

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT  
GENERAL COMMITTEES

Public Bill Committee

## OVERSEAS OPERATIONS (SERVICE PERSONNEL AND VETERANS) BILL

*Fifth Sitting*

*Wednesday 14 October 2020*

*(Morning)*

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CLAUSE 1 under consideration when the Committee adjourned till this day  
at Two o'clock.

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**not later than**

**Sunday 18 October 2020**

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**The Committee consisted of the following Members:**

*Chairs:* DAVID MUNDELL, † GRAHAM STRINGER

† Anderson, Stuart (*Wolverhampton South West*)  
(Con)

† Atherton, Sarah (*Wrexham*) (Con)

† Brereton, Jack (*Stoke-on-Trent South*) (Con)

† Dines, Miss Sarah (*Derbyshire Dales*) (Con)

† Docherty, Leo (*Aldershot*) (Con)

† Docherty-Hughes, Martin (*West Dunbartonshire*)  
(SNP)

† Eastwood, Mark (*Dewsbury*) (Con)

† Evans, Chris (*Islwyn*) (Lab/Co-op)

† Gibson, Peter (*Darlington*) (Con)

† Jones, Mr Kevan (*North Durham*) (Lab)

† Lewell-Buck, Mrs Emma (*South Shields*) (Lab)

† Lopresti, Jack (*Filton and Bradley Stoke*) (Con)

† Mercer, Johnny (*Minister for Defence People and  
Veterans*)

Monaghan, Carol (*Glasgow North West*) (SNP)

† Morgan, Stephen (*Portsmouth South*) (Lab)

† Morrissey, Joy (*Beaconsfield*) (Con)

† Twist, Liz (*Blaydon*) (Lab)

Steven Mark, Sarah Thatcher, *Committee Clerks*

† **attended the Committee**

## Public Bill Committee

Wednesday 14 October 2020

(Morning)

[GRAHAM STRINGER *in the Chair*]

### Overseas Operations (Service Personnel and Veterans) Bill

9.25 am

**The Chair:** Before we begin consideration, I have to make a few preliminary points. Members will understand the need to respect social distancing guidance, and I shall intervene if necessary to remind everyone. I remind Members to switch electronic devices to silent. Tea and coffee are not allowed during sittings.

Many Members will speak spontaneously in the debate but, if they have speaking notes, it would be helpful to our colleagues in *Hansard* if those can be sent to [hansardnotes@parliament.uk](mailto:hansardnotes@parliament.uk).

For a number of Members, this is the first time that they have been in a Bill Committee. If any hon. Member is unsure of the procedure or wants advice, the Clerk and I are here to help, and not in any sense to hinder.

We now begin line-by-line consideration of the Bill. The selection list for today's sitting is available in the room, on the desk. It shows how the selected amendments have been grouped together for debate. Amendments grouped together are generally on the same or a similar issue.

Please note that decisions on amendments do not take place in the order that they are debated, but in the order that they appear on the amendment paper. The selection and grouping list shows the order of debates. Decisions on each amendment are taken when we come to the clause to which the amendment relates.

#### Clause 1

##### PROSECUTORIAL DECISION REGARDING ALLEGED CONDUCT DURING OVERSEAS OPERATIONS

**Chris Evans** (Islwyn) (Lab/Co-op): I beg to move amendment 23, in clause 1, page 2, line 1, at end insert—

“(ba) operating weapon-bearing UAVs (Unmanned Aerial Vehicles) or RPAS (Remotely Piloted Aerial Systems) from the British Islands in support of overseas operations.”

It is a pleasure to serve under your chairmanship, Mr Stringer.

The Bill is important to our service personnel, and it is crucial that we get it right. Last week, one of our witnesses, Mr Sutcliffe, said to us:

“please scrutinise the Bill as carefully as you can...and...look after your service and ex-service personnel in the best way you can.”—[*Official Report, Overseas Operations (Service Personnel and Veterans) Public Bill Committee*, 6 October 2020; c. 10, Q9.]

It is important to keep those things in mind as we proceed. I hope that the Government will consider our amendments even-handedly. They have been tabled in

good faith, in the hope that we can make the Bill the best it can be for the brave men and women who serve in our armed forces.

Amendment 23 calls for unmanned aerial vehicles or remotely piloted aerial systems operated from the British isles in support of overseas operations to be included in the Bill. The Minister has said that he is happy to look again at all aspects of the Bill and that he wants to build a collegiate approach in the House to get the Bill through. I would argue that this clause is a good place to start. The amendment would a simple and effective way to help the Bill to achieve its stated aims. If the Government are serious about making this Bill comprehensive, I see no reason for UAVs not to be included. As drafted, the Bill is not clear enough about its scope or what it includes.

In recent times, we have seen a dramatic rise in the use of UAVs. The failure to include them in the Bill gives me concern that it is not looking enough to the future of warfare. The Government have made their plans clear, saying that they will rely increasingly on unmanned aerial vehicles, meaning that those will account for an important part of the integrated review. Across the world, armed forces have invested millions in the development of UAVs for military operations. The United States has increasingly relied on drones to carry out its military operations overseas, and the rest of the world is quickly following.

In 2016, at the cost of £816 million, the drone acquisition programme was approved by the Ministry of Defence. Earlier this year, the permanent secretary at the Ministry of Defence said that the estimated cost had risen by an additional £325 million. The UK Government are funnelling ever-increasing sums into the funding of UAVs for military purposes. Since 2007, about 3,700 Royal Air Force drone missions have killed 1,000 terrorists in Iraq, Afghanistan and Syria.

**Mr Kevan Jones** (North Durham) (Lab): Does my hon. Friend agree that UAVs are an integral part of the new battlespace and that, while some people argue that they are outside any rules of engagement, they are in fact governed by the same rules as govern conventional weapons and that the people using them are aware of the legal restraints?

**Chris Evans:** I thank my right hon. Friend for his intervention. A long-standing member of the Defence Committee, he has developed a reputation as an expert in the field of defence. He is right that the impact of technology will only increase in changing our world beyond all recognition. It is important to realise that, in future, whether drones are operated from the British islands or America, they will be as much a part of warfare as boots on the ground. Unmanned combat is likely to become an increasingly common form of warfare. The Ministry of Defence has said it aims for a third of the Royal Air Force to be remotely piloted by 2030, and funding for unmanned aerial vehicles for military purposes continues to grow. Given their rising use, the exclusion from the Bill of UAVs and remotely piloted aircraft systems is a glaring oversight if the legislation is to serve its purpose in the future.

The Ministry of Defence is also considering the most appropriate systems for air combat, especially when Typhoon leaves service in 2030. Options for air combat

forces include unmanned combat aerial vehicles with both offensive and defensive capabilities. That would see a mix of manned and unmanned craft in the air force, working alongside each other. Surely those piloting UAVs from the UK should be given the same consideration under the Bill as those they work alongside.

**Mr Jones:** The hon. Friend refers to unmanned aerial vehicles, but is it not the case that in future we will also have unmanned sea vehicles and, increasingly, autonomous tank-type vehicles on the battlespace?

**Chris Evans:** My right hon. Friend is absolutely right. People will still have to operate those vehicles in future, and they will also be open to the horrors of war and what happens on the battlefield. We should keep that in mind as we develop this argument.

Until recently, the drones used by the UK armed forces were remotely piloted aerial systems. The proposed unmanned combat aerial vehicles differ from the previous drones as they are designed to fight for air supremacy. That widens the scope of drone and other unmanned warfare, as my right hon. Friend just said, increasing the number of service personnel working on an overseas mission but not physically based overseas. General Sir Mark Carleton-Smith recently said that he foresees the Army of the future as an integration of “boots and bots” and that in future combat those on the ground will be supported by “swarms of drones”. We look forward to hearing more about those plans when the integrated review is finally published.

The Ministry of Defence also continues to fund research into the future of drones. The Government are funding jointly with the French a study into the feasibility of an unmanned combat aircraft as a possible replacement for Typhoon from 2030. The Government have said they have no plans to develop fully autonomous weapons; that means that service personnel will continue to operate UAVs for the foreseeable future. What is clear from all that is that drones are here to stay. Therefore, those who operate those missions should be included in the Bill. It is important to note that drone operators face a worryingly high chance of developing post-traumatic stress disorder. In fact, in 2015, Reaper squadron boss Wing Commander Damian Killeen told the BBC that staff operating drone aircraft in Iraq and Syria may be at greater risk of mental trauma.

While drone operators may be based in the UK, they are completing overseas missions. There is a popular image that operating a drone is like playing a video game, but those who serve say that that is simply not the case. One US drone operator is quoted as saying:

“You are 18 inches away from 32-inch, high-definition combat, where you are in contact [by headset with] the guys on the ground... You are there. You are there. You fly with them, you support them and a person you are tasked with supporting gets engaged, hurt, possibly killed, it’s a deeply, deeply emotional event. It’s not detached. It’s not a video game. And it’s certainly not 8,000 miles away.”

For some, drone operation can be more traumatising than flying a conventional aircraft. As Commander Killeen says:

“You’ve got that resolution where you know exactly what it is that’s on the other end of your crosshairs.”

Research by the US air force also suggests that those in the kill chain see more graphic violence than their special forces counterpart on the ground. On surveillance

missions, they are more likely to see destroyed homes and villages, as well as witnessing dead bodies and human remains. One UAV pilot told the *Daily Mirror*:

“The days are long and hard and can be mentally exhausting. And although UAV pilots are detached from the real battle, it can still be traumatic, especially if you are conducting after-action surveillance.

When you are piloting a UAV for hours, you feel part of the battle, even though you are thousands of miles away.”

The risk of post-traumatic stress disorder is also increased by the fact that, unlike personnel on the ground, who perhaps do a four-month tour, UAV operators often work year round, meaning less chance for a break and time to recover. Justin Bronk, a research fellow for airpower at the London-based Royal United Services Institute, said that fast jet crews were used to deploy on short tours abroad, but that drone operators switched daily between potentially lethal operations and family life, which could be

“extremely draining and psychologically taxing”.

The psychological stress of drone warfare is visible in difficulties that the UK faces in recruitment and retention of those qualified to fly armed drones. During an appearance before the Public Accounts Committee in January, the Ministry of Defence permanent secretary said that for the Royal Air Force, the training and retraining of drone crews has “historically proven challenging”.

The effect that taking part in such machines has on UAV pilots mentally, despite their being physically further away from the action, merits their inclusion in the Bill. Only last week, in our evidence session, Clive Baldwin of Human Rights Watch said:

“The idea of having one rule for overseas operations and one for domestic operations will be increasingly artificial”.—[*Official Report, Overseas Operations (Service Personnel and Veterans) Public Bill Committee*, 6 October 2020; c. 67, Q135.]

Drone operators may not be physically overseas, but they are very much taking part in overseas operations. With unmanned warfare looking like it will be more common in future conflicts, I would argue that failing to include those operations in the Bill may cause the Ministry of Defence service personnel issues down the line. The Government have said that they want the Bill to protect service personnel from repeated investigations and vexatious claims. Do those service personnel who operate UAVs not also deserve to be protected?

Given the increasing use of UAVs and RPAS, I would be deeply concerned were they not included in the Bill. If the Bill is to do as the Minister purports, surely, if we are to protect our service personnel, we want to include and protect those personnel who operate our drones.

**Mr Jones:** I thank my hon. Friend for introducing this amendment, which I assume is a probing one in order to have the debate. But, Mr Stringer, it was remiss of me not to say what a pleasure it is to serve under your chairmanship, especially now we are both serial rebels on our Benches, after votes that took place this week on covid.

I do not like the word “drone”. It gives the sinister idea that somehow these things are indiscriminate weapons and there is no human in the chain. Unmanned aerial vehicle is a more appropriate term. I accept that, in the future, we may get to a system where unmanned aerial

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vehicles or subsea systems are completely autonomous, but at the moment, we are talking about the human in the chain.

It is a common myth, mainly argued by those who are against the use of UAVs, that somehow there are no rules that govern how they are used. Nothing could be further from the truth. When I was a Minister in the Ministry of Defence, I met the individuals who pilot—that is the word we use—these unmanned systems in both Iraq and Afghanistan. They are in the same decision-making process and legal framework as if someone was dropping a ordnance from a Typhoon or any type of manned aircraft.

There is a chain of command, including a legal framework around their decisions. Before each individual airstrike takes place, there is a legal justification. That might come as a surprise to some people who want to portray the view that people are sat in Nevada or Waddington or Florida pressing buttons, attacking targets. Nothing could be further from the truth. There is a legal framework for each operation and that is supported by the legal service. It surprises some people that each strike has a legal sign-off, with lawyers who agree what can and cannot be done, including, as I know from my time in office, a chain that sometimes includes Ministers who have to agree to those sign-offs. There are many examples where Ministers have had sign-off.

Is what we are talking about pretty? No, it is not—but anyone who knows the battle space or any type of combat knows that it is not a pretty thing. Killing people is not something that anyone wants to do, but unmanned aerial vehicles have given a capability to us and our allies which has been of tremendous help, not only in saving UK and allies' servicemen and women's lives, but in saving civilian lives.

The chain of command is a legal framework. Do things go wrong? Yes, clearly they do, and not just in this theatre. Sometimes in a very complex battle scenario, no matter how well you plan for it, you cannot foresee every eventuality. What irritates me is that people sometimes look back at those situations with some sort of crystal ball and say, "Well, if I was there, I would have done X, Y and Z."

**Jack Lopresti** (Filton and Bradley Stoke) (Con): On a point of information, and paying tribute to the right hon. Gentleman's experience in the field, if a Minister signs off an operation and it goes wrong, does that mean that the Minister is legally culpable for the decision, or is it the operator operating the UAV or is it the people on the ground calling in the mission?

**Mr Jones:** I will come to that in a minute; it is an important point on the legal protection that is there for the people involved.

Things do go wrong. It is fine for people to look back and say, "Look, if that happened, I would have done this differently," but that is just not how warfare takes place. Sometimes, there are critical decisions that have to be taken at short notice to protect civilians or protect our armed forces' lives. At the end of the day, they are down to individual judgments, not only by the commanders who authorise things, but by the people we are asking to protect us as members of our armed forces.

9.45 pm

On that side, I think we are a world leader in terms of ensuring that our men and women, when they go into battle and have to use force, have clear rules of engagement and a clear legal framework behind that. I know that there are some hon. Members on this Committee who have served, and they will know that it is drummed into them right from basic training, "These are the things you will do," but if we are looking for perfection in this very complex world, we will not get it. On airstrikes, will we will get perfection? No, we will not. We will get situations where intelligence changes or is wrong, and situations where "collateral damage"—an awful phrase that I never like using—happens, meaning that civilians are maimed or killed because of that airstrike. That does not, though, undermine the reason why we need to use lethal force in certain circumstances.

There is one other thing that I can certainly tell the Committee from my experience: there are numerous missions with UAVs, and the impression has been given that somehow we can just press a button and people are fire at things willy-nilly. That is not true, because we have a situation with a legal framework around it, and I know that from my own experience of airstrikes that were stopped, sometimes at the last minute. The reason for that is because the operator, possibly in connection with people on the ground, sees that there are civilians or that the situation has changed in terms of the target. Those missions are aborted at the last minute, and that goes not only for UAV operations but for conventional airstrikes as well; that is the nature of a fast-moving battlespace.

In all that, we can have all the rules we like, but at the end of the day we have human beings in that process. What this amendment states, and what I believe, is that that individual needs protection, because it is a new type of warfare and it is only going to change further. If we look, for example, not just at UAVs, but at the maritime systems we have now, which will be unmanned, and the land systems we have, which will increasingly be unmanned, I am quite confident from my experience that the use of those systems in this country will be governed by the rules of engagement and chain of command and decision making. We cannot necessarily say that for many of our adversaries, who will not use the type of ethical approach that we do.

However, that does change the nature of warfare, and I think my hon. Friend the Member for Islwyn is making a point about the human being in this. Is somebody sat in Warrington, operating a drone over Afghanistan, Yemen or anywhere else in the world, on overseas operations? They are not physically out of this country, because they are sat there in a nice part of Lincolnshire, but is that classed as an overseas operation? If we get a situation where, for example, it is argued that the use of force was not justified or that it led to civilian deaths or to something that would not be "legal", that is where we need some clarity.

This is a probing amendment from my hon. Friend, and I think that is the purpose of this Committee: perhaps not to have votes on things, but to ensure that we have looked at the different areas.

**Martin Docherty-Hughes** (West Dunbartonshire) (SNP): When the hon. Member for Islwyn was introducing the amendment, he noted that it was not meant to take on

board issues in relation to fully autonomous systems. Nevertheless, it should be recognised that fully autonomous systems will be with us sooner rather than later and that, in those systems, there is a human decision-making process that must be safeguarded. Artificial intelligence is artificial, requiring human instigation to create the algorithm to make the decision-making process, and we must keep that in mind as we recognise the need for and validity of securing protections.

**Mr Jones:** I agree. Again, some people writing or talking about this area are saying that somehow the human being has nothing to do with it. The hon. Gentleman is correct in that even if we get to having a futuristic system with fully autonomous vehicles and in-flight combat between various systems, swarms of drones and things like that, a decision will still need to be taken on how that system is used. That is an area where not just in the UK but internationally we will need to look at rules of engagement and the definition of an autonomous vehicle. There is increasingly a move towards autonomous vehicles. Look at the Team Tempest programme from BAE Systems and its partners and how that is going: there can be a pilot, but the design will not need a pilot, and that ain't that far away—it is coming up fast.

It comes back to the decision-making process. The hon. Member for Filton and Bradley Stoke mentioned the chain of command issue. That goes to the heart of the Bill because of the importance of having the audit trail for who took which decisions. It is difficult for anyone in the chain of command to take a decision, from the person executing the mission on the ground right up to a Minister signing something off. That is not an easy process. Can things go wrong all the way through? Yes. However, I would argue that as long as a decision is underpinned by our legal processes right the way through to authorisation by a Minister to ensure that it is legally watertight, we should be okay. Mistakes will happen. What a lot of the public find strange is that in cells that deal with targeting, there are MOD or RAF lawyers sat there, saying, “I am sorry, you cannot do that.” It shocks people.

Unmanned aerial vehicles have got to the point where there is a bit of folklore when people make a decision. It is therefore important to ensure there is that legal framework. However, as I said, things will go wrong, and my hon. Friend the Member for Islwyn is trying in the amendment to consider what happens when things do go wrong. Is somebody sat in RAF Waddington classed as being on overseas operations? That is a grey area that perhaps has not appeared yet in all these claims, but I think it will.

The evidence we have taken in the last few weeks has highlighted how, in many ways, this is an easier area to look at in terms of investigations because there is—there should be—that chain of decision making. However, it does get complicated when we are working with allies. I am confident that we have some of the most robust rules in terms of targeting and rules of engagement, but—how can I put this diplomatically?—I do not think it is the same for some of our allies, especially one of our closest allies. Could we argue that some of the examples I have seen in Afghanistan and Iraq were proportionate in the way they were conducted? I do not think they were. That has led to the idea that somehow we are the same.

Let us suppose we get to the situation where we have a legal challenge to somebody who has been sat in Waddington, has legitimately followed the legal advice and something goes wrong. What happens? Are they classed as being on overseas operations? We should give them protection because they are not just following orders, but following the legal guidance that has been supplied to them as to why they are carrying out the mission. That is an area we need to look at.

It links to a broader point about what we deem to be overseas operations. Eminent lawyers will want to argue around the head of a pin about this, if we do not look at it. The other side is other operations. Increasingly we, as a nation, are not going into conflicts on our own, but with other nations. That leads to a situation where, on occasion, UK forces are not under the command of UK personnel, but those of other nations. I do not think people realise that.

Some nations have different interpretations of what is proportionate. How are they included, especially within—that misnomer—peacekeeping? Peacekeeping can be dangerous. I have visited parts of the world where peacekeeping is taking place that were far from peaceful, and were stressful for the individuals involved. Is that classed as an overseas operation?

When I was walking in this morning—I often think when I am walking—I was thinking that this gets to the definition of what an overseas operation is. If somebody were based at NATO headquarters in Brussels, would that be classed as an overseas operation? I am not suggesting they would be involved in a mission such as an airstrike or combat in Brussels, although perhaps they might be on a rowdy Friday or Saturday night in the Grand Place. Is that classed as an overseas operation for that individual? Those individuals are lone officers, but members of our armed forces are serving in ones and twos around the world, mentoring forces, doing a great job in defence diplomacy and ensuring that the high standards we have in this country are passed on to other nations.

My hon. Friend the Member for Islwyn talked about the UAV operators themselves. I have read a few studies about their mental health and the jury is out on evidence of increased PTSD and other things. It is a strange environment for individuals, as my hon. Friend said, because they are separated from the battle space, but they see and do some graphic and dangerous things. Having seen some of those videos, what happens is not pretty. The jury is still out on the issue of mental health effects and that is an area where we need more research, not just in this country but internationally. That links to part 2. If those individuals developed mental illness later, given the time limits set out in the Bill, would they be excluded or not? That is another area that we need to look at when we come to part 2.

Can we ever future-proof legislation? No. Politicians all think that we can see into the future as if with hindsight, but unfortunately we all know that most of our legislation is reactive to events. We can try to make it as future-proof as possible, however, and amendment 23, which I presume is a probing amendment, is really a way of asking whether the MOD and the people who have drawn up the Bill have thought about the area. Whether we like it or not, it will increasingly become a challenge not just for how we train people, but for how individuals are legally protected. Even if it cannot be

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incorporated into the Bill, I would certainly like the Ministry of Defence to look not only at the training, but at what the legal status of those individuals will be. The amendment is welcome in allowing us to explore some of those areas; I hope that it will give MOD policy makers some food for thought on where we take this in the future.

10 am

**The Minister for Defence People and Veterans (Johnny Mercer):** It is a pleasure to serve under your chairmanship, Mr Stringer.

The principle is that part 1 should cover personnel in circumstances in which they may “come under attack or face the threat of attack or violent resistance”

in the course of an overseas operation, as detailed in clause 1(6). When developing our policy, we considered whether we should extend the coverage of part 1 to include UK-based drone operators when the systems that they are operating are involved in operations outside the British islands. However, we determined that although the UK-based drone pilots would be considered part of an overseas operation, they could not be said to be at risk of personal attack or violence, or face the threat of attack or violence, as would be the case for an individual deployed in the theatre of operations. We therefore determined that as the personal threat circumstances would not arise in a UK-based role, the personnel in those roles would not warrant the additional protection provided by the measures in part 1. I therefore ask that the amendment be withdrawn.

**Mr Jones:** I see the logic of how the Bill is structured, and I accept that somebody sitting in Waddington is not going to be attacked by an enemy, but if the purpose of the Bill is to give them legal protection for their actions, they are not immune from being attacked in a legal process for something that they do on overseas operations.

**Johnny Mercer:** Some really important points have been made, particularly about mental health provision and the protection of those who operate these systems, but the Bill is clearly there to provide the additional protections that particularly apply to those who face the threat of violence and attack at the time, so I disagree on this point. I therefore ask that the amendment be withdrawn.

**Martin Docherty-Hughes:** I take on board what the Minister says, but we may disagree on an overall element of the Bill. It is the Overseas Operations Bill, and the persons we are speaking of are involved in an overseas operation. Surely the security given to those in the physicality of the arena of military activity should not be just about geography or about those who are physically participating in the overall operations.

**Johnny Mercer:** The clauses that deal with special consideration for the circumstances of what is going on at the time are there precisely to take account of the unique physical and mental demands of being in close combat; that is what they are designed for. To suggest

that drone operators operating from UK shores would face the same pressures is not the same thing. I therefore ask that the amendment be withdrawn.

**Chris Evans:** This was a probing amendment. I am happy to withdraw it, but I hope that the Minister will revisit the matter as soon as we know more from research about the effects of post-traumatic stress disorder on drone operators and—as we move towards the integrated review—technology starts to dominate the battlefield. I hope that he will give a commitment that the MOD will revisit that in the near future. I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

**Stephen Morgan (Portsmouth South) (Lab):** I beg to move amendment 25, in clause 1, page 2, line 2, leave out “5” and insert “10”

**The Chair:** With this it will be convenient to discuss the following:

Amendment 26, in clause 1, page 2, line 4, leave out “5” and insert “10”

Amendment 27, in clause 5, page 3, line 19, leave out “5” and insert “10”

Amendment 28, in clause 5, page 3, line 36, leave out “5” and insert “10”

New clause 8—*Limitation of time for minor offences*—  
“(none) No proceedings shall be brought against any person in relation to a relevant offence, where—

- (a) the condition set out in subsection 3 of section 1 is satisfied,
- (b) the offence is subject to summary conviction only, or is one in the commission of which no serious, permanent or lasting psychological or physical injury has been caused, and
- (c) a period of six months has passed from the time the offence was committed or discovered.”

*This amendment would dispose of minor allegations of misconduct by imposing a time limit similar to that which exists in relation to summary only matters in Magistrates’ Courts.*

**Stephen Morgan:** It is a pleasure to serve under your chairmanship, Mr Stringer. I start by thanking you for the way you have skilfully conducted proceedings through this Committee stage so far. Your skill and guidance have allowed the Committee to provide the proper scrutiny that we all agree that all legislation passing through this House is due, and allowed proceedings to be conducted in an orderly and timely manner. I also thank the Clerks and wider support teams for their support in allowing proceedings to run as smoothly as possible. This period presents particular challenges, including allowing witnesses to provide evidence by video link. The entire Committee will join me in thanking them for their important work.

This is the first time I have led a Bill through Committee, and also, as I understand it, the Minister’s. However, this is by no means the first time that you have been Chair of a Bill Committee, Mr Stringer. As I understand it, it was the Digital Economy Bill back in 2016 that was first chaired by your good self in Committee, four years ago, almost to the day. It would be fair to say that a lot has changed in those four years and I am sure that I speak for the entire membership of the Committee when I say that we are in safe hands with your experience and guidance. I also thank my right hon. Friend the

Member for North Durham for his contributions, as well as my hon. Friends the Members for Islwyn, for South Shields and for Blaydon.

Before we progress, I want to take the opportunity to outline our concerns about the Bill once again. The Government still have an opportunity to fix the Bill and get it right. Unfortunately, the Bill does not focus on the root causes of the terrible stresses experienced by our armed forces personnel and their families. The Government should focus on what can be done to reduce the length and regular occurrence of investigations for vexatious claims faced by our armed forces personnel, not prosecutions. In addition, as we heard from a wide variety of witnesses last week, the Bill does not protect our armed forces personnel; it protects the MOD. As we heard last week, the introduction of a six-year time limit against armed forces personnel making civil claims puts them at a distinct disadvantage to civilians.

Crucially, the Bill also risks breaching the armed forces covenant. I repeat: there is still time for the Government to fix this and get the Bill right. As we have said at every stage, we will work constructively with the Government to improve the Bill. That is why the Opposition have also tabled vital amendments, including the requirement for the Government to commission and publish an independent evaluation of service personnel access to both legal advice and legal aid in relation to legal, civil and criminal proceedings covered by the Bill's provisions. I hope the Government will listen to the points raised in Committee and work with us to protect our troops and get the Bill right.

**The Chair:** Order. I have allowed the hon. Gentleman to continue, not because he started with those kind words about me, but because it is the start of the Bill and the hon. Gentleman is new to the position. The amendment is tightly drawn around five and 10 years, so I will from now on be quite strict about focusing on what the actual amendment is, and not moving out of scope.

**Stephen Morgan:** Thank you, Mr Stringer, I was about to get to the point around our amendment.

Part 1 sets a five-year limit on the prosecution of current or former armed forces personnel for alleged offences committed in the course of duty while overseas, save for exceptional circumstances. That would mean that the Bill would halve the timeframe initially envisaged for the prosecution of offences.

The Government's consultation originally proposed a 10-year deadline, which would have meant that operations in Afghanistan, which ended in 2014, fell outside the time limit unless the circumstances for prosecuting any new alleged offences were deemed exceptional. That raises questions about the Government's reasons, and about the evidence or advice that they received, for changing the deadline to five years. Why not six or seven years? Five years seems to be an arbitrary figure, with no clear evidence for why that timeframe has been selected. Will the Minister provide the evidence behind the selection of that specific timeframe?

According to written evidence shared by the charity Reprieve, even countries such as France and the US, which operate statutes of limitation for criminal offences, have never introduced provisions that give military personnel special status in criminal law. Why are we deviating

from the international standards that we share with our security partners, which risks undermining our international reputation? That is not the global Britain that the country was promised by the Government during the last election.

In 2020, the Judge Advocate General for the armed forces—the most senior ranking military judge—said that creating a five-year limit on prosecutions would be a damaging signal for Britain to send to the world, and would be a stain on the country's reputation if Britain were perceived as reluctant to act in accordance with long-standing international law. What was the Government's reasoning for ignoring such an important figure who was raising serious concerns about the Bill's five-year limit on prosecutions?

The Government also seem determined to ignore those very same concerns when they are raised by the Defence Committee. In July 2020, the Chair of that Committee sent a letter to the Secretary of State to reiterate concerns that to protect

“serving personnel and veterans against vexatious claims or unnecessary investigations and prosecutions”,

the Bill

“may not be an effective way of achieving those aims.”

In that letter, the Chair also posed a further set of questions about the decision to reduce to five years the initial prosecution cut-off of 10 years.

The Labour party is determined to stop vexatious claims made against armed forces personnel, which cause them and their families truly heartbreaking stress, but as last week's evidence sessions made clear, the parts of the Bill that intend to remedy that contain logical flaws. Furthermore, the Minister himself has said that one of the biggest problems was the Ministry's inability to investigate itself properly, as well as the standard of those investigations. If those investigations were done properly with self-regulation, we would probably not be in Committee today. I ask the Minister: why does the Bill not deal with those investigatory issues that he has identified?

Clive Baldwin, the senior legal adviser at Human Rights Watch, has suggested that the Bill would

“greatly increase the risk that British soldiers who commit serious crimes will avoid justice”;

that

“the presumptive time-limit of five years... will encourage a culture of delay and cover-up of criminal investigations”;

and that, in turn, it would increase the risk of the International Criminal Court considering bringing its own prosecutions.

As I have said, there is still time to change the Bill, to focus on the issues that need addressing, and to get it right. That means focusing on legislation that will stop the sad cases that we have heard time and again about our troops undergoing drawn-out investigations, only for the decision to be made against prosecution. That is what needs fixing and it is where the Government's focus should be.

In last week's evidence sessions, we repeatedly heard the same concerns from a wide range of witnesses. Hilary Meredith, of Hilary Meredith Solicitors, said that she was against any cut-off. She went on:

“I think the reason why the cases became historic is not the date of the accusation—any of the criminal accusations under human rights law, for example, came within 12 months of the incident

[Stephen Morgan]

taking place. It was the prolonged procedure that was bungled afterwards that made those cases historic. It is the procedure and investigation in the UK that need to be reviewed and overhauled, and not necessarily a time limit placed on criminal or civil prosecutions.”—[*Official Report, Overseas Operations (Service Personnel and Veterans) Public Bill Committee*, 06 October 2020; c. 16, Q24.]

That lays clear the problem with the Bill. It became increasingly clear from the evidence that not only is the five-year time limit arbitrary, but it does not even fix the issues that the Minister cites to justify the Bill. The investigations are what cause the mental stresses that we know put our troops and their families under incredible pressure. Dr Jonathan Morgan, fellow and reader in law at Corpus Christi College, Cambridge, also said in evidence last week:

“Ten years was originally proposed; that has been reduced to five. There seems to be no logical answer, certainly, as to that particular time period”.—[*Official Report, Overseas Operations (Service Personnel and Veterans) Public Bill Committee*, 6 October 2020; c. 34.]

To add to that, the former Attorney General of Northern Ireland from 2010 to 2020, John Larkin QC, went on to say:

“There is no magic in the number five; that is a matter of policy choice”.—[*Official Report, Overseas Operations (Military Personnel and Veterans) Bill*, 6 October 2020; c. 31, Q60.]

Yet again, we hear that there is seemingly no logic in the choice of five years as the limit for prosecutions. However, that also suggests something new: that the decision to select five years as the limit was a political choice, not one borne out of consultation or analysis.

10.15 am

**Stuart Anderson** (Wolverhampton South West) (Con): I note that every example the hon. Gentleman uses is a legal representative or firm, or legal mind. We heard some great evidence last week from the soldiers. As you said, this is a point of policy. We wanted to make sure we represent our armed forces and make them the best in the world to serve in, and five years was well received among the junior ranks we spoke to the armed forces. You say that Labour is the party to support the armed forces, but arguing for 10 years shows that is not the case.

**The Chair:** Order. I remind hon. Members that if they use “you”, they are referring to me, not the Front-Bench spokesperson. I also remind members of the Committee that interventions should be short and to the point. If hon. Members try to catch my eye, there will be time to make speeches on each amendment, if they wish to.

**Stephen Morgan:** I thank the hon. Gentleman for that remark. We also learned last week from the witnesses that, while veterans may welcome the intent of the Government to take forward action, when they looked at the detail of the Bill, they were not so satisfied with its contents.

**Mr Jones:** The hon. Member for Wolverhampton South West raised the issue of evidence, but the most moving statement last week was from Major Bob Campbell, who went through hell for 17 years. Even he admitted the problem in his case was the reinvestigation investigation.

**Stephen Morgan:** I thank my right hon. Friend for that remark. It is very clear that the Bill in its current form will not help that case if that is repeated ever again.

The Government have let us down on the Bill. It is becoming ever clearer in Committee not only that it fails to fix the problems that it intends to fix, but that the Government have failed in the due diligence for our armed forces personnel and their families that they deserve. The Government should be developing legislation by properly conducting consultation, analysis and identifying the best way to deal with the issues at hand.

Sadly, it seems that the Government are inclined to make policy on the hoof. It is exactly this failure to identify the root causes of the issues that our armed forces personnel face that has been continually highlighted in Committee. As Professor Richard Ekins, head of the judicial power project at the Policy Exchange, highlighted in evidence last week:

“It certainly does not stop investigations. In fact, if one were to make a criticism of the Bill, one might say that it places no obstacle on continuing investigations, which might be thought to be one of the main mischiefs motivating of the Bill”.—[*Official Report, Overseas Operations (Military Personnel and Veterans) Bill*, 6 October 2020; c. 35, Q60.]

We also heard from Major Bob Campbell about the unimaginable stresses he faced in a 17-year investigation that eventually did not lead to prosecution. I know the entire Committee will join me in thanking him for his service and offering our condolences for the terrible process he has been put through. Once again, we heard that the Bill does not deal with the key problem of addressing investigations. The specific case of Major Bob Campbell would not be covered by the Bill.

Last week, Dr Jonathan Morgan also stated that Major Bob Campbell’s case would not have been addressed by these proposals. He was prosecuted in 2006 in connection with an alleged offence in 2003, which would have been within the five-year period for bringing a prosecution. It is only in 2020, after 17 years, that he has finally been cleared. Several hon. Members made the point on Second Reading that perhaps the real vice is not so much late prosecutions but the continued investigations by the Ministry of Defence, without necessarily leading to a criminal prosecution at all.

If I have understood the facts of Major Campbell’s case, it rather shows that a five-year soft cut-off for prosecutions will not solve that kind of problem at all. Are the Government really prepared to abandon decorated armed services personnel like Major Bob Campbell? Is that really what the Government have set out to achieve?

In summary, I hope that the Government will listen to the points raised here—including the extensive evidence that we have heard that the five-year limit is at best arbitrary—refocus the Bill on dealing with investigations, not just prosecutions, and work with us to protect our troops and get this Bill right.

I ask the Minister, what evidence or advice have the Government received to change the deadline to five years? Why not six or seven? I ask the Minister to provide evidence on why that specific timeframe was selected. Are the Government really prepared to abandon decorated armed services personnel like Major Bob Campbell? Is that really what the Government have set out to achieve? Why does the Bill not deal with the issues in investigations that the Minister has identified? What is the Government’s reasoning for ignoring the

Judge Advocate General in this Bill, raising serious concerns about the problems he raised about the five-year limit on prosecutions?

**Mr Jones:** Are we dealing with the group together, including my new clause 8?

**The Chair:** We are dealing with new clause 8 and amendments 26, 27 and 28.

**Mr Jones:** Thank you for that clarification, Mr Stringer.

With new clauses 8, 6 and 7 we come to the issue of investigation. We will discuss new clauses 6 and 7 later. The new clauses put forward by my hon. Friend the Member for Portsmouth South get to the heart of the issue, which has come out in the evidence we have taken over the past few weeks. This Bill puts the cart before the horse. It deals with prosecutions rather than the real issue, which is investigations.

I find that odd. Who was consulted on drafting this Bill? We heard evidence last week that Judge Blackett was not consulted on this Bill, so who drafted it? Anyone looking at the Iraq Historic Allegations Team or the testimony given last week by Major Bob Campbell can see that the issue is investigation. It would be interesting to hear the reasons why the limit has gone from 10 years, as recommended in the consultation, down to five.

Personally, I do not agree with the time limit, for the reasons that my hon. Friend has just outlined. It will give no protection to those veterans of the most recent conflicts in Afghanistan and Iraq, whom this Bill seems to be focused on, nor will it give protection to veterans in the future, because investigation will still take place from that five-year period. Are they traumatic? I think they must be.

I agree with my hon. Friend, and I pay huge tribute to Major Bob Campbell for his evidence last week, because it must have been very difficult for him. Consider the idea that any of us would have something hanging over us for 17 years. If it was a minor offence, it would be bad enough, but he was accused of horrendous crimes for 17 years, and investigated time and again for the same thing. I cannot imagine how that felt for him as an individual.

What is proposed will not stop investigations. It is clear to me that if we have limitations as outlined in the Bill, we will get cases that go to the International Criminal Court. Its investigations will take into account the lack of action, because there is a five-year limit. We will come later to the presumption of prosecution, which is another huge problem. Do I actually want our servicemen and women to end up in the International Criminal Court? No, I do not. I think it is proud testimony not only to the professionals in our armed forces, but to our legal system and what we have had so far, that we have avoided that because of our robust legal system and the oversight of our military justice system.

The problem with the Bill—the Minister gave this away in his ill-advised winding up on Second Reading—is that it implies that people are either in favour of our brave armed forces or in favour of ambulance-chasing lawyers. As I said on Second Reading, my record of supporting defence and the armed forces speaks for itself. My attacks on ambulance-chasing solicitors, through my work on the miners' compensation scheme and the formation of the sister regulation body—taking it away

from the law side—also speak for themselves. What we need over the Bill is a legal framework that is there not just because it is nice to have, but because society needs a framework that protects individuals—not just individual civilians, but members of our armed forces. As one witness said last week about the unique situation for members of the armed forces, they have few enough rights, and recourse to the law is important. In terms of our standing in the world, we are rightly proud that we have been a beacon of being able to portray good practice both in law and in other areas.

New clause 8 is about how we try to stop the cycle of investigation. As I say, I am just surprised that when the Bill was being drafted, no one thought, “Let’s look at what the problem is.” It is around investigation and the time it takes. Various arguments have been about why investigations have taken so long. Is it a lack of resources? It possibly is in some cases. Has it been the issue around Iraq and Afghanistan? Are we now in a different political climate? Yes, we are. When I was a Minister in the Ministry of Defence, when we were in Iraq and Afghanistan, the will to ensure that accusations were investigated came from all sides. It was not just from the liberal wing of Liberty and others; it was from Conservative Members as well. Mistakes were made.

Not having the issue of investigation in the Bill—

**The Chair:** Order. I have been listening carefully to the right hon. Member. The amendments are very tightly drawn. New clause 8 is about the limitation on time for minor offences. I do not want to restrict the debate, but I do want to focus on what the amendments are, rather than wandering all the way through the Bill. If the right hon. Member focused on the new clause and the three amendments that were are debating, that would be helpful.

**Mr Jones:** I accept your ruling, Mr Stringer. New clause 8 is around investigation.

**The Chair:** For minor offences.

**Mr Jones:** Yes. I will come back to the new clauses later.

Some serious accusations were made in the IHAT and Northmoor investigations. They took so long because some were very complicated, but some were very minor. The more we can speed up the system for the accused and the quicker it is dealt with, the better. It will be better for armed service personnel, and better for confidence in our system. New clause 8 tries to get a system that deals with minor cases and does not lead to endless investigations into things that really should be dealt with in the first instance.

New clause 8 argues that minor offences should be dealt with through a summary process, which Judge Blackett referred to last week and through which the magistrates court system already deals with cases. One thing that is missing in the entire Bill, which would give us confidence in it, is judicial oversight of the reasons why things are done. That is important. New clause 8 would empower prosecutors to place a six-month time limit on summary matters.

10.30 am

**Martin Docherty-Hughes:** In reality, the right hon. Gentleman wants to remove bureaucracy because justice

[*Martin Docherty-Hughes*]

delayed is justice denied, whether someone is the accuser or the accused. His new clause seeks clarity for minor offences.

**Mr Jones:** It is clarity for the individuals, so that they can be dealt with swiftly. If Judge Blackett had been consulted on this Bill, that might have been included.

I will not try your patience, Mr Stringer, because I might need it when I come to new clauses 6 and 7 on the broader issues around investigation, which I notice the MOD is now moving on and possibly recognising that it has missed a trick in the Bill. The new clause would give the court powers. We are not talking about serious offences or common assault. We did a similar thing in the Armed Forces Act 2006. We gave commanding officers the powers to deal with minor offences, because the old system was taking an inordinate amount of time to deal with them. We are basically setting up a de minimis case. As the hon. Gentleman just said, it would deal with the bureaucracy and make sure that we concentrate on the most serious offences.

People might say, “How does this get into ambulance-chasing solicitors?” With IHAT and Northmoor, some of the cases put forward were to do with such things as slaps and assaults, which would actually meet this criteria. Why did it take years to investigate whether somebody was slapped if it was on a Saturday night in a pub and classed as a common assault? Why did it take years to investigate or in some cases re-investigate? We could argue that it happened in Iraq or Afghanistan or somewhere else and it might be more difficult to gather evidence and witnesses, but it should not be beyond the wit of the legal system to look at the evidence initially and say, “To be honest, the threshold for this would not be very high.” Why were they brought? We know: in some cases, clearly, Phil Shiner was trying to get some compensation out of an alleged fault, but the pressure was put on those individuals who were accused of things that were minor and would have been dealt with normally. The new clause frees up the criminal justice system and the investigators to concentrate on the things that we want to concentrate on, which are the more serious cases.

Would that protect our armed forces? Yes, I think it would, because we would have a sense of fairness for them—they would be getting speedy justice, they would not go through reinvestigation and they would not have to wait an inordinate length of time for things dealt with as a matter of course in a magistrates court. It is a way to give protection to servicemen and women, while also—as the hon. Member for West Dunbartonshire said—making the system more effective.

The important thing, however, is the judicial oversight—this is not just deciding to stop prosecution; the evidence is looked at, the de minimis test is applied and only then would that be ended. That would be a huge improvement. The Minister said he was looking for improvement of the Bill and, to me, this is an obvious way to do it.

**Johnny Mercer:** Amendments 25 to 28 seek to change the time at which the presumption comes into effect from five to 10 years. The proposal in the public consultation that we ran last year was for a 10-year timeframe for the statutory presumption. It was not fixed policy, because we were seeking the public’s views.

In the consultation, we asked the following questions: whether 10 years was appropriate as a qualifying time, and whether the measure should apply regardless of how long ago the relevant events occurred. As we set out in our published response to the consultation, there was support for a 10-year timeframe, but equally there was support for presumption to apply without a timeframe at all. We also considered the written responses, which clearly indicated the concerns that a 10-year timeframe was too long—memories can fade, evidence tends to deteriorate and the context of events changes. There were also concerns that 10 years was too long to have the threat of prosecution hanging over a serviceperson’s head.

Respondents suggested time periods of less than 10 years, with the most popular timeframe being five years. As the issue that we seek to address relates to historical alleged offences, we did not feel able to apply the presumption without a timeframe. However, given the strength of the views expressed, we felt that a timeframe of less than 10 years would be more appropriate, and five years was the most popular alternative.

**Mr Jones:** Will the Minister say what the numbers were for the responses to the consultation? What was the basic divide between those who wanted 10 years and those who wanted none or five years?

**Johnny Mercer:** I am more than happy to write to the right hon. Gentleman with the exact responses. They are in the House of Commons Library, in the impact assessment. The numbers were clear, and I have just outlined the general findings—[*Interruption.*] I will not give way again. Some people want 10 years and some five years—

**Mr Jones:** It is not in your notes.

**The Chair:** Order. Continue, Minister.

**Johnny Mercer:** Thank you, Mr Stringer.

New clause 8 seeks to limit to six months the period between an offence being committed or discovered and any proceedings being brought, where a number of conditions can be satisfied. First, the offence must be a relevant offence, committed on overseas operations by a serviceperson. Importantly, the bar to proceedings only applies if the offence being prosecuted is subject to summary conviction only, or is one where no serious, permanent or lasting psychological or physical injury has been caused.

During an investigation, it is not always clear what the charge will be, but this is made harder for investigations on overseas operations where the injured person is a local national. It will not always be possible to get information regarding the incident, or on the permanence or lasting nature of an injury, in the timeframe demanded by the amendment.

Investigations on overseas operations inevitably rely to some degree on actions by others in theatre. Delays in such investigations are a fact of the operational environment and placing a time limit on investigations runs the risk that others may be able to affect the outcome of a service police investigation. The service police cannot have any barriers placed in the way that fetter their investigative decision making. A time limit in these circumstances would do just that.

Even the most minor offences take on a greater significance in an operational environment. A minor offence is not necessarily a simple matter that could be dealt with quickly by a commanding officer. Placing a barrier in the way of investigations for minor offences does not take account of the disproportionate effect of poor discipline directed towards local nationals in an operational setting.

The amendment is modelled on the provisions that exist in relation to summary-only matters in the Magistrates' Courts Act 1980. That is where the problem lies. That Act codifies the procedures applicable in the magistrates courts of England and Wales. It is not legislation written to accommodate the extraordinary demands made of a system operating in an operational context.

**Mr Jones:** Will the Minister give way on that point?

**Johnny Mercer:** I will not give way.

Delays are inevitable and applying civilian standards to an operational context is inappropriate. If this is something that might be considered for the service justice system, it would seem more appropriate for an armed forces Bill, but with an exemption to account—

**Mr Jones:** On a point of order, Mr Stringer. This is a very strange Committee. Basically, the Minister is reading his civil service brief into the record, rather than actually answering the points. It is going to be very difficult to scrutinise the Bill properly if he will not take interventions, even though I accept he might be at a disadvantage if it is not in his briefing notes.

**The Chair:** The right hon. Gentleman knows that is not a point of order. The Minister is entitled to give way as he chooses.

**Johnny Mercer:** If this measure is something that might be considered for the service justice system, it would be more appropriate for an armed forces Bill, but with an exemption to account for the complexity of overseas operations. This Bill is not the correct legislative vehicle for the measure. I therefore ask that the amendment be withdrawn.

**Mr Jones:** I just find this remarkable, Mr Stringer. We have a Minister who has come in here to read his civil service brief into the record. He is not taking account of anything that is being said, by myself or by other hon. Members. When he wants to be questioned on it, he will not take interventions. It is a strange way of doing this. He possibly thinks that doing a Committee is just about reading the civil service brief the night before and then reading it into the record. I am sorry, but that is not how we do scrutiny in this House.

With regard to the Minister's comment that this measure would be more appropriate in an armed forces Bill, that may well be the case, but he has an opportunity to put it in here. He can sit there and smile but, frankly, he is doing himself no favours. He has said that he wants co-operation on the Bill, but he is doing nothing. He is going to try to plough through with what he has got, irrespective of whether it damages our armed forces personnel. That makes me very angry.

The Minister said that the Magistrates' Court Act provisions would not cross over to this Bill. We could draw up a protocol around that, which would fit in the

Bill. If the Bill is supposed to be the all-singing, all-dancing, huge protection that we are going to give to our servicemen and servicewomen, then that should have been in the Bill.

**Martin Docherty-Hughes:** Does the right hon. Gentleman recognise that the ranks, as opposed to the chain of command, would be best served by an acceptance of the new clause, because it gives clarity and allows them to move forward on those cases, within the elements that he has discussed?

10.45 am

**Mr Jones:** It does. There is an argument, which some members of the Committee are trying to make, that it is the ranks versus the seniors, but this is designed to protect the ranks.

The Minister says that it would be more appropriate to have this in an armed forces Bill. If that is the case, why was this Bill not held over until next year, when we could incorporate all of this into an armed forces Bill? Having sat on nearly every single armed forces Bill over the past 20 years, I know that there are things in this Bill that would be able to fit into an armed forces Bill. We know that the reason it is in this Bill is because it was a political stunt—it is more about politics than about what it is supposed to do.

New clause 8 should be incorporated in this Bill, because it would get to the root cause, which we discussed last week and which people have continually commented on: namely, that the Bill does not look at investigations. If the Minister got off his phone and listened, he might be able to get to a situation where, after reflecting on this, the Government may well look at how they can codify this and put it into the Bill, because it would then be stronger. As has been said, we want to protect, and that is what we are supposed to be doing with the Bill.

**The Chair:** Does the right hon. Gentleman wish to press the amendment to a vote?

**Mr Jones:** Yes, I do.

*Question put, That the amendment be made.*

*The Committee divided: Ayes 6, Noes 10.*

#### Division No. 1]

#### AYES

Docherty-Hughes, Martin  
Evans, Chris  
Jones, rh Mr Kevan

Lewell-Buck, Mrs Emma  
Morgan, Stephen  
Twist, Liz

#### NOES

Anderson, Stuart  
Atherton, Sarah  
Brereton, Jack  
Dines, Miss Sarah  
Docherty, Leo

Eastwood, Mark  
Gibson, Peter  
Lopresti, Jack  
Mercer, Johnny  
Morrissey, Joy

*Question accordingly negatived.*

**Martin Docherty-Hughes:** I beg to move amendment 14, in clause 1, page 2, line 2, leave out "the day on which the alleged conduct took place" and insert "the day on which the first investigation relevant to the alleged conduct concluded".

**The Chair:** With this it will be convenient to discuss the following:

Amendment 2, in clause 3, page 2, line 33, at end insert—

“(ba) the thoroughness, promptness and efficacy of any ongoing investigation into the alleged conduct or any relevant previous investigation, and the reasons for any delays in such investigations;”

*This amendment would ensure that the adequacy of any investigative process to date is given particular weight by a relevant prosecutor.*

Amendment 56, in clause 3, page 2, line 33, at end insert—

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

*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.*

New clause 6—*Judicial oversight of investigations*—

“(1) This section applies to any investigation by a police force into alleged conduct as described in subsection 3 of section 1.

(2) The police force investigating the conduct must place their preliminary findings before an allocated judge advocate as soon as possible, but no later than 6 months after the alleged offence was brought to their attention.

(3) The judge advocate shall have the power to determine—

- (a) that no serious, permanent or lasting psychological or physical injury has been caused; and order that the investigation should cease;
- (b) that the evidence is of a tenuous character because of weakness or vagueness or because of inconsistencies with other evidence, and that it is not in the interests of justice to continue an investigation; and order that the investigation should cease; or
- (c) that there is merit in the complaint; and make directions as to the timetable and extent of further investigation.”

*This amendment would set a timetable for police investigations into alleged conduct during overseas operations, to ensure they are as short as possible and provide an opportunity for a judge to stop an unmeritorious or vexatious investigation early.*

New clause 7—*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 under section (Judicial oversight of investigations).

(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 that there is a real possibility that it would support a conviction.”

**Martin Docherty-Hughes:** I rise to speak to the amendment for a very specific reason. It concerns the word “alleged” in the Bill. The Government, in bringing forward the Bill, have sought to provide clarity to members of the armed forces and veterans against some elements of the legal profession, which is the constant narrative during our debates—although, I have to say that there are many members of the legal profession who are not only members of the armed forces, but veterans too. We need to be very much aware of the rule of law.

The clarity that I and my party require, which is why we have tabled this amendment, is to remove that word “alleged”, because it causes ambiguity, whereas I think the Government’s intention in introducing the Bill is to give clarity. Whether or not I disagree with various parts of it, if not the vast majority, we are seeking to work here in a coherent and collegiate fashion, because I think that, not only for the accused but for the accuser, we need to be clear about the point at which we start, which is the day on which the first investigation takes place.

The word “alleged” creates ambiguity in the law and ambiguity for members of the armed forces and veterans, which is why we have brought forward this specific amendment.

**Johnny Mercer:** Mr Stringer, do you want me to speak only to amendment 14?

**The Chair:** I want to give you the opportunity to comment on amendment 14 and the associated amendments and new clauses.

**Johnny Mercer:** The other associated amendments as well?

**The Chair:** Yes.

**Johnny Mercer:** I thought so.

**Mr Jones:** Mr Stringer, are you going to move the other clauses? Are you taking them as a group?

**The Chair:** What is being debated is amendment 14 to clause 1. We are also debating amendments 2 and 56, and new clauses 6 and 7. If hon. Members wish to vote at the end, we will vote on amendment 14. However, it is in order to discuss the other amendments and new clauses.

**Johnny Mercer:** One of the main purposes of introducing the presumption against prosecution is to provide greater certainty for veterans in relation to the threat of repeat investigations and the possible prosecution for events that happened many years ago. Amendment 14 would undermine that objective by extending the starting point for the presumption and, in some cases, creating even more uncertainty. However, I want to reassure Members that the presumption measure is not an attempt to cover up past events as it does not prevent an investigation to credible allegations of wrongdoing in the past, and neither does it prevent the independent prosecutor from determining that a case should go forward to prosecution.

**Martin Docherty-Hughes:** Does the Minister not accept that the very word “alleged” creates ambiguity within the law and, if anything, creates a barrier? Our amendment would give the clarity that he and his Government are seeking.

**Johnny Mercer:** I do not accept that. The wording about the “alleged conduct” is clear. We have dealt with a number of allegations: 3,500 from the Iraq Historical Allegations Team alone, and another 1,000 from Afghanistan. They are alleged offences and it is right to leave those in there. I request that the amendment be withdrawn.

**Martin Docherty-Hughes:** I will not be withdrawing the amendment.

*Question put,* That the amendment be made.

*The Committee divided:* Ayes 6, Noes 10.

#### Division No. 2]

#### AYES

|                         |                       |
|-------------------------|-----------------------|
| Docherty-Hughes, Martin | Lewell-Buck, Mrs Emma |
| Evans, Chris            | Morgan, Stephen       |
| Jones, rh Mr Kevan      | Twist, Liz            |

#### NOES

|                   |                |
|-------------------|----------------|
| Anderson, Stuart  | Eastwood, Mark |
| Atherton, Sarah   | Gibson, Peter  |
| Brereton, Jack    | Lopresti, Jack |
| Dines, Miss Sarah | Mercer, Johnny |
| Docherty, Leo     | Morrissey, Joy |

*Question accordingly negatived.*

**Liz Twist** (Blaydon) (Lab): On a point of order, Mr Stringer. I would be grateful for your clarification on the next steps. I understood that that was taken as a group, but will we be moving now to the other amendments in the group and asking for them to be moved?

**The Chair:** The opportunity to debate the other amendments in this group has gone; that went when that debate finished. We can now, if hon. Members wish, vote on amendment 26, and then we will come to clause stand part. If I can help the hon. Lady, if I think—as I almost certainly will think—that the debate on clause 1 has not been exhausted, we can have a general debate on clause 1. However, the opportunity to debate amendment 26 went when we moved to the vote on the previous amendment. I will now ask whether you want to vote on amendment 26.

**Mr Jones:** Further to that point of order, Mr Stringer. I did ask whether you were taking these as a group and when I could move my amendment.

**The Chair:** I read out at the beginning that they were being debated together. I made that clear.

**Mr Jones:** May I ask for clarification on new clauses 6 and 7? In terms of the general debate on clause 1, reference could obviously be made to them in that.

**The Chair:** I will think about that while we are debating. I know that the right hon. Gentleman is not new to the House, but many members of this Committee are. If they listened carefully, I did read through all the areas we were debating at the start of this. I read out the amendments we were debating and what was before the Committee.

**Mr Jones:** To be fair, Mr Stringer, I also asked to move those new clauses. I am sorry, with respect, Chair, but you did not clarify that.

**The Chair:** It was clarified at the beginning. I cannot go back to that. That has been debated, although Members did not speak to it. If hon. Members wish to

have a clause stand part debate, we can have that. You are absolutely right that we will vote later on new clauses, but the opportunity to debate them was then, when I read out the list.

**Liz Twist:** Further to that point of order, Mr Stringer. I do not wish to be difficult in any way, and of course I respect your ruling, but I think there was some misunderstanding at the start about exactly what we were doing. You certainly did say that we were taking these amendments, but I think we were expecting the sequence of people to be able to move them. I wonder whether there is any way that we can resolve that issue so that these amendments can be moved.

**The Chair:** I accept that there is a misunderstanding, but the statements were read out clearly from the Chair about what we were debating at the start. The opportunity to debate them was not taken. I cannot think of any way to debate them now. However, I will take the Clerk's advice later and see whether there is a way.

**Mr Jones** *rose*—

**The Chair:** I will take no further points of order on the matter at this time. Clearly, people have not taken the opportunity to debate the matter. That is unfortunate. I will take the Clerk's advice to see whether there is any way of doing that, but I cannot think of any way at the present time, because we have passed it. We have now moved on to amendment 26. Does Stephen Morgan wish to move amendment 26 formally?

**Stephen Morgan:** I do wish to move it.

**The Chair:** I am asking whether the hon. Gentleman wants to vote on the amendment.

**Mrs Emma Lewell-Buck** (South Shields) (Lab): On a point of order, Mr Stringer. I was under the impression that we voted on amendment 26 as part of the first grouping.

**The Chair:** We did not. We debated it. There is a difference between debates on amendments grouped together because they are related and the order in which decisions are taken.

11 am

**Leo Docherty** (Aldershot) (Con): May I ask a question, Mr Stringer? Is it therefore the case that we move now to clause 2?

**The Chair:** No. We have to get through the amendments, and then there will be a clause stand part debate on clause 1. We have to agree to clause 1, as amended or not, before moving on to the amendments to clause 2. By the start of this afternoon's session, which I will chair, I will have clarified with the Clerk whether it is possible to come back to this, because the hon. Member for Blaydon says that there has been a genuine misunderstanding.

If hon. Members will take their place, the Clerk tells me that the issues raised in the amendments and the new clause can be raised in the clause stand part debate on clause 1. If that is not clear to hon. Members, now is the time to ask a question.

**Mr Jones:** It is clear, but I asked the Chair, when he was taking that group of amendments, whether I could move my new clause. I will not go over that. It was strange to me, because I have been here long enough to know that when amendments and new clauses are grouped, they can actually be moved. I did ask the Chair, but I was not allowed to do that.

**The Chair:** If the right hon. Member will take his seat, I had already told the Committee what was being debated. There was clearly a misunderstanding. We are going to resolve that issue, and then we can have the clause stand part debate. For clarity, amendment 26 has been moved formally. Does the Front-Bench spokesperson wish to put it to a vote.

**Stephen Morgan:** Yes, I wish to put that to a vote.

*Amendment proposed:* 26, in clause 1, page 2, line 4, leave out “5” and insert “10”.—(Stephen Morgan.)

*Question put,* That the amendment be made.

*The Committee divided:* Ayes 6, Noes 10.

### Division No. 3]

#### AYES

|                         |                       |
|-------------------------|-----------------------|
| Docherty-Hughes, Martin | Lewell-Buck, Mrs Emma |
| Evans, Chris            | Morgan, Stephen       |
| Jones, rh Mr Kevan      | Twist, Liz            |

#### NOES

|                   |                |
|-------------------|----------------|
| Anderson, Stuart  | Eastwood, Mark |
| Atherton, Sarah   | Gibson, Peter  |
| Brereton, Jack    | Lopresti, Jack |
| Dines, Miss Sarah | Mercer, Johnny |
| Docherty, Leo     | Morrissey, Joy |

*Question accordingly negated.*

*Question proposed,* That the clause stand part of the Bill.

**The Chair:** Does the Minister wish to say something generally about clause 1? If not, I will open it up to the floor so that the amendments in the previous group, or any other issue relating to the clause, can be debated.

**Johnny Mercer:** Not at this stage, Mr Stringer.

**Mr Jones:** I say again what a pleasure it is to serve under your chairmanship, Mr Stringer.

On clause 1, we heard last week that one problem the Bill does not address relates to investigations. If that had been included, the Bill would be more effective in stopping the unfair distress of individuals. We heard from Major Campbell, who was quite graphic about his 17 years of investigations. The clause is clear about trying to clear up the system and we have heard about the system being made more efficient, which would not only ensure that armed forces personnel get a fair hearing but speed up the processes where they face distress.

It is not surprising that investigations are not being considered. Let us look at General Nick Parker’s evidence last week. I know him well—he has had a distinguished career—and I certainly know his son, who was injured in Afghanistan. Those of us on the Opposition Benches

might say, “It’s yet another general rather than a squaddie,” but I have a huge amount of respect for him. He not only has the Army running through his veins but stands up for the armed forces and the men and women who served under him, having their best interests at heart. He would be supportive of any legislation or anything done to try to improve their lot. Having had a few heated arguments with him over the years—he is no shrinking violet—I know that if he thought the Bill was perfect or would improve things, he would say that. What he says about investigations is therefore important. He said:

“On the effectiveness side, it appears as if part 1 of the Bill focuses entirely on the process of prosecution, whereas for me the big issue here is the process of investigation and, critically in that process, ensuring that the chain of command is deeply connected with what goes on from the very outset. I do not think there is any serviceman or woman who would not accept that bad behaviour on the frontline must be treated quickly and efficiently. Nobody would want anything in the process that somehow allows people who have behaved badly on the frontline to get away with it. But all of us would believe that the process has to be quick, efficient and effective to remove the suspicion of a malicious allegation as quickly as possible. I cannot see how this Bill does that.”—[*Official Report, Overseas Operations (Service Personnel and Veterans) Public Bill Committee*, 8 October 2020; c. 94, Q188.]

The Minister referred to next year’s armed forces Bill as being appropriate for that, but I am aghast. If this Bill is supposed to be the Rolls-Royce legislation to protect our servicemen and women, why on earth does it not include investigation?

I note that, ironically, since we took evidence, a written ministerial statement was made yesterday in which the Defence Secretary announced that investigations will be looked at. He said:

“The Overseas Operations (Service Personnel and Veterans) Bill currently before this House will provide reassurance to service personnel that we have taken steps to help protect them from the threat of repeated investigations and potential prosecution in connection with historical operations...However, we are also clear that there should be timely consideration of serious and credible allegations and, where appropriate, a swift and effective investigation followed by prosecution, if warranted. In the rare cases of real wrongdoing, the culprits should be swiftly and appropriately dealt with. In doing so, this will provide greater certainty to all parties that the justice system processes will deliver an appropriate outcome without undue delay.”—[*Official Report*, 13 October 2020; Vol. 682, c. 9WS.]

Even the Defence Secretary recognises that one of the issues is the length of investigations. Could I disagree with any of what he said? No. As I said in speaking to new clause 8, the issue is effectiveness in making sure not only that the service is protected from malicious allegations, but that individuals are. We must always think about that, because at the end of the day the individual is important.

The Defence Secretary’s statement goes on to say:

“I am therefore commissioning a review so that we can be sure that, for those complex and serious allegations of wrongdoing against UK forces which occur overseas on operations, we have the most up to date and future-proof framework, skills and processes in place and can make improvements where necessary. The review will be judge-led and forward looking and, whilst drawing on insights from the handling of allegations from recent operations, will not seek to reconsider past investigative or prosecutorial decisions or reopen historical cases. It will consider processes in the service police and Service Prosecuting Authority as well as considering the extent to which such investigations are hampered by potential barriers in the armed forces, for example, cultural issues or operational processes.”—[*Official Report*, 13 October 2020; Vol. 682, c. 9WS.]

**Mrs Lewell-Buck:** Is my right hon. Friend a little concerned about the Secretary of State's comments, as I am? If indeed those comments are true and that is the intention, why has the Minister not tabled amendments today to address that issue?

**Mr Jones:** My hon. Friend makes a very good point. We were told, although I do not believe it, that the Government wanted to improve the Bill and would consider amendments. I accept that Opposition amendments are not always properly drafted to fit into a Bill, but it is quite common for the Government to say that they will look at an amendment and change it, but put the spirit of it into a Bill. There is an opportunity to do that now, but unfortunately we have a Minister who clearly just wants to say, "No, we will get the Bill through as drafted, and that's it," which is contrary to his statements about trying to work together with people. There is an opportunity to do that now and I do not understand why we cannot do it, as my hon. Friend says.

The Defence Secretary's statement goes on to say:

"A key part of the review will be its recommendations for any necessary improvements. It will seek to build upon and not reopen the recommendations of the service justice system review".—[*Official Report*, 13 October 2020; Vol. 682, c. 9WS.]

**Martin Docherty-Hughes:** On the justice system review and its relationship to the Bill, in answer to a question from my hon. Friend the Member for Glasgow North West last week about Major Campbell's 17 years of dreadful investigation, General Sir Nick Parker said:

"That will not happen if you have a credible system that investigates and you address some of the cultural issues in the chain of command by making it genuinely accountable for what is happening."—[*Official Report, Overseas Operations (Service Personnel and Veterans) Bill Public Bill Committee*, 8 October 2020; c. 98, Q201.]

Does the right hon. Gentleman agree that the Bill does absolutely none of that?

**Mr Jones:** It does not. If somebody like Nick Parker is saying that, we need to take it seriously. As for how the Bill has been born, I would love to know who is claiming paternity for it, because a lot of people seem to have been excluded—certainly the Judge Advocate General has. I would have thought he was the obvious person, as a senior military person in the justice system, to be brought in at an early stage to look at some of the things we shall talk about later—not only the issues of international law, but how the system could be improved.

11.15 am

The Defence Secretary's written statement states:

"A key part of the review will be its recommendations for any necessary improvements. It will seek to build upon and not reopen the recommendations of the service justice system review".—[*Official Report*, 13 October 2020; Vol. 682, c. 9WS.]

We heard last week from Judge Blackett about the service justice system review, and it would be interesting to know how those recommendations, which are about improving the system, have been fed into the Bill. If there are obvious things in the review, they should have been included in the Bill. It is strange to me when I consider who has written the Bill—whether it has been done for political reasons, rather than by people who understand the military and the service justice system

and who look at the issues that face servicemen and women. I am amazed at the exclusion of people such as Judge Blackett.

Then, literally as the Bill is beginning its passage through the House, the Defence Secretary commissions yet another review of the exact subject that came up in the evidence sittings, about investigations. I find it remarkable. We do not need another review. We just need to implement some simple things, some of which Judge Blackett came forward with last week, and some of which will have come out of the service justice review.

I am sure that there will be an argument in the Ministry of Defence, knowing the civil servants as I do, that everything should be pushed off into the Crown review and the armed forces Bill, which I understand is coming up next year. To be honest, I have a lot of sympathy with that, because that is where the provisions we are considering should be—not in a separate Bill. Things have been done in this way for political reasons, because the Conservative party stood for election saying that it would implement legislation.

If we were to deal with the matter next year as part of the armed forces Bill we would look at the situation in the round, in terms of not just prosecution but investigations. There may be a view that it is possible to do things in isolation in this regard, but it is not. We have already seen the implications that changing one thing will have elsewhere. Ideally it would be best to act next year.

**Miss Sarah Dines (Derbyshire Dales) (Con):** It is a pleasure to serve under your chairmanship, Mr Stringer. The scope of the Bill clearly does not encompass a wide-scale investigation of the present investigation process. Will the right hon. Gentleman explore a little more and explain what he did in his tenure as a Defence Minister to look into the matter?

**Mr Jones:** I will say this to the hon. Lady: if she wants a long rundown of the positive things that the Labour Government did for the armed forces I can start with the Armed Forces (Pensions and Compensation) Act 2004.

**Miss Dines:** But on investigations?

**Mr Jones:** It is related, because it is related to people who were serving on operations. For the first time ever it brought forward a modern system of lump sum payments, which were never there before, for Falkland veterans or anything else. I actually extended that in 2007 to cover issues to do with mental health provision. Our record was that each year but one of that Labour Government we accepted the finding of the Armed Forces Pay Review Body, as opposed to the Conservative Government's cutting pay. We maintained our armed forces spending at a level above inflation. The 2010 Conservative Government cut the defence budget by 16%.

We also had the armed forces welfare pathway, which I started in—

**The Chair:** Order. I am sure that the right hon. Gentleman knows that he is moving way outside the scope of clause 1 and the amendments and new clauses. I ask him to come back to the clause stand part debate.

**Mr Jones:** I am sorry, Mr Stringer. I was going down memory lane to happier times. Just to finish that point, the welfare pathway, which the Government who came to power in 2010 rightly changed and renamed the covenant, was something that I introduced in 2010.

The hon. Member for Derbyshire Dales raised the issue of investigations and what we did. She is the new Member for that beautiful part of the world, and I have huge respect for her predecessor. I spent many a time at Kinder Scout and Hope as a boy walking round that area, so I know her area very well. But I think that she has to recognise the issue in terms of Iraq and Afghanistan. Yes, huge and terrible accusations were made about what was going on. There was pressure not only from what could be called the outriders on the left but from her own party to the effect that some of these accusations should have been investigated. If there was a failure, it was around investigation.

I do not want to try your patience, Mr Stringer, but we also did the Armed Forces Act 2006, which meshed the three service disciplinary systems into one. That was a huge issue, but it actually improved service discipline and investigations. This is an opportunity to get this Bill right. Let me say to the hon. Lady that I just want to get the Bill right. I think that if we had an approach from the Minister whereby he would take on board some of this, we could do these things, both here and in the other place, but there is a tendency, which I do not like, to think that somehow we in this place scrutinise legislation, and the Government know that they are going to change things but they change things in the House of Lords, giving the public the impression that somehow the House of Lords is this all-seeing, all-knowing, body when actually those things should be done here. I am already talking, as I am sure others are, to Members of the House of Lords, including, I have to say to the Minister, some of his noble Friends who I think also have concerns about the Bill.

There is an opportunity here to do that with investigations. The issue with the amendments that we were talking about is really this. We had the debate about investigation of de minimis things, but what I

think everyone wants is that investigations can be done quickly—not be done quickly and dismissed, because we have to get the balance right in terms of people making serious allegations that are investigated properly. Let us remember that we are talking here about allegations from civilians against members of the armed forces, but remember also that there are often cases between servicemen and women, who are making accusations against themselves—against individuals. There has to be a sense of fairness, and it cannot be right that it goes on for a very long time, so it does need judicial oversight. If someone is accused of something, that should be investigated properly and quickly, but that should also be done in a legal process that cannot be challenged—well, I am sure that everything can be challenged if someone pays a lawyer enough, but we must ensure that we have a situation whereby it is as judicially robust as possible.

**Martin Docherty-Hughes:** In response to a question asked by the hon. Member for Blyden last week, General Sir Nick Parker stated:

“Nobody would want anything in the process that somehow allows people who have behaved badly on the frontline to get away with it. But all of us would believe that the process has to be quick, efficient and effective to remove the suspicion of a malicious allegation as quickly as possible. I cannot see how this Bill does that.”—[*Official Report, Overseas Operations (Service Personnel and Veterans) Public Bill Committee*, 8 October 2020; c. 94, Q188.]

Does the right hon. Gentleman agree that legitimacy and effectiveness are not an element of this Bill and that we need to see structural change before we can go forward?

**Mr Jones:** I agree. The impression that I think some people try to give of the armed forces is that the armed forces, which have a job to go and do, want to be above the law. Nothing could be further from the truth.

11.25 am

*The Chair adjourned the Committee without Question put (Standing Order No. 88).*

*Adjourned till this day at Two o'clock.*



