

Overseas Operations (Service Personnel and Veterans) Bill

REVISED
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 11

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,

Clause 11 - continued

- (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 FAULKS
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—

After Clause 12 - continued

- (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;
 - (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
 - (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,”

Schedule 1 - continued

- 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,
 - (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,

Schedule 4 - 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 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.

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