

# 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**

LORD DUBS  
BARONESS MASSEY OF DARWEN  
BARONESS SMITH OF NEWNHAM

*The above-named Lords give notice of their intention to oppose the Question that Clause 1 stand part of the Bill.*

***Member's explanatory statement***

*This amendment removes the presumption against prosecution (Clauses 1–7) for the reasons outlined in Chapter 3 of the JCHR's ninth Report of this session.*

**Clause 2**

LORD DUBS  
BARONESS MASSEY OF DARWEN  
BARONESS SMITH OF NEWNHAM

*The above-named Lords give notice of their intention to oppose the Question that Clause 2 stand part of the Bill.*

***Member's explanatory statement***

*This amendment removes the presumption against prosecution (Clauses 1–7) for the reasons outlined in Chapter 3 of the JCHR's ninth Report of this session.*

**Clause 3**

LORD DUBS  
BARONESS MASSEY OF DARWEN  
BARONESS SMITH OF NEWNHAM

*The above-named Lords give notice of their intention to oppose the Question that Clause 3 stand part of the Bill.*

***Member's explanatory statement***

*This amendment removes the presumption against prosecution (Clauses 1–7) for the reasons outlined in Chapter 3 of the JCHR's ninth Report of this session.*

**Clause 4**

LORD DUBS  
BARONESS MASSEY OF DARWEN  
BARONESS SMITH OF NEWNHAM

*The above-named Lords give notice of their intention to oppose the Question that Clause 4 stand part of the Bill.*

***Member's explanatory statement***

*This amendment removes the presumption against prosecution (Clauses 1–7) for the reasons outlined in Chapter 3 of the JCHR's ninth Report of this session.*

**Clause 5**

LORD DUBS  
BARONESS MASSEY OF DARWEN  
BARONESS SMITH OF NEWNHAM

*The above-named Lords give notice of their intention to oppose the Question that Clause 5 stand part of the Bill.*

***Member's explanatory statement***

*This amendment removes the presumption against prosecution (Clauses 1–7) for the reasons outlined in Chapter 3 of the JCHR's ninth Report of this session.*

**Clause 6**

LORD DUBS  
BARONESS MASSEY OF DARWEN  
BARONESS SMITH OF NEWNHAM

*The above-named Lords give notice of their intention to oppose the Question that Clause 6 stand part of the Bill.*

***Member's explanatory statement***

*This amendment removes the presumption against prosecution (Clauses 1–7) for the reasons outlined in Chapter 3 of the JCHR's ninth Report of this session.*

**Clause 7**

LORD DUBS  
BARONESS MASSEY OF DARWEN  
BARONESS SMITH OF NEWNHAM

*The above-named Lords give notice of their intention to oppose the Question that Clause 7 stand part of the Bill.*

***Member's explanatory statement***

*This amendment removes the presumption against prosecution (Clauses 1–7) for the reasons outlined in Chapter 3 of the JCHR's ninth Report of this session.*

**After Clause 7**

LORD THOMAS OF GRESFORD  
BARONESS SMITH OF NEWNHAM

Insert the following new Clause—

**“Investigation of serious crime related to overseas operations**

- (1) In deciding whether to commence criminal proceedings for serious crime 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 serious crime arising out of overseas operations is satisfied that sufficient evidence of criminality exists, 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 crime 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; or
  - (b) give appropriate advice and directions to the investigator as to the investigation.
- (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 on 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 alleged crime may not be further investigated or reinvestigated without the direction of the Director of Service Prosecutions acting in the public interest.
- (8) The Judge Advocate General may give Practice Directions as he or she deems appropriate for the investigation of serious crime arising out of overseas operations.
- (9) For the purposes of this section—
  - “investigator” means a member of the service police or a civil police force;
  - “serious crime” means crime triable on indictment punishable by imprisonment of not less than 2 years;
  - “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.”

**After Clause 12**

LORD DANNATT  
LORD STIRRUP  
LORD BOYCE  
LORD TOUHIG

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 report, and
  - (b) lay a copy of the report before Parliament.
- (4) The duty of care report is a report about the continuous process of review 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 report 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

**After Clause 12 - continued**

- (d) where relevant, family members of any person meeting the definition within (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.”

***Member’s explanatory statement***

*This new Clause will require the Ministry of Defence to identify a new duty of care to create a new standard for policy, services and training in relation to legal, pastoral and mental health support provided to service personnel involved in investigations or litigations arising from overseas operations, and to report annually on their application of this standard.*

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*27 January 2021*

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