

Overseas Operations (Service Personnel and Veterans) Bill

LORDS NON-INSISTENCE, AMENDMENT TO COMMONS AMENDMENT,
DISAGREEMENT AND AMENDMENTS IN LIEU

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

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.”

LORDS NON-INSISTENCE, AMENDMENT TO COMMONS AMENDMENT,
DISAGREEMENT AND AMENDMENTS IN LIEU

The Lords do not insist on their Amendment 1 and do agree with the Commons in their Amendments 1A to 1G, 1J, 1K, 1M and 1N, do agree with the Commons in their Amendment 1Q and do propose Amendment 1R as an amendment thereto, and do disagree with the Commons in their Amendments 1H, 1L and 1P and do propose Amendments 1S to 1U in lieu thereof—

- 1R** In paragraph 31B(1), leave out from “1957” to end of sub-paragraph (3) and insert “(grave breaches of the Geneva Conventions) is an excluded offence.”
- 1S** Schedule 1, page 12, line 41, leave out from “crime” to end of line 2 on page 13, and insert “as defined in article 8.2”
- 1T** Schedule 1, page 13, line 15, leave out from “crime” to end of line 18 and insert “as defined in article 8.2”
- 1U** Schedule 1, page 14, line 9, leave out from “crime” to end of line 12 and insert “as defined in article 8.2”

After Clause 12

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.*

LORDS NON-INSISTENCE AND AMENDMENT IN LIEU

The Lords do not insist on their Amendment 5 to which the Commons have disagreed for their Reason 5A, but do propose Amendment 5B in lieu –

- 5B** After Clause 12, 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) judicial reviews and inquiries into allegations of misconduct by service personnel;
 - (c) such other related fields as the Secretary of State may determine.
- (5) 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).
- (6) 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.
- (7) None of the provisions of this section may be used to alter the principle of combat immunity.”

LORDS NON-INSISTENCE, AMENDMENT
TO COMMONS AMENDMENT,
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LIEU TO THE
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