

ARMED FORCES ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 24: Byelaws for service purposes

98. The Secretary of State has statutory powers to make byelaws as to the use of land held for military purposes. Section 2(2) of the Military Lands Act 1900 (“the 1900 Act”) deals with areas of the sea, tidal water or shore. Paragraph (b) of the proviso to section 2(2) currently requires the consent of the Board of Trade if a byelaw is to affect adversely any public right of navigation, anchoring, grounding, fishing, bathing, walking or recreation. Responsibility for these different uses of the sea and shore no longer rest with one body (except perhaps, by virtue of transfers of functions, the Secretary of State for Transport).
99. **Section 24** removes paragraph (b) of the proviso to section 2 and accordingly the requirement for the Board of Trade’s consent. Instead section 24 adds a new section 2(2A) to the 1900 Act. This requires the Secretary of State, before making any such byelaws, to take all reasonable steps to ascertain whether the byelaw would adversely affect any public rights mentioned above. If he considers that it would, he must satisfy himself that the restriction of the particular right is required for the safety of the public or for the military purpose for which the area affected is used, and that the restriction imposed is only to such extent as is reasonable. These requirements are broadly equivalent to the provisions which govern the grant of consent by the Board of Trade.
100. The amended section 2 of the 1900 Act will continue to apply to byelaws made by virtue of that section and to those made by virtue of section 7 of the Land Powers (Defence) Act 1958 (“the 1958 Act”).
101. **Section 24** also removes section 2(3) of the 1900 Act, which makes provision for the giving of notice by, and the making of objections to the Board of Trade. The Secretary of State’s duty to give an opportunity for objections, and to consider any objections made, is provided for in section 17 of the Military Lands Act 1892 (“the 1892 Act”).
102. **Section 24** also amends section 17 of 1892 Act. That section also governs the procedure for publishing byelaws, whether made by virtue of the 1892 Act, the 1900 Act or the 1958 Act. The section removes the requirement that the Secretary of State for Defence shall publish the byelaws in such manner as appears to him necessary to make them known to all persons in the locality, and replaces it with a requirement that he publish the byelaws in such manner as appears to him appropriate.