

Overseas Operations (Service Personnel and Veterans) Bill

[This provisional Marshalled List includes all amendments tabled for Day 1 onwards.
A revised Marshalled List will be produced following the conclusion of proceedings
on Day 1. Neither amendments nor members' names may be added between the two.]

PROVISIONAL SECOND
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN COMMITTEE OF THE WHOLE HOUSE

[Amendments marked ★ are new or have been altered]

**Amendment
No.**

Clause 1

BARONESS MASSEY OF DARWEN
LORD DUBS
BARONESS SMITH OF NEWNHAM

1 Page 2, line 2, leave out “5” and insert “10”

Member’s explanatory statement

This amendment provides that the presumption against prosecution only applies after 10 years (instead of 5 years).

2 Page 2, line 4, leave out “5” and insert “10”

Member’s explanatory statement

This amendment provides that the presumption against prosecution only applies after 10 years (instead of 5 years).

LORD DUBS
BARONESS MASSEY OF DARWEN
BARONESS SMITH OF NEWNHAM
BARONESS JONES OF MOULSECOOMB

The above-named Lords give notice of their intention to oppose the Question that Clause 1 stand part of the Bill.

Member’s explanatory statement

This removes the presumption against prosecution (Clauses 1–7) for the reasons outlined in Chapter 3 of the JCHR’s ninth Report of this session.

Clause 2

LORD TUNNICLIFFE
LORD THOMAS OF GRESFORD

3 Leave out Clause 2 and insert the following new Clause –

“Ability to conduct a fair trial

The principle referred to in section 1(1) is that a relevant prosecutor making a decision to which that section applies may determine that proceedings should be brought against the person for the offence, or, as the case may be, that the proceedings against the person for the offence should be continued, only if the prosecutor has reasonable grounds for believing that the fair trial of the person has not been materially prejudiced by the time elapsed since the alleged conduct took place.”

Member’s explanatory statement

This new Clause replaces the presumption against prosecution with a requirement on a prosecutor deciding whether to bring or continue a prosecution to consider whether the passage of time has materially prejudiced the prospective defendant’s chance of a fair trial.

LORD DUBS
BARONESS MASSEY OF DARWEN
BARONESS SMITH OF NEWNHAM
BARONESS JONES OF MOULSECOOMB

The above-named Lords give notice of their intention to oppose the Question that Clause 2 stand part of the Bill.

Member’s explanatory statement

This removes the presumption against prosecution (Clauses 1–7) for the reasons outlined in Chapter 3 of the JCHR’s ninth Report of this session.

Clause 3

BARONESS MASSEY OF DARWEN
LORD DUBS
BARONESS SMITH OF NEWNHAM

4 Page 2, line 23, leave out paragraph (a)

Member’s explanatory statement

This amendment and the other amendments to Clause 3 in the name of Baroness Massey would delete the requirement to give “particular weight” in any prosecution decision after 5 years to a person having an impaired ability to exercise self-control or to exercise sound judgement whilst being deployed on operations overseas.

LORD TUNNICLIFFE
LORD BOYCE
LORD THOMAS OF GRESFORD

5 Page 2, line 33, at end insert –

“(c) the quality and duration of relevant investigations.”

Member's explanatory statement

This amendment would require prosecutors to give weight to the quality and duration of relevant investigations when deciding whether to bring or continue proceedings against a person relating to alleged conduct during overseas operations.

LORD THOMAS OF CWMGIEDD

6 Page 2, line 33, at end insert –

“(c) the extent to which the active investigation into the relevant offence and any relevant previous investigation were carried out by an investigating authority in accordance with standards demonstrating fairness, thoroughness, independence and accountability to a person independent of any military command within the services.”

Member's explanatory statement

The purpose of the amendment is to require the prosecutor to have regard to the standards applied in the investigation(s).

BARONESS MASSEY OF DARWEN

LORD DUBS

BARONESS SMITH OF NEWNHAM

7 Page 2, line 34, leave out subsection (3)

Member's explanatory statement

This amendment and the other amendments to Clause 3 in the name of Baroness Massey would delete the requirement to give “particular weight” in any prosecution decision after 5 years to a person having an impaired ability to exercise self-control or to exercise sound judgement whilst being deployed on operations overseas.

8 Page 2, line 38, leave out subsection (4)

Member's explanatory statement

This amendment and the other amendments to Clause 3 in the name of Baroness Massey would delete the requirement to give “particular weight” in any prosecution decision after 5 years to a person having an impaired ability to exercise self-control or to exercise sound judgement whilst being deployed on operations overseas.

LORD DUBS

BARONESS MASSEY OF DARWEN

BARONESS SMITH OF NEWNHAM

BARONESS JONES OF MOULSECOOMB

The above-named Lords give notice of their intention to oppose the Question that Clause 3 stand part of the Bill.

Member's explanatory statement

This removes the presumption against prosecution (Clauses 1–7) for the reasons outlined in Chapter 3 of the JCHR's ninth Report of this session.

Clause 4

LORD DUBS
 BARONESS MASSEY OF DARWEN
 BARONESS SMITH OF NEWNHAM
 BARONESS JONES OF MOULSECOOMB

The above-named Lords give notice of their intention to oppose the Question that Clause 4 stand part of the Bill.

Member's explanatory statement

This removes the presumption against prosecution (Clauses 1–7) for the reasons outlined in Chapter 3 of the JCHR's ninth Report of this session.

Clause 5

BARONESS MASSEY OF DARWEN
 LORD DUBS
 BARONESS SMITH OF NEWNHAM
 BARONESS D'SOUZA

9 Page 3, line 19, leave out "5" and insert "10"

Member's explanatory statement

This amendment provides that the presumption against prosecution only applies after 10 years (instead of 5 years).

LORD FALCONER OF THOROTON
 BARONESS D'SOUZA
 BARONESS JONES OF MOULSECOOMB

10 Page 3, line 29, at end insert—

“(3A) Where the consent of the Attorney General is sought under subsection (2) or (3), the Attorney General must prepare a report containing his or her reasons for granting or withholding consent, as the case may be, with reference to sections 1 to 3 of this Act, and must lay a copy of this report before each House of Parliament.”

Member's explanatory statement

This amendment requires the Attorney General to lay out their evidence and assessment as to why they granted or refused consent to prosecute.

LORD FALCONER OF THOROTON
 BARONESS JONES OF MOULSECOOMB

11 Page 3, line 29, at end insert—

“() Where the consent of the Attorney General, or the Advocate General for Northern Ireland, is sought under subsection (2) or (3), the Attorney General, or the Advocate General for Northern Ireland as the case may be, must—

(a) give consent if he or she considers that failing to give consent would significantly increase the likelihood of the International Criminal Court exercising its own competence in relation to the matter,

Clause 5 - continued

- (b) prepare a report containing his or her reasons for granting or withholding consent, as the case may be, with reference to sections 1 to 3, and
- (c) lay a copy of the report before Parliament.”

12 Page 3, line 29, at end insert –

- “() Where the consent of the Attorney General, or the Advocate General for Northern Ireland, is sought under subsection (2) or (3), the Attorney General, or the Advocate General for Northern Ireland as the case may be, must –
- (a) give consent if he or she considers that failing to give consent would lead to a breach of international law,
 - (b) prepare a report containing his or her reasons for granting or withholding consent, as the case may be, with reference to sections 1 to 3, and
 - (c) lay a copy of the report before Parliament.”

BARONESS MASSEY OF DARWEN
LORD DUBS
BARONESS SMITH OF NEWNHAM

13 Page 3, line 36, leave out “5” and insert “10”

Member’s explanatory statement

This amendment provides that the presumption against prosecution only applies after 10 years (instead of 5 years).

LORD DUBS
BARONESS MASSEY OF DARWEN
BARONESS SMITH OF NEWNHAM
BARONESS JONES OF MOULSECOOMB

The above-named Lords give notice of their intention to oppose the Question that Clause 5 stand part of the Bill.

Member’s explanatory statement

This removes the presumption against prosecution (Clauses 1–7) for the reasons outlined in Chapter 3 of the JCHR’s ninth Report of this session.

Clause 6

LORD ROBERTSON OF PORT ELLEN
LORD ALTON OF LIVERPOOL
LORD WEST OF SPITHEAD
LORD CAMPBELL OF PITTENWEEM

14 Page 4, line 11, at end insert –

- “() An offence is not a relevant offence if it amounts to –
- (a) torture, within the meaning of section 134 of the Criminal Justice Act 1988 (torture); or

Clause 6 - continued

- (b) genocide, a crime against humanity or a war crime as defined in section 50 of the International Criminal Court Act 2001 (meaning of “genocide”, “crime against humanity” and “war crime”).”

Member’s explanatory statement

This amendment provides that the presumption against prosecution does not apply to war crimes, crimes against humanity, genocide or torture.

LORD TUNNICLIFFE
LORD THOMAS OF GRESFORD

15 Page 4, line 21, at end insert –

“() Regulations under subsection (6) may not remove offences listed in Schedule 1.”

LORD DUBS
BARONESS MASSEY OF DARWEN
BARONESS SMITH OF NEWNHAM
BARONESS JONES OF MOULSECOOMB

The above-named Lords give notice of their intention to oppose the Question that Clause 6 stand part of the Bill.

Member’s explanatory statement

This removes the presumption against prosecution (Clauses 1–7) for the reasons outlined in Chapter 3 of the JCHR’s ninth Report of this session.

After Clause 6

BARONESS RITCHIE OF DOWNPATRICK
BARONESS JONES OF MOULSECOOMB
LORD HAIN

16 Insert the following new Clause –

“Compliance with the Belfast Agreement 1998

Nothing in this Part is to be construed in any manner that is non-compliant with the Belfast Agreement 1998.”

Member’s explanatory statement

This amendment, and the amendments to page 8, line 12 and page 26, line 16 in the name of Baroness Ritchie of Downpatrick, ensure that the bill cannot be interpreted in a way that undermines the Belfast Agreement 1998’s requirement for the Government to complete incorporation into Northern Ireland law of the European Convention on Human Rights, with direct access to the courts, and remedies for breach of the Convention.

Clause 7

LORD DUBS
BARONESS MASSEY OF DARWEN
BARONESS SMITH OF NEWNHAM

The above-named Lords give notice of their intention to oppose the Question that Clause 7 stand part of the Bill.

Member's explanatory statement

This removes the presumption against prosecution (Clauses 1–7) for the reasons outlined in Chapter 3 of the JCHR's ninth Report of this session.

After Clause 7

LORD THOMAS OF GRESFORD
BARONESS SMITH OF NEWNHAM

17 Insert the following new Clause –

“Investigation of serious crime related to overseas operations

- (1) In deciding whether to commence criminal proceedings for serious crime against a member of Her Majesty's Forces arising out of overseas operations, the relevant prosecutor must take into account whether the investigation has been timely and comprehensively conducted.
- (2) Where an investigator of serious crime arising out of overseas operations is satisfied that sufficient evidence of criminality exists, the investigator must within 21 days refer the investigation to the Service Prosecuting Authority with any initial findings and accompanying case papers.
- (3) An investigation may not proceed after the period of 6 months beginning with the day on which the crime was first reported without the reference required in subsection (2).
- (4) On receiving a referral under subsection (2), the Service Prosecuting Authority must either –
 - (a) order the investigation to cease; or
 - (b) give appropriate advice and directions to the investigator as to the investigation.
- (5) Where the investigation proceeds, the Service Prosecuting Authority must monitor and review its progress at intervals of three months and must on each review make a decision on the terms set out in subsection (4).
- (6) On the conclusion of the investigation, the investigator must send a final report with accompanying case papers to the Service Prosecuting Authority for the consideration of criminal proceedings.
- (7) After receipt of the final report, the facts and circumstances of the alleged crime may not be further investigated or reinvestigated without the direction of the Director of Service Prosecutions acting in the public interest.
- (8) The Judge Advocate General may give Practice Directions as he or she deems appropriate for the investigation of serious crime arising out of overseas operations.

After Clause 7 - continued

(9) For the purposes of this section—

“investigator” means a member of the service police or a civil police force;

“serious crime” means crime triable on indictment punishable by imprisonment of not less than 2 years;

“case papers” includes summaries of interviews or other accounts given by the suspect, previous convictions and disciplinary record, available witness statements, scenes of crime photographs, CCTV recordings, medical and forensic science reports.”

LORD FALCONER OF THOROTON

18 Insert the following new Clause—

“Time limit for commencing proceedings for minor offences

After section 60 of the Armed Forces Act 2006 insert—

“60A Time limit for minor offences

(1) A person may not be charged in respect of a minor offence carried out in the course of overseas operations after the end of six months beginning with the day on which the offence is alleged to have been committed.

(2) In this section—

“minor offence” means—

(a) any offence committed by a member of a regular or reserve force which would be in the jurisdiction of the Service Civilian Court if committed by a civilian;

(b) any offence capable of being dealt with at a summary hearing under section 53 or 54;

“overseas operations” has the meaning given in section 1(6) of the Overseas Operations (Service Personnel and Veterans) Act 2021.””

Clause 8

LORD FALCONER OF THOROTON

19 Page 6, line 8, after “forces,” insert “except where it would be inequitable for an action in respect of a personal injury or death which could have occurred in the United Kingdom to be subject to a different time limit if it occurred overseas,”

Member’s explanatory statement

This amendment ensures that a court can disapply the civil longstop if the same equipment or cause of negligence results in injury or death in overseas operations as in the UK.

Clause 11

LORD FALCONER OF THOROTON

20 Page 7, leave out lines 7 to 28

Clause 11 - continued

BARONESS SMITH OF NEWNHAM
LORD THOMAS OF GRESFORD

- 21 Page 7, line 23, at end insert –
“(c) the importance of the proceedings in securing the rights of the claimant.”

Member’s explanatory statement

This amendment adds a further consideration to which UK courts must have particular regard when determining whether to disapply the standard HRA limitation period of one year so as to ensure that the claimant’s interest in having their claim proceed is not subordinated.

- 22 Page 7, line 30, leave out from “before” to end of line 34 and insert “the end of the period of 6 years beginning with the date of knowledge.”

Member’s explanatory statement

This amendment is one of a series that change the relevant date from which the six-year longstop starts to run so as to account for legitimate and explicable delays commonly experienced by persons bringing claims under the HRA arising out of overseas operations.

- 23 Page 7, line 34, at end insert –
“(4A) The court may disapply the rule in subsection (1)(b) where it appears to the court that it would be equitable to do so having regard to the reasons for the delay, in particular whether the delay resulted from –
(a) the nature of the injuries,
(b) logistical difficulties in securing the services required to bring a claim, so long as the claimant was making all reasonable attempts to secure such services, or
(c) any other reasons outside the control of the person bringing the claim.”

Member’s explanatory statement

This amendment introduces a discretion for UK courts to allow a HRA claim arising out of overseas operations to proceed in prescribed circumstances so as to account for legitimate and explicable delays commonly experienced by persons bringing such claims.

- 24 Page 7, line 40, at end insert –
“(c) of the manifestation of the harm resulting from that act which is the subject of the claim, and
(d) that they were eligible to bring a claim under the Human Rights Act 1998 against the Ministry of Defence or Secretary of State for Defence in the courts of the United Kingdom.”

Member’s explanatory statement

This amendment is one of a series that change the relevant date from which the six-year longstop starts to run so as to account for legitimate and explicable delays commonly experienced by persons bringing claims under the HRA arising out of overseas operations.

BARONESS RITCHIE OF DOWNPATRICK
 BARONESS JONES OF MOULSECOOMB
 LORD HAIN

25 Page 8, line 12, at end insert—

“(4B) The rule referred to in section 7A is not to be construed in any manner that is non-compliant with the Belfast Agreement 1998.”

Member’s explanatory statement

This amendment, and the amendments after Clause 6 and to page 26, line 16 in the name of Baroness Ritchie of Downpatrick, ensure that the bill cannot be interpreted in a way that undermines the Belfast Agreement 1998’s requirement for the Government to complete incorporation into Northern Ireland law of the European Convention on Human Rights, with direct access to the courts, and remedies for breach of the Convention.

Clause 12

LORD FALCONER OF THOROTON
 LORD HOPE OF CRAIGHEAD
 LORD THOMAS OF GRESFORD
 BARONESS D’SOUZA

26 Page 8, line 20, at end insert—

“(1A) No order may be made by the Secretary of State under section 14 following consideration under this section unless a draft of the order has been laid before, and approved by, each House of Parliament.”

Member’s explanatory statement

This amendment would require significant derogations regarding overseas operations proposed by the Government from the European Convention on Human Rights to be approved by Parliament before being made.

LORD FAULKES
 LORD GARNIER

27 Page 8, line 20, at end insert—

“(1A) Whether or not the Secretary of State makes a derogation under Article 15(1) of the Convention, no claim shall be brought in the courts of England and Wales under this Act in relation to, or arising out of, such overseas operations.”

LORD HOPE OF CRAIGHEAD
 LORD THOMAS OF GRESFORD
 LORD CRAIG OF RADLEY

The above named Lords give notice of their intention to oppose the Question that Clause 12 stand part of the Bill.

After Clause 12

LORD TUNNICLIFFE

LORD BOYCE

28 Insert the following new Clause—

“Limitation on reinvestigation

- (1) This section applies where—
 - (a) a person has been acquitted of an offence relating to conduct on overseas operations, or
 - (b) a determination has been made that an investigation into an offence relating to such conduct should cease.
- (2) No further investigation into the alleged conduct shall be commenced unless—
 - (a) compelling new evidence has become available, and
 - (b) an allocated judge advocate determines that the totality of the evidence against the accused is sufficiently strong.”

Member’s explanatory statement

This new Clause would require a judge advocate of the armed services to determine if new evidence is sufficient to grant reinvestigation of armed forces personnel for alleged offences in which they have been acquitted or the original investigation was ceased.

LORD TUNNICLIFFE

LORD BOYCE

LORD WEST OF SPITHEAD

LORD STIRRUP

29 Insert the following new Clause—

“Restrictions on time limits: actions brought against the Crown by service personnel

Nothing in this Part applies to any action brought against the Crown by a person who is a member or former member of the regular or reserve forces, or of a British overseas territory force to whom section 369(2) of the Armed Forces Act 2006 (members of British overseas territories’ forces serving with UK forces) applies.”

Member’s explanatory statement

This new Clause amends Part 2 of the Bill so that it explicitly excludes actions brought against the Crown by serving or former service personnel from the limitations on courts’ discretion that the Part imposes in respect of actions relating to overseas operations.

LORD TUNNICLIFFE

30 Insert the following new Clause—

“Access to legal aid for service personnel in criminal proceedings

Within 12 months of this Act coming into force, the Secretary of State shall commission an independent evaluation of access to legal aid for members and former members of the regular and reserve forces and of British overseas territory forces to whom section 369(2) of the Armed Forces Act 2006 (members of British overseas territories' forces serving with UK forces) applies, in relation to criminal legal proceedings in connection with operations of the armed forces outside the British Islands, and lay a copy of the evaluation report before each House of Parliament.”

Member’s explanatory statement

This new Clause would require the Government to commission and publish an independent evaluation of service personnel’s access to legal aid in relation to the criminal proceedings covered by the provisions in the Bill.

LORD DANNATT
LORD STIRRUP
LORD BOYCE
LORD TUNNICLIFFE

31 Insert the following new Clause—

“Duty of care to service personnel

- (1) The Secretary of State must establish a duty of care standard in relation to legal, pastoral and mental health support provided to service personnel involved in investigations or litigation arising from overseas operations, as defined in subsection (6) of section 1.
- (2) The Secretary of State must lay a copy of this standard before Parliament within six months of the date on which this Act is passed.
- (3) The Secretary of State must thereafter in each calendar year—
 - (a) prepare a duty of care report, and
 - (b) lay a copy of the report before Parliament.
- (4) The duty of care report is a report about the continuous process of review and improvement to meet the duty of care standard established in subsection (1), in particular in relation to incidents arising from overseas operations of—
 - (a) litigation and investigations brought against service personnel for allegations of criminal misconduct and wrongdoing;
 - (b) civil litigation brought by service personnel against the Ministry of Defence for negligence and personal injury;
 - (c) judicial reviews and inquiries into allegations of misconduct by service personnel;
 - (d) such other related fields as the Secretary of State may determine.
- (5) In preparing a duty of care report the Secretary of State must have regard to, and publish relevant data in relation to (in respect of overseas operations)—
 - (a) the adequacy of legal, welfare and mental health support services provided to service personnel who are accused of crimes;

After Clause 12 - continued

- (b) complaints made by service personnel or their legal representation when in the process of bringing or attempting to bring civil claims against the Ministry of Defence for negligence and personal injury;
 - (c) complaints made by service personnel or their legal representation when in the process of investigation or litigation for an accusation of misconduct;
 - (d) meeting national standards of care and safeguarding for families of service personnel, where relevant.
- (6) In subsection (1) “service personnel” means –
- (a) members of the regular forces and the reserve forces;
 - (b) members of British overseas territory forces who are subject to service law;
 - (c) former members of any of Her Majesty's forces who are ordinarily resident in the United Kingdom; and
 - (d) where relevant, family members of any person meeting the definition within paragraph (a), (b) or (c).
- (7) In subsection (1) “duty of care” means both the legal and moral obligation of the Ministry of Defence to ensure the wellbeing of service personnel.
- (8) None of the provisions of this section may be used to alter the principle of combat immunity.”

Member’s explanatory statement

This new Clause will require the Ministry of Defence to identify a new duty of care to create a new standard for policy, services and training in relation to legal, pastoral and mental health support provided to service personnel involved in investigations or litigations arising from overseas operations, and to report annually on their application of this standard.

LORD BROWNE OF LADYTON
LORD CLEMENT-JONES
LORD HOUGHTON OF RICHMOND

32

Insert the following new Clause –

“Liability for using novel technologies: review

- (1) Within 3 months of this Act being passed, the Secretary of State must commission a review of the implications of increasing autonomy associated with the use of artificial intelligence and machine learning, including in weapons systems, for legal proceedings against armed forces personnel that arise from overseas operations, and produce recommendations for favourable legal environments for UK armed forces operating overseas, including instilling domestic processes and engaging in the shaping of international agreements and institutions.
- (2) The review must consider –
- (a) what protection and guidance armed forces personnel need to minimise the risk of legal proceedings being brought against them which relate to overseas operations in response to novel technologies,
 - (b) how international and domestic legal frameworks governing overseas operations need to be updated in response to novel technologies, and

After Clause 12 - continued

- (c) what novel technologies could emerge from the Ministry of Defence and the United Kingdom's allies, and from the private sector, which could be used in overseas operations.
- (3) Within the period of one year beginning on the day on which the review is commissioned, the Secretary of State must lay a report before Parliament of its findings and recommendations.”

BARONESS RITCHIE OF DOWNPATRICK
 BARONESS JONES OF MOULSECOOMB
 LORD HAIN

33 Insert the following new Clause—

“Exceptions

Nothing in this Act may be construed in any manner that is non-compliant with the UK’s international obligations, including, but not limited to, the European Convention on Human Rights and the Belfast Agreement 1998.”

Member’s explanatory statement

This amendment ensures that the bill cannot be interpreted in a way that undermines the UK’s commitments under international law, including the European Convention on Human Rights. In doing so, it strengthens the Belfast Agreement 1998’s requirement of incorporation of the Convention into Northern Ireland law.

Clause 13

LORD CRAIG OF RADLEY
 LORD BOYCE

34 Page 8, line 36, at end insert—

- “() In particular, regulations may amend the Armed Forces Act 2006 for the purpose of consolidating the provisions of Part 1 and this section in that Act.”

After Clause 14

LORD LANCASTER OF KIMBOLTON

35 Insert the following new Clause—

“Channel Islands, Isle of Man and British overseas territories

Her Majesty may by Order in Council provide for any of the provisions of this Act (except sections 8, 9 and 10 and Schedules 2, 3 and 4) to extend, with or without modifications, to any of the Channel Islands, the Isle of Man or any British overseas territory.”

Member’s explanatory statement

This amendment seeks to extend the territorial extent of the Bill to the Isle of Man, Channel Islands and Overseas Territories.

Schedule 1

LORD HOPE OF CRAIGHEAD
LORD ROBERTSON OF PORT ELLEN
LORD TUNNICLIFFE
BARONESS SMITH OF NEWNHAM

- 36 Page 11, line 15, at end insert –
“1A An offence under section 134 of the Criminal Justice Act 1988 (torture).”

LORD TUNNICLIFFE
LORD DUBS
LORD HOPE OF CRAIGHEAD

- 37 Page 12, line 39, at end insert –
“(za) an act of genocide under article 6,”
- 38 Page 12, line 40, leave out sub-sub-paragraph (a) and insert –
“(a) a crime against humanity within article 7.1(a)-(k), or”
- 39 Page 12, line 41, leave out sub-sub-paragraph (b) and insert –
“(b) a war crime within article 8.2(a) (which relates to grave breaches of the Geneva Conventions).”
- 40 Page 13, line 13, at end insert –
“(za) an act of genocide under article 6,”
- 41 Page 13, line 14, leave out sub-sub-paragraph (a) and insert –
“(a) a crime against humanity within article 7.1(a)-(k), or”
- 42 Page 13, line 15, leave out sub-sub-paragraph (b) and insert –
“(b) a war crime within article 8.2(a) (which relates to grave breaches of the Geneva Conventions).”
- 43 Page 14, line 7, at end insert –
“(za) an act of genocide under article 6,”
- 44 Page 14, line 8, leave out sub-sub-paragraph (a) and insert –
“(a) a crime against humanity within article 7.1(a)-(k), or”
- 45 Page 14, line 9, leave out sub-sub-paragraph (b) and insert –
“(b) a war crime within article 8.2(a) (which relates to grave breaches of the Geneva Conventions).”

Schedule 2

LORD FALCONER OF THOROTON

- 46 Page 16, line 2, at beginning insert “Subject to subsection (1ZD),”

Member's explanatory statement

This amendment ensures that a court can disapply the civil longstop if the same equipment or cause of negligence results in injury or death in overseas operations as in the UK.

BARONESS SMITH OF NEWNHAM
LORD THOMAS OF GRESFORD

- 47 Page 16, line 5, leave out “section 11 relevant date (see subsection (7))” and insert “date of knowledge”

Member's explanatory statement

This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run in England and Wales so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for personal injury arising out of overseas operations.

- 48 Page 16, line 5, at end insert—
- “(1ZAA) The court may disapply the rule in subsection (1ZA) where it appears to the court that it would be equitable to do so having regard to the reasons for the delay, in particular whether the delay resulted from—
- (a) the nature of the injuries,
 - (b) logistical difficulties in securing the services required to bring a claim, so long as the claimant was making all reasonable attempts to secure such services, or
 - (c) any other reasons outside the control of the person bringing the claim.”

Member's explanatory statement

This amendment introduces a discretion for the courts of England and Wales to allow a civil claim for personal injury arising out of overseas operations to proceed in prescribed circumstances so as to account for legitimate and explicable delays commonly experienced by persons bringing such claims.

LORD FALCONER OF THOROTON

- 49 Page 16, line 24, at end insert—
- “(1ZD) The court may, however, disapply any provision of section 11 in its application to an overseas armed forces action even though the action was brought after the expiration of the period of six years from the section 11 relevant date if it appears to the court that it would be equitable to do so because the incident or incidents to which the action relates could reasonably have occurred in the United Kingdom and, if it or they had done so, the limit of six years would not apply.”

Member's explanatory statement

This amendment ensures that a court can disapply the civil longstop if the same equipment or cause of negligence results in injury or death in overseas operations as in the UK.

BARONESS SMITH OF NEWNHAM
LORD THOMAS OF GRESFORD

- 50 Page 16, line 30, leave out from “the” to end of line 32 and insert “date of knowledge”

Member's explanatory statement

This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run in England and Wales so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for wrongful death arising out of overseas operations.

LORD FALCONER OF THOROTON

- 51 Page 16, line 32, at end insert “, unless it appears to the court that it would be equitable to do so because the incident or incidents to which the action relates could reasonably have occurred in the United Kingdom and, if it or they had done so, the limit of six years would not apply.”

Member's explanatory statement

This amendment ensures that a court can disapply the civil longstop if the same equipment or cause of negligence results in injury or death in overseas operations as in the UK.

BARONESS SMITH OF NEWNHAM
LORD THOMAS OF GRESFORD

- 52 Page 16, line 36, leave out “section 12 relevant date (see subsection (7))” and insert “date of knowledge”

Member's explanatory statement

This amendment, in partnership with others, changes the relevant date from which the six-year longstop starts to run in England and Wales so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for wrongful death arising out of overseas operations.

LORD FALCONER OF THOROTON

- 53 Page 16, line 36, at end insert “, unless it appears to the court that it would be equitable to do so because the incident or incidents to which the action relates could reasonably have occurred in the United Kingdom and, if it or they had done so, the limit of six years would not apply.”

Member's explanatory statement

This amendment ensures that a court can disapply the civil longstop if the same equipment or cause of negligence results in injury or death in overseas operations as in the UK.

BARONESS SMITH OF NEWNHAM
LORD THOMAS OF GRESFORD

- 54 Page 16, line 36, at end insert –
- “() The court may disapply the rules in subsections (2A) and (2B) where it appears to the court that it would be equitable to do so having regard to the reasons for the delay, in particular whether the delay resulted from –
 - (a) the nature of the injuries,
 - (b) logistical difficulties in securing the services required to bring a claim, so long as the claimant was making all reasonable attempts to secure such services, or
 - (c) any other reasons outside the control of the person bringing the claim.”

Member's explanatory statement

This amendment introduces a discretion for the courts of England and Wales to allow a civil claim for wrongful death arising out of overseas operations to proceed in prescribed circumstances so as to account for legitimate and explicable delays commonly experienced by persons bringing such claims.

55 Page 17, line 5, at end insert—

“(c) the court must also have particular regard to the importance of the proceedings in securing the rights of the claimant.”

Member's explanatory statement

This amendment adds a further consideration to which the courts of England and Wales must have particular regard when determining whether to disapply the standard limitation period of three years so as to ensure that the claimant's interest in having their civil claim proceed is not illegitimately subordinated.

56 Page 17, line 35, leave out from beginning to end of line 5 on page 18 and insert—

““the date of knowledge” means the date on which the person bringing the proceedings first knew, or first ought to have known—

- (a) of the act complained of,
- (b) that it was an act of the Ministry of Defence or the Secretary of State for Defence,
- (c) of the manifestation of the injury resulting from that act which is the subject of the claim, and
- (d) that they were eligible to bring a claim against the Ministry of Defence or Secretary of State for Defence in the courts of the United Kingdom.”

Member's explanatory statement

This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run in England and Wales so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for personal injury and wrongful death arising out of overseas operations.

Schedule 3

BARONESS SMITH OF NEWNHAM
LORD THOMAS OF GRESFORD

57 Page 20, line 32, at end insert—

“(c) the importance of the proceedings in securing the rights of the claimant.”

Member's explanatory statement

This amendment adds a further consideration to which the courts of Scotland must have particular regard when determining whether to disapply the standard limitation period of three years so as to ensure that the claimant's interest in having their civil claim proceed is not subordinated.

- 58 Page 20, line 41, leave out “section 17 relevant date” and insert “date of knowledge (see subsection (13))”

Member’s explanatory statement

This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run in Scotland so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for personal injury arising out of overseas operations.

- 59 Page 21, line 2, leave out “section 18 relevant date” and insert “date of knowledge (see subsection (13))”

Member’s explanatory statement

This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run in Scotland so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for wrongful death arising out of overseas operations.

- 60 Page 21, line 7, leave out “section 17 relevant date” and insert “date of knowledge (see subsection (13))”

Member’s explanatory statement

This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run in Scotland so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for personal injury arising out of overseas operations.

- 61 Page 21, line 7, at end insert –
- “() The court may disapply the rules in subsections (5) to (7) where it appears to the court that it would be equitable to do so having regard to the reasons for the delay, in particular whether the delay resulted from –
- (a) the nature of the injuries,
 - (b) logistical difficulties in securing the services required to bring a claim, so long as the claimant was making all reasonable attempts to secure such services, or
 - (c) any other reasons outside the control of the person bringing the claim.”

Member’s explanatory statement

This amendment introduces a discretion for the courts of Scotland to allow a civil claim for personal injury or wrongful death arising out of overseas operations to proceed in prescribed circumstances so as to account for legitimate and explicable delays commonly experienced by persons bringing such claims.

- 62 Page 22, leave out lines 10 to 15 and insert –
- ““the date of knowledge” means the date on which the person bringing the proceedings first knew, or first ought to have known –
- (a) of the act complained of,

Schedule 3 - continued

- (b) that it was an act of the Ministry of Defence or the Secretary of State for Defence,
- (c) of the manifestation of the injury resulting from that act which is the subject of the claim, and
- (d) that they were eligible to bring a claim against the Ministry of Defence or Secretary of State for Defence in the courts of the United Kingdom.”

Member’s explanatory statement

This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run in Scotland so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for personal injury and wrongful death arising out of overseas operations.

Schedule 4

BARONESS SMITH OF NEWNHAM
LORD THOMAS OF GRESFORD

- 63 Page 24, line 5, leave out “Article 7 relevant date (see paragraph (8))” and insert “date of knowledge”

Member’s explanatory statement

This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run in Northern Ireland so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for personal injury arising out of overseas operations.

- 64 Page 24, line 5, at end insert—
- “() The court may disapply the rule in paragraph (1A) where it appears to the court that it would be equitable to do so having regard to the reasons for the delay, in particular whether the delay resulted from—
- (a) the nature of the injuries,
 - (b) logistical difficulties in securing the services required to bring a claim, so long as the claimant was making all reasonable attempts to secure such services, or
 - (c) any other reasons outside the control of the person bringing the claim.”

Member’s explanatory statement

This amendment introduces a discretion for the courts of Northern Ireland to allow a civil claim for personal injury or wrongful death arising out of overseas operations to proceed in prescribed circumstances so as to account for legitimate and explicable delays commonly experienced by persons bringing such claims.

- 65 Page 24, line 29, leave out from “the” to end of line 31 and insert “date of knowledge”

Member's explanatory statement

This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run in Northern Ireland so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for personal injury out of overseas operations.

- 66 Page 24, line 34, leave out “Article 9 relevant date (see paragraph (8))” and insert “date of knowledge”

Member's explanatory statement

This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run in Northern Ireland so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for wrongful death arising out of overseas operations.

- 67 Page 25, line 5, at end insert –
 “(c) the court must also have particular regard to the importance of the proceedings in securing the rights of the claimant.”

Member's explanatory statement

This amendment adds a further consideration to which the courts of Northern Ireland must have particular regard when determining whether to disapply the standard limitation period of three years so as to ensure that the claimant's interest in having their civil claim proceed is not subordinated.

- 68 Page 25, leave out lines 25 to 43 and insert –
 ““the date of knowledge” means the date on which the person bringing the proceedings first knew, or first ought to have known –
 (a) of the act complained of,
 (b) that it was an act of the Ministry of Defence or the Secretary of State for Defence,
 (c) of the manifestation of the injury resulting from that act which is the subject of the claim, and
 (d) that they were eligible to bring a claim against the Ministry of Defence or Secretary of State for Defence in the courts of the United Kingdom.”

Member's explanatory statement

This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run in Northern Ireland so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for personal injury and wrongful death arising out of overseas operations.

BARONESS RITCHIE OF DOWNPATRICK
 BARONESS JONES OF MOULSECOOMB
 LORD HAIN

- 69 Page 26, line 16, at end insert –
 “(8) After paragraph (9) insert –
 “(10) Nothing in this Article is to be construed in any manner that is non-compliant with the text of the Belfast Agreement 1998.””

Member's explanatory statement

This amendment, and the amendments after Clause 6 and to page 8, line 12 in the name of Baroness Ritchie of Downpatrick ensure that the bill cannot be interpreted in a way that undermines the Belfast Agreement 1998's requirement for the Government to complete incorporation into Northern Ireland law of the European Convention on Human Rights, with direct access to the courts, and remedies for breach of the Convention.

Overseas Operations (Service Personnel and Veterans) Bill

PROVISIONAL SECOND
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN COMMITTEE OF THE WHOLE HOUSE

8 March 2021
