

OVERSEAS OPERATIONS (SERVICE PERSONNEL AND VETERANS) ACT 2021

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Overseas Operations (Service Personnel and Veterans) Act 2021 (c. 23) which received Royal Assent on 29 April 2021.

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

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These Explanatory Notes relate to the Overseas Operations (Service Personnel and Veterans) Act 2021 (c. 23) which received Royal Assent on 29 April 2021

Overview of the Act

- 1 The Overseas Operations (Service Personnel and Veterans) Act includes the following provisions:
 - a. Measures that will apply when decisions are made by prosecutors in relation to the prosecution of current or former Service personnel for historical offences allegedly committed overseas.
 - i. Firstly, a presumption against prosecution. This provision raises the threshold to be applied by prosecutors when considering whether a service person or veteran should be prosecuted in such cases, by stipulating that it is to be exceptional for a prosecutor to determine that a prosecution should be brought.
 - ii. Secondly, the prosecutor must give particular weight to the adverse impact of the particular conditions the person was exposed to and the exceptional demands and stresses of overseas operations on a Service person (including on their ability to make sound judgements and on their mental health) and, in cases where there have been previous investigations and no compelling new evidence has emerged, the public interest in finality.
 - iii. Thirdly, if a prosecutor determines that, notwithstanding the presumption, it is appropriate for a prosecution to be brought, the consent of the Attorney General for England and Wales or the Advocate General for Northern Ireland will then be required for the prosecution to proceed.
- 2 These measures apply where the prosecutor's decision concerns a "relevant offence". The definition of "relevant offence" covers all offences, save for those listed in Schedule 1.¹
 - a. Restriction of judicial discretion to allow certain civil claims connected with overseas operations. This further restricts the court's discretion to extend the normal time limit of three years for bringing civil claims for personal injury and/or death connected with historical events outside the UK by requiring the court to have particular regard to additional factors (in addition to those that already exist) when deciding whether to allow a claim to proceed beyond the three-year limitation period. Those new factors include, for example, particular regard to the likely impact of the operational context on the ability to remember events and the likely impact of any legal proceedings on the mental health of any service personnel witnesses.
 - b. Restriction of judicial discretion to allow claims under the Human Rights Act 1998 (HRA) connected with overseas operations. This requires the court to have particular regard to various factors (as set out in the bullet point above for civil claims for personal injury and/or death) when considering whether to extend the primary limitation period of one year.

¹ The offences listed in Schedule 1 include sexual offences, torture and offences under the International Criminal Court Act 2001.

- c. Limitation longstop for civil claims connected with operations overseas. There is also an absolute limitation longstop of six years which will prevent claims being brought more than six years after the date of incident, or more than six years after the date of knowledge.
- d. Changes to private international law rules for personal injury and death claims connected with overseas operations. The Act amends existing legislation to provide that when the limitation periods of another country are applied to these claims, there will be an absolute limitation longstop of six years.
- e. Limitation longstop for claims under the HRA connected with overseas operations. This similarly imposes an absolute limitation longstop of six years for bringing HRA claims connected with overseas operations. This means there is a consistent approach to the absolute limitation periods for both personal injury and death claims and for HRA claims connected with overseas operations. The time for the longstop on HRA claims will be calculated from the date of the act. If the date of knowledge is later than the date of the incident, then claimants will have an additional one year to make a claim, provided that one-year period ends more than six years after the date of the act.

Policy and legal background

- 3 This Act aims to provide greater certainty for Service personnel and veterans in relation to claims and potential prosecution for historical events that occurred in the complex environment of overseas operations.
- 4 This Act seeks to address issues that have partly arisen from the 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.
- 5 It also raises the bar for prosecutions in relation to alleged historical incidents that occurred on overseas operations, requiring prosecutors to have proper regard to the uniquely challenging context.
- 6 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 Act and that prosecutions will only go ahead in exceptional cases.
- 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, judgments 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 Act will stop those suspected of committing criminal acts from being prosecuted, where appropriate.
- 10 UK Service personnel and veterans have been subject to numerous claims – including those that were ultimately discredited, or were brought in multiple jurisdictions, or were found to have been encouraged by lawyers pursuing financial gain.
- 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 Act.

Territorial extent and application

- 12 The Act extends to England and Wales, Scotland and Northern Ireland. The effects of the provisions are substantively the same throughout the UK, but as amendments were needed to different pieces of legislation in the different jurisdictions, some provisions of the Act apply to England and Wales only, some to Scotland, and others to Northern Ireland.

Commentary on provisions of Act

Part 1: Restrictions on prosecution for certain offences

Presumption against prosecution

Section 1: Prosecutorial decision regarding alleged conduct during overseas operations

- 13 This section sets out when the statutory presumption against prosecution (section 2), and the requirement to give particular weight to specified factors (section 3), will apply to decisions whether or not to prosecute in criminal cases. The effect of the section is such that the measures at sections 2 and 3 also apply to decisions as to whether or not private prosecutions should be allowed to continue.
- 14 This section sets out:
 - a. which groups will be covered by sections 2 and 3 of the Act: 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 five 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 sections 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".

Section 2: Presumption against prosecution

- 15 This section 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 earlier.

Section 3: Matters to be given particular weight

- 16 This section sets out specific matters to which a prosecutor must give particular weight when deciding whether or not to bring proceedings in a particular case. These matters are:
 - 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)).

- 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). This section ensures that, in these circumstances, the public interest in finality being achieved without undue delay is a matter to which the prosecutor gives particular weight when making a decision.

17 The requirement to give weight to these matters is limited to where they tend to reduce the culpability of the accused individual or otherwise tend against prosecution.

Section 4: Section 3: supplementary

18 This section explains what is meant by "relevant previous investigation" and "new" evidence.

Consent to prosecution

Section 5: Requirement of consent to prosecute

19 This section sets out the requirement that if a prosecutor determines that, notwithstanding the presumption against prosecution (at section 2) and the requirement to give particular weight to specified matters (at section 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 five 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 section does not extend to Scotland given that all criminal prosecution decisions in the public interest in Scotland are taken by, or on behalf of, the Lord Advocate. 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.

Section 6: "Relevant offence"

- 20 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 excluded by virtue of Schedule 1.
- 21 Any alleged offences committed by the groups identified in section 1 against a member of the Armed Forces (including BOTF), a Crown Servant or a defence contractor will not constitute a relevant offence.

Section 7: General interpretation etc

- 22 This section provides definitions and supplementary explanations for terminology appearing in sections 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 five 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

Section 8: Restrictions on time limits to bring actions: England and Wales

- 23 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 particular regard when exercising its discretion. These changes apply only to claims for personal injuries or deaths which are connected with overseas operations.
- 24 Subsection (2) explains that Part 2 of Schedule 2 amends the Foreign Limitation Periods Act 1984. These changes ensure that where foreign limitation periods are to be applied in personal injury and/or death claims connected with overseas operations which are brought in England or Wales, claimants will not benefit from more generous time limits that may be available in that foreign law.

Section 9: Restrictions on time limits to bring actions: Scotland

- 25 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 particular regard when exercising its discretion. These changes apply only to claims for personal injuries or deaths which are connected with overseas operations.
- 26 Subsection (2) explains that Part 2 of Schedule 3 amends the Prescription and Limitation (Scotland) Act 1973 to ensure that where foreign limitation periods are to be applied in personal injury and/or death claims connected with overseas operations which are brought in Scotland, claimants will not benefit from more generous time limits in that foreign law.

Section 10: Restrictions on time limits to bring actions: Northern Ireland

- 27 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 which are connected with overseas operations.
- 28 Subsection (2) explains that Part 2 of Schedule 4 amends the Foreign Limitation Periods (Northern Ireland) Order 1985/754. These changes ensure that where foreign limitation periods are to be applied in personal injury and/or death claims connected with overseas operations which are brought in Northern Ireland, claimants will not benefit from more generous time limits that may be available in that foreign law.

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

- 29 This section 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.
- 30 Subsection (2) inserts a new section 7A into the HRA.
- 31 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 to proceed beyond 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)), and 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 proceed 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 that one-year period expires more than six years after the date of the act.
- 32 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.
- 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”.

Part 3: General

Section 12: Power to make consequential provision

- 35 This section provides the Secretary of State and the Lord Chancellor with the power to make consequential amendments.

Section 13: Extent

- 36 This section sets out the territorial extent of the Act. It extends to England and Wales, Scotland and Northern Ireland, except as specified in this section.

Section 14: Commencement and application

- 37 This section makes provision about the coming into force of the provisions of the Act.
- 38 None of the provisions in sections 1 to 11 will apply to proceedings started before the date on which the provisions of the Act come into force.

Section 15: Short Title

- 39 This section sets out the short title of the Act.

Schedule 1: Excluded offences for the purposes of section 6

- 40 Schedule 1 details the offences excluded from the scope of the requirements of Sections 2, 3 and 5, and is structured as follows:

Part 1 – Criminal conduct etc under Armed Forces legislation. This Part of Schedule 1 excludes sexual offences.

Part 2 – International Criminal Court Act 2001. This Part of Schedule 1 excludes offences of genocide, crimes against humanity and war crimes under the International Criminal Court Act 2001 (in the law of England and Wales and Northern Ireland).

Part 3 – International Criminal Court (Scotland) Act 2001. This Part of Schedule 1 excludes the offences of genocide, crimes against humanity and war crimes under the International Criminal Court (Scotland) Act 2001.

Part 4 – Other offences. This Part of Schedule 1 excludes the offence of torture under s.134 of the Criminal Justice Act 1988, as well as all offences under section 1(1) Geneva Conventions Act 1957.

Part 5 – Provisions extending jurisdiction in respect of certain sexual offences. This Part of Schedule 1 excludes certain sexual offences under provisions that extend jurisdiction (whereby certain acts, if done outside of the UK, constitute offences in UK).

Schedule 2: Limitation periods: England and Wales

Part 1 – Court’s discretion to disapply time limits

- 41 Part 1 of Schedule 2 amends section 33 of the LA, which sets out the factors that the court must have particular regard to 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.
- 42 Paragraph 1(2) inserts 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.
- 43 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.
- 44 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)), and the likely impact of giving evidence on the mental health of the Service personnel or veterans involved.
- 45 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.
- 46 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 claims for personal injuries or deaths connected with overseas operations; and explains how “the relevant date” is to be calculated.

Part 2 – Restriction of foreign limitation law

- 47 Part 2 of Schedule 2 amends the Foreign Limitation Periods Act 1984, and ensures that where foreign limitation periods are applicable to personal injury and/or death claims connected with overseas operations brought in England or Wales, claimants cannot benefit from more generous time limits in that foreign law. 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 in connection with an overseas operation.

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- 48 Paragraphs 2(2) and (3) insert a new section (1ZA) into the Act.
- 49 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.
- 50 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.
- 51 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.
- 52 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.
- 53 Subsection (1ZA)(4) defines the meaning of "overseas armed forces tort action".
- 54 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.
- 55 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

- 56 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 personal injury and/or death claims.
- 57 Paragraph 1(3) inserts a new section 19AA, which restricts the power in section 19A in relation to overseas operations.
- a. New section 19AA(2) makes the exercise of the discretionary power subject to new section 19AA(3) and 19AA(5) to 19AA(7).
 - b. New 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 new section 19AA(4)), and the likely impact of giving evidence on the mental health of the Service personnel or veterans involved.
 - c. New 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. New sections 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. New sections 19AA(11) to (14) provide definitions of the terms used elsewhere in this section.

Part 2 – Restriction of foreign limitation law

- 58 Part 2 of Schedule 3 amends section 23A of the Prescription and Limitation (Scotland) Act 1973, and ensures that where foreign limitation periods are applicable to personal injury and/or death claims connected with overseas operations brought in Scotland, claimants cannot benefit from more generous time limits in foreign law. 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.
- 59 Paragraph 2(1) and (3) insert a new section 23B into the Act.
- 60 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 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.
- 61 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.
- 62 Section 23B(4) defines the meaning of “overseas armed forces personal injury action”.
- 63 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

- 64 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 for personal injury and/or death.
- 65 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.
- 66 Paragraph 1(3) inserts new paragraphs (3A) and (3B), which explain how these amendments interact with article 9.

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- 67 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)), and the likely impact of giving evidence on the mental health of the Service personnel or veterans involved.
- 68 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.
- 69 Paragraph 1(6) and (7) insert new definitions.

Part 2 – Restriction of foreign limitation law

- 70 Part 2 of Schedule 4 amends the Foreign Limitation Periods (Northern Ireland) Order 1985/754, and ensures that where foreign limitation periods are applicable to personal injury and/or death claims connected with overseas operations brought in Scotland, claimants cannot benefit from more generous time limits in foreign law. 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.
- 71 Paragraph 2(1) and (3) insert a new article 3A into the Order.
- 72 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.
- 73 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.
- 74 Article 3A(4) defines the meaning of “overseas armed forces tort action” for the purposes of article 3A.
- 75 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.
- 76 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

77 Section 14 sets out how the different provisions will be commenced.

Related documents

78 The following documents are relevant to the Act 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](#).
- Public Consultation on Legal Protections for Armed Forces Personnel and Veterans serving in operations outside the United Kingdom: Ministry of Defence Analysis and Response, available [here](#).
- House of Commons Defence Committee report, “Drawing a line: Protecting veterans by a Statute of Limitations”. The full report can be found [here](#). The Government’s response can be found [here](#).
- Joint Committee on Human Rights report on the Overseas Operations (Service Personnel and Veterans) Act can be found [here](#). The Government’s response can be found [here](#).

Annex A – Territorial extent and application in the United Kingdom

79 The Act 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 Act apply to England and Wales only, some to Scotland, and others to Northern Ireland.

80 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?
Section 1	Yes	Yes	Yes	Yes
Section 2	Yes	Yes	Yes	Yes
Section 3	Yes	Yes	Yes	Yes
Section 4	Yes	Yes	Yes	Yes
Section 5	Yes	Yes	No	Yes
Section 6	Yes	Yes	Yes	Yes
Section 7	Yes	Yes	Yes	Yes
Section 8	Yes	Yes	No	No
Section 9	No	No	Yes	No
Section 10	No	No	No	Yes
Section 11	Yes	Yes	Yes	Yes
Section 12	Yes	Yes	Yes	Yes
Section 13	Yes	Yes	Yes	Yes
Section 14	Yes	Yes	Yes	Yes
Section 15	Yes	Yes	Yes	Yes
Schedule 1	Yes	Yes	Yes	Yes
Schedule 2	Yes	Yes	No	No
Schedule 3	No	No	Yes	No
Schedule 4	No	No	No	Yes

Annex B – Hansard References

81 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
<i>House of Commons</i>		
Introduction	18 March 2020	Vol. 673 Col. 1005
Second Reading	23 September 2020	Vol. 680 Col. 984
Public Bill Committee	6 October 2020	First sitting Vol. 681 Col. 1
	6 October 2020	Second sitting Vol. 681 Col. 31
	8 October 2020	Third sitting Vol. 681 Col. 81
	8 October 2020	Fourth Sitting Vol. 681 Col. 103
	14 October 2020	Fifth sitting Vol. 682 Col. 131
	14 October 2020	Sixth sitting Vol. 682 Col. 163
	20 October 2020	Seventh sitting Vol. 682 Col. 211
	20 October 2020	Eighth sitting Vol. 682 Col. 243
	22 October 2020	Ninth sitting Vol. 681 Col. 297
	22 October 2020	Tenth sitting Vol. 681 Col. 325
Report and Third Reading	3 November 2020	Vol. 683 Col. 201
<i>House of Lords</i>		
Introduction	4 November 2020	Vol. 807 Col. 795
Second Reading	20 January 2021	Vol. 809 Col. 1170
Committee of the whole House	9 March 2021	Vol. 810 Col. 1493
Report	13 April 2021	Vol. 811 Col. 1167
Third Reading	19 April 2021	Vol. 811 Col. 1651
Commons Consideration of Lords Amendments	21 April 2021	Vol. 692 Col. 1014
Lords Consideration of Commons Amendments	26 April 2021	Vol. 811 Col. 2089
Commons Consideration of Lords message	27 April 2021	Vol. 693 Col. 286
Lords Consideration of Commons Amendments	28 April 2021	Vol. 811 Col. 2345
Royal Assent	29 April 2021	House of Commons Vol. 693 Col. 520
		House of Lords Vol. 811 Col. 2413

These Explanatory Notes relate to the Overseas Operations (Service Personnel and Veterans) Act 2021 (c. 23) which received Royal Assent on 29 April 2021

Annex C – Progress of the Bill table

82 This Annex shows how each section and Schedule of the Act was numbered during the passage of the Bill through Parliament.

Section of the Act	Bill as Introduced in the Commons	Bill as amended in Committee in the Commons	Bill as introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords
Section 1	Clause 1	Clause 1	Clause 1	Clause 1	Clause 1
Section 2	Clause 2	Clause 2	Clause 2	Clause 2	Clause 2
Section 3	Clause 3	Clause 3	Clause 3	Clause 3	Clause 3
Section 4	Clause 4	Clause 4	Clause 4	Clause 4	Clause 4
Section 5	Clause 5	Clause 5	Clause 5	Clause 5	Clause 5
Section 6	Clause 6	Clause 6	Clause 6	Clause 6	Clause 6
Section 7	Clause 7	Clause 7	Clause 7	Clause 7	Clause 8
Section 8	Clause 8	Clause 8	Clause 8	Clause 8	Clause 9
Section 9	Clause 9	Clause 9	Clause 9	Clause 9	Clause 10
Section 10	Clause 10	Clause 10	Clause 10	Clause 10	Clause 11
Section 11	Clause 11	Clause 11	Clause 11	Clause 11	Clause 12
	Clause 12	Clause 12	Clause 12	Clause 12	
Section 12	Clause 13	Clause 13	Clause 13	Clause 13	Clause 15
Section 13	Clause 14	Clause 14	Clause 14	Clause 14	Clause 16
Section 14	Clause 15	Clause 15	Clause 15	Clause 15	Clause 17
Section 15	Clause 16	Clause 16	Clause 16	Clause 16	Clause 18
Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1
Schedule 2	Schedule 2	Schedule 2	Schedule 2	Schedule 2	Schedule 2
Schedule 3	Schedule 3	Schedule 3	Schedule 3	Schedule 3	Schedule 3
Schedule 4	Schedule 4	Schedule 4	Schedule 4	Schedule 4	Schedule 4

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