

# Overseas Operations (Service Personnel and Veterans) Bill

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MARSHALLED  
LIST OF AMENDMENTS  
TO BE MOVED  
ON REPORT

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[Amendments marked ★ are new or have been altered]

Amendment  
No.

**Clause 2**

LORD FALCONER OF THOROTON  
LORD THOMAS OF GRESFORD  
LORD HOPE OF CRAIGHEAD

1 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.*

**Clause 5**

BARONESS RITCHIE OF DOWNPATRICK

2 Page 3, line 27, leave out paragraph (b)

***Member’s explanatory statement***

*This amendment is one of a series in the name of Baroness Ritchie designed to limit the extent of the bill insofar as it applies to the courts in Northern Ireland in order to remedy the incompatibility of the present bill with the provisions of the Belfast Agreement that require incorporation of the European Convention on Human Rights into Northern Irish law in a manner that ensures direct access to the courts and remedies for ECHR breaches.*

**Clause 6**

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

3 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
- (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.*

BARONESS RITCHIE OF DOWNPATRICK

4 Page 4, line 15, leave out “ , or of Northern Ireland,”

***Member’s explanatory statement***

*This amendment is one of a series in the name of Baroness Ritchie designed to limit the extent of the bill insofar as it applies to the courts in Northern Ireland in order to remedy the incompatibility of the present bill with the provisions of the Belfast Agreement that require incorporation of the European Convention on Human Rights into Northern Irish law in a manner that ensures direct access to the courts and remedies for ECHR breaches.*

**Clause 7**

BARONESS RITCHIE OF DOWNPATRICK

5 Page 5, line 3, leave out paragraph (d)

***Member’s explanatory statement***

*This amendment is one of a series in the name of Baroness Ritchie designed to limit the extent of the bill insofar as it applies to the courts in Northern Ireland in order to remedy the incompatibility of the present bill with the provisions of the Belfast Agreement that require incorporation of the European Convention on Human Rights into Northern Irish law in a manner that ensures direct access to the courts and remedies for ECHR breaches.*

**After Clause 7**

LORD THOMAS OF GRESFORD  
LORD FALCONER OF THOROTON  
LORD BOYCE  
LORD DANNATT

6 Insert the following new Clause—

**“Investigation of allegations related to overseas operations**

- (1) In deciding whether to commence criminal proceedings for allegations 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 allegations arising out of overseas operations is satisfied that there is sufficient evidence of criminal conduct to continue the investigation, 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 allegation 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 if it considers it unlikely that charges will be brought, or
  - (b) give appropriate advice and directions to the investigator about avenues of inquiry to pursue and not pursue, including—
    - (i) possible defendants to consider,
    - (ii) possible explanations to consider for the circumstances giving rise to the investigation, and
    - (iii) overseas inquiries and seeking the help of overseas jurisdictions.
- (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 in 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 allegations may not be further investigated or reinvestigated without the direction of the Director of Service Prosecutions acting on the ground that there is new compelling evidence or information which might—
  - (a) materially affect the previous decision, and
  - (b) lead to a charge being made.
- (8) The Judge Advocate General may give Practice Directions as he or she deems appropriate for the investigation of allegations arising out of overseas operations.
- (9) For the purposes of this section—

**After Clause 7 - continued**

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

“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.”

**Clause 8**

LORD THOMAS OF GRESFORD  
BARONESS SMITH OF NEWNHAM

7 Leave out Clause 8

**Clause 9**

LORD THOMAS OF GRESFORD  
BARONESS SMITH OF NEWNHAM

8 Leave out Clause 9

**Clause 10**

BARONESS RITCHIE OF DOWNPATRICK

9 Leave out Clause 10

***Member’s explanatory statement***

*This amendment is one of a series in the name of Baroness Ritchie designed to limit the extent of the bill insofar as it applies to the courts in Northern Ireland in order to remedy the incompatibility of the present bill with the provisions of the Belfast Agreement that require incorporation of the European Convention on Human Rights into Northern Irish law in a manner that ensures direct access to the courts and remedies for ECHR breaches.*

**Clause 11**

BARONESS RITCHIE OF DOWNPATRICK

10 Page 8, line 7, at end insert—

“(10) The rule referred to in this section does not apply before the courts of Northern Ireland.”

***Member’s explanatory statement***

*This amendment is one of a series in the name of Baroness Ritchie designed to limit the extent of the bill insofar as it applies to the courts in Northern Ireland in order to remedy the incompatibility of the present bill with the provisions of the Belfast Agreement that require incorporation of the European Convention on Human Rights into Northern Irish law in a manner that ensures direct access to the courts and remedies for ECHR breaches.*

**Clause 12**

LORD HOPE OF CRAIGHEAD  
BARONESS SMITH OF NEWNHAM  
LORD FALCONER OF THOROTON  
LORD CRAIG OF RADLEY

- 11 Leave out Clause 12

**After Clause 12**

LORD TUNNICLIFFE

- 12 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 must 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 FALCONER OF THOROTON  
LORD STIRRUP  
LORD BOYCE  
LORD THOMAS OF GRESFORD

- 13 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 DANNATT  
LORD STIRRUP  
LORD BOYCE  
LORD TUNNICLIFFE

14 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 update, and
  - (b) include the update in the Armed Forces Covenant annual report when it is laid before Parliament.
- (4) The duty of care update is a review about the continuous process 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 update 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).

**After Clause 12 - continued**

- (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 litigation arising from overseas operations, and to include a duty of care update in the Armed Forces Covenant Annual Report.*

**Clause 13**

BARONESS RITCHIE OF DOWNPATRICK

- 15 Page 9, line 11, leave out paragraph (c)

**Member’s explanatory statement**

*This amendment is one of a series in the name of Baroness Ritchie designed to limit the extent of the bill insofar as it applies to the courts in Northern Ireland in order to remedy the incompatibility of the present bill with the provisions of the Belfast Agreement that require incorporation of the European Convention on Human Rights into Northern Irish law in a manner that ensures direct access to the courts and remedies for ECHR breaches.*

**Clause 14**

BARONESS RITCHIE OF DOWNPATRICK

- 16 Page 9, line 13, leave out “, Scotland and Northern Ireland” and insert “and Scotland”

**Member’s explanatory statement**

*This amendment is one of a series in the name of Baroness Ritchie designed to limit the extent of the bill insofar as it applies to the courts in Northern Ireland in order to remedy the incompatibility of the present bill with the provisions of the Belfast Agreement that require incorporation of the European Convention on Human Rights into Northern Irish law in a manner that ensures direct access to the courts and remedies for ECHR breaches.*

- 17 Page 9, line 17, leave out subsection (4)

**Member’s explanatory statement**

*This amendment is one of a series in the name of Baroness Ritchie designed to limit the extent of the bill insofar as it applies to the courts in Northern Ireland in order to remedy the incompatibility of the present bill with the provisions of the Belfast Agreement that require incorporation of the European Convention on Human Rights into Northern Irish law in a manner that ensures direct access to the courts and remedies for ECHR breaches.*

**Clause 15**

BARONESS HOEY  
LORD LEXDEN

18★ Page 9, line 21, at end insert —

“( ) Regulations under subsection (2) may not be made until a Minister of the Crown has published a report on progress made towards equal treatment of veterans of operations in Northern Ireland since 1969 and those who served overseas in respect of the matters covered by this Act.”

BARONESS RITCHIE OF DOWNPATRICK

19 Page 9, line 36, leave out subsection (10)

***Member’s explanatory statement***

*This amendment is one of a series in the name of Baroness Ritchie designed to limit the extent of the bill insofar as it applies to the courts in Northern Ireland in order to remedy the incompatibility of the present bill with the provisions of the Belfast Agreement that require incorporation of the European Convention on Human Rights into Northern Irish law in a manner that ensures direct access to the courts and remedies for ECHR breaches.*

**Schedule 1**

BARONESS GOLDIE

20 Page 12, line 7, leave out “this Part of this Schedule” and insert “paragraphs 2 to 13”

***Member’s explanatory statement***

*This amendment clarifies the scope of paragraph 14.*

BARONESS RITCHIE OF DOWNPATRICK

21 Page 12, line 34, leave out “or Northern Ireland”

***Member’s explanatory statement***

*This amendment is one of a series in the name of Baroness Ritchie designed to limit the extent of the bill insofar as it applies to the courts in Northern Ireland in order to remedy the incompatibility of the present bill with the provisions of the Belfast Agreement that require incorporation of the European Convention on Human Rights into Northern Irish law in a manner that ensures direct access to the courts and remedies for ECHR breaches.*

22 Page 13, line 12, leave out paragraphs 20 to 22

***Member’s explanatory statement***

*This amendment is one of a series in the name of Baroness Ritchie designed to limit the extent of the bill insofar as it applies to the courts in Northern Ireland in order to remedy the incompatibility of the present bill with the provisions of the Belfast Agreement that require incorporation of the European Convention on Human Rights into Northern Irish law in a manner that ensures direct access to the courts and remedies for ECHR breaches.*

BARONESS GOLDIE

23 Page 13, line 28, leave out paragraph 23



**Member's explanatory statement**

*This amendment corrects an error in the Bill. The provision omitted by this amendment is unnecessary because section 65 of the International Criminal Court Act 2001 does not establish an offence separate from those already mentioned in paragraphs 17 to 22 of Schedule 1 to the Bill.*

BARONESS RITCHIE OF DOWNPATRICK

24 Page 13, line 40, leave out paragraph (b)

**Member's explanatory statement**

*This amendment is one of a series in the name of Baroness Ritchie designed to limit the extent of the bill insofar as it applies to the courts in Northern Ireland in order to remedy the incompatibility of the present bill with the provisions of the Belfast Agreement that require incorporation of the European Convention on Human Rights into Northern Irish law in a manner that ensures direct access to the courts and remedies for ECHR breaches.*

BARONESS GOLDIE

25 Page 14, line 24, leave out paragraph 30

**Member's explanatory statement**

*This amendment corrects an error in the Bill. The provision omitted by this amendment is unnecessary because section 5 of the International Criminal Court (Scotland) Act 2001 does not establish an offence separate from those already mentioned in paragraphs 27 to 29 of Schedule 1.*

BARONESS RITCHIE OF DOWNPATRICK

26 Page 14, line 40, leave out "or Northern Ireland"

**Member's explanatory statement**

*This amendment is one of a series in the name of Baroness Ritchie designed to limit the extent of the bill insofar as it applies to the courts in Northern Ireland in order to remedy the incompatibility of the present bill with the provisions of the Belfast Agreement that require incorporation of the European Convention on Human Rights into Northern Irish law in a manner that ensures direct access to the courts and remedies for ECHR breaches.*

27 Page 15, line 2, leave out "or Northern Ireland"

**Member's explanatory statement**

*This amendment is one of a series in the name of Baroness Ritchie designed to limit the extent of the bill insofar as it applies to the courts in Northern Ireland in order to remedy the incompatibility of the present bill with the provisions of the Belfast Agreement that require incorporation of the European Convention on Human Rights into Northern Irish law in a manner that ensures direct access to the courts and remedies for ECHR breaches.*

28 Page 15, line 6, leave out paragraph 33

**Member's explanatory statement**

*This amendment is one of a series in the name of Baroness Ritchie designed to limit the extent of the bill insofar as it applies to the courts in Northern Ireland in order to remedy the incompatibility of the present bill with the provisions of the Belfast Agreement that require incorporation of the European Convention on Human Rights into Northern Irish law in a manner that ensures direct access to the courts and remedies for ECHR breaches.*

29 Page 15, line 26, leave out “or Northern Ireland”

**Member's explanatory statement**

*This amendment is one of a series in the name of Baroness Ritchie designed to limit the extent of the bill insofar as it applies to the courts in Northern Ireland in order to remedy the incompatibility of the present bill with the provisions of the Belfast Agreement that require incorporation of the European Convention on Human Rights into Northern Irish law in a manner that ensures direct access to the courts and remedies for ECHR breaches.*

**Schedule 4****BARONESS RITCHIE OF DOWNPATRICK**

30 Leave out Schedule 4

**Member's explanatory statement**

*This amendment is one of a series in the name of Baroness Ritchie designed to limit the extent of the bill insofar as it applies to the courts in Northern Ireland in order to remedy the incompatibility of the present bill with the provisions of the Belfast Agreement that require incorporation of the European Convention on Human Rights into Northern Irish law in a manner that ensures direct access to the courts and remedies for ECHR breaches.*

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*8 April 2021*

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