

# OVERSEAS OPERATIONS (SERVICE PERSONNEL AND VETERANS) BILL

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Overseas Operations (Service Personnel and Veterans) Bill as introduced in the House of Commons on 18 March 2020 (Bill 117).

- These Explanatory Notes have been prepared by the Ministry of Defence (MOD) in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice, provide background information on the development of policy, and provide additional information on how the Bill will affect existing legislation.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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## Overview of the Bill

- 1 This Bill aims to provide greater certainty for Service personnel and veterans in relation to vexatious claims and prosecution of historical events, that occurred in the uniquely complex environment of armed conflict overseas.
- 2 This Bill seeks to address issues that have partly arisen from the unforeseen expansion of the European Convention on Human Rights (ECHR) to cover overseas military operations where the UK had assumed that international humanitarian law had primacy.
- 3 It also seeks to raise the bar for prosecutions in relation to historical incidents that occur in the context of overseas operations, requiring prosecutors to have proper regard to the uniquely challenging context.
- 4 The measures aim to provide greater certainty by reassuring Service personnel and veterans that prosecution decisions must take into account factors as specified in the Bill and that

prosecutions will only go ahead in exceptional cases.

5 The Overseas Operations (Service Personnel and Veterans) Bill includes the following:

- a. A statutory presumption against prosecution, which stipulates that once five years have elapsed from the date of an incident, it is to be exceptional for a prosecutor to prosecute a service person or veteran for an offence committed during an overseas operation. This Bill will not prevent prosecutions, but will require prosecutors, when deciding whether to prosecute, to give particular weight to: the adverse effects that the prevailing conditions during that overseas operation are likely to have had on the ability of that service person or veteran to make sound judgements or exercise self-control or on their mental health; and, in cases where there has been a previous investigation and no compelling new evidence has emerged, the public interest in finality. Any prosecutor in England and Wales, and Northern Ireland

who decides that a case should proceed to trial (having taken account of these conditions) must obtain the consent of the Attorney General, or the Advocate General for Northern Ireland, before commencing a prosecution.

- b. Changes to time limits for bringing claims in tort for personal injury or death, and claims for Human Rights Act 1998 (HRA) violations, that occur in the context of overseas military operations.

*Tort claims for personal injury and death*

This Bill amends section 33 of the Limitation Act 1980 (LA), which confers on the court qualified discretion to extend the normal time limit of three years for personal injury and death claims. There is currently no limit to this discretion, which only requires the court to satisfy itself that it would be equitable to extend the time limit beyond the three-year period. In addition to this general principle, the LA sets out six factors to which the court must have particular regard:

- the length of, and reasons for, the delay in bringing the claim;
- the impact of that delay on the cogency of the evidence;
- the conduct of the defendant after the cause of action arose;
- the duration of any disability of the plaintiff arising after the date the cause of action arose;
- whether the plaintiff acted promptly and reasonably once he/she became aware of a cause of action; and,
- the steps taken by the plaintiff to obtain medical, legal or expert advice and the nature of advice he/she may have received.

The Bill sets out additional factors that the court should have particular regard to in proceedings concerning overseas operations. The Bill also provides that the limitation period cannot be extended beyond six years.

The Bill makes equivalent changes to the Prescription and Limitation (Scotland) Act 1973 and to the Limitation (Northern Ireland) Order 1989/1339.

The Bill also makes changes to the Foreign Limitation Periods Act 1984 (and equivalent Scottish and Northern Irish legislation) in respect of tort claims brought in accordance with the principles of private international law. These amendments will mean that the court will have to disregard foreign limitation periods where they exceed six years.

### *HRA claims*

The same principles will apply to HRA claims. To ensure the court takes proper account of the operational context, this Bill modifies the HRA to give the court only qualified discretion to extend the ordinary limitation period and to remove the court's ability to allow any claim brought in relation to an HRA violation arising during an overseas military operation if more than six

years have elapsed.

- c. A requirement to consider derogation, as permitted by European Convention on Human Rights (ECHR). This provision ensures that all future governments are compelled to consider derogating from ECHR for the purpose of a specific military operation – so that operational effectiveness can be maintained by, for example, enabling detention where appropriate for imperative reasons of security. This Bill will not change the processes that must be followed if the Government concludes that the case for derogation is made; section 16 HRA provides that any derogation order made under section 14 HRA will cease to have effect unless it is approved by both Houses of Parliament. Those provisions will be unaffected by this Bill.

## **Policy background**

6 This Bill represents one strand of the

Government's approach to addressing the problem of "Lawfare" (the judicialisation of armed conflict) and to ending the cycle of reinvestigation of historic events. The Government is intending to introduce separate legislation covering operations in Northern Ireland.

- 7 International humanitarian law was developed to regulate the conduct of combat operations and recognises the inherent risks and dangers both for Service personnel and for the local population. It imposes obligations that are realistic and reasonable to expect the Armed Forces to meet even when operating in hostile conditions overseas. However, judgements in Strasbourg and the UK's domestic courts in relation to operations in Iraq and Afghanistan confirmed the applicability of ECHR to overseas military operations, and the actions of the MOD and UK Service personnel.
- 8 Operations in Iraq in 2003-2009 (Operation Telic) and Afghanistan in 2002-2017 (Operation Herrick) gave rise to an unprecedented number

of legal claims for damages and non-compliance with the UK's obligations under the ECHR. MOD faced approximately 1,400 judicial review claims and over 900 civil claims for compensation arising from the 2003-09 operations in Iraq, and around 100 claims arising from operations in Afghanistan. In some cases, the courts found that the UK's legal obligations were breached: they ruled that detention processes were flawed, and that some practices which constituted inhuman or degrading treatment were prevalent.

9 There were also instances of criminal behaviour, where individuals were prosecuted for serious criminal offences. Nothing in this Bill will stop those guilty of committing serious criminal acts from being prosecuted.

10 UK Service personnel and veterans have had to endure a wave of vexatious claims – including those that were ultimately discredited, or have been brought in multiple jurisdictions, or were found to have been encouraged by lawyers pursuing financial gain – that has created an industry of litigation. Ultimately, such behaviour

resulted in Phil Shiner of Public Interest Lawyers being struck off for serious breaches of the solicitors' code of conduct.

11 As announced in the then Defence Secretary's Written Ministerial Statements of 21 May and 22 July 2019, a 12-week public consultation on proposed legal protections measures for Service personnel and veterans who served in operations outside the UK was launched on 22 July 2019. The consultation set out three main proposals which would be beneficial to Armed Forces personnel and veterans: a statutory presumption against prosecution, a new partial defence to murder, and a time limit on civil litigation claims for personal injury/death. There were over 4,200 responses to the consultation. These responses helped to shape the measures in this Bill.

## **Territorial extent and application**

12 The Bill will extend to England and Wales, Scotland and Northern Ireland. The effects of the provisions are substantively the same throughout the UK, but as amendments are needed to different pieces of legislation in the different nations, some provisions of the Bill apply to England and Wales only, some to Scotland, and others to Northern Ireland.

13 The matters to which the provisions of the Bill relate are not within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly because they relate to the Armed Forces, and no legislative consent motion is being sought in relation to any provision of the Bill.

## **Commentary on provisions of Bill**

### **Part 1: Restrictions on prosecution for certain offences**

#### **Presumption against prosecution**

##### **Clause 1: Prosecutorial decision regarding alleged conduct during overseas operations**

14 This clause sets out when the statutory presumption against prosecution (clause 2), and the requirement to give particular weight to specified factors (clause 3), will apply to decisions whether or not to prosecute in criminal cases. The effect of the clause is such that the measures at clauses 2 and 3 also apply to decisions as to whether or not private prosecutions should be allowed to continue.

- 15 This clause sets out:
- a. which groups will be covered by clauses 2 and 3 of the Bill: the Armed Forces (reserves and regulars), and members of British Overseas Territory Forces (BOTF) when operating with UK Armed Forces;
  - b. that the measures only apply to events that

took place more than 5 years ago, with the start point for calculating this time period being the date that the alleged conduct occurred. Where an alleged offence continued over more than one day, the start point for the 5-year time period will be the last day on which the alleged conduct occurred;

- c. that the measures at clauses 2 and 3 only apply to these groups when they are deployed on relevant overseas operations; and
- d. what is meant by "relevant overseas operations".

## Clause 2: Presumption against prosecution

16 This clause explains the effect of the presumption: that it is to be exceptional for a prosecutor to determine that proceedings should be brought in relation to offences committed by members of the Armed Forces when deployed on operations outside of the British Islands more than five years ago.

## Clause 3: Matters to be given particular weight

17 This clause sets out the specific matters to which a prosecutor must give particular weight

when deciding whether or not to bring proceedings in a particular case. These matters include:

- a. Subsection (2)(a) - the demands of overseas military operations, and the adverse effects that deployment on such operations can have on Service personnel, including on their capacity to make sound decisions and their mental health (this is further expanded in 3(3) and 3(4)). This clause highlights the marked difference in the circumstances surrounding an alleged offence committed on operations overseas, compared with a situation where the alleged criminal conduct occurs in the domestic civilian setting. It seeks to ensure that full recognition is given to these differences when prosecutors make decisions on whether to bring proceedings.
- b. Subsection (2)(b) – applies to the situation where there has been a previous investigation or investigations in relation to alleged criminal conduct and no compelling new evidence has arisen since any such

investigation(s). The clause is aimed at addressing concerns over the impact on personnel of repeat investigations and the threat of prosecution long after the events in question, in particular where there is no compelling new evidence to be considered. It highlights the public interest in these cases coming to a timely and final resolution. Where there is compelling new evidence, the prosecutor could determine that it would be appropriate to proceed to prosecution.

- 18 Giving weight to these matters may reduce the culpability of the accused individual and move the balance of decision-making by the prosecutor in favour of not prosecuting.

#### Clause 4: Section 3: supplementary

- 19 This clause explains what is meant by "relevant previous investigation" and "new" evidence.

### Consent to prosecution

#### Clause 5: Requirement of consent to prosecute

- 20 This clause sets out the requirement that if a

prosecutor determines that, notwithstanding the presumption against prosecution (at clause 2) and the requirement to give particular weight to specified matters (at clause 3), it is appropriate to prosecute a current or former member of the Armed Forces in relation to an alleged offence committed on overseas operations more than 5 years ago, the consent of the Attorney General for England and Wales, or the Advocate General for Northern Ireland, must be obtained before a prosecution can proceed. The clause does not extend to Scotland given that all criminal prosecution decisions in Scotland are taken by or on behalf of the Lord Advocate in the public interest. This is reflected in the Scotland Act 1998 which upholds the constitutional role of the Lord Advocate as the head of the systems of criminal prosecution and investigation of deaths in Scotland.

### Clause 6: "Relevant offence"

21 The definition of a "relevant offence" includes service offences under section 42 of the Armed Forces Act 2006 and all criminal

offences except those that are specifically excluded by virtue of Schedule 1 (i.e. sexual offences).

22 Any alleged offences committed by the groups identified at clause 1 against a member of the Armed Forces (including BOTF), a Crown Servant or a defence contractor will not constitute a relevant offence.

### Clause 7: General interpretation etc

23 This clause provides definitions and supplementary explanations for terminology appearing in clauses 1 to 7. In particular:

- a. Subsection (1) provides that for murder or any other offence that causes death, where the victim's death occurred after the date of the injury, the 5-year time period will be counted from the day of the alleged conduct (rather than from the date of death).
- b. Subsection (2) explains what is covered by the term "the British Islands".
- c. Subsection (3) defines "relevant prosecutors"; namely, the Director of Service Prosecutions,

together with the public prosecutors in England & Wales, Scotland and Northern Ireland.

d. Subsection (4) defines a number of other terms used in this Part. In particular, it identifies the investigating authorities.

## **Part 2: Limitation Periods and Human Rights**

### **Limitation**

#### **Clause 8: Restrictions on time limits to bring actions: England and Wales**

24 Subsection (1) introduces Schedule 2, Part 1 which amends the rules governing the court's discretion to disapply the three-year time limit for bringing claims for personal injuries and deaths as set out in the Limitation Act 1980 (LA); it provides that the limitation period cannot be extended beyond six years, and specifies additional factors to which the court must have regard when exercising its discretion. These changes apply only to claims for personal injuries or deaths sustained in the course of overseas operations.

25 Subsection (3) explains that Part 2 of

Schedule 2 amends the Foreign Limitation Periods Act 1984. These changes ensure that the law on foreign limitation periods is consistent with the amendments in Part 1 of Schedule 2.

### Clause 9: Restrictions on time limits to bring actions: Scotland

26 Subsection (1) introduces Schedule 3, Part 1 which amends the rules governing the court's discretion to override the three-year time limit for bringing claims for personal injuries and deaths as set out in the Prescription and Limitation (Scotland) Act 1973; it provides that the limitation period cannot be extended beyond six years, and specifies factors to which the court must have regard when exercising its discretion. These changes apply only to claims for personal injuries or deaths sustained in the course of overseas operations.

27 Subsection (2) explains that Part 2 of Schedule 3 amends the Prescription and Limitation (Scotland) Act 1973 to ensure that the law on foreign limitation periods is consistent with the amendments in Part 1 of Schedule 3.

## Clause 10: Restrictions on time limits to bring actions: Northern Ireland

28 Subsection (1) introduces Schedule 4, Part 1 which amends the rules governing the court's discretion to disapply the three-year time limit for bringing claims for personal injuries and deaths as set out in the Limitation (Northern Ireland) Order 1989/1339; it provides that the limitation period cannot be extended beyond six years, and specifies additional factors to which the court must have regard when exercising its discretion. These changes apply only to claims for personal injuries or deaths sustained in the course of overseas operations.

29 Subsection (3) explains that Part 2 of Schedule 4 amends the Foreign Limitation Periods (Northern Ireland) Order 1985/754. These changes ensure that the law on foreign limitation periods is consistent with the amendments in Part 1 of Schedule 4.

## Clause 11: Court's discretion to extend time in certain Human Rights Act proceedings

30 This clause amends the rules governing the

court's discretion to extend the one-year time limit for bringing claims under the HRA. These changes apply only to proceedings in connection with overseas operations.

31 Subsection (2) inserts a new section 7A into the HRA.

32 Section 7A(1) specifies that a court's exercise of discretion is subject to section 7A(2) and (4).

a. Section 7A(2) sets out certain factors to which the court must have particular regard, when deciding whether to allow a claim outside the normal time limit. These factors are intended to ensure that the court takes proper account of the operational context (as defined in section 7A(3)), including the likely impact of proceedings on the mental health of the Service personnel or veterans involved.

b. Section 7A(4) imposes a rule that claims cannot be brought more than six years after the act complained of occurred, or more than one year after the date of knowledge (as defined in section 7A(5)) if later.

- 33 Section 7A(6) establishes the scope of section 7A; it applies only to claims brought against the Ministry of Defence or Secretary of State for Defence in connection with overseas operations (as defined in section 7A(7)). Proceedings will not be “in connection with” overseas operations if they relate to preparatory work, e.g. training in preparation for overseas operations.
- 34 Sections 7A(8) and (7A)(9) define “the British Islands” and “Her Majesty’s forces”.
- 35 Subsection (3) specifies that new section 7A applies to any such claim that is commenced after that section comes into force. Claims that have been commenced before new section 7A comes into force are unaffected by these amendments.

## **Duty to consider derogation**

### **Clause 12: Duty to consider derogation from Convention**

- 36 This inserts a new section 14A into the HRA, and imposes upon the Secretary of State a duty to consider derogation from the ECHR under

certain circumstances.

37 Section 14A(1) sets out the nature of the duty and the circumstances under which it arises.

38 The duty arises only in relation to overseas operations (as defined in section 14A(2)) that the Secretary of State considers meet a minimum threshold: the operation must be “significant”. This is intended to avoid imposing a duty in relation to any operations that manifestly would not meet the criteria for derogation set out in Article 15 of the Convention.

39 The duty is an ongoing one, requiring the Secretary of State to keep under review throughout such operations whether a derogation would be appropriate. This reflects the nature of operations, which may change or evolve over time.

40 Discretion rests with the Secretary of State as to whether the two qualifying conditions (the significance of the operation, and the appropriateness of derogation) are met. If the Secretary of State decides that it would be

appropriate to derogate in relation to a particular overseas operation, section 14 of the HRA would apply.

### **Part 3: General**

#### **Clause 13: Power to make consequential provision**

41 This clause provides the Secretary of State and the Lord Chancellor with the power to make consequential amendments.

#### **Clause 14: Extent**

42 This clause sets out the territorial extent of the Bill. It extends to England and Wales, Scotland and Northern Ireland, except as specified in this clause.

#### **Clause 15: Commencement and transitional provision**

43 This clause makes provision about the coming into force of the provisions of the Bill.

44 None of the provisions in clauses 1 to 11 will apply to proceedings started before the date on which the provisions of the Bill come into force.

#### **Clause 16: Short Title**

45 This clause sets out the short title of the Bill.

## Schedule 1: Excluded offences for the purposes of section 6

46 Schedule 1 details the sexual offences excluded from the scope of the requirements of clauses 2, 3 and 5, and is structured as follows:

Part 1 - Criminal conduct etc under Armed Forces legislation.

Part 2 - International Criminal Court Act 2001

Part 3 - International Criminal Court (Scotland) Act 2001

Part 4 - Provisions extending jurisdiction in respect of certain sexual offences.

## Schedule 2: Limitation periods: England and Wales

### Part 1 – Court’s discretion to disapply time limits

47 Part 1 of Schedule 2 amends section 33 of the LA, which sets out the factors that the court must consider when exercising its discretion to extend the normal time limit (set out in section 11 and section 12 of the LA) for bringing claims for personal injury or death. These amendments do not change the way in which the time limit is calculated.

48 Paragraph 1(1) and (2) insert new subsections (1ZA) to (1ZC) into section 33 of the LA.

- a. Subsection (1ZA) prohibits the court from allowing any claim to proceed if it has been commenced more than six years after the relevant date (as defined in new subsection (7)).
- b. Subsection (1ZB) specifies that these amendments apply only to claims against the Ministry of Defence or Secretary of State for Defence or members of Her Majesty's forces made in connection with overseas operations (as defined in new subsection (7)) where the damage (as defined in subsection (1ZC)) complained of occurred outside the British Islands.

49 Paragraph 1(3) inserts new subsections (2A) to (2B) into section 33 of the LA. These specify the effect of these amendments in relations to section 12 of the LA.

50 Paragraph 1(4) inserts new subsections (5A) and (5B) into section 33 of the LA. Subsection

(5A) specifies those additional factors to which the court must have particular regard, when deciding whether to disapply the normal time limit for bringing a personal injury or death claim. These factors are intended to ensure that the court takes proper account of the operational context (as defined in subsection (5B)), including the likely impact of giving evidence on the mental health of the Service personnel or veterans involved.

51 Paragraph 1(5), which inserts a new subsection (6A) into section 33 of the LA, clarifies how these amendments will apply in light of the Limitation (Enemies and War Prisoners) Act 1945.

52 Paragraph 1(6) substitutes a new subsection (7) into section 33 of the LA. This amends the definitions used to restrict the effect of these amendments to personal injuries or deaths sustained during overseas operations; and explains how “the relevant date” is to be calculated.

## Part 2 – Restriction of foreign limitation law

- 53 Part 2 of Schedule 2 amends the Foreign Limitation Periods Act 1984, and ensures that the law on foreign limitation periods is consistent with the amendments to the LA introduced by clause 8(1). Those amendments restrict – to a maximum of six years from the date on which the cause of action arose – the court’s discretion to extend the normal time limit for bringing claims against the Ministry of Defence, the Secretary of State for Defence, or members of Her Majesty’s forces for personal injuries, deaths or false imprisonment that occurred during an overseas operation.
- 54 Paragraphs 2(2) and (3) insert a new section (1ZA) into the Act.
- 55 Subsection (1ZA)(1) specifies that, for subsection (1ZA)(3) to apply, the conditions set out in subsections (1ZA)(1) and (1ZA)(2) must be met.
- 56 Subsection (1ZA)(1) requires that the cause of action has arisen in connection with an overseas military operation, and is subject to the limitation law of the foreign country under whose

law the tort claim has been brought.

57 Subsection (1ZA)(2) requires that a period of six years must have elapsed since the date on which the foreign limitation period began, or when the action could first have been brought.

58 If both those conditions are satisfied, subsection (1ZA)(3) specifies that the defendant (i.e. Ministry of Defence, the Secretary of State for Defence, or members of Her Majesty's forces) will have a complete defence to any such claim. This ensures that no claim in relation to overseas operations that is brought in reliance on foreign law can proceed after six years.

59 Subsection (1ZA)(4) defines the meaning of "overseas armed forces tort action".

60 Subsections (1ZA)(5) and (6) specify what should happen in relation to claims where the limitation period under the applicable foreign law has been suspended, interrupted, or disregarded, or where the Limitation (Enemies and Prisoners of War) Act 1945 applies.

61 Paragraph 2(4) inserts a new subsection

(3A) into section 7 of the Act, and specifies that new section 1ZA applies to any claim that is commenced after that section comes into force. Claims that have been commenced before new section 1ZA comes into force are unaffected by these amendments.

## Schedule 3: Limitation periods: Scotland

### Part 1 – Court’s power to override time limits

62 Part 1 of Schedule 3 amends section 19A of the Prescription and Limitation (Scotland) Act 1973, which permits the court to override the normal time limit for bringing claims.

63 Paragraph 1(3) inserts a new section 19AA, which restricts the power in section 19A in relation to overseas operations.

a. Section 19AA(2) makes the exercise of power subject to section 19AA(3) and 19AA(5) to 19AA(7).

b. Section 19AA(3) specifies the factors to which the court must have particular regard when deciding whether to disapply the normal time limit for bringing a claim for personal injury

(including delictual protection of liberty, i.e. false imprisonment) or death. These factors are intended to ensure that the court takes proper account of the operational context (as defined in section 19AA(4)), including the likely impact of giving evidence on the mental health of the Service personnel or veterans involved.

- c. Sections (19AA)(5) and (19AA)(6) prohibit the court from allowing any claim to proceed if it has been commenced more than six years after the relevant date (as defined in section 19AA(13)). Section 19AA(7) prohibits the court from allowing a claim under section 18(4) of the Act to proceed unless the person died within six years of the relevant date (as defined in section 19AA(13)).
- d. Section 19AA(8) to (10) specify what should happen where periods of time have been disregarded, or where the Limitation (Enemies and War Prisoners) Act 1945 applies.
- e. Sections 19AA(11) to (14) provide definitions of the terms used elsewhere in this section.

## Part 2 – Restriction of foreign limitation law

64 Part 2 of Schedule 2 amends section 23A of the Prescription and Limitation (Scotland) Act 1973, and ensures that the law on foreign limitation periods is consistent with the amendments introduced by clause 9(1). Those amendments restrict – to a maximum of six years from the date on which the cause of action arose – the court’s discretion to extend the normal time limit for bringing claims against the Ministry of Defence, the Secretary of State for Defence, or members of Her Majesty’s forces for personal injuries, deaths or false imprisonment that occurred during an overseas operation.

65 Paragraph 2(1) and (3) insert a new section 23B into the Act.

66 Section 23B(1) specifies that subsection (3) applies where the conditions set out in subsections (1) and (2) are met.

- a. Section 23B(1) requires that the cause of action has arisen in relation to an overseas military operation, and is subject to the limitation law of the foreign country under

whose law the personal injury claim has been brought.

b. Section 23B(2) requires that a period of six years must have elapsed since the date on which the foreign limitation period began, or when the action could first have been brought.

67 If both those conditions are satisfied, subsection (3) specifies that the defendant (i.e. Ministry of Defence, the Secretary of State for Defence, or members of Her Majesty's forces) will have a complete defence to any such claim. This ensures that no claim in relation to overseas operations that is brought in reliance on foreign law can proceed after six years.

68 Section 23B(4) defines the meaning of "overseas armed forces personal injury action".

69 Sections 23B(5) specifies what should happen in relation to claims where the limitation period under the applicable foreign law has been suspended, interrupted or disregarded.

## Schedule 4: Limitation periods: Northern Ireland

## Part 1 – Court’s discretion to disapply time limits

70 Part 1 of Schedule 4 amends article 50 of the Limitation (Northern Ireland) Order 1989 / 1339, which permits the Court to override the normal time limit for bringing claims.

71 Paragraph 1(2) inserts new paragraphs (1A) to (1C).

a. New paragraph (1A) prohibits the court from allowing any claim to proceed if it has been commenced more than six years after the relevant date (as defined in new paragraph (8)).

b. New paragraph (1B) specifies that these amendments apply only to claims against the Ministry of Defence or Secretary of State for Defence or members of Her Majesty’s forces made in connection with overseas operations where the damage (as defined in paragraph (1C)) complained of occurred outside the British Islands.

72 Paragraph 1(3) inserts new paragraphs (3A) and (3B), which explain how these amendments

interact with article 9.

73 Paragraph 1(4) inserts new paragraph (6A). Paragraph (6A) specifies those additional factors to which the court must have particular regard when deciding whether to disapply the normal time limit for bringing a personal injury or death claim. These factors are intended to ensure that the court takes proper account of the operational context (as defined in paragraph (6B)), including the likely impact of giving evidence on the mental health of the Service personnel or veterans involved.

74 Paragraph (1)(5) inserts a new paragraph (7A), which clarifies how these amendments will apply in light of the Limitation (Enemies and War Prisoners) Act 1945.

75 Paragraph 1(6) and (7) insert new definitions.

## Part 2 – Restriction of foreign limitation law

76 Part 2 of Schedule 4 amends the Foreign Limitation Periods (Northern Ireland) Order 1985/754, and ensures that the law on foreign

limitation periods is consistent with the amendments introduced by clause 10(1). Those amendments restrict – to a maximum of six years from the date on which the cause of action arose – the court’s discretion to extend the normal time limit for bringing claims against the Ministry of Defence, the Secretary of State for Defence, or members of Her Majesty’s forces for personal injuries, deaths or false imprisonment that occurred during an overseas operation.

77 Paragraph 2(1) and (3) insert a new article 3A into the Order.

78 Article 3A(1) specifies that, for article 3A(3) to apply, the conditions set out in paragraphs (1) and (2) must be met.

a. Article 3A(1) requires that the cause of action has arisen in relation to an overseas operation, and is subject to the limitation law of the foreign country under whose law the tort claim has been brought.

b. Article 3A(2) requires that a period of six years must have elapsed since the date on which the foreign limitation period began, or

when the action could first have been brought.

79 If both those conditions are satisfied, article 3A(3) specifies that the defendant (i.e. Ministry of Defence, the Secretary of State for Defence, or members of Her Majesty's forces) will have a complete defence to any such claim. This ensures that no claim in relation to overseas operations that is brought in reliance on foreign law can proceed after six years.

80 Article 3A(4) defines the meaning of "overseas armed forces tort action" for the purposes of article 3A.

81 Article 3A(5) and (6) specifies what should happen in relation to claims where the limitation period under the applicable foreign law has been suspended, interrupted or disregarded, or where the Limitation (Enemies and Prisoners of War) Act 1945 applies.

82 Paragraph 2(4) amends article 8, and specifies that new article 3A applies to any claim that is commenced after that article comes into force. Claims that have been commenced before

new article 3A comes into force are unaffected by these amendments.

## **Commencement**

83 Clause 15 sets out how the different provisions will be commenced.

## **Financial implications of the Bill**

84 The Government does not expect the provisions of the Bill to have any direct financial implications. There are no expected direct costs to business or civil society organisations as a result of this Bill.

## **Parliamentary approval for financial costs or for charges imposed**

85 No money resolution is required.

## **Compatibility with the European Convention on Human Rights**

86 The Secretary of State for Defence has made a statement under section 19(1)(a) of the Human Rights Act 1998 that, in his view, the provisions of the Bill are compatible with the Convention rights.

87 The Government will publish a separate ECHR memorandum which explains its assessment of the compatibility of the Bill's

provisions with the Convention rights.

### Related documents

88 The following documents are relevant to the Bill and can be read at the stated locations:

- Public Consultation on Legal Protections for Armed Forces Personnel and Veterans serving in operations outside the United Kingdom available here: [20190718-MOD\\_consultation\\_document-FINAL.pdf](#)
- House of Commons Defence Committee report “Drawing a line: Protecting veterans by a Statute of Limitations”. Full report is [here](#).

## Annex A - Territorial extent and application in the United Kingdom

The Bill will extend to England and Wales, Scotland and Northern Ireland. The effects of the provisions are substantively the same throughout the UK, but as amendments are needed to different pieces of legislation in the different nations, some provisions of the Bill apply to England and Wales only, some to Scotland, and others to Northern Ireland.

The extent and application of the provisions are summarised in the table below.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion sought?
Clause 1	Yes	Yes	Yes	Yes	No	No	No	No
Clause 2	Yes	Yes	Yes	Yes	No	No	No	No
Clause 3	Yes	Yes	Yes	Yes	No	No	No	No
Clause 4	Yes	Yes	Yes	Yes	No	No	No	No
Clause 5	Yes	Yes	No	Yes	No	No	No	No
Clause 6	Yes	Yes	Yes	Yes	No	No	No	No
Clause 7	Yes	Yes	Yes	Yes	No	No	No	No
Clause 8	Yes	Yes	No	No	No	No	No	No
Clause 9	No	No	Yes	No	No	No	No	No
Clause 10	No	No	No	Yes	No	No	No	No
Clause 11	Yes	Yes	Yes	Yes	No	No	No	No
Clause 12	Yes	Yes	Yes	Yes	No	No	No	No
Clause 13	Yes	Yes	Yes	Yes	No	No	No	No

Clause 14	Yes	Yes	Yes	Yes	No	No	No	No
Clause 15	Yes	Yes	Yes	Yes	No	No	No	No
Clause 16	Yes	Yes	Yes	Yes	No	No	No	No
Schedule 1	Yes	Yes	Yes	Yes	No	No	No	No
Schedule 2	Yes	Yes	No	No	No	No	No	No
Schedule 3	No	No	Yes	No	No	No	No	No
Schedule 4	No	No	No	Yes	No	No	No	No

Note: The ‘English votes for English Laws’ procedure does not apply for Clause 8 or for Schedule 2. Although these provisions extend to England and Wales only, they relate to a matter that is reserved, meaning neither the Scottish Parliament, the National Assembly for Wales, or the Northern Ireland Assembly could legislate in their territories on the same matter.

# **OVERSEAS OPERATIONS (SERVICE PERSONNEL AND VETERANS) BILL EXPLANATORY NOTES**

These Explanatory Notes relate to the Overseas Operations (Service Personnel and Veterans) Bill as introduced in the House of Commons on 18 March 2020 (Bill 117).

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