

ARMED FORCES ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 23: Protected prisoners of war

93. Articles 82 and 102 of the Geneva Convention Relative to the Treatment of Prisoners of War 1949 oblige the United Kingdom to make prisoners of war detained by United Kingdom forces subject to United Kingdom service law and to the same courts and procedures as United Kingdom armed forces.
94. The current regime governing prisoners of war for the purposes of meeting these requirements is set out in a Royal Warrant dated 7 August 1958. The Royal Warrant contains the Prisoners of War (Discipline) Regulations 1958 (“the 1958 Regulations”). These regulations govern the custody and maintenance of discipline amongst prisoners of war detained by United Kingdom forces. They are based on provisions in the Army Act 1955. That Act was repealed and replaced by AFA 2006. Accordingly, the 1958 Regulations are now out of date. Section 23 allows for their replacement by new regulations made by Royal Warrant and based on provisions in AFA 2006.
95. The section provides for the insertion of a new section 371A into AFA 2006. The new section provides that Her Majesty may by Royal Warrant apply relevant provisions of AFA 2006, subject to modifications, to protected prisoners of war (as defined by section 7(1) of the Geneva Conventions Act 1957) detained by United Kingdom forces. Alternatively Her Majesty may make provision for such protected prisoners of war equivalent to relevant provisions in AFA 2006, again subject to modifications.
96. The purpose is to ensure that the provision made by Her Majesty can cover any aspect of the services’ system of justice, and in particular to allow Her Majesty by Royal Warrant to extend to certain institutions whose powers and functions are defined in AFA 2006 (such as the Court Martial) powers and functions in respect of prisoners of war. Accordingly the only provisions of AFA 2006 which are not relevant provisions for the purposes of new section 371A are those in Parts 14 (enlistment, terms of service etc), 15 (forfeitures and deductions) and 16 (inquiries).
97. New section 371A also imposes a duty on the Secretary of State to publish any such Royal Warrant in such way as appears to him to be appropriate.