks at admissions, including arrangements, numbers and appeals.
			<ul style="list-style-type: none"> <li>• section 175 of the Education Act 2002 (duties of local authorities and</li> </ul>	Governing bodies and LAs of maintained schools and FE colleges to make arrangements to ensure that their

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		governing bodies in relation to welfare of children)	functions are exercised with a view to safeguarding and promoting the welfare of children.
		<ul style="list-style-type: none"> <li>sections 2 to 7 and 9 of the Learner Travel (Wales) Measure 2008</li> </ul>	Assess travel needs, make arrangements, limits, for pre and post 16 education, travel arrangements not to favour certain types of education or training.
		<ul style="list-style-type: none"> <li>Chapters 2 (individual development plans) and 3 (supplementary functions) of Part 2 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018</li> </ul>	Individual Development Plans (EHCP equivalent), decide, prepare and maintain plans, co-operate with health bodies, reviews, reconsideration of plans, ceasing, transfer and provision of Additional Learning. Duty to take reasonable steps and some administrative related duties.
	<b>Healthcare</b>	<ul style="list-style-type: none"> <li>local authority in Wales</li> <li>Local Health Board established under section 11 of the National Health Service (Wales) Act 2006</li> <li>Special Health Authority established under section 22 of the National Health Service (Wales) Act 2006</li> <li>National Health Service trust in Wales</li> </ul>	<ul style="list-style-type: none"> <li>a function under or by virtue of the National Health Service (Wales) Act 2006</li> </ul> <p>The organisational and governmental structure of the Welsh NHS is primarily set out in the National Health Service Wales Act 2006 (NHSWA 2006). The Act consolidated in relation to Wales the provisions of the National Health Service Act 1977 associated legislation, and set out in one statute the distinct structure of the Welsh NHS. There are many differences between the structures and governance of the NHS in England and Wales, especially with regards to the health service bodies in operation in Wales.</p> <p>General functions of each public body, incl. local health boards, LAs, Special Health authorities and NHS trusts. Promote the NHS constitution, improve services, effectiveness, patient choice and involvement, reduce inequalities, provision of services, administration and management, property, finance etc. Looks at medical, dental, ophthalmic &amp; pharmaceutical aspects.</p>
	<ul style="list-style-type: none"> <li>local authority in Wales</li> </ul>	<ul style="list-style-type: none"> <li>Part 6 of the Housing Act 1996 (allocation of housing accommodation)</li> </ul>	Allocation of social housing, eligibility, applications and allocations schemes.



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	<b>Housing</b>		<ul style="list-style-type: none"> <li>Part 1 of the Housing Grants, Construction and Regeneration Act 1996 (grants, etc for renewal of private sector housing)</li> <li>Part 2 of the Housing (Wales) Act 2014 (anaw 7)</li> <li>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)</li> </ul>	<p>Duties concerning grants, including renovation, common parts, DFGs, &amp; HMO. Also sets out restrictions and payment/repayment.</p> <p>Homelessness – reviews and strategies, help advice and assistance to access help, duty to assess, duty to help applicants, referrals to other LAs.</p> <p>For the purpose of improving living conditions in their area, a local housing authority may provide, directly or indirectly, assistance to any person for the purpose of enabling him to acquire, adapt, repair, demolish and construct replacement accommodation.</p> <p>Caveat - so far as that regulation deals with the provision of financial assistance for a purpose corresponding to any purpose specified in s23 of the Housing Grants, Construction and Regeneration Act 1996 (reasons for granting DFGs e.g. access to accommodation or room, shower, food prep etc.)</p>
<b>Scotland</b>	<b>Education</b>	<ul style="list-style-type: none"> <li>a local authority in Scotland</li> <li>a Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978</li> <li>a person or body in their capacity as an appropriate agency for the purposes of section 23 of the Education</li> </ul>	<ul style="list-style-type: none"> <li>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</li> <li>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)</li> </ul>	<p>Comply with parents requests for schools, information as to placing in schools and other matters, reasonable excuses for non-attendance at school (sickness, too far, or other), provision of school transport and other facilities.</p> <p>Right to be provided school education by LA, duty to secure education that develops children to achieve fullest potential and take into account views of the child.</p>

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		<p>(Additional Support for Learning) (Scotland) Act 2004 (asp 4)</p> <ul style="list-style-type: none"> <li>the Education (Additional Support for Learning) (Scotland) Act 2004 (asp 4), except sections 15 to 21 of, and Schedule 1 to, that Act</li> </ul>	<p>ASN (SEND equivalent) assessments, coordinated support plans (EHCP equivalent), info sharing, placing requests. Excludes mediation and appeals and tribunals.</p>
		<ul style="list-style-type: none"> <li>Parts 3 (children's services planning) and 5 (child's plan) of the Children and Young People (Scotland) Act 2014 (asp 8)</li> </ul>	<p>LAs to prepare a plan which safeguards supports and promotes wellbeing of children, co-operating with health boards etc.</p>
	<b>Healthcare</b>	<ul style="list-style-type: none"> <li>an integration authority (within the meaning of section 59 of the Public Bodies (Joint Working) (Scotland) Act 2014 (asp 9))</li> <li>a Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978</li> <li>a Special Health Board constituted under section 2 of that Act</li> <li>the Common Services Agency for the Scottish Health Service</li> </ul>	<ul style="list-style-type: none"> <li>a function under or by virtue of the National Health Service (Scotland) Act 1978</li> </ul>
<b>Housing</b>	<ul style="list-style-type: none"> <li>a local authority in Scotland</li> <li>a local authority landlord</li> </ul>	<ul style="list-style-type: none"> <li>sections 19 to 21 of the Housing (Scotland) Act 1987 (housing lists etc)</li> </ul>	<p>Standards and performance in housing management - admissions to housing list, priority need , consultation on rules, determination of minimum period for application to remain in force, rules relating to the list and transfer of tenants.</p>

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		<p>LA landlords refers to those local authorities that own and manage their own social housing stock. LAs mentioned separately due to statutory responsibility for homelessness.</p>	<ul style="list-style-type: none"> <li>Part 2 of that Act (homeless persons)</li> </ul>	Homelessness – definition, priority need, local connection, inquiry into cases, interim and permanent duty to accommodation, assess need for housing support services, right to review, assistance for voluntary organisations.
			<ul style="list-style-type: none"> <li>sections 1 and 2 (homelessness: strategies and advice) of the Housing (Scotland) Act 2001 (asp 10)</li> </ul>	Assess homelessness in an area and strategy to prevent and reduce homelessness in its area.
			<ul style="list-style-type: none"> <li>section 71(2)(e) of the Housing (Scotland) Act 2006 (asp 1) (adaptation of a house for a disabled person)</li> </ul>	The 'scheme of assistance' offers advice and help to people who need to carry out repair and improvement work to their homes. This duty covers specifically DFGs.
NI	Education	<ul style="list-style-type: none"> <li>the Education Authority established under section 1(1) of the Education Act (Northern Ireland) 2014 (c. 12 (N.I.));</li> <li>the Board of Governors of a grant-aided school in Northern Ireland;</li> <li>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.));</li> <li>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</li> </ul>	<ul style="list-style-type: none"> <li>Article 52 (school transport) of the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3))</li> </ul>	School transport
			<ul style="list-style-type: none"> <li>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</li> </ul>	Children with special educational needs – general, provision, identification and assessment
			<ul style="list-style-type: none"> <li>Article 16(4) and (5) (admission criteria) of the Education (Northern Ireland) Order 1997 (S.I. 1997/866 (N.I. 5))</li> </ul>	Admission criteria
			<ul style="list-style-type: none"> <li>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</li> </ul>	<ul style="list-style-type: none"> <li>(duty on boards of governors to safeguard and promote the welfare of pupils)</li> <li>(admission to special schools of children resident outside Northern Ireland)</li> </ul>

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	Ambulance Service Health and Social Care Trust.	Education and Libraries (Northern Ireland) Order 2003 (S.I. 2003/424 (N.I. 12))		
<b>Healthcare</b>	<ul style="list-style-type: none"> <li>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.));</li> <li>a Local Commissioning Group appointed under section 9 of the Health and Social Care (Reform) Act (Northern Ireland) 2009)</li> <li>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.</li> </ul>	<ul style="list-style-type: none"> <li>the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14));</li> <li>the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I. 1));</li> <li>the Health and Social Care (Reform) Act (Northern Ireland) 2009 (c.1 (N.I.)).</li> </ul>	<p>Broadly, establishes health bodies and their functions/services – the department, HSCBs, central bodies, those providing medical services. Duties on co-operation between bodies. Administrative duties concerning finance, property etc.</p> <p>Update on the 1972 Order. Establishes trusts and HSS Councils. Administrative duties covering finance, accommodation.</p> <p>Act restructuring health and social care. Covers existing bodies and their functions e.g. department, trusts. Establishes RHSCBs, the RBSO, Regional Agency and functions. Covers patient representation, and public-private partnerships.</p>	
	<b>Housing</b>	<ul style="list-style-type: none"> <li>the Northern Ireland Housing Executive</li> </ul>	<ul style="list-style-type: none"> <li>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))</li> </ul>	House allocation scheme and allocation to eligible persons.
			<ul style="list-style-type: none"> <li>Part 2 (housing the homeless) of the Housing (Northern Ireland) Order 1988 (S.I. 1988/1990 (N.I. 23))</li> </ul>	Homelessness duties – advice and info, priority need, inquiry

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			<ul style="list-style-type: none"><li>• Article 35(1)(c) of the Housing (Northern Ireland) Order 2003 (S.I. 2003/412 (N.I. 2))</li></ul>	Grants for improvements and repairs in terms of provision of facilities for disabled persons in dwelling and in common parts of buildings with one or more flats.
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