

OVERSEAS OPERATIONS (SERVICE PERSONNEL AND VETERANS) BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

What these notes do

1. These Explanatory Notes relate to the Lords Amendments to the Overseas Operations (Service Personnel and Veterans) Bill as brought from the House of Lords on 19 April 2021 (Bill 285).
2. These Explanatory Notes have been prepared by the Ministry of Defence in order to assist the reader of the Bill and the Lords Amendments. They do not form part of the Bill and have not been endorsed by Parliament.
3. These Explanatory Notes, like the Lords Amendments themselves, refer to HL Bill 147, the Bill as first introduced in the Lords.
4. These Explanatory Notes need to be read in conjunction with the Lords Amendments and the text of the Bill. They are not, and are not intended to be, a comprehensive description of the Lords Amendments.
5. Lords Amendment 1 was tabled by Lord Robertson of Port Ellen and was opposed by the Government.
6. Lords Amendment 2 was tabled by Lord Thomas of Gresford and was opposed by the Government.
7. Lords Amendment 3 was tabled by Lord Hope of Craighead and was accepted by the Government.
8. Lords Amendment 4 was tabled by Lord Falconer of Thoroton and was opposed by the Government.
9. Lords Amendment 5 was tabled by Lord Dannatt and was opposed by the Government.
10. Lords Amendment 6, 7 and 8 were tabled in the name of the Minister.
11. In the following Commentary, an asterisk(*) appears in the heading of any paragraph that deals with a non-Government amendment.

Commentary on Lords Amendments

Lords Amendment to clause 6: “Relevant offence”

Lords Amendment 1*

- 1 Lords Amendment 1 would amend clause 6 to exclude further criminal offences from the requirements set out in clauses 2, 3 and 5. Those offences are war crimes, crimes against humanity, genocide or torture.

Lords Amendments after clause 7

Lords Amendment 2*

- 2 Lords Amendment 2 would insert a new clause into the Bill after clause 7, which sets out a new process for investigations.
- 3 Subsections (2) and (3) introduce timelines for investigations into allegations that arise out of overseas operations.
- 4 The new clause introduces a direct role for prosecutors in investigations, which includes:
 - a. introducing a regular case review function for the Service Prosecuting Authority; and
 - b. the requirement for the Director of Service Prosecutions to decide whether there should be a further investigation into an alleged offence following the completion of a service police “final report”, and on the grounds that there is new compelling evidence or information which might materially affect the previous decision and lead to a charge being made.
- 5 Subsection (8) introduces a new power for the Judge Advocate General to give Practice Directions for investigations as he or she deems appropriate.

Lords Amendment 3*

- 6 Lords Amendment 3 removes clause 12 (duty to consider derogation from Convention) from the Bill.

Lords Amendment 4*

- 7 Lords Amendment 4 would exclude actions brought against the Crown by serving or former service personnel from the limitation measures introduced by Part 2 of the Bill in relation to personal injury/death and Human Rights Act 1998 claims connected with overseas operations.

Lords Amendment 5*

- 8 Lords Amendment 5 would require the Secretary of State to establish and lay before Parliament, within 6 months of the Bill receiving Royal Assent, 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.

- 9 Subsection (3) would require the Secretary of State to prepare an annual duty of care update to be included in the Armed Forces Covenant annual report. Subsections (4) and (5) set out what should be covered by the annual update.

Lords Amendments to Schedule 1: Excluded offences for the purposes of clause 6

Lords Amendments 6, 7 and 8

- 10 Lords Amendments 6 to 8 are minor and technical amendments.
- 11 Lords Amendment 6 corrects the scope of paragraph 14 of Schedule 1 so that it no longer includes section 42 of the Armed Forces Act 2006 (which provides that a person subject to service law, or a civilian subject to service discipline, commits an offence under section 42 if they do any act that is punishable by the law of England and Wales, or, if done in England and Wales, would be so punishable) as section 42 does not create any new offences.
- 12 Lords Amendment 7 deletes paragraph 23 of Schedule 1 because section 65 of the International Criminal Court Act 2001 does not establish an offence separate from those already mentioned in paragraphs 17 – 22 of Schedule 1, and therefore does not need specific exclusion.
- 13 Similarly, Lords Amendment 8 deletes paragraph 30 of Schedule 1 because section 5 of the International Criminal Court (Scotland) Act 2001 does not establish an offence separate from those already mentioned in paragraphs 27 – 29 of Schedule 1, and therefore does not need specific exclusion.

Financial Effects of Lords Amendments

- 14 Lords Amendment 2 would place new responsibilities on investigators and the Service Prosecuting Authority (SPA) and gives the Judge Advocate General the power to make Practice Directions. The SPA in particular will have a new role in the investigative process that would incur additional costs.
- 15 The SPA will have to consider whether an investigation should continue after 21 days where an investigator is satisfied that there is sufficient evidence of criminal conduct to continue the investigation. If the investigation is to continue the SPA is required to give appropriate advice and direction to the investigator. The SPA must monitor and review the progress of an investigation at intervals of three months and must on each review make a fresh consideration. The Director of Service Prosecutions must also consider any new compelling evidence or information in relation to a case that has received its final report, before allowing further investigation or reinvestigation into the alleged criminal conduct.

- 16 This new investigative process is uncosted, but does imply new, potentially significant, financial burdens on the SPA. Although these cannot be quantified at this stage, as we do not know what future operations the UK Armed Forces will be involved in, there were in the region of 3,000 Service Police investigations in Iraq and 3,000 in Afghanistan. During the height of this caseload the SPA set up the Operational Offending team which cost an additional £350,000 in 2015-2016. This cost would increase significantly with the SPA's additional functions in relation to investigations.

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