

# Overseas Operations (Service Personnel and Veterans) Bill

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## COMMONS DISAGREEMENT, AMENDMENTS IN LIEU, REASONS, AND AMENDMENT CONSEQUENTIAL UPON A LORDS AMENDMENT

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[The page and line references are to HL Bill 147, the bill as first printed for the Lords]

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### Clause 6

#### LORDS AMENDMENT 1

- 1** 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”).”

#### COMMONS DISAGREEMENT AND AMENDMENTS IN LIEU

*The Commons disagree to Lords Amendment 1 but propose Amendments 1A to 1Q in lieu.*

- 1A** Page 4, line 19, at end insert—
- “(5A) An offence is not a “relevant offence” if it is an excluded offence by virtue of Part 3A of Schedule 1.”
- 1B** Page 4, line 20, leave out subsections (6) to (8)

#### Schedule 1

- 1C** Page 11, line 9, at end insert “, 31A and 31B”
- 1D** Page 11, line 18, at end insert—
- “3A An offence under section 1(1) of the Genocide Act 1969 (genocide).”
- 1E** Page 12, line 7, after “Schedule” insert “or paragraphs 31A and 31B”

- 1F** Page 12, line 39, leave out “of committing—” and insert “on account of an act constituting—  
(za) genocide as defined in article 6,”
- 1G** Page 12, line 40, leave out “within article 7.1(g)” and insert “as defined in article 7”
- 1H** Page 12, line 40, at end insert—  
“(aa) torture within—  
(i) article 8.2(a)(ii)-1 (which relates to grave breaches of the Geneva Conventions of 12 August 1949), or  
(ii) article 8.2(c)(i)-4 (which relates to armed conflicts not of an international character), or”
- 1J** Page 13, line 13, leave out “of committing—” and insert “on account of an act constituting—  
(za) genocide as defined in article 6,”
- 1K** Page 13, line 14, leave out “within article 7.1(g)” and insert “as defined in article 7”
- 1L** Page 13, line 14, at end insert—  
“(aa) torture within—  
(i) article 8.2(a)(ii)-1 (which relates to grave breaches of the Geneva Conventions of 12 August 1949), or  
(ii) article 8.2(c)(i)-4 (which relates to armed conflicts not of an international character), or”
- 1M** Page 14, line 6, leave out “of committing—” and insert “on account of an act constituting—  
(za) genocide as defined in article 6,”
- 1N** Page 14, line 8, leave out “within article 7.1(g)” and insert “as defined in article 7”
- 1P** Page 14, line 8, at end insert—  
“(aa) torture within—  
(i) article 8.2(a)(ii)-1 (which relates to grave breaches of the Geneva Conventions of 12 August 1949), or  
(ii) article 8.2(c)(i)-4 (which relates to armed conflicts not of an international character), or”
- 1Q** Page 14, line 34, at end insert—

“PART 3A

OTHER OFFENCES OF TORTURE

- 31A An offence under section 134 of the Criminal Justice Act 1988 (torture) is an excluded offence.
- 31B (1) An offence under section 1(1) of the Geneva Conventions Act 1957 on account of the commission (or of aiding, abetting or procuring the commission) of a relevant grave breach involving torture is an excluded offence.
- (2) In sub-paragraph (1) “relevant grave breach involving torture” means—  
(a) a grave breach of a scheduled convention involving torture, or

- (b) a grave breach of the first protocol resulting, under paragraph 2 of Article 85 of the first protocol, from a grave breach within paragraph (a).
- (3) In sub-paragraph (2) “grave breach of a scheduled convention” and “grave breach of the first protocol” have the same meaning as in section 1(1) of the Geneva Conventions Act 1957.”

#### After Clause 7

#### LORDS AMENDMENT 2

2 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 –  
 “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;  
 “investigator” means a member of the service police or a civil police force.”

#### COMMONS REASON

*The Commons disagree to Lords Amendment 2 for the following Reason –*

- 2A** *Because it would not be appropriate to restrict the investigation of alleged offences as proposed in the Lords Amendment.*

#### Clause 12

#### LORDS AMENDMENT 3

- 3** Leave out Clause 12

#### COMMONS AMENDMENT CONSEQUENTIAL UPON THE LORDS AMENDMENT

*The Commons propose the following Amendment to the Bill consequential upon the Lords Amendment –*

- 3A** Title, line 1, leave out from “proceedings” to “in” in line 2

#### After Clause 12

#### LORDS AMENDMENT 4

- 4** 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.”

#### COMMONS REASON

*The Commons disagree to Lords Amendment 4 for the following Reason –*

- 4A** *Because the limitation periods proposed in Part 2 of the Bill allow reasonable time for the bringing of claims, and it would be incompatible with the European Convention on Human Rights for different periods to apply in respect of different types of claimant.*

## LORDS AMENDMENT 5

5 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).
- (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.”

COMMONS REASON

*The Commons disagree to Lords Amendment 5 for the following Reason –*

- 5A** *Because it is not necessary, and would not be practicable, to define a legally binding standard of care in relation to the matters referred to in the Lords Amendment.*



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*21 April 2021*

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