

# Overseas Operations (Service Personnel and Veterans) Bill

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AMENDMENTS  
TO BE MOVED  
IN COMMITTEE OF THE WHOLE HOUSE

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**Clause 1**

BARONESS MASSEY OF DARWEN  
LORD DUBS  
BARONESS SMITH OF NEWNHAM

Page 2, line 2, leave out “5” and insert “10”

***Member’s explanatory statement***

*This amendment provides that the presumption against prosecution only applies after 10 years (instead of 5 years).*

Page 2, line 4, leave out “5” and insert “10”

***Member’s explanatory statement***

*This amendment provides that the presumption against prosecution only applies after 10 years (instead of 5 years).*

**Clause 2**

LORD TOUHIG

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 3**

BARONESS MASSEY OF DARWEN  
LORD DUBS  
BARONESS SMITH OF NEWNHAM

Page 2, line 23, leave out paragraph (a)

***Member's explanatory statement***

*This amendment and the other amendments to Clause 3 in the name of Baroness Massey would delete the requirement to give "particular weight" in any prosecution decision after 5 years to a person having an impaired ability to exercise self-control or to exercise sound judgement whilst being deployed on operations overseas.*

LORD TOUHIG  
LORD BOYCE

Page 2, line 33, at end insert –

“(c) the quality and duration of relevant investigations.”

***Member's explanatory statement***

*This amendment would require prosecutors to give weight to the quality and duration of relevant investigations when deciding whether to bring or continue proceedings against a person relating to alleged conduct during overseas operations.*

BARONESS MASSEY OF DARWEN  
LORD DUBS  
BARONESS SMITH OF NEWNHAM

Page 2, line 34, leave out subsection (3)

***Member's explanatory statement***

*This amendment and the other amendments to Clause 3 in the name of Baroness Massey would delete the requirement to give "particular weight" in any prosecution decision after 5 years to a person having an impaired ability to exercise self-control or to exercise sound judgement whilst being deployed on operations overseas.*

Page 2, line 38, leave out subsection (4)

***Member's explanatory statement***

*This amendment and the other amendments to Clause 3 in the name of Baroness Massey would delete the requirement to give "particular weight" in any prosecution decision after 5 years to a person having an impaired ability to exercise self-control or to exercise sound judgement whilst being deployed on operations overseas.*

**Clause 5**

BARONESS MASSEY OF DARWEN  
LORD DUBS  
BARONESS SMITH OF NEWNHAM

Page 3, line 19, leave out “5” and insert “10”

**Member's explanatory statement**

*This amendment provides that the presumption against prosecution only applies after 10 years (instead of 5 years).*

LORD FALCONER OF THOROTON

Page 3, line 29, at end insert –

“(3A) Where the consent of the Attorney General is sought under subsection (2) or (3), the Attorney General must prepare a report containing his or her reasons for granting or withholding consent, as the case may be, with reference to sections 1 to 3 of this Act, and must lay a copy of this report before each House of Parliament.”

**Member's explanatory statement**

*This amendment requires the Attorney General to lay out their evidence and assessment as to why they granted or refused consent to prosecute.*

BARONESS MASSEY OF DARWEN  
LORD DUBS  
BARONESS SMITH OF NEWNHAM

Page 3, line 36, leave out “5” and insert “10”

**Member's explanatory statement**

*This amendment provides that the presumption against prosecution only applies after 10 years (instead of 5 years).*

**Clause 6**

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

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.*

**Clause 11**

BARONESS SMITH OF NEWNHAM  
LORD THOMAS OF GRESFORD

Page 7, line 23, at end insert –

- “(c) the importance of the proceedings in securing the rights of the claimant.”

**Member's explanatory statement**

*This amendment adds a further consideration to which UK courts must have particular regard when determining whether to disapply the standard HRA limitation period of one year so as to ensure that the claimant's interest in having their claim proceed is not subordinated.*

Page 7, line 30, leave out from “before” to end of line 34 and insert “the end of the period of 6 years beginning with the date of knowledge.”

**Member's explanatory statement**

*This amendment is one of a series that change the relevant date from which the six-year longstop starts to run so as to account for legitimate and explicable delays commonly experienced by persons bringing claims under the HRA arising out of overseas operations.*

Page 7, line 34, at end insert –

- “(4A) The court may disapply the rule in subsection (1)(b) where it appears to the court that it would be equitable to do so having regard to the reasons for the delay, in particular whether the delay resulted from –
- (a) the nature of the injuries,
  - (b) logistical difficulties in securing the services required to bring a claim, so long as the claimant was making all reasonable attempts to secure such services, or
  - (c) any other reasons outside the control of the person bringing the claim.”

**Member's explanatory statement**

*This amendment introduces a discretion for UK courts to allow a HRA claim arising out of overseas operations to proceed in prescribed circumstances so as to account for legitimate and explicable delays commonly experienced by persons bringing such claims.*

Page 7, line 40, at end insert –

- “(c) of the manifestation of the harm resulting from that act which is the subject of the claim, and
- (d) that they were eligible to bring a claim under the Human Rights Act 1998 against the Ministry of Defence or Secretary of State for Defence in the courts of the United Kingdom.”

**Member's explanatory statement**

*This amendment is one of a series that change the relevant date from which the six-year longstop starts to run so as to account for legitimate and explicable delays commonly experienced by persons bringing claims under the HRA arising out of overseas operations.*

**Clause 12**

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

Page 8, line 20, at end insert –

- “(1A) No order may be made by the Secretary of State under section 14 following consideration under this section unless a draft of the order has been laid before, and approved by, each House of Parliament.”

**Member's explanatory statement**

*This amendment would require significant derogations regarding overseas operations proposed by the Government from the European Convention on Human Rights to be approved by Parliament before being made.*

LORD HOPE OF CRAIGHEAD  
LORD THOMAS OF GRESFORD

*The above-name Lords give notice of their intention to oppose the Question that Clause 12 stand part of the Bill.*

**After Clause 12**

LORD TOUHIG  
LORD BOYCE

Insert the following new Clause—

**“Limitation on reinvestigation**

- (1) This section applies where—
  - (a) a person has been acquitted of an offence relating to conduct on overseas operations, or
  - (b) a determination has been made that an investigation into an offence relating to such conduct should cease.
- (2) No further investigation into the alleged conduct shall be commenced unless—
  - (a) compelling new evidence has become available, and
  - (b) an allocated judge advocate determines that the totality of the evidence against the accused is sufficiently strong.”

**Member's explanatory statement**

*This new Clause would require a judge advocate of the armed services to determine if new evidence is sufficient to grant reinvestigation of armed forces personnel for alleged offences in which they have been acquitted or the original investigation was ceased.*

LORD TOUHIG  
LORD TUNNICLIFFE  
LORD BOYCE

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 TUNNICLIFFE

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 shall 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.*

**Schedule 1**

LORD HOPE OF CRAIGHEAD  
LORD ROBERTSON OF PORT ELLEN  
LORD TOUHIG

Page 11, line 15, at end insert –

“1A An offence under section 134 of the Criminal Justice Act 1988 (torture).”

LORD TOUHIG  
LORD DUBS

Page 12, line 39, at end insert –

“(za) an act of genocide under article 6,”

Page 12, line 40, leave out sub-sub-paragraph (a) and insert –

“(a) a crime against humanity within article 7.1(a)-(k), or”

Page 12, line 41, leave out sub-sub-paragraph (b) and insert –

“(b) a war crime within article 8.2(a) (which relates to grave breaches of the Geneva Conventions).”

Page 13, line 13, at end insert –

“(za) an act of genocide under article 6,”

Page 13, line 14, leave out sub-sub-paragraph (a) and insert –

“(a) a crime against humanity within article 7.1(a)-(k), or”

Page 13, line 15, leave out sub-sub-paragraph (b) and insert –

“(b) a war crime within article 8.2(a) (which relates to grave breaches of the Geneva Conventions).”

**Schedule 1 - continued**

Page 14, line 7, at end insert –

“(za) an act of genocide under article 6,”

Page 14, line 8, leave out sub-sub-paragraph (a) and insert –

“(a) a crime against humanity within article 7.1(a)-(k), or”

Page 14, line 9, leave out sub-sub-paragraph (b) and insert –

“(b) a war crime within article 8.2(a) (which relates to grave breaches of the Geneva Conventions).”

**Schedule 2**

BARONESS SMITH OF NEWNHAM  
LORD THOMAS OF GRESFORD

Page 16, line 5, leave out “section 11 relevant date (see subsection (7))” and insert “date of knowledge”

***Member’s explanatory statement***

*This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run in England and Wales so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for personal injury arising out of overseas operations.*

Page 16, line 5, at end insert –

“(1ZAA) The court may disapply the rule in subsection (1ZA) where it appears to the court that it would be equitable to do so having regard to the reasons for the delay, in particular whether the delay resulted from –

- (a) the nature of the injuries,
- (b) logistical difficulties in securing the services required to bring a claim, so long as the claimant was making all reasonable attempts to secure such services, or
- (c) any other reasons outside the control of the person bringing the claim.”

***Member’s explanatory statement***

*This amendment introduces a discretion for the courts of England and Wales to allow a civil claim for personal injury arising out of overseas operations to proceed in prescribed circumstances so as to account for legitimate and explicable delays commonly experienced by persons bringing such claims.*

Page 16, line 30, leave out from “the” to end of line 32 and insert “date of knowledge”

**Member's explanatory statement**

*This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run in England and Wales so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for wrongful death arising out of overseas operations.*

Page 16, line 36, leave out “section 12 relevant date (see subsection (7))” and insert “date of knowledge”

**Member's explanatory statement**

*This amendment, in partnership with others, changes the relevant date from which the six-year longstop starts to run in England and Wales so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for wrongful death arising out of overseas operations.*

Page 16, line 36, at end insert –

“( ) The court may disapply the rules in subsections (2A) and (2B) where it appears to the court that it would be equitable to do so having regard to the reasons for the delay, in particular whether the delay resulted from –

- (a) the nature of the injuries,
- (b) logistical difficulties in securing the services required to bring a claim, so long as the claimant was making all reasonable attempts to secure such services, or
- (c) any other reasons outside the control of the person bringing the claim.”

**Member's explanatory statement**

*This amendment introduces a discretion for the courts of England and Wales to allow a civil claim for wrongful death arising out of overseas operations to proceed in prescribed circumstances so as to account for legitimate and explicable delays commonly experienced by persons bringing such claims.*

Page 17, line 5, at end insert –

“(c) the court must also have particular regard to the importance of the proceedings in securing the rights of the claimant.”

**Member's explanatory statement**

*This amendment adds a further consideration to which the courts of England and Wales must have particular regard when determining whether to disapply the standard limitation period of three years so as to ensure that the claimant's interest in having their civil claim proceed is not illegitimately subordinated.*

Page 17, line 35, leave out from beginning of line 35 to end of line 5 on page 18 and insert –

““the date of knowledge” means the date on which the person bringing the proceedings first knew, or first ought to have known –

- (a) of the act complained of,



**Schedule 2 - continued**

- (b) that it was an act of the Ministry of Defence or the Secretary of State for Defence,
- (c) of the manifestation of the injury resulting from that act which is the subject of the claim, and
- (d) that they were eligible to bring a claim against the Ministry of Defence or Secretary of State for Defence in the courts of the United Kingdom.”

***Member’s explanatory statement***

*This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run in England and Wales so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for personal injury and wrongful death arising out of overseas operations.*

**Schedule 3**

BARONESS SMITH OF NEWNHAM  
LORD THOMAS OF GRESFORD

Page 20, line 32, at end insert –

- “(c) the importance of the proceedings in securing the rights of the claimant.”

***Member’s explanatory statement***

*This amendment adds a further consideration to which the courts of Scotland must have particular regard when determining whether to disapply the standard limitation period of three years so as to ensure that the claimant’s interest in having their civil claim proceed is not subordinated.*

Page 20, line 41, leave out “section 17 relevant date” and insert “date of knowledge (see subsection (13))”

***Member’s explanatory statement***

*This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run in Scotland so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for personal injury arising out of overseas operations.*

Page 21, line 2, leave out “section 18 relevant date” and insert “date of knowledge (see subsection (13))”

***Member’s explanatory statement***

*This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run in Scotland so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for wrongful death arising out of overseas operations.*

Page 21, line 7, leave out “section 17 relevant date” and insert “date of knowledge (see subsection (13))”

**Member's explanatory statement**

*This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run in Scotland so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for personal injury arising out of overseas operations.*

Page 21, line 7, at end insert—

- “( ) The court may disapply the rules in subsections (5) to (7) where it appears to the court that it would be equitable to do so having regard to the reasons for the delay, in particular whether the delay resulted from—
- (a) the nature of the injuries,
  - (b) logistical difficulties in securing the services required to bring a claim, so long as the claimant was making all reasonable attempts to secure such services, or
  - (c) any other reasons outside the control of the person bringing the claim.”

**Member's explanatory statement**

*This amendment introduces a discretion for the courts of Scotland to allow a civil claim for personal injury or wrongful death arising out of overseas operations to proceed in prescribed circumstances so as to account for legitimate and explicable delays commonly experienced by persons bringing such claims.*

Page 22, leave out lines 10 to 15 and insert—

- ““the date of knowledge” means the date on which the person bringing the proceedings first knew, or first ought to have known—
- (a) of the act complained of,
  - (b) that it was an act of the Ministry of Defence or the Secretary of State for Defence,
  - (c) of the manifestation of the injury resulting from that act which is the subject of the claim, and
  - (d) that they were eligible to bring a claim against the Ministry of Defence or Secretary of State for Defence in the courts of the United Kingdom.”

**Member's explanatory statement**

*This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run in Scotland so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for personal injury and wrongful death arising out of overseas operations.*

**Schedule 4**

BARONESS SMITH OF NEWNHAM  
LORD THOMAS OF GRESFORD

Page 24, line 5, leave out “Article 7 relevant date (see paragraph (8))” and insert “date of knowledge”

**Member's explanatory statement**

*This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run in Northern Ireland so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for personal injury arising out of overseas operations.*

Page 24, line 5, at end insert –

- “( ) The court may disapply the rule in paragraph (1A) where it appears to the court that it would be equitable to do so having regard to the reasons for the delay, in particular whether the delay resulted from –
- (a) the nature of the injuries,
  - (b) logistical difficulties in securing the services required to bring a claim, so long as the claimant was making all reasonable attempts to secure such services, or
  - (c) any other reasons outside the control of the person bringing the claim.”

**Member's explanatory statement**

*This amendment introduces a discretion for the courts of Northern Ireland to allow a civil claim for personal injury or wrongful death arising out of overseas operations to proceed in prescribed circumstances so as to account for legitimate and explicable delays commonly experienced by persons bringing such claims.*

Page 24, line 29, leave out from “the” to end of line 31 and insert “date of knowledge”

**Member's explanatory statement**

*This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run in Northern Ireland so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for personal injury out of overseas operations.*

Page 24, line 34, leave out “Article 9 relevant date (see paragraph (8))” and insert “date of knowledge”

**Member's explanatory statement**

*This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run in Northern Ireland so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for wrongful death arising out of overseas operations.*

Page 25, line 5, at end insert –

- “(c) the court must also have particular regard to the importance of the proceedings in securing the rights of the claimant.”

**Member's explanatory statement**

*This amendment adds a further consideration to which the courts of Northern Ireland must have particular regard when determining whether to disapply the standard limitation period of three years so as to ensure that the claimant's interest in having their civil claim proceed is not subordinated.*

Page 25, leave out lines 25 to 43 and insert—

““the date of knowledge” means the date on which the person bringing the proceedings first knew, or first ought to have known—

- (a) of the act complained of,
- (b) that it was an act of the Ministry of Defence or the Secretary of State for Defence,
- (c) of the manifestation of the injury resulting from that act which is the subject of the claim, and
- (d) that they were eligible to bring a claim against the Ministry of Defence or Secretary of State for Defence in the courts of the United Kingdom.”

***Member’s explanatory statement***

*This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run in Northern Ireland so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for personal injury and wrongful death arising out of overseas operations.*

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*21 January 2021*

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