

Armed Forces Bill (HL Bill 36)

BRIEFING

**JURISDICTION OVER SEXUAL OFFENCES
COMMITTED BY MEMBERS OF VISITING FORCES**

A. INTRODUCTION

1. The Centre for Military Justice (CMJ) is a small, independent legal charity established in 2019 to advise current and former members of the Armed Forces or their bereaved families who have suffered serious bullying, sexual harassment, sexual violence, racism, other abuse or neglect. We offer an advice and signposting service, as well as full legal advocacy and legal representation, where we act for clients in formal complaints processes, in Employment Tribunals, in the civil courts and the Coroner's Court. The CMJ also undertakes educational and outreach work, promoting the rule of law, equality and human rights law and access to justice. Supporting women that have experienced gender-based violence and other discrimination, harassment or victimisation due to their sex is a principal focus of our work.¹
2. Since we were established in 2020, we have advised at least six women about issues connected to alleged sexual or domestic violence perpetrated by visiting members of the US armed forces to the UK. In all cases, the victims were not US citizens nor were they employed by the US armed forces. We have been concerned to read the [recent cases reported by the Guardian](#) suggesting that local civilian police forces are facilitating the transfer of jurisdiction to the US military authorities in far too many cases, with serious implications for victims of crime who enjoy far less protection in that jurisdiction.
3. This briefing proposes an amendment to the Armed Forces Bill 2026 that would ensure that, in future cases, there is a clear presumption that such cases should be taken forward in the United Kingdom civilian criminal justice system rather than the US military jurisdiction.²
4. **In summary:**
 - (1) In the recent cases, the United Kingdom had the primary right to prosecute. Under the NATO Status of Forces Agreement 1951 ("**the NATO SOFA**"), the treaty which governs the position of the forces of one NATO state stationed in the territory of another, the sending state has the primary right to try its personnel only where the

¹ www.centreformilitaryjustice.org.uk

² This is our second briefing on the Armed Forces Bill 2026. The first can be accessed here: <https://centreformilitaryjustice.org.uk/guide/cmj-submission-on-the-armed-forces-bill-2026/>

victim is connected with the force or the offence was committed in the course of official duty. Neither applied. Nothing in the Visiting Forces Act 1952 barred trial here.

- (2) Rather, jurisdiction appears to have been given away by choice, by the local civilian police force, with no statutory procedure, no prosecutorial decision or limited prosecutorial involvement and a lack of informed consultation with the victims. No enactment regulates who may waive the United Kingdom's primary right, on what criteria, or with what involvement of the victim.
- (3) The proposed amendment fills that gap via the Armed Forces Bill 2026, by inserting a new section 3A into the Visiting Forces Act 1952, under which offences of this kind are presumed to be investigated and tried here. The presumption could be displaced only by a decision of the Director of Public Prosecutions taken personally, in exceptional circumstances and after the victim had been invited to make representations. The restriction would bind the civilian and service police, and the service authorities, as well as prosecutors.
- (4) In CMJ's view the amendment is compatible with the NATO SOFA, because it regulates how United Kingdom authorities exercise the primary right which the treaty gives them and does not alter the treaty's allocation of jurisdiction.
- (5) One provision, the rule that a sexual offence can never be a "duty" offence, potentially goes further.

B. THE PRESENT LAW

5. Nothing in the NATO SOFA or in legislation as it stands required jurisdiction to be ceded in the recently reported cases. The United Kingdom had the primary right to prosecute and declined to exercise it by choice (apparently by the local police forces). No enactment governs how that choice to cede jurisdiction is made. That is what the amendment aims to address.
6. The NATO SOFA allocates criminal jurisdiction between the sending and the receiving state. It is the agreement of 19 June 1951 between the parties to the North Atlantic Treaty which governs the position of the forces of one member state present, by invitation, in the territory of another. The United Kingdom gave it effect in domestic law by the Visiting Forces Act 1952 and applied the Act to the United States by the 1954 Order. Article VII deals with criminal jurisdiction.
7. Where an offence is punishable under the law of both states, as a sexual offence is, Article VII(3) determines which state has the “primary right” to exercise jurisdiction:
 - a. the sending state has the primary right where the offence is solely against its own security or property, or solely against the person or property of another member of the force or of its civilian component or of a dependant, or where the offence arose out of an act done in the performance of official duty;
 - b. in the case of any other offence, the receiving state has the primary right.
8. A sexual offence committed against a person unconnected with the force is in the second category. In the recent cases, the primary right was the United Kingdom’s.
9. The NATO SOFA permits waiver of the primary right. A state which declines to exercise its primary right must notify the other state; and it must give “sympathetic consideration” to a request for a waiver in a case which the other state considers to be of particular importance: Article VII(3)(c). The treaty says nothing about who declines jurisdiction for the United Kingdom, by what procedure, or on what criteria.
10. Domestic law bars trial here only in narrow cases, none of which applied. Section 3(1) of the Visiting Forces Act 1952 prevents trial by a United Kingdom court only where the offence was committed in the course of duty, or where the victim was themselves connected with a visiting force. The victims in the recent cases were not, as CMJ understands it. The United Kingdom courts were competent to try the offences, and the Act already treats the Director of Public Prosecutions as the officer who deals with the sending state on questions of jurisdiction: section 3(3)(a).
11. As we understand it, jurisdiction was (in effect) declined by the local police force rather

than by any prosecutor. Civilian police were reportedly told that the United States Air Force had “taken over”; the alleged victims consented to the transfer at an early stage, without taking legal advice; and by the time they raised concerns the United States proceedings were effectively too far advanced to be recalled.

12. So far as CMJ is aware, no published arrangement governs such situations. The Memorandum of Arrangement disclosed to us under the Freedom of Information Act deals with the policing of United States bases, not with jurisdiction over offences.

13. The contrast with domestic practice is stark:

- a. Where the United Kingdom’s own civilian and service justice systems are both capable of asserting jurisdiction over an offence, there is now a protocol between the Director of Public Prosecutions and the Director of Service Prosecutions which was made under section 320A of the Armed Forces Act 2006 (as amended by s7 of the Armed Forces Act 2021), which requires jurisdiction over rape and sexual assault cases to be decided at a senior level; treats offences against civilians as belonging ordinarily in the civilian courts; and requires the victim’s views to be sought.³
- b. Where the competing forum is a foreign military court, there is no equivalent. This is a striking omission.

C. THE PROPOSED AMENDMENT

14. The proposed amendment is within the scope of the Armed Forces Bill 2026.⁴ It inserts a new section 3A into the Visiting Forces Act 1952, by a new clause added to the Bill’s visiting forces group (clauses 41 and 42 of the Armed Forces Bill). Under it:

- a. a qualifying sexual offence committed by a member of a visiting force against a person unconnected with the force is presumed to be investigated and tried in the United Kingdom;
- b. neither the police (civilian or service police) nor anyone else may transfer such a case to the sending country. Only the Director of Public Prosecutions (or the Lord Advocate in Scotland or the Director of Public Prosecutions for Northern Ireland) may do so, personally, in exceptional circumstances, and only after the victim has been invited to make representations; and
- c. a sexual offence can *never* be treated as committed in the course of official duty.

³ This protocol was introduced pursuant to the settlement of a judicial review claim on 06/08/21 brought by three survivors of rape in the UK armed forces against the then Secretary of State for Defence, which challenged the arrangements for determining jurisdiction for service women and men who were victims of serious sexual offences in the military and in the UK.

⁴ From the recital: ‘to make provision about visiting forces’.

AMENDMENT 1

After Clause 42, insert the following new Clause—

“Visiting forces: qualifying sexual offences

i. After section 3 of VFA 1952 insert—

“3A Qualifying sexual offences: restriction on relinquishment of jurisdiction

1. This section applies where—

a. a person is alleged to have committed a qualifying sexual offence in the United Kingdom at a time when the person was a member of a visiting force or of its civilian component, and

b. the alleged victim was not at that time a member of that force or component, or a dependant of such a member.

2. It is to be presumed that the alleged offence will be investigated by a United Kingdom police force and that any proceedings in respect of it will be conducted before a United Kingdom court.

3. A relevant authority may not transfer the investigation of the alleged offence to the authorities of the sending country, consent to the exercise of jurisdiction over it by those authorities, or otherwise waive the United Kingdom’s primary right to exercise jurisdiction in respect of it, except pursuant to a decision under subsection (4).

4. The relevant prosecutor may decide that the alleged offence is to be dealt with under the law of the sending country only if—

a. the decision is made by the relevant prosecutor personally, and

b. the relevant prosecutor is satisfied that, by reason of exceptional circumstances, it is in the interests of justice for the alleged offence to be so dealt with.

5. In making a decision under subsection (4) the relevant prosecutor must have regard to the gravity of the alleged offence; the connection of the alleged victim and of the offence with the United Kingdom; the capacity of the sending country’s arrangements, including its treatment of victims, to secure justice in the case; and any matters relied on in support of a request for a waiver.

6. Before making a decision under subsection (4) the relevant prosecutor must, so far as reasonably practicable, notify the alleged victim, invite representations within a reasonable period, and take into account any representations made.

7. On making a decision under subsection (4) the relevant prosecutor must record the decision and the reasons for it in writing and, so far as reasonably practicable, notify them to the alleged victim.

8. Nothing in this section prevents sympathetic consideration being given to a request by the sending country for a waiver of the United Kingdom’s primary right; but effect may be given to such a request only in accordance with this section.

9. For the purposes of this Act, an act constituting a qualifying sexual offence is not capable of arising out of and in the course of a person’s duty as a member of a visiting force or of its civilian component; and a certificate under section 11(4) is accordingly of no effect in relation to such an offence.

10. In this section—

“alleged victim” means the person against whom the offence is alleged to have been committed and, where that person has died or lacks capacity to act, includes a member of that person’s family;

“qualifying sexual offence” means an offence under Part 1 of the Sexual Offences Act 2003, an offence under Part 1 of the Sexual Offences (Scotland) Act 2009 or rape at common law in Scotland, an offence under the Sexual Offences (Northern Ireland) Order 2008, or an offence of attempting, conspiring in, encouraging or assisting, or aiding, abetting, counselling or procuring the commission of, such an offence;

“relevant authority” means a relevant prosecutor, the chief officer of any United Kingdom police force (including the Ministry of Defence Police), the Provost Marshal of any service police force, the Director of Service Prosecutions, or a person acting under the direction and control of any of them;

“relevant prosecutor” means the Director of Public Prosecutions in relation to England and Wales, the Lord Advocate in relation to Scotland, and the Director of Public Prosecutions for Northern Ireland in relation to Northern Ireland.”

ii. In section 11 of VFA 1952 (evidence), after subsection (8) (inserted by section 42) insert—

“(9) This section is subject to section 3A(9).”

AMENDMENT 2 (consequential)

Clause 55, page 71, line [●], at end insert—

“(f) section (Visiting forces: qualifying sexual offences).”

15. By way of explanation:

- a. In CMJ’s view, the proposed amendment is compatible with the NATO SOFA. The treaty allocates jurisdiction between the two states; the amendment leaves that allocation untouched and regulates only the manner in which the United Kingdom exercises the primary right which the treaty confers. Subsection (8) preserves in terms the duty to give sympathetic consideration to requests for a waiver: the sending state may still ask, and the request must still be considered; the amendment prescribes who answers, and how.
- b. The provision which may be considered most contentious is subsection (9), which provides that a sexual offence can never be a “duty” offence. However, in our view the rule reflects the position generally taken internationally, that sexual violence can never arise out of and in the course of official duty. We cannot see that there could be any proper objection to that.

CENTRE FOR MILITARY JUSTICE

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