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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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The following abbreviations are used to show a Member's party affiliation:

Abbreviation	Party/Group
CB	Cross Bench
Con	Conservative
DUP	Democratic Unionist Party
GP	Green Party
Ind Lab	Independent Labour
Ind LD	Independent Liberal Democrat
Ind SD	Independent Social Democrat
Ind UU	Independent Ulster Unionist
Lab	Labour
Lab Co-op	Labour and Co-operative Party
LD	Liberal Democrat
LD Ind	Liberal Democrat Independent
Non-afl	Non-affiliated
PC	Plaid Cymru
UKIP	UK Independence Party
UUP	Ulster Unionist Party

No party affiliation is given for Members serving the House in a formal capacity, the Lords spiritual, Members on leave of absence or Members who are otherwise disqualified from sitting in the House.

House of Lords

Wednesday 20 January 2021

The House met in a hybrid proceeding.

Noon

Prayers—read by the Lord Bishop of Bristol.

Arrangement of Business

Announcement

12.07 pm

The Lord Speaker (Lord Fowler): My Lords, the Hybrid Sitting of the House will now begin. Some Members are here in the Chamber, others are participating remotely, but all Members will be treated equally. Oral Questions will now commence. I ask that those asking supplementary questions keep them short and confined to two points and that Ministers' answers are also accordingly brief.

New Businesses: Capital Gains Tax

Question

12.08 pm

Asked by ***Lord Leigh of Hurley***

To ask Her Majesty's Government, further to the report by the Office for Tax Simplification *OTS Capital Gains Tax Review: Simplifying by design*, published on 11 November 2020, what steps they have taken to ascertain the impact of the equalisation of Capital Gains Tax to income tax on entrepreneurs starting new businesses.

Lord Leigh of Hurley (Con): My Lords, I beg leave to ask the Question in my name on the Order Paper and, in so doing, draw your Lordships' attention to my interests as disclosed in the register.

Baroness Penn (Con): My Lords, in July 2020, the Chancellor commissioned the Office of Tax Simplification to examine and provide recommendations on how to make CGT as simple and efficient as possible. The Government are now considering this report and its recommendations. Any changes to the tax system will take place at a fiscal event and be informed by appropriate analysis of the impact on those affected by such changes.

Lord Leigh of Hurley (Con): I am sure my noble friend the Minister will agree that, while we all want tax to be as simple as possible, one has to recognise that capital gains tax is different from other taxes: it is to reward capital that is invested and is at risk. The Laffer curve for capital gains tax is different from the curve for income tax, and we need entrepreneurs, particularly serial entrepreneurs, to start new businesses in the UK.

Baroness Penn (Con): My Lords, the Government absolutely realise the vital role that entrepreneurs and small business people play in the UK economy. We ensure that, in assessing any tax changes, the impact is analysed, including any behavioural impacts of those changes.

Lord Sikka (Lab) [V]: My Lords, I begin by drawing attention to my entry in the register of interests. Does the Minister agree that by taxing capital gains at the same marginal rates as income tax, the Government could end many tax avoidance schemes? Secondly, London and the south-east of England account for around 27% of the UK population but receive 50% of capital gains tax reliefs. What assessment have the Government made of the regional disparities created by their capital gains tax regime?

Baroness Penn (Con): My Lords, the Government are absolutely committed to levelling up across the UK, including by incentivising investment in areas outside London and the south-east. When it comes to capital gains tax and wider tax measures, the report by the Wealth Tax Commission actually found that, on a narrow definition, UK taxes on wealth are about average for G7 countries, and on a slightly wider definition, our taxes on wealth are among the highest of the G7 countries.

Lord Bhatia (Non-Afl) [V]: My Lords, can the Minister confirm whether new businesses will benefit from this equalisation?

Baroness Penn (Con): My Lords, the proposals for equalisation are currently in a report from the Office of Tax Simplification and do not represent government policy—although of course the Government will look at the recommendations of that report very carefully.

Lord Northbrook (Con): My Lords, will my noble friend the Minister use her best endeavours to encourage the Chancellor to keep capital gains tax rates the same, and encourage him also to take the view that, within reason, lower rates of tax, particularly capital gains tax, can lead to higher revenues for the Treasury?

Baroness Penn (Con): My Lords, the Government always consider the need to balance raising revenue with the principles of fairness and market efficiency when we take tax decisions. All tax decisions also take into account the impacts of behavioural change for those affected. At any fiscal event, the Government produce and publish policy costings which are scrutinised by the OBR, and these include relevant behavioural impacts on revenue.

Lord Palmer of Childs Hill (LD) [V]: My Lords, business asset disposal relief is mistargeted if its aim is to stimulate investment. Does the Minister agree that it has become a form of retirement relief for successful and wealthy entrepreneurs?

Baroness Penn (Con): My Lords, the Government reformed business asset disposal relief at last year's Budget, focusing the relief on the largest number of small business owners, ensuring they can still benefit from it, while reducing the allowance for the small number of taxpayers who were benefiting disproportionately from previous levels of relief.

Lord Colgrain (Con): My Lords, I refer to my interests in the register. Does the Minister agree that, in order to foster the level of entrepreneurial investment we need after both Brexit and the pandemic, consideration should be given to increasing business asset disposal relief? Secondly, does she agree that the Government should look again at the calculation of CGT on private equity investments, where the current arrangements are disproportionately disadvantageous to taxpayers?

Baroness Penn (Con): My Lords, as I said, the Government recently changed the regime for business asset disposal relief, but I reassure my noble friend that the change has kept the relief focused on small business owners and that over 80% of those using the relief were unaffected. On his second point, carried interest is a share of the profits made by a financial fund which is treated as capital gains; the Government have no plans to change rules around carried interest, but we keep all tax policy under review.

Lord Bilimoria (CB) [V]: My Lords, our tax system needs to support a competitive and dynamic economy. Businesses have suffered hugely during the pandemic. Does the noble Baroness agree that now is not the time to talk about raising taxes via capital gains tax or corporation tax? Does she also agree that raising taxes will stifle our recovery from the pandemic and hamper business investment and inward investment into the country, making our economy and businesses less competitive? We need to encourage entrepreneurship and investment into businesses; that will create the jobs that pay the taxes, which will increase our tax take.

Baroness Penn (Con): I absolutely agree with the noble Lord's sentiment about the importance of entrepreneurs and businesses to the country's recovery. As I said to my noble friend earlier, the Government always consider the need to balance raising revenue with the principles of fairness and market efficiency. However, I cannot deny that, in future years, we will have some difficult decisions to take on balancing the books and recovering from the pandemic.

Lord Tunnicliffe (Lab) [V]: My Lords, that the Office of Tax Simplification deemed it necessary to split the findings of its review into two reports serves only to highlight the complexities and risks of tax reform. The Government often warn of the perils of unintended consequences; this has certainly been the case with previous iterations of capital gains tax. Does the Minister agree that it is vital to remain mindful of the potentially significant behavioural changes and wider economic impacts that may result from seemingly small changes to tax policy?

Baroness Penn (Con): My Lords, the noble Lord puts his point very well; I entirely agree.

Baroness Bowles of Berkhamsted (LD) [V]: Does the Minister consider that social impact, as well as behavioural impact, should be taken into account? Is there not a case for reducing the percentage of shares that must be sold to an employee ownership trust to qualify for capital gains tax relief or some partial relief?

Baroness Penn (Con): My Lords, a number of factors are taken into account by the Treasury and the OBR when assessing tax policy. On the second point, the enterprise management incentive has been protected during the Covid-19 outbreak; the Treasury has prioritised urgent support measures for people, amending legislation so that the scheme can still be used by affected firms where employees are furloughed or where their working hours have been reduced as a result of Covid.

Viscount Trenchard (Con): My Lords, the rebasing for CGT purposes of assets on death, coupled with the ability to transfer via a surviving spouse who expects to live seven years, distorts the transfer of assets down the generations. Has the Minister considered introducing a capital tax regime like those of Canada and Australia, where there is no inheritance tax but also no exemption from CGT on death—instead, 50% of the capital gains arising on death is aggregated with the beneficiary's other income and charged to income tax, leaving the other 50% untaxed?

Baroness Penn (Con): My Lords, inheritance tax is currently the main tax levied at the point of death. However, I am sure the noble Lord will be aware of the Office of Tax Simplification's report on inheritance tax; the Government are considering its findings carefully.

The Lord Speaker (Lord Fowler): My Lords, all supplementary questions have been asked.

Covid-19: Early Years Sector

Question

12.17 pm

Asked by ***The Lord Bishop of Gloucester***

To ask Her Majesty's Government what assessment they have made of the wellbeing of children under five affected by the COVID-19 pandemic; and what steps they are taking to support the early years sector affected by the pandemic.

The Parliamentary Under-Secretary of State, Department for Education and Department for International Trade (Baroness Berridge) (Con): My Lords, the department is monitoring the impact of the pandemic on children and Ofsted has reported on the effects of Covid-19 on the early years sector. Early years are crucial for child development, so the Government are prioritising keeping

these settings open. The Chancellor announced a £44 million investment in 2021-22 for local authorities to increase hourly rates paid to childcare providers for the Government's free childcare entitlement offers.

The Lord Bishop of Gloucester [V]: My Lords, I thank the Minister for her Answer. The pandemic has deeply impacted the early years of many children's lives. Given that pre-pandemic work by the Children's Commissioner identified a need for strong connection across health, education and social care, will Her Majesty's Government consider a Minister for children and young people at Cabinet level as a matter of urgency as we emerge from this pandemic?

Baroness Berridge (Con): My Lords, the right reverend Prelate is correct that there is a cross-departmental approach to this. She will be aware of the proposals for family hubs, which should provide families with access to all those services on the ground. I assure her that the Secretary of State for Education is prioritising policy on children at the request of the Prime Minister.

Lord Framlingham (Con) [V]: My Lords, given the vulnerability of children, whatever their age, in this rapidly changing world, when family breakdown and its sad consequences have become commonplace, will the Minister use her good offices to stress the huge and undeniable importance of the traditional family structure to children and do all she can to promote it?

Baroness Berridge (Con): My Lords, it is quite clear that with the effects of the pandemic on children and young people, family structure and wider community groups have been essential in providing support, along with our ensuring that children have access to school—when it is possible for them to be in school. As I reiterate, the Secretary of State for Education is prioritising children's policies.

Baroness Butler-Sloss (CB) [V]: My Lords, are the Government giving sufficient financial support to CAMHS—child and adolescent mental health services—for young children, many of whom have urgent mental health problems?

Baroness Berridge (Con): My Lords, as a result of the NHS plan, £2.3 billion is being invested in mental health services, and 345,000 individuals should be additionally supported within CAMHS by 2023-24. In relation to schools, mental health issues have been prioritised within guidance. We are still rolling out mental health support teams in secondary schools and have made specific links between mental health issues in the *Keeping Children Safe in Education* updated guidance, as it can often be a symptom of a safeguarding issue, not just a mental health problem.

Baroness Walmsley (LD) [V]: My Lords, even before the pandemic, 65% of children in some areas were not receiving the mandated two-and-a-half-year health visitor check because of cuts to the workforce. Will there be any additional resources for the health visitor workforce to help them to catch up with missed visits to vulnerable young families during the pandemic?

Baroness Berridge (Con): My Lords, health visitors do essential work. The Government support the letter written by the chief nurse, which outlines that health visitors and other front-line health professionals should not be moved from those roles in this stage of the pandemic, to ensure that visits can be made to those vulnerable families. Since April 2020, it has been part of GPs' contracts that they are to have an assessment with a mother six to eight weeks after the child is born.

Lord Watson of Invergowrie (Lab) [V]: My Lords, a survey carried out on behalf of the DfE last October into the effects of Covid-19 on childcare and early years providers showed that only 45% of private nurseries and 55% of childminders believed that they would be financially able to continue for another year. It simply cannot be right that the average gap between the hourly cost of delivering a funded two year-old's place and the funding rate paid to settings for that place is £2 an hour—a 37% funding deficit. The All-Party Parliamentary Group on Childcare and Early Education has called for the Government to commission an independent review of the costs of delivering childcare. Surely the Minister cannot deny that such a review is essential to safeguard the long-term viability of the sector.

Baroness Berridge (Con): My Lords, in the autumn and summer terms, the Government paid out the entitlements regardless of the number of children attending these settings. As attendance rose during the autumn, we gave notice to the sector that we were moving back to a per-child-attending basis of funding. Tomorrow is the census, when we will have an up-to-date picture of how many are in attendance in those settings. What is essential at the moment is that the department monitors the market and what is happening in this sector to be able to have the most up-to-date information on the sustainability of those settings, as the noble Lord quite rightly outlines.

Baroness Verma (Con) [V]: My Lords, my noble friend the Minister knows that domestic violence during Covid has increased dramatically and scarily. As there are reduced visits from health professionals, can she tell me what work is being done with local community groups to ensure that children—particularly from BAME communities where English is not the first language—are not left without any support? I understand the six-to-eight-week visit after a baby is born, but these children are pre-school age and need to be monitored, particularly in the most vulnerable households.

Baroness Berridge (Con): My Lords, we have specifically requested that, if those children already classified as vulnerable are not attending early years settings, those settings do their best to get in touch with the children. That is why it has also been important to look at the role of the voluntary sector. The department has given £11 million to the Barnardo's-led See, Hear, Respond initiative, which is a consortium of charities for those children who are not yet known to be vulnerable. We have sadly had around 1,500 referrals through that initiative.

Baroness Watkins of Tavistock (CB) [V]: My Lords, health visiting has continued during lockdown, using video contacts with parents instead of face-to-face visits. Can the Minister assure the House that this approach will be rigorously evaluated before widespread adoption? This is particularly important given the recent stark findings from the child safeguarding practice review, which showed that the number of children dying or being seriously harmed after suspected abuse or neglect rose by a quarter, to 285 notifications, during April to September in England. Of these, 102 involved babies under the age of one. Does the Minister agree that it is vital that a properly resourced health visiting service is available to parents and young children, particularly the most vulnerable families, post Covid?

Baroness Berridge (Con): My Lords, there will be much evaluation of the strategies used by various statutory agencies during the pandemic. The Secretary of State has written to directors of children's services in local authorities to highlight particularly the group that are most vulnerable: babies. They are a key group that we have asked the See, Hear, Respond initiative to focus on. One of the important differences between this lockdown and the first is that we are enabling birth registrations to take place, which, of course, are a key function to make us aware of a child's birth and therefore be able to follow up if there are any issues.

The Lord Speaker (Lord Fowler): I call the noble Lord, Lord Roberts of Llandudno.

Lord Roberts of Llandudno (LD) [V]: [*Inaudible.*]

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): Could the noble Lord ask his question please?

Lord Roberts of Llandudno (LD) [V]: [*Inaudible.*]

The Lord Speaker (Lord Fowler): I think we will go on, in that case. Sorry. I call the noble Baroness, Lady Neville-Rolfe.

Baroness Neville-Rolfe (Con) [V]: I welcome the fact that, in recognition of the importance of early learning, the Government have kept nursery schools open. Primary schools are also open for some pupils, although the arrangements seem to vary locally. The success of vaccination gives us all hope. Does my noble friend agree that we should not reverse these arrangements, whatever happens, and that we should move to get all children back into primary school from after the February half-term?

Baroness Berridge (Con): My Lords, I share the noble Baroness's ambition—it is our ambition—that, as soon as the public health guidance allows, we will get children back into school. Of course, vulnerable children and those of critical care workers are still in school. Indeed, just under 20% of the early years sector is school-based, and those settings should be open in accordance with the guidance that all early years settings should be open. But we very much look forward to the day we can reopen schools fully, as I believe most parents and teachers do.

The Lord Speaker (Lord Fowler): My Lords, the time allowed for this Question has elapsed. I understand that we have a Minister for the fourth Oral Question—the hard-working noble Lord, Lord Bethell—so we will go to that. I call the noble Lord, Lord Cormack.

Covid-19: Vaccination

Question

12.29 pm

Asked by ***Lord Cormack***

To ask Her Majesty's Government what plans they have in place to ensure that no one has to wait more than three months for a second dose of a COVID-19 vaccination.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con): My Lords, we are absolutely committed to making sure that everyone gets two doses, so if they have received their Pfizer first dose, they will get a Pfizer second dose within 12 weeks of the first one. Similarly, if they have had their AstraZeneca first dose, they will get their AstraZeneca second dose within 12 weeks. The four UK CMOs and the JCVI agree that prioritising the first vaccine dose will protect the greatest number of at-risk people overall in the shortest period of time.

Lord Cormack (Con) [V]: My Lords, naturally I thank my noble friend for that Answer. I have just returned from the very efficiently run county showground vaccination centre outside Lincoln, where I have had my first dose and have been given a date for my second. My noble friend has certainly reassured me on the Government's determination both to give the same vaccine and at the right time. However, is he aware of the findings in Israel, where there has been an extremely impressive rollout of vaccination, which have cast considerable doubt on the wisdom of delaying the second dose? This has caused a great deal of concern, not least in your Lordships' House, voiced by the noble Baronesses, Lady Boothroyd and Lady Bakewell, among others. Can he please give us some reassurance that there is no danger of diminishing the efficacy of the vaccine by delaying the second dose?

Lord Bethell (Con): I am extremely pleased to hear the update from my noble friend, and I thank all those in Lincoln who were contributing to his effective vaccination and his second appointment, which is very reassuring. I reassure him that, on the Israeli numbers, Sir Patrick Vallance, the Chief Scientific Adviser, has been very clear—he was on the media round this morning. The Israelis looked at a very specific time period—14 days—and a very specific age group. This is very different to the analysis done by the JCVI and the MHRA, which looked at all age groups over a much broader period. The efficacy of immunity from days 10 to 21 is thought to be 89%. That is a very considerable and impactful effect, and I have spoken to the noble Baroness, Lady Boothroyd, to reassure her on that matter.

Lord Anderson of Swansea (Lab): My Lords, the rollout of the first vaccine has gone fairly smoothly, although there have been glitches or bumps, particularly in terms of regional disparities. What lessons have been learned, and what was the reason for choosing 12 weeks—was it administrative, medical or supply?

Lord Bethell (Con): My Lords, there have been glitches; I do not know whether there are lessons learned. However, I can share with the noble Lord that the practicalities of getting the Pfizer vaccine in particular—which, as he knows, requires deep-cold storage—into every part of the country are quite challenging, and we are trying to reach not only the big mass centres but community pharmacies and GP surgeries. The delivery of the vaccine to thousands and thousands of locations will always be a little uneven, and there have been occasions where we have deemed it the correct procedure to have people stood up for their vaccination even though we were not 100% sure of the delivery of the vaccination. That does create concern but I think has been the right approach to take.

Baroness Jolly (LD) [V]: My Lords, my question follows that of the noble Lord, Lord Anderson of Swansea. For many in isolation, the appointment for their first jab is all that has kept them going, and the certainty of timing of the second has changed since the introduction of the vaccine regime. Can the Minister tell us whether that is to do with the region—there seem to be problems in the south-west—or is it demand, logistics or science?

Lord Bethell (Con): My Lords, if I understood the noble Baroness's question correctly, I reassure her that absolutely everyone's details are registered in the national immunisation database, so everyone will receive an invitation for their second dose, as I mentioned earlier. However, the reason for having this longer period before the second dose is completely pragmatic. Every 250 doses saves a life, so it is absolutely essential that we get the maximum number of first doses out as quickly as possible. The MHRA, the JCVI and others have looked at the safety and efficacy of this approach, and they have found reassuring evidence that this will work extremely well. I take great joy in the fact that we have found a way to get the highest number of doses to the greatest number of people as quickly as we possibly can.

Lord Ribeiro (Con) [V]: My Lords, mindful of the impact of Covid-19 on front-line health staff during this pandemic, and given the report in the *Times* today of reduced supplies of the Pfizer/BioNTech vaccine during January and February, can the Minister say what plans there are to ensure that these front-facing health staff in hospitals and care homes are prioritised as a matter of urgency to protect them from the pandemic? As someone in his late 70s who is waiting for the vaccine, I am happy to forgo mine until such time as the health staff I mentioned are protected.

Lord Bethell (Con): I am enormously grateful for my noble friend's important gesture and pay tribute to his generosity of spirit. However, it is absolutely essential that he gets his vaccine as soon as he can, because he is at the top of the list. Morbidity is determined by age, not proximity. Healthcare staff are of course of deep concern to all of us, but those who are in PPE and in protected conditions have no greater chance of getting the disease than members of the general public. It is essential that we put those who have the highest risk of morbidity—the oldest—at the front of the queue, which is why we have the prioritisation list that we have.

Baroness Campbell of Surbiton (CB) [V]: My Lords, I thank the hard-working Minister and his Government for listening to the most clinically vulnerable groups and for reprioritising vaccination for all care workers, ensuring their greater safety. However, I am concerned that people under 65 with learning disabilities who live in care homes are in group 6 rather than in group 1, when ONS data clearly shows that they have been disproportionately affected throughout the pandemic. It is illogical that they now have to wait longer than other people with learning disabilities—older ones—in residential care. What plans do the Government have to ensure consistency and fairness in vaccination allocation to all people in residential care, especially in this category of people?

Lord Bethell (Con): My Lords, the noble Baroness puts her point very well. There is a huge amount of sympathy and concern for those who have underlying conditions, and she is right that ONS data on those with underlying conditions demonstrates a higher hospitalisation and mortality rate. That is why we have put all individuals between 16 and 64 with underlying health conditions that put them at a higher risk of serious disease and mortality higher up the prioritisation list than others. However, it is age more than anything else that is the greatest determinant of morbidity, and that is why the list looks the way it does.

Baroness Thornton (Lab) [V]: My Lords, I would like to ask the Minister about those who are housebound and bedbound. If their domiciliary workers, care workers and unpaid carers are vaccinated in centres and with their GPs, what arrangements are in place for home visits to vaccinate this particular cohort of people, who cannot leave their home because of their disability or their particular conditions? It has been rumoured that there is no intention to vaccinate this cohort at present, which I find remarkable. So I would like the noble Lord to assure the House that arrangements are being made for this particular cohort.

Lord Bethell (Con): My Lords, I reassure the noble Baroness that it is absolutely not our intention to leave those who are housebound out of the scheme—not at all. In fact, they are an important priority. They are logistically a big challenge. We are in a numbers game. We are trying to get the greatest number vaccinated as quickly as possible. However, we are working extremely closely with community pharmacists and GPs to try to figure out the way in which we can get the vaccine to people who cannot make their own way to a vaccination centre. Those plans are in advanced progress. I do not have details of them to hand, but I would be glad to write to the noble Baroness with those details.

Baroness Sheehan (LD) [V]: My Lords, can the Minister say how concerned the Government are that diminishing efficacy in partially immunised people among a population with high prevalence of the disease, as we have in the UK, will foster ideal conditions for the virus to mutate into vaccine-resistant forms?

Lord Bethell (Con): My Lords, I do not quite agree with the premise of the question, which is the concept of being partially vaccinated. When you get your first vaccination shot, you are vaccinated, your body has been primed, B cells make the antibodies and you learn how to fight the disease. That is categoric. Where the noble Baroness absolutely has a point is that it is an uncomfortable truth that when we lean in to the virus, it will seek to escape and mutate, and that is the moment of absolute highest risk for the country. That is why we are trying to move as quickly as we humanly and possibly can: there is a moment in time, an opportunity to get the vaccine out to as many people as possible to avoid the mutation throwing up variants that escape our vaccine.

Lord Mann (Non-Afl): We heard a few voices last spring and summer suggesting that the National Health Service was not good enough and that a privatised service would have been better in dealing with the pandemic. They are remarkably silent now. Will the Minister join me in the celebrations across this country at the moment of the brilliance of the National Health Service and the fact that people being vaccinated are going in with a smile on their face, being welcomed by people—volunteers and staff—with a smile on their face, all saying how brilliant our National Health Service is?

Lord Bethell (Con): My Lords, I am enormously grateful for the testimony of the noble Lord, but I would probably put it slightly differently. Listen, we are in Act I, and I do not think it is quite the right moment to take curtain calls and bows just yet. The NHS has stepped up to this challenge absolutely magnificently, but there is still a huge amount to do and to get through. In addition to the praise that the noble Lord rightly gave the NHS, I also pay tribute to other parts of government, and particularly to the Army, local authorities and the private sector, which contributed the vaccine in the first place, all of which have worked together in a great spirit of collaboration. It is only through that spirit of collaboration that we have been able to deliver what we have.

The Lord Speaker (Lord Fowler): My Lords, the time allowed for this Question has elapsed, and we now go back to the third Oral Question.

Flooding

Question

12.41 pm

Asked by ***Lord Rooker***

To ask Her Majesty's Government what assessment they have made of preparations against flooding in England in 2021.

The Minister of State, Department for the Environment, Food and Rural Affairs and Foreign, Commonwealth and Development Office (Lord Goldsmith of Richmond Park) (Con) [V]: My Lords, alongside our record £5.2 billion investment to better protect 336,000 properties over the next six years, our policy statement sets out plans to accelerate progress to better protect and better prepare against flooding and coastal erosion. We are fully prepared to respond to flooding this winter; this includes £120 million to repair flood defences damaged during last winter's floods, 6,500 trained staff, 25 miles of temporary flood barriers and 250 high-volume pumps ready to deploy.

Lord Rooker (Lab) [V]: Does the Minister accept that in a car-crash performance at the Public Accounts Committee last week, his department and the Environment Agency failed to answer the criticism in the National Audit Office report on flood risk management? Of the 4,500 homes flooded last winter, a few are a hundred yards from my home in Ludlow, some still empty and with no extra protection. I ask Ministers to visit flood areas, as the one thing they do not get from television and the media is the smell. It is that smell that would wake them up to do even more.

Lord Goldsmith of Richmond Park (Con) [V]: [*Inaudible*] —report. I should say that we are pleased that the report highlights that government investment is making a difference by significantly lowering flood risk for thousands upon thousands of homes right across the country, on the back of the Government's £2.6 billion flood defence programme, which has since been significantly increased. This programme is on time, it is on budget and it has yielded results, as acknowledged by the National Audit Office, but I fully take on board the noble Lord's comments about the misery involved in having one's life turned upside down by the horror of flooding. This is of course a priority for this Government.

Baroness Jones of Moulsecoomb (GP): The Minister is probably aware that it is not only homes, businesses and agricultural land that are flooded but our transport infrastructure. Last year, in Scotland, in Carmont, a train crashed into a landslip and three people died. Do the Government have an urgent national plan? It could not be more appropriate today, when Storm Christoph is hammering at our country.

Lord Goldsmith of Richmond Park (Con) [V]: As I say, this is a priority issue for the Government. We are now on track to better protect 300,000 homes from flooding through the £2.6 billion. We have committed to doubling that investment to what I believe is a record £5.2 billion, which will protect a further 336,000 properties from flooding and coastal erosion over the next six years. We believe that will reduce national flood risk by about 11% and help avoid about £32 billion in future economic damage, providing benefits and supporting job creation. We are putting our money where our mouth is in tackling this issue. We are introducing a suite of measures on the back of that £5.2 billion and, of course, we hope to reduce the risk of flooding year on year, even against the horrors of climate change.

Lord Flight (Con) [V]: My Lords, 65% of flood prevention is in poor health since the National Rivers Authority was subsumed into the Environment Agency, and no further checks have taken place on the state of river and sea walls for nearly 30 years. I put it to the Minister that the sooner flood defence is separated off from the Environment Agency—and given to an independent authority in charge of flood defence and how large sums of money are spent—the quicker our flood defences will be restored to the good order they had under the National Rivers Authority.

Lord Goldsmith of Richmond Park (Con) [V]: I believe that Defra, the Environment Agency and local emergency services are fully prepared to respond to any flooding alongside the response required to Covid-19. Extensive preparations are being made to operate flood defences and flood storage reservoirs and to put up temporary barriers where needed to protect communities ahead of the incoming weather. I just make the point that the Environment Agency has 25 miles of temporary flood barriers, 250 high-volume pumps, eight principal depots spread around the country, 6,500 staff trained and ready to respond and 1,500 military on standby to provide mutual aid. The Government's preparations have been made and we are, we believe, fully prepared. I do not accept the noble Lord's comments about the Environment Agency.

Lord Krebs (CB) [V]: My Lords, as a result of climate change, the sea level will rise and some of our coastal areas will be inundated in the coming decades. Have the Government assessed the eventual need to relocate some coastal communities due to flooding risk, and have they identified which are the most vulnerable? Related to this, do the Government have a policy on how much flood risk will be acceptable in future?

Lord Goldsmith of Richmond Park (Con) [V]: The noble Lord highlights an important point. We know that many of our coastal settlements are at risk if trends continue in the same direction. We are also investing, as part of our response and the £5.2 billion, £200 million to support more than 25 local areas to take forward wider innovative actions that improve their resilience to flooding and coastal erosion, with a big emphasis on nature-based solutions. I cannot provide the noble Lord with a numerical answer on the level of acceptable damage, but we are increasingly emphasising nature-based solutions, because we know that, in terms of pound-for-pound investment, that is where we are likely to see a very significant return. That is as true on the mainland as it is on the coast.

Lord Harris of Haringey (Lab) [V]: My Lords, I refer to my registered interests. The national risk register orders the reasonable worst-case scenarios for each of the risks that it considers in terms of their impact. Floods rank in the second-highest category of impact, only exceeded by pandemics and a large-scale CBRN attack. So I ask the Minister: what is the estimated cost to the nation of a reasonable worst-case flood scenario? Less than £1 billion a year is scheduled to be spent on flood defences over the next six years. Is that anything like enough?

Lord Goldsmith of Richmond Park (Con) [V]: The £5.2 billion is a record investment by any Government ever in relation to flood risk, but it is not going to be invested in isolation. The Government will shortly come forward with a tree strategy, backed up by a £640 million nature for climate fund. That tree strategy will lend itself in many different ways to help to reduce the risk of flooding. Land planted to trees in the right places can absorb water many times faster than land that is not planted to trees. We have a peat strategy, which has direct implications for flood prevention, and the flood strategy that I mentioned earlier. Combined, this suite of policies, backed up with significant investment, should be able to reduce the risk that the noble Lord has identified.

Baroness Bakewell of Hardington Mandeville (LD) [V]: My Lords, flooding is becoming a way of life for many people. Flood Re, an insurance scheme for residents unable to get flooding insurance through usual means, has been running for several years. Do the Government use the information on the frequency of Flood Re claims to prioritise where flood defence budgets are spent, in order to bring relief to areas that are constantly flooded?

Lord Goldsmith of Richmond Park (Con) [V]: In terms of where to invest, where the Government invests and where the Environment Agency places its focus are entirely based on the data that we have. Therefore, the areas that are most at risk are prioritised. We do not distinguish between urban versus rural or north versus south. Priority is based on solid criteria that apply across the board. The noble Baroness mentioned Flood Re. There has been a big increase in availability and affordability since its launch. Independent research tells us that, before that, only 9% of households with previous flood claims could get two or more quotes on price-comparison sites, and none could get five or more. Now, 100% can get two or more quotes and 99% can get five or more, so the initiative seems to have worked.

Baroness Rawlings (Con) [V]: I thank the Minister for telling us about the tree strategy, which I was going to ask about and is very important. Is it not also the case that improving drainage structures, even by following the Dutch dyke system, can prevent flooding?

Lord Goldsmith of Richmond Park (Con) [V]: My noble friend was, I think, referring to dredging, which certainly can play a part in flood-risk management. However, the truth is that it can also make flooding worse downstream. Over each of the past three years, the EA has spent between £50 million and £55 million to manage the flow in channels. This allows the EA to dredge around 200 kilometres of river channel every year. Where there is evidence that dredging will reduce flood risk without increasing flooding downstream, and where it meets the Government's criteria and is affordable, we will do it. However, we need to make sure that it is done in the right place; otherwise, we might end up with perverse outcomes.

The Lord Speaker (Lord Fowler): The time allowed for this Question has elapsed, and that brings us to end of Question Time.

12.53 pm

Sitting suspended.

Arrangement of Business

Announcement

1 pm

The Deputy Speaker (Lord Duncan of Springbank) (Con): My Lords, the Hybrid Sitting of the House will now resume. I ask Members to respect social distancing.

Northern Ireland: Victims' Payment Scheme

Private Notice Question

1 pm

Tabled by ***Lord Empey***

To ask Her Majesty's Government what steps they are taking to ensure that payments are made to victims of the Troubles in Northern Ireland under the Victims' Payment Scheme; and what discussions they have had with the Northern Ireland Executive about the delivery of the Scheme.

Viscount Younger of Leckie (Con): My Lords, the Secretary of State has made clear the high priority that he places on having the victims' payment scheme open and receiving applications as soon as possible. He has committed to continuing to engage with Executive Ministers to this end. Officials also continue to support the Northern Ireland Executive on delivery of the scheme, which victims have waited too long for. The UK Government have always been clear that the devolved funding settlement means that the Executive is funded through the block grant, together with its own revenue-raising capabilities, to deliver its statutory responsibilities, including this scheme.

Lord Empey (UUP) [V]: My Lords, on Monday, the Sinn Féin Finance Minister at Stormont produced a draft budget for the next financial year. In that budget, there was nil provision for payment of these pensions. I know that Sinn Féin is opposed to this scheme and had to be dragged kicking and screaming through the courts, but the main people we must focus on are the victims, whose trauma has been exacerbated throughout the struggle over the payment of these pensions. They have had to go to court once already; they may very well have to do so again. The situation is intolerable.

Having passed the legislation to ensure that these people are recompensed for these life-changing events over many years, surely we have a national responsibility to ensure that this pension is paid, and paid on time. Applications are due to start in March, yet there is no provision and no agreement. We are playing political football here. Can the Minister assure the House that these pensions will be paid in the next financial year; that applications will be accepted in March; and that this nonsense will come to an end before more people are traumatised?

Viscount Younger of Leckie (Con): Indeed. I listened carefully to the noble Lord's comments. As he knows, the UK Government made legislation to establish a victims' payment scheme, both to fulfil their legal obligation and because they are committed to doing what they can to progress a scheme that has for too long been delayed by political disagreements, as the noble Lord alluded to.

On the amount, it is not clear how much money is required. That is something for Naomi Long and the justice board to work through. I know that she has been working extremely hard to gain an estimate of the figures—that is, the numbers involved and the amounts that might need to be paid out.

Lord Hain (Lab) [V]: My Lords, does the Secretary of State not understand that, by refusing seriously to discuss with the Northern Ireland Executive the funding of the Troubles permanent disablement payment scheme —so far, the only piece of successful legislation on legacy passed by this Government and which originated in this House—the scheme could be stillborn, and the shameful failure to deliver payments to which those severely injured through no fault of their own are legally entitled will cast a toxic cloud over any future efforts to deal with other legacy aspects of Northern Ireland's violent past?

Viscount Younger of Leckie (Con): Again, the noble Lord makes a good point. It is hugely frustrating that the formal designation of a department to lead on delivering the scheme took so long; in fact, as he will know, it took a court case to get that designation in 2020. However, we have that now and the Department of Justice is working very hard to put the systems in place to do what the noble Lord said: to get the payments to victims.

Baroness Suttie (LD) [V]: My Lords, the current very public stalemate is causing great distress and anxiety to many of the victims who hoped to benefit from this scheme. Does the Minister agree with what the Northern Ireland Justice Minister, Naomi Long, said yesterday:

"I will leave no stone unturned in terms of trying to get a resolution to this … We do not want to let the victims down at this late stage, given the good progress that has been made"?

Does he therefore acknowledge that engaging with the Northern Ireland Executive and holding the joint meeting requested by them would do much to help make progress?

Viscount Younger of Leckie (Con): I agree with the noble Baroness's comments in terms of the comments made by Naomi Long, who, again, is working extremely hard to put systems in place, establish the necessary resources and hire the appropriate experienced people. This is what is required to get to the right point. We hope that the month of March will be the launch pad from which payments can be made to victims.

Lord Caine (Con): My Lords, what is the current understanding between the UK Government and the Northern Ireland Executive as to who is responsible

for funding this scheme? During my time in the Northern Ireland Office, it was clearly a devolved competence. Does my noble friend agree that, out of a block grant of some £15 billion, it ought to be perfectly realistic to expect the Sinn Féin Finance Minister to find the money for these long-overdue payments?

Viscount Younger of Leckie (Con): I touched on this earlier. As my noble friend will know, the funding for the scheme is to come from the block grant. The regulations provide for the Executive Office to provide funding to the department responsible for supporting the victims' payments board. The devolved funding settlement means that the Executive are funded through the block grant—which, by the way, is £14.1 billion for 2020-21—together with Northern Ireland's own revenue-raising capabilities to fund their statutory responsibilities.

Lord Dodds of Duncairn (DUP) [V]: My Lords, victims' uncertainty must be removed as soon as possible. I am glad that the Government, working with us in the last Parliament, put the legislation in place for these pensions and ensured that they would go only to innocent victims, because terrorists and their victims should never be equated. Since many people throughout the United Kingdom are eligible under this scheme, not just those based in Northern Ireland, does the Minister agree that the Government have a national duty in relation to its financing because of the recipients, who are likely to be in receipt of benefits and pensions? Does he also agree that the Sinn Féin Finance Minister in Northern Ireland needs to step up and work constructively to find solutions so that the victims get the compensation that they deserve?

Viscount Younger of Leckie (Con): I agree with the noble Lord. The victims, some of whom have suffered horrific injuries and endured great trauma, have been waiting for too long. As he will know, it will be up to Naomi Long and her board to decide on eligibility for payments. I have no doubt that she has in mind those who will apply from not just Northern Ireland but Great Britain.

Lord Murphy of Torfaen (Lab) [V]: My Lords, we all understand that the pandemic is dominating everything in Northern Ireland, including affecting the victims of the Troubles, but time is running out for many of these men and women. This matter is now very urgent. Will the Minister go back to the Secretary of State and ask him personally to deal with it—especially the issue of finance—including through a meeting with the First Minister and the Deputy First Minister?

Viscount Younger of Leckie (Con): I take the noble Lord's point but I see no need to do that because the Secretary of State is fully engaged on this matter. As the noble Lord will know, he regards this as a key priority. He continues to do what he can to support the Northern Ireland Executive to be sure that the money is paid to victims as soon as possible.

Lord Kilclooney (CB): My Lords, first, I must declare an interest, having been a victim of an assassination attempt in Northern Ireland. I will not be seeking any benefit from this scheme.

People have been waiting far too long to benefit from this scheme. Many lost limbs or their eyesight, and they are getting older. Time is running out, and this should be a matter of urgency for the Secretary of State for Northern Ireland and for the Northern Ireland Executive. It seems to me that the Minister of Finance in Northern Ireland is delaying action because he wants those who were terrorists and were victims in the campaign in Northern Ireland also to benefit. It is a political gesture by the Minister of Finance. That must not be the way to make progress. When the Secretary of State says, "Stop this nonsense", he is really saying that it is a matter for the block grant and the Stormont Executive. Will the block grant be increased accordingly because of this scheme? Alternatively, can the Secretary of State take control of this scheme and issue the benefits from Westminster, which originally passed the legislation?

Viscount Younger of Leckie (Con): First, I am very well aware that the noble Lord was caught up in the Troubles. I will not be drawn on some of the comments he made, but as I said earlier in response to the question from my noble friend Lord Cain, Northern Ireland received a block grant of £14.1 billion for 2021-22 and the Northern Ireland Executive will receive an additional £918 million on top of the Northern Ireland baseline, so the funding is there. Of course, as the noble Lord will know, however much is required to respond to applications from victims, that is spread over more than a decade.

Lord Lexden (Con): My Lords, should not both the Northern Ireland Office and the Northern Ireland Executive hang their heads in shame at the unconscionable delay in implementing a scheme for which both Houses of Parliament have repeatedly called? Is it not disgraceful that while Ministers squabble, people are dying without the compensation that is their due? If the new UK Government/Northern Ireland Executive board cannot sort out problems such as this, what is it for?

Viscount Younger of Leckie (Con): I can only repeat to my noble friend that, as he well knows, it is up to the Northern Ireland Executive to take this forward. The Secretary of State is, and always has been, firmly committed to seeing the introduction of this scheme and payments being made to victims who have waited far too long, as I have said. We will continue to prioritise the Executive's delivery of them. Finally, I hope I have given reassurance that Naomi Long and her team are working hard and fast and are making very good progress.

Lord Dubs (Lab) [V]: My Lords, will the Minister confirm that there is an important vacancy, namely that of the Victims Commissioner for Northern Ireland, so there is nobody to speak out on behalf of victims or to apply pressure to the Executive or whoever is holding this up? What will the Minister do to ensure that the Victims Commissioner is appointed as soon as possible?

Viscount Younger of Leckie (Con): I am aware that a Victims Commissioner has not yet been appointed. That process is under way, but I reassure the noble Lord that that is not delaying any process to pay out money to victims.

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, the Minister said that the Secretary of State for Northern Ireland is fully engaged in this matter. Will the Minister ensure that the Secretary of State accelerates that level of engagement and has an immediate meeting with the First and Deputy First Ministers, the Minister of Finance and the Minister for Justice to find a solution —perhaps a hybrid solution whereby the Government provide the up-front initial funding, with the Northern Ireland Executive providing for the ongoing annual costs?

Viscount Younger of Leckie (Con): I am sure that the Secretary of State will be listening and I will certainly pass that on. However, I again reassure the noble Baroness that the Secretary of State has regular meetings with the First Minister, the Deputy First Minister and, where necessary, the Irish Government on many matters, including this one. That is ongoing. It is important that he does his bit, which he is doing, to encourage the Northern Ireland Executive, whose responsibility it is, to take things forward.

Lord Cormack (Con) [V]: My Lords, I do not doubt for a moment the integrity or determination of the Secretary of State, having spoken to him last week, but this is a scandal. The people in Northern Ireland have prevaricated and procrastinated and while that has been going on, people have been dying. For many, it is too late already. Has the time not come for prime ministerial involvement here? Will my noble friend please pass on that suggestion because we need to break this logjam immediately?

Viscount Younger of Leckie (Con): I take note of my noble friend's comment, but what counts is what is happening on the ground. Naomi Long and her board are taking forward the necessary processes to ensure that applications are made available to those victims who wish to apply.

The Deputy Speaker (Lord Duncan of Springbank) (Con): Unfortunately, the time allowed for this Private Notice Question has now elapsed.

UK Musicians: EU Visa Arrangements

Commons Urgent Question

The following Answer to an Urgent Question was given in the House of Commons on Tuesday 19 January.

"This Government recognise the importance of the UK's world-leading cultural and creative industries. We recently demonstrated that commitment by providing an unprecedented £1.57 billion package of support to help them through the Covid-19 pandemic. It is therefore entirely consistent that, during the negotiations with the EU, we pushed for ambitious arrangements allowing performers and artists to work across Europe.

Our proposals, which were informed by our extensive consultation and engagement with the UK's cultural and creative industries, would have allowed UK musicians and other cultural touring professionals to travel and perform in the UK and the EU more easily, without the need for work permits. Regrettably, those mutually beneficial proposals were rejected by the EU. As a result, UK cultural professionals seeking to tour in the EU will be required to check domestic immigration and visitor rules for each member state in which they intend to tour. Although some member states allow touring without a permit, others will require a pre-approved visa and/or a work permit.

It is absolutely vital that we now support our touring sectors to understand the new rules associated with working and travelling in the EU. We are delivering an extensive programme of engagement with the sector to help them understand any new requirements. That includes working with Arts Council England and various other sector bodies, to help distil and clarify the new rules.

As my right honourable friend the Secretary of State for Digital, Culture, Media and Sport has already made very clear, we will also look at whether we can work with our partners in EU member states to find ways to make life easier for those working in the creative industries in our respective countries. In the meantime, we will continue close dialogue with the creative and cultural sectors, to understand the ongoing impacts and ensure that they have the right support at the right time to continue to thrive."

1.17 pm

Lord Stevenson of Balmacara (Lab) [V]: My Lords, despite the helpful exchanges on this topic yesterday, this seems to be about how DCMS can square the Home Office red lines on freedom of movement. We need greater transparency. Will the Minister place copies of all correspondence between the EU and the UK on this issue in the Library? Secondly, we need trust. Can she confirm that the Government will take full account of the views of the ISM and others that the short-term business visitor model is not appropriate and that any final agreement for visitors from the EU to the UK should be based on a 90-day permitted paid engagement model? Finally, we need a plan. Will the Minister spell out what the original UK proposal was and commit to writing to us about what the new negotiating objective will be—assuming that the EU's door is indeed still open?

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Baroness Barran) (Con): I thank the noble Lord for his questions. I do not think the red lines were between DCMS and the Home Office; I think they were between the UK and the EU. We proposed a tailored deal for musicians and other cultural professionals and the EU did not accept it. On the correspondence and the discussions, my noble friend the Minister for Digital and Culture said yesterday in the other place that she would talk to BEIS and Home Office colleagues with a view to publishing the details of those discussions. On the noble Lord's final point, we are consulting extensively with the sector to understand what it needs to be able to thrive once we emerge from the pandemic.

Lord McNally (LD) [V]: My Lords, that explanation just does not fit with all the briefings that have gone on on both sides of the channel about what really happened.

What really happened is that the Government were inflexible in the TCA for fear of the European Research Group and other Brexit zealots anxious to protect the purity of Brexit. The Government have got to go back to the table on this. My advice to musicians would be to mobilise the millions of supporters, particularly among the young, who should be outraged at the betrayal of this important sector.

Baroness Barran (Con): I am surprised at the noble Lord's remarks, because our inflexibility, as he describes it, was simply that we tried very hard in the negotiations to stand up for Britain's brilliant cultural and creative sectors, and to reflect their request to us about what they needed from the deal. Perhaps the remark about inflexibility could be pointed elsewhere.

Baroness Bull (CB): My Lords, the EU has visa-waiver agreements in place with some 27 countries that allow 90 days' visa-free travel within any 180 days and that specifically permit artists to undertake paid work on an ad hoc basis. In contrast to responses yesterday, an EU official quoted today has said that the phrase "ad hoc" covers touring and could, by negotiation, have been extended to support staff. Given that, can the Minister say whether the Government will move quickly to explore a similar agreement for the UK alongside the trade deal? Does she agree that taking back control of our borders was surely never intended to leave UK artists with less freedom to pursue their craft than their creative peers in, say, Tonga, St Lucia or the Federated States of Micronesia?

Baroness Barran (Con): I can only reiterate to the noble Baroness that our understanding of the EU's offer is not as she describes it. I also repeat the words of my honourable friend the Minister for Culture yesterday, when she said that, if there was an open door to talk about these things, she would be the first person through it. However, I do not think that we should raise people's hopes about this. As the sector has said, it needs clarity, not recrimination, and that is what we are working on.

Baroness Nicholson of Winterbourne (Con): Does the Minister recognise the huge value of music globally to mental and physical human health? As that has been a matter of profound importance during the pandemic, as it will be following it, this really matters. If so, will she persuade the Government and all departments to prioritise music as one of the major attractions of the UK globally? We are a fount of music, or the head for music, in terms of performance, practising, invention and teaching, and this could be one of the biggest attractions to the UK from people around the world.

Baroness Barran (Con): My noble friend makes some powerful points. She is quite right that UK music is one of our great success stories, generating almost £6 billion in GVA annually. In relation to mental and physical health, we have worked together with Arts Council England, the National Academy for Social Prescribing and NHS England to set up the thriving communities fund, which will bring all forms of art to communities to help them recover from Covid.

Baroness Bakewell (Lab) [V]: My Lords, many, if not most, musicians are freelance or self-employed workers. As such, they are among the 3 million taxpayers who have fallen through the net of the Government's financial support during the pandemic. Will the Government and the Minister please explain why they cannot at least support musicians in this way?

Baroness Barran (Con): I understand the noble Baroness's concerns in this area, and we definitely continue to explore routes through it. However, I reassure her that direct funding has gone from Arts Council England to freelancers and, furthermore, to some of the benevolent societies that support them.

Lord Vaizey of Didcot (Con): My Lords, it is very depressing that the careers of thousands of British-based musicians have been affected by the Government's devotion to ending free movement. I have no doubt at all that there is blame on both sides, but we are where we are. I am sure that Ministers will attempt, as best they can, to renegotiate this lamentable situation. Perhaps I may make a practical suggestion. Given that when our musicians travel to Europe, they are now in the same position as when they travel to the United States, will the Minister have a conversation with her ministerial colleagues about committing resources in terms of both officials and money to create an online one-stop shop to help musicians who still, amazingly, might wish to tour in Europe to navigate the new bureaucracy?

Baroness Barran (Con): I thank my noble friend for his suggestion. We are exploring all ways of making this as simple and straightforward as possible, but he will be aware that each member state has its own regulations in this regard. However, our ambition is clear.

Lord Wigley (PC) [V]: My Lords, I draw attention to my registered interests. Does the Minister accept that this wholly avoidable mess turns the clock back half a century, leaves musicians, particularly freelance soloists, with unnecessary obstacles to working professionally in EU countries, and imposes road blocks for European musicians wishing to perform in Britain? Is this not a narrow-minded approach that not only undermines our musicians and concert organisers but shows how inward-looking post-Brexit Britain is fast becoming?

Baroness Barran (Con): I reassure the noble Lord that our negotiators did everything in their power to avoid the current situation. We are incredibly disappointed that the EU neither proposed nor would accept a tailored deal for musicians. We are trying to give those brilliant and talented people the clarity that they need to continue to thrive.

Baroness McIntosh of Hudnall (Lab) [V]: My Lords, the noble Baroness has often told the House—indeed, she has just done so again—that the Government are committed to supporting musicians, but I have to tell her from personal experience that they do not feel supported. They feel shocked and scared. The EU trade deal actively harms their interests, and they do not understand why. But since, as the noble Lord,

[Baroness McIntosh of Hudnall]
Lord Vaizey, has just said, we are where we are, will she confirm that the Government will now engage urgently in further negotiations with the EU and with member states to ensure that the livelihoods of UK musicians are not seriously damaged?

Baroness Barran (Con): With regard to the noble Baroness's broader point about support for musicians, the culture recovery fund has already dispersed over £168 million to more than 600 musical groups and venues, so I think that our support for musicians is clear. In terms of reopening negotiations with the EU, the noble Baroness's party, and my own, very recently voted for the deal, which included all the points that we are discussing today. Our offer still stands but, in the meantime, we are pursuing simplification and clarification on a bilateral basis with individual member states.

The Deputy Speaker (Lord Duncan of Springbank) (Con): My Lords, I am afraid that the time allowed for this Question has now elapsed.

Domestic Abuse Bill

Order of Consideration Motion

1.27 pm

Moved by ***Baroness Scott of Bybrook***

That it be an instruction to the Committee of the Whole House to which the Domestic Abuse Bill has been committed that they consider the Bill in the following order:

Clauses 1 to 38, Schedule 1, Clauses 39 to 68, Schedule 2, Clauses 69 to 80, Title.

Baroness Scott of Bybrook (Con): My Lords, I beg to move the Motion standing on the Order Paper in the name of my noble friend Lady Williams.

Motion agreed.

1.28 pm

Sitting suspended.

Overseas Operations (Service Personnel and Veterans) Bill

Second Reading

2 pm

Moved by ***Baroness Goldie***

That the Bill be now read a second time.

Relevant document: 9th Report from the Joint Committee on Human Rights

The Minister of State, Ministry of Defence (Baroness Goldie) (Con) [V]: My Lords, it is with pleasure that I beg to move that this Bill be now read a second time. I begin by paying tribute to the brave men and women of our Armed Forces, who protect this country and our security, day in and day out. These exceptional individuals are often called upon to perform their jobs under extraordinarily difficult and dangerous circumstances, enduring great hardship, being exposed to injury and risking the ultimate sacrifice of their own lives.

Similarly, I want to pay tribute to the families of current and former personnel. They keep homes together, bring up children and attend to the care of older relatives, giving the precious members of our Armed Forces the peace of mind to do their duty. We owe the Armed Forces and their families our utmost respect and support, and we must reflect that in how we treat them. They must know that, when they are taking necessary and appropriate action to protect us and the freedoms that we value, we in turn will not shy away from taking the necessary and appropriate action to protect them.

However, the reality is that, having asked these personnel to risk life and injury in the most unforgiving of environments in overseas conflicts, they have returned home to face a dark shadow of uncertainty: an enduring, corrosive uncertainty about whether or not they will be called into criminal or civil proceedings many years down the line. They do not know whether they will be required to relive the traumatic events of, and defend their actions in, a conflict that took place many years previously.

That shadow endures because such potential proceedings are not always constrained by the passage of time. That is neither reasonable nor appropriate. However, it reflects the increased pattern of the judicialisation of warfare, evident over the last 25 years. Equally, we must take action to ensure that our commanders on the ground in the field of conflict, having to make potentially life-or-death split-second decisions, do not feel inhibited, or, worse, distracted, by concerns about how their actions may be perceived many years later—that is clearly profoundly undesirable.

Let me also be crystal clear that those who commit criminal acts or behave negligently must face justice and must expect to be called to account. However, that should be done without undue delay: periods of delay stretching over years are simply not acceptable. Delay does not serve the interests of the victims, for whom the most certain route to justice is to bring forward a criminal allegation or a claim for compensation as soon as possible before evidence disappears or becomes stale or before memories become opaque.

The Overseas Operations (Service Personnel and Veterans) Bill seeks to address these issues. It deals with the issue of unreasonable delay, but it also endeavours to provide greater certainty to our service personnel and veterans that the unique pressures—and they are unique—placed on them during overseas operations will be taken into account when decisions are being made as to whether to prosecute for alleged historical offences. These are the objectives that the Bill seeks to deliver.

I have been struck by commentary on the Bill: some people think it is necessary but does not go far enough, while others think it is unnecessary and goes too far. The Government have endeavoured to strike a balance

that recognises the position of victims and our Armed Forces and seeks to be fair to both. In my discussions with many of your Lordships, I detect broad sympathy with the Bill's objectives. I acknowledge that a number of your Lordships have concerns about some of the individual provisions in it and will wish to press the Government for clarification and reassurance as to how these will impact in practice. I look forward to this debate as an opportunity to explore these.

I make clear that the measures in this Bill are not the only work being taken forward in respect of these matters. The Government are progressing recommendations from the service justice system review, and the forthcoming Armed Forces Bill is expected to contain provisions relating to key recommendations from this. I am pleased to confirm to your Lordships that the review by Sir Richard Henriques of the conduct of investigations relating to overseas operations and the prosecutorial process, which was announced by the Secretary of State in October, is under way and due to report in the summer.

This is a journey that started in the early days of operations in Iraq and Afghanistan, and it is important to recognise that we have already come a long way since then. That journey has involved intensive scrutiny and legal challenge, and both the service police and the Armed Forces have learned important lessons on better resourcing, supporting and professionalising investigations on operations. The Ministry of Defence is also constantly reviewing its policies, training and practices to help to ensure that we comply with all applicable legal obligations on future operations.

I turn to the Bill itself and what it seeks to deliver. First, it is important to be clear about what it does not do, because it seems to me that a somewhat distorted version of the Bill has achieved a degree of currency. The Bill is not an amnesty or a statute of limitations: prosecutions can still go forward after five years from the date of the alleged incident and it does not prevent allegations of offences being made and investigated after five years. There may be circumstances where victims are unable to report their allegations quickly after the event, and that is recognised. The Bill does not abolish, eradicate or eliminate the rights of victims of crime, nor does it deny the rights of those who seek redress in the civil courts, whether they are Armed Forces personnel, MoD employees or other parties.

I will move now to what the Bill does. Part 1 introduces measures dealing with criminal matters, which includes a presumption against prosecution where five or more years have passed since an alleged offence on an overseas operation. With Part 1, the Government have sought to strike a balance: on the one hand, introducing protective measures that set a high threshold for a prosecutor to determine whether a case should be prosecuted and ensure that the adverse impact of overseas operations will be given particular weight in favour of the service person or veteran; and, on the other hand, ensuring that, in circumstances where our service personnel fall short of the high standards of personal behaviour and conduct that is required and expected of them, they can still be held to account. This is one of the reasons that we have not proposed an amnesty or a statute of limitations. Let me be very clear: the presumption against prosecution after five years is not an absolute bar to prosecution. We have also sought to avoid fettering the prosecutor's discretion in making a decision to prosecute and have ensured that the measures are compliant with international law.

Clause 1 sets out the circumstances in which the measures in Part 1 apply to decisions about whether or not to prosecute criminal cases. In short, the measures apply only once five years have elapsed from the date of an alleged offence by service personnel that took place on relevant overseas operations. For the purposes of Part 1, the Bill defines what constitutes relevant overseas operations.

Clause 2 introduces the presumption against prosecution, the effect of which is that it should be "exceptional" for a prosecutor to determine that a service person or veteran should be prosecuted for alleged offences that occurred on operations outside the UK more than five years previously. While the presumption introduces an "exceptional" threshold, it is important to note that the presumption is rebuttable; the prosecutor retains their discretion to determine that a case is exceptional and should be prosecuted.

Clause 3 requires the prosecutor to give particular weight to certain matters. These include the adverse impact of overseas operations on a service person, including on their mental health, and, in cases where there has already been a previous investigation and there is no new, compelling evidence, the public interest in cases coming to a timely conclusion.

Clause 5 requires the consent of the Attorney-General before a prosecution can proceed to trial. Clause 6 provides a definition of the "relevant offences" to which Part 1 applies and introduces Schedule 1, which lists the offences that are excluded from the presumption.

The offences listed in Schedule 1 reflect the Government's strong position that there can be no conceivable link between operational duties and the use of sexual violence and sexual exploitation on overseas operations, and that the "exceptional" threshold in the Bill should not apply in such circumstances.

We have not excluded other offences, including torture, because, in the course of their duties on overseas operations, we expect our service personnel to undertake activities which are intrinsically violent in nature. Where service personnel are engaged in combat, detention and interrogations, they have faced and will continue to face allegations such as of torture and war crimes because of the unique nature of warfare. They may deny and refute these allegations, but they can still expect to face them.

Critics of the Bill believe that this signals that the Government no longer view with gravity offences such as war crimes and torture. Well, we most certainly do: these crimes are appalling and, as I have already emphasised, the prosecutor retains their discretion to determine that a case is exceptional and should be prosecuted.

The measures in Part 1 will not therefore allow service personnel to act with impunity; they do not impact on the willingness or ability of the United Kingdom to investigate or prosecute alleged offences committed by our service personnel. These measures are consistent with our international legal obligations

[Baroness Goldie]
and, as such, they will not put our service personnel at risk of being investigated by or prosecuted in the International Criminal Court.

Part 2 of the Bill makes changes to the time limits for bringing tort claims for personal injury or death, and Human Rights Act claims, relating to events that occur in connection with overseas operations. Again, the Government's intent with the measures in Part 2 is to ensure that claims are brought promptly so that the courts are able to assess them when memories are fresh and evidence is more readily available. This will help to ensure that service personnel and veterans will not be called on indefinitely to recall often traumatic incidents that they have understandably sought to put behind them. It will also mean that, where such claims make allegations of criminal behaviour, these can also be considered expeditiously by the service police.

Clauses 8 to 10 introduce Schedules 2, 3 and 4, which introduce new factors that the courts in England and Wales, Scotland and Northern Ireland must consider when deciding whether a claim for personal injury or death can be allowed beyond the normal time limit of three years. These new factors ensure that the "operational context" in which incidents occurred is properly taken into account. They weigh up the likely impact of the proceedings on the mental health of the service personnel or veterans who may be called as witnesses.

The provisions also introduce an absolute maximum time limit of six years for such claims. For personal injury or death claims, that time limit will be calculated from the date of incident or from the claimant's date of knowledge. The provisions also ensure that, where the law of another country is to be applied when the court is assessing the claim, the maximum time limit of six years still applies.

Clause 11 introduces three factors for the courts to consider when deciding whether to extend the one-year time limit for bringing Human Rights Act claims and an absolute maximum time limit of six years. It also introduces a date-of-knowledge provision for a Human Rights Act claim in connection with an overseas operation, so that it can be brought up to 12 months from the date of knowledge, even if that 12-month period ends after the six-year period has expired.

Finally, Clause 12 will further amend the Human Rights Act to impose a duty on government to consider derogating from—that is, suspending—some of our obligations under the ECHR in relation to significant overseas military operations. This measure does not require derogation to take place, but it requires future Governments to make a conscious decision as to whether derogation is appropriate in the light of the circumstances at the time. The Bill does not change any of the existing parliamentary oversight that currently applies to derogation orders.

These measures are consistent with court rulings that claimants do not need to be provided with an indefinite opportunity to obtain a remedy. Once again, the purpose of the limitation long-stops is to encourage individuals to bring claims promptly, while evidence and memories are fresh.

In conclusion, this a necessary and important Bill. It seeks to reduce the uncertainty faced by our service personnel and veterans and looks to the future, providing a better and clearer legal framework for dealing with allegations and claims arising from future overseas operations and recognising the unique burden and pressures placed on our service personnel. It strikes an appropriate balance between victims' rights and access to justice on the one hand and fairness to those who defend this country and our values on the other. It delivers on a manifesto commitment by the Conservative Party to our Armed Forces and veterans. It is based on strong support for the proposals, as evidenced in the response to the public consultation and by clear majorities in the other place. I therefore commend the Bill to the House.

2.17 pm

Lord Touhig (Lab) [V]: My Lords, across this House, there is overwhelming support for Britain's Armed Forces, and I echo the Minister by paying tribute to them. The British people value the men and women who serve in our Armed Forces. They value them for their total support at home battling Covid, and for protecting our country and securing our safety.

Britain's Armed Forces are renowned for upholding international law and the highest standards of legal military conduct. It was Britain which led the way in establishing a rules-based international order after the Second World War. We were the champions of universal human rights and international law.

However, I fear that the thrust of this Bill puts that at risk and, sadly, it is part of a pattern: a pattern from the Government of disregarding international law and risking Britain's reputation. Last year, the internal market Bill made headlines around the world for breaking international law and, as drafted, this Bill does the same. It calls into question Britain's proud commitment to the Geneva conventions and undermines our role at the United Nations. It threatens our moral authority to require the conduct of other nations to meet the standards set by international conventions. But I do not despair because, as with the internal market Bill, this House can make a difference to this legislation.

At the outset, I want to make it clear that we recognise the need to protect our troops from vexatious claims. We have all heard stories of ex-servicemen being accused of committing the most awful crimes overseas, and of cases involving claims without any historical or truthful basis and their awful impact on the accused and their families. But this Bill will not put a stop to that.

I have no doubt about the honest ambition of the Veterans Minister in the other place to end vexatious claims, but last September he himself said that the Bill may—not will, but may—reduce the number of vexatious claims, a point that the Secretary of State for Defence made in a note to Members today. It does not cover Northern Ireland or tackle the cycle of reinvestigations, nor create a legal framework for the future. I make it clear that we welcome any opportunity to fix this flawed legislation and will work with colleagues on all sides to build a consensus—because outside Parliament, from the Royal British Legion to Liberty, people are desperate for us to get this right.

Labour's aims are threefold: first, to protect British troops against vexatious claims and repeat investigations; secondly, to protect British troops and their rights to

justice from the MoD itself; and, thirdly, to protect Britain's reputation as a force for good in the world, upholding human rights and the rules-based international order.

Part 1 introduces a statutory presumption against the prosecution for any alleged offences committed while overseas more than five years previously, save for exceptional circumstances. There is a requirement that the consent of the Attorney-General is obtained if a prosecution is to proceed.

The Explanatory Notes state:

"Nothing in this Bill will stop those guilty of committing serious criminal acts from being prosecuted",

but many disagree. Our own Delegated Powers Committee, chaired by the noble Lord, Lord Blencathra, said:

"These measures would appear to make prosecutions for 'relevant offences' much less likely."

Many also have serious concerns about how this relates to Britain's international legal obligations. Clearly, presumption risks breaching the Geneva convention, the convention against torture, the Rome statute, the European Convention on Human Rights and other long-standing international legal obligations. Indeed, presumptions against prosecution could even increase the risk of service personnel appearing before the International Criminal Court. That was made clear by the ICC prosecutor, Fatou Bensouda; in a statement on Iraq and the UK, she says that the ICC is:

"tasked with determining whether it should exercise its own competence in a criminal case, in place of a State … To do so, the ICC must be satisfied that no relevant proceedings have been undertaken, or … because the State is unwilling to do so".

A very good friend of mine, a distinguished parliamentarian and Minister for the Armed Forces, Adam Ingram, asked me over the weekend this simple question: how will this Bill stop the ICC from prosecuting British service men and women? Perhaps the noble Baroness could provide an answer.

The Bill also explicitly excludes sexual violence from presumptions, but not torture or war crimes. Surely a British Government do not really want to decriminalise torture or war crimes.

Part 2 reveals a different motive. It is about reducing compensation paid out to troops and

"protecting the MOD, rather than the service personnel".—[*Official Report*, Commons, Overseas Operations (Service Personnel and Veterans) Bill Committee, 8/10/20; col. 86.]

Those are not my words but the words of the director-general of the Royal British Legion. The Bill removes the current discretion of the court to extend the time beyond six years for compensation claims for personal injury or death overseas. Over the past 15 years, for every 25 cases brought by injured British troops against the MoD, just one case was brought by alleged victims against our troops. Britain deployed 140,000 troops in Iraq over six years and, in 1,000 civil claims against the Government, the MoD paid compensation in just 330 cases. But the Government seem determined to limit access to the compensation that these men and women deserve. The Association of Personal Injury Lawyers said that this will give service personnel fewer rights than a prisoner. This Bill gives British service personnel fewer rights than a person convicted of a crime and serving a prison sentence. That cannot be right.

I draw the attention of the House to the case of Alistair Inglis, who received nearly £550,000 for hearing loss caused by a negligent exposure to noise while serving in the Royal Marines. This brave man served in Northern Ireland, the Gulf and Afghanistan, and left the forces because of his injuries. Only in 2014, seven years after he was first aware that he had a problem with his hearing, did he speak with a lawyer. If this Bill had been on the statute book then, he would probably not have got a penny. It is plain wrong that those who put their lives on the line for Britain should have less access to compensation than the British citizens that they are there to defend.

Furthermore, the Royal British Legion fears that Part 2 risks breaching the Armed Forces covenant. It says that it will prevent personnel holding the MoD to account if it fails to properly equip them, or when it makes serious errors that lead to death or injury.

Vexatious claims are a problem that needs to be solved, but in a lawful and effective way that does not trash Britain's reputation and standing as a country that takes its international obligations seriously. But the Bill will not stop reinvestigations. Long-running litigation, repeat investigations and judicial reviews are signs of a flawed system that has failed British troops under successive Governments. Seventy percent of the complaints looked at by the Iraq Historic Allegations Team were rejected as there was no case to answer. In other words, those allegations did not warrant a full investigation, but they would have been wholly unaffected by the Bill had it been on the statute book then. Why? As Dr Julian Lewis MP pointed out in the other place, this Bill deals only with prosecutorial decisions and not investigations. The Government promised a review into this, but there have been three reviews in the past five years with more than 80 recommendations on investigations.

On this side, we believe that prosecutors should give weight to the quality and duration of relevant investigations when deciding whether to bring or continue proceedings. The Judge Advocate-General of the Armed Forces should determine whether new evidence is sufficient to grant reinvestigation. We will also argue for better case management, with cases brought before a judge in a specific period and setting, and target times for police investigations.

Many noble Lords want to take part in this debate, so I shall conclude my remarks. We want to build a consensus across the House to improve the Bill. To the Minister I say that we will work with you. Will you work with us to forge a constructive consensus on the changes needed to overhaul investigations; to set up safeguards against vexatious claims that are entirely consistent with our international obligations; and to guarantee troops the right to compensation when MoD failures lead to death or injury overseas? From these Benches, I can say that Labour and the Armed Forces ultimately want the same thing: to protect British troops and British values. Those are not Labour hopes alone: Conservatives, Liberal Democrats, Cross-Benchers and non-aligned colleagues in this House all want that too. Working together, we have an opportunity to make a real and lasting difference. For God's sake, let us take it.

2.27 pm

Lord Thomas of Gresford (LD) [V]: My Lords, it is a pleasure to follow the noble Lord, Lord Touhig, and to assure him that we will stand with him in his opposition to the Bill.

It is a hot and sticky night in Iraq; in a small prefabricated, concrete guard hut, 20 men are detained by British soldiers. Their heads are hooded and their arms bound behind their backs. There is no battlefield stress—this is the secure British headquarters in Basra, and these are civilians. They are forced into stress positions, half-squatting without support. They cannot see, but they can certainly hear; they are yelled at and called "apes". Their moans are orchestrated by their mocking captors into a choir, with a corporal in charge conducting them—literally. If they move from the stress positions they are struck, either with a stick or a fist. The smell is indescribable. Passing soldiers are invited into the hut to get their own punch in, and some do. The post mortem reveals 93 separate injuries to a man who died, Baha Mousa. That was the evidence I heard unfold at the court martial in Bulford.

Let us reverse the picture and suppose that the men being beaten are captured British soldiers. Every noble Lord can think of a young and enthusiastic serving soldier who risks that fate. Their captors say to them: "You do this to us; we will do it to you". Let us wind the clock on in this scenario and suppose that the enemy state has investigated. It has taken its time, but it has identified the torturers—but their law follows the British precedent set by the Bill. They cannot be prosecuted, and the British soldiers cannot claim compensation because it all happened six years ago. There is no prosecution, no punishment and no compensation.

Veteran soldiers have been trained to go into battle, to face bullets and bombs on our behalf, but the Government suggest that questioning by a British court would be too stressful—too stressful for the soldiers to go into a witness box or the dock; they would have to relive horrific events, even if they have themselves caused or participated in them. Everything is wrong about this Bill. "We are against 'lawfare'", they say—legal constraints around armed conflict. What do they want, "unlawfare"? Is there a single noble and gallant Lord speaking today who will say that his decisions made in actual conflict were hampered by the Geneva conventions; that he would have acted differently if it were not for the law; that he would have tortured prisoners of war for information? War is a bloody and barbaric event. Western democracies have sought to curb its worst excesses. Is it to be the policy of Her Majesty's Government to abandon those international standards and to give effective immunity against anything to her Armed Forces in the field? Can you abuse, shoot and kill not just the armed opposition but civilians like Baha Mousa, a hotelier, without any consequences at all?

Looking at the Bill, it is obvious that the Government have forgotten that there can be no prosecution without an investigation. It is two stages: investigation first, prosecution second. There is absolutely nothing in the Bill—no time limitation—which prevents an investigator knocking on the door of a veteran 30, 40 or 50 years after the event and arresting, interrogating and charging him. The Minister called it "corrosive uncertainty". Well, that is stressful, but investigation may not seem worth the trouble. If the investigator has produced a file with sufficient evidence of, say, torture, to convict, the Bill obliges the director to ignore it. He must go straight to the second question: is it in the public interest? Regardless of the merits, the presumption against prosecution kicks in. Even if he decides to prosecute, he can be overruled by the political decision of the Attorney- General, which probably depends on how many people are protesting in Parliament Square.

There is an anomaly. Sexual offences are excluded from the presumption, so if a soldier tortures, rapes and kills a civilian, there is a presumption against prosecuting him for the torture and the murder but not for the rape. This is surely indefensible on any policy or moral basis. I hope that amendments to excise Part 1 entirely will be brought forward to preserve our moral leadership in the world, which is the passionate plea from Theresa May in today's papers.

What about the five-year limitation period for criminal proceedings? Investigating what has happened in overseas operations is no easy task. Witnesses have to be found. There are language difficulties which can mislead an investigator. There are logistical difficulties in bringing witnesses to this country for the trial. I shall never forget the lady brought all the way from a dusty village in Iraq to give evidence to the 3 Para court martial in Colchester in 2005. She stepped into the witness box, took the oath on the Koran and addressed us. She said that now she had sworn on the Koran she had to tell the truth. The incident she had described to investigators, of a soldier ripping off her clothing, was entirely a figment of her imagination. Former Judge Advocate-General Jeff Blackett told the Commons Committee on the Bill that the two murder cases from Iraq in which he was the judge—the 3 Para and Marine A cases—had been brought to trial within two years of the events. It is not the prosecuting procedures which cause delay, it is protracted investigations, about which the Bill says nothing.

What signal does it send to an enemy if a Minister announces a derogation from the European Convention on Human Rights? Will Parliament have a say on the wilful killing or torture of prisoners? The Bill is silent. Does the Minister agree that such a serious step, of such danger to any of our troops falling into enemy hands, should be taken only with the consent of both Houses, on a vote, and that that should appear on the face of the Bill?

On the civil side of this litigation, the current system has not failed. Unmeritorious claims have been dismissed and Paul Shiner has been struck off the roll. That is over, but the Government have paid out some £32 million in compensation to claimants, mostly for allegations of torture during interrogation. In answer to my Written Question last June, the Minister herself replied:

> "If … it is found that there is substance to the allegations and there has been negligence on our part, compensation is paid"—

£32 million. So all the claims that have been brought are not unmeritorious. The Government have settled rather than face a court hearing when the allegations can be publicly ventilated. The Bill does not protect veteran servicemen because they do not need protection. They are never involved in the proceedings, even as a

witness, because it all happens in discussions in the robing room outside court—if it ever gets that far. It is surely wrong to pretend that immunity from suit is for veterans when, in practical terms, it only saves the Government paying out millions on claims which they would agree are meritorious.

The Bill is all wrong. It creates greater risks for currently serving soldiers, whose enemies will do unto us as we do to them. It destroys even further the British reputation for the rule of law and the upholding of human rights. It does not protect veterans from intrusive investigations years after the event. The International Criminal Court is watching us today. We promoted and ratified the Rome treaty, which binds us to it. It has no limitation period, no presumption against prosecution, no triple lock. It opened a dossier on the UK two years ago, to monitor whether we deal properly with war crimes such as torture. People may think that the court is concerned with Bosnian leaders or African dictators but, if the Bill goes through, we will one day suffer the ignominy of seeing a British serviceman dealt with by that court because our system has failed to bring him to justice. In the Baha Mousa murder trial, there was only one conviction: of the corporal who "conducted the choir". He pleaded guilty to a war crime. That was the first ever, and the last, conviction of a British soldier for a war crime. He was sentenced to 12 months' imprisonment.

2.37 pm

Lord Dannatt (CB) [V]: My Lords, we have waited far too long for a Bill to be introduced that provides adequate protection for British service men and women to conduct operations free from the fear of retrospective investigation and possible prosecution—a justifiable fear that hangs over individuals for many years, or even decades, after events have taken place. Today we are debating a Bill that attempts to meet that requirement. As the Secretary of State for Defence said in introducing this Bill, it is,

"to protect our veterans against repeated reinvestigations where there is no new or compelling evidence against them, and to end vexatious claims against our Armed Forces."

Although the Bill refers only to overseas operations, there are closely related issues with regard to Northern Ireland, about which noble Lords have frequently expressed their concern, not least in a debate in my name on 5 September 2018.

As much as we welcome this attempt to address the legislative aspiration by the Secretary of State and expanded on by the Minister just now, we have already heard from the noble Lords, Lord Touhig and Lord Thomas of Gresford, that the Bill, as currently drafted, does not meet the aim that it purports to satisfy. Although it has passed all its stages in the other place, many amendments were tabled and debated but rejected by the Government, whose majority in the House of Commons ensured that outcome. Moreover, there has been considerable criticism of the Bill outside Parliament, and our inboxes have been filled with briefings by well-respected commentators and professional groups, many urging that it be defeated or at least paused.

Here lies the dilemma: do we ultimately reject the Bill and lose the opportunity to provide the protection needed by our serving soldiers and veterans, or do we do our constitutional duty and seek to amend it, so that legitimate concerns are addressed, while ensuring that our servicepeople get the protection that they need? As parliamentary time, especially in the other place, is always at a premium, I am loath to give up the Bill, or even to pause it, and I therefore believe that the focus in this Chamber must be to amend the Bill to make it fit for its legitimate purpose.

Within the time constraints of this debate, I will raise three points. First, the Bill, which complements the Armed Forces covenant, needs to set out very clearly the Ministry of Defence's standard of duty of care in relation to the legal, pastoral and mental health support provided to service personnel involved in investigations arising from overseas operations. If an example is needed as to why this is important, I refer to the case of Major Bob Campbell, who, along with two Royal Engineer colleagues, was investigated no fewer than eight times over 17 years before being exonerated. He is now a broken man, his career and health in ruins. He fell well outside any reasonable duty of care.

Secondly, the very sensible presumption against prosecution set out in Part 1 of the Bill needs to be more closely defined, removing the doubts that have been raised that such a presumption opens the way for cases such as rape and torture to go potentially unpunished. It has been argued that this presumption against prosecution is not needed because there have been very few prosecutions. But that is not the point. The point is that an outrageous number of allegations and investigations have proved groundless, thus resulting in very few prosecutions. It is well recorded that a virtual industry to pillory British soldiers was set up following the unpopular intervention in Iraq in 2003. As the Secretary of State for Defence has said, for example:

"In 2004, Phil Shiner, a lawyer, went fishing. He fished for stories, he fished for victims and he fished for terrorists."—[*Official Report*, Commons, 23/9/20; col. 984.]

That conduct was completely unacceptable and Mr Shiner was quite properly struck off, but the damage to the reputation of the British Armed Forces had been done. Thus, a presumption against prosecution is a very reasonable safeguard, as is the five-year time limit, unless, of course, new and compelling evidence emerges. Those are the "exceptional circumstances" to which the Bill quite properly refers.

Thirdly, there is the relationship that the United Kingdom should have with international bodies to meet our wider obligations. The Bill suggests an amendment to the Human Rights Act 1998 to provide for the Secretary of State to consider whether it would be appropriate for the United Kingdom to make a derogation. While this has superficial attractions, I believe that—like the recent flirting in the internal markets Bill—the UK would run the risk of weakening our reputation as an upholder of international law and conventions. Moreover, such derogation could place the British soldier on the battlefield at even greater risk from his or her enemies, if international standards of conduct are overturned. War is a two-way exchange and actions have consequences.

I support the Bill, but it needs radical amendment to achieve its stated purpose.

2.42 pm

Lord King of Bridgwater (Con) [V]: My Lords, I am pleased to have the opportunity to follow the noble Lord, Lord Dannatt. I agree with his final conclusion and I agree, if I am right, with what the noble Lord, Lord Touhig, said. They both recognised that it is time to deal with this long-standing grievance, which was such a scar on our scenery at the time and has been so unfair to a lot of veterans and some serving soldiers, with the procession of investigations and attempted prosecutions, in often very difficult circumstances.

Some speeches have already indicated all the problems that arise with the Bill, but I admire and respect the Government and Ministers for having the courage at last to deal with this issue—to address it and not to duck it, as has happened for far too long.

I have one question to raise. The Bill of course deals with overseas operations, and one area in which a lot of these grievances arose is Northern Ireland. I hope that when she replies the Minister can make the position on that quite clear. I understand that a further Bill is possibly coming forward on Northern Ireland, but can she confirm the present position?

I also notice that there seems to have been a good deal of misrepresentation about what the Bill does. We know that some countries, faced with this difficulty, introduced amnesties and others introduced statutes of limitations. Of course, neither is suggested in this legislation, nor is the decriminalisation of serious crimes.

On the time limit, I do not think five years is unreasonable in the current climate, but it is a sensible provision that this is not necessarily an absolute time limit and can be exceeded if the prosecutor can demonstrate exceptional circumstances that justify prosecution after a longer period.

One area where I will be interested to hear the further discussion in Committee is that of why sexual relations are excluded but torture and war crimes are not. I hope that the Minister can reply on that and that this will come up in further discussions in Committee.

We have all lived with the history of some very unhappy investigations and tragic events that have affected some of our veterans, many of them quite unfairly, leading to much personal distress and family grievance. It is time that this was dealt with. It is also important because in some areas it undoubtedly has an impact on recruitment. There may be people who would think of joining the Armed Forces and putting themselves in harm's way for the nation's sake, but do not want to be treated in this way. Even more important, when we are living in a world of fake news as well as the world of social media, knowing what the truth really is in many circumstances is much more difficult. We need, therefore, to strengthen our defences, with proper protection and stewardship of those who serve our Armed Forces.

I join in the tributes paid to the quality of all those who go into some exceptionally nasty and dangerous circumstances—especially at the present time—in defence of our country and its interests. It is our duty as a legislature to make sure that, where they deserve protection, they get it. I therefore certainly support the progress of the Bill. It is very important not to abandon the stage—I think the noble Lord, Lord Thomas of Gresford, suggested that it was almost too difficult. There must be a brave attempt to deal with this and establish at last an Act of Parliament to give proper protection against some of the grievances that we have faced.

2.47 pm

The Lord Bishop of Portsmouth [V]: My Lords, reflecting on the Bill, its intentions and likely legal effect reminded me of something I learned during my time as chaplain of Wadham College, Oxford, during the febrile days of the 1980s. Wadham was then, as now, a crucible of intellectual innovation, not least in literary studies. Its senior English fellow then was Terry Eagleton, who interested himself in a method of criticism known as deconstruction. This meant, I think, that the story we thought we were reading or being told was undermined by another narrative hidden within the text, so what we might have thought meant one thing often meant something entirely different.

The Bill before the House represents a model of deconstruction. The Government's stated intention is, as we heard in the gracious Speech,

"to tackle vexatious claims that undermine our Armed Forces".

I regret to say that I cannot see how the Bill, as drafted, fulfils that intention. The Government may then deserve two cheers for acting when other Governments have not, but action is not the same as outcome. The good intentions of Ministers and their statements in Parliament and the media do not match what the Bill will do. The Bill would do what the Bill states, not what the Government would like it to do, or what an MoD press release announces as its objectives. I leave it to other noble Lords far better qualified than I to reflect on the very troubling risk that the Bill might lead to crimes of torture going unpunished as well as providing an attractive precedent for those countries that have historically accepted lower standards than our own.

But I would like to comment on one aspect of the Bill. I applaud the Government's stated intention to protect service personnel from being hung out to dry under the risk of investigations over many years, but I wonder whether, as a matter of law, this Bill provides the protection that the Government seek. I doubt it does. Indeed, I worry that we risk offering false comfort to the men and women of our Armed Forces, who deserve our support.

Moreover, I am troubled that the effect of the Bill would be to reduce, indeed take away, the legal rights of our service personnel. That concern is shared, as we know, by the Royal British Legion. I say this because the Bill introduces a six-year time limit for bringing personal injury and human rights cases against the Government. Such an absolute prohibition does not apply to civilians, because the courts can use their discretion to extend the time limits available. This Bill, as it stands, would therefore mean that service personnel have fewer legal rights than civilians, while the Government are provided with an additional protection against what might be entirely deserving late claims.

Protecting the Ministry of Defence from legitimate claims might not be the Government's intention, but it would be the effect of this Bill. That is a poor position for the Government to get into, and, to put it as gently as I can, it is difficult to see how it accords with the

commitments the Government and we have made under the military covenant. Good intentions are one thing; bad law is another. This Bill, I say with deep regret —and understatement—is disappointing, and it would represent disappointingly poor law.

2.51 pm

Lord Robertson of Port Ellen (Lab) [V]: My Lords, this is an important Bill, but it has to be examined closely so that it does not create more problems than it sets out to solve. Ordinarily, I would almost instinctively be in favour of legislation that gave protection to our troops from vexatious legislation and the miseries of legal ambulance chasers. My association with the Armed Forces has left with me a huge respect and admiration for those who wear the British uniform and the crucial civilians who support them. In my time as Secretary of State for Defence, I had to issue orders to deploy troops abroad, and I shouldered that responsibility with enormous care and sensitivity.

I fear that aspects of this legislation suffer from the law of unintended consequences. In a brief speech, I can only mention a few of my reservations about this Bill. First, I believe that this is the first time in legal history in this country that a specific group of citizens will be the subject of a statute of impunity. There may in some people's minds be a justification for such a break with such long-standing tradition and precedent. However, I personally do not think that curtailing the rights of vexatious lawyers justifies that kind of unprecedented change. Even if there were justification, there needs to be a much bigger, more profound debate on the import of this kind of decision, occasioned by this kind of Bill.

Secondly, I strongly agree with those in the Commons, and in this debate, and in the country, who cannot see the justification for exempting torture and war crimes from the list in the Bill. By including torture and war crimes, this new apparent statute of impunity seems incongruous and indefensible. My own former Chief of Defence, the noble and gallant Lord, Lord Guthrie, has made it clear in an open letter to the *Times*, and in articles, that torture is indefensible in a civilised military, as well as ineffective as a tactic. We should listen to his wise words and those of the noble Lord, Lord Dannatt, who has just spoken, as well.

My third objection—here, the law of unintended consequences really comes into its own—is that the International Criminal Court will now claim jurisdiction for the first time in Britain because we have introduced these apparent immunities. I was in Government when we signed up to the International Criminal Court; we did so safe in the knowledge that the integrity of our fair, impartial legal system would mean that the ICC could not act against our troops in conflict. I fear that the changes in UK law in this Bill would render our forces liable to be investigated and potentially prosecuted by the International Criminal Court. We now know that the ICC prosecutor has already made that point—that threat—as well.

The Policy Exchange is the Government's go-to think tank, and this week it published a document with a foreword by Lieutenant-General Sir Graeme Lamb, who said,

"good intentions are not enough as the Bill as it stands may fail to protect our troops adequately."

We do a disservice to our troops, now and in the future, if we put them on a different legal basis to the society they represent and defend. We can and should make improvements in this House. The Government should take some time before they bring the Bill back to consider it. In that way, we might avoid that iron law of unintended consequences. We have a duty to do so.

2.57 pm

Baroness Northover (LD) [V]: My Lords, it may be that this Bill was well intended—to protect those in our Armed Forces who may be subject to vexatious claims. We certainly owe those Armed Forces a huge debt of gratitude. But I do not think I have ever participated in a piece of legislation which is so evidently flawed, except perhaps the Brexit Bill which sought to break international law. What legal advice did the Government receive? Did they override it?

The noble Baroness is a formidable Minister, and she will not want her reputation tarnished. There was much in the introductory general remarks to her speech with which we would all agree, but not when she got into the details of the Bill. I am sure she recognises this. I think the right reverend Prelate the Bishop of Portsmouth hit the nail on the head. He said that the Bill will do what is stated within the Bill, not what the Government would like it to do—or, I might add, what they hope it will do.

This morning, we received a defensive note, not from the Minister, or the Bill team, but a politically and newly appointed special adviser. That says to me that the MoD knows the mistake it is making here. I note the devastating critique by the Joint Committee on Human Rights and its conclusion that simply tabling this Bill has already damaged the reputation of the Armed Forces and the United Kingdom internationally.

I am used to receiving requests that Bills should be amended. I am not used to receiving requests that the whole Bill be thrown out. But that is what is being requested by Liberty and Amnesty International among others, and they know a thing or two about the importance of international law and how it has been painstakingly built up over time to protect us all, including our military forces, of which we expect so much.

We are often warned about the Dangerous Dogs Act as being legislation rushed through in response to an event which does not achieve what is sought but, most of all, has negative consequences. The noble Lord, Lord Dannatt, identified that we have another such Bill here. We seem to be dealing in particular with the unacceptable practice of a corrupt solicitor, Phil Shiner. In the other place, my right honourable friend Alistair Carmichael recommended building "an easy consensus", as he put it, on acting against vexatious civil claims, starting with engagement with the regulatory authorities in the legal profession. I note here that Phil Shiner was struck off.

Instead, we have the Bill, with its potential to damage our military, potential victims and standing in the world, and break our commitment once again to international law. On the day that President Biden is sworn in, are we choosing this moment to step aside from international law? The implication surely is not that we believe in British exceptionalism: that our

[Baroness Northover]
troops should not be subject to international law, as others are. I expect the Chinese Communist Party and Putin think that of theirs. Trump certainly thought that of his followers.

As the Bingham Centre and others have pointed out, the Bill undermines the basic concept that we are all subject to the law, no matter who we are. It makes it harder for victims to access justice. Grave war crimes face substantial legal barriers before there could be a prosecution. The exception for crimes committed against British soldiers undermines equality before the law, giving our victims more rights than others. The Bill grants a veto on prosecutions after the five-year mark to the Attorney-General. This undermines the value of our independent prosecution service—[*Inaudible*]—interference, as my noble friend Lord Thomas pointed out.

If we fail properly to investigate, we are breaching our domestic and international obligations under the Geneva conventions and the UN Convention against Torture. Having, in effect, a statute of limitations here makes it more likely that British soldiers will be prosecuted by the ICC, as the noble Lord, Lord Robertson, wisely pointed out. It even makes it harder for anyone—civilian or soldier—to hold the MoD to account, as my noble friend Lord Thomas and the right reverend Prelate pointed out.

The Minister emphasises that exemptions do not have to be taken. But where there are those possibilities in the legislation, that is the risk. The Government have much they say they wish to do to build back better after the pandemic. This Bill has so many flaws that it should not be taking up our time. Whether it can be made into useful legislation surely has to be a moot point. The risk is that amendments passed in the Lords and large sections taken out of the Bill may be overturned in the Commons, given the Government's majority. We should all be acutely aware of that risk.

3.02 pm

Lord Hope of Craighead (CB) [V]: My Lords, there are indeed various reasons to be concerned about the Bill but I should like to concentrate on two of them: the omission of torture from the list of offences which are excluded from the restrictions on prosecution in Part 1, and the duty to consider derogation from the convention in Clause 12. In doing so, I am drawing on my experience when I was sitting as a member of the Appellate Committee of this House in the cases of Pinochet in 1999, which was brought under the torture convention, and A v the Secretary of State in 2004, in which we held that a derogation order allowing for indefinite detention should be quashed.

Prohibition of the crime of torture has been recognised for many decades as one of the most fundamental obligations of the international community. It cannot be derogated from in any circumstances and all nations have an equal interest in the apprehension and prosecution of the offenders. In 1987 the UN Convention against Torture, which the United Kingdom did much to promote, came into force. One of its achievements is to prevent evasion of punishment by the torturer moving from one state to another. This is because article 5 requires each state party not only to establish its jurisdiction over torture when the alleged offender is a national of that state, but to take jurisdiction over any alleged offender who is found within its territory. This is an international crime against which there is no safe haven.

For us to apply the measures listed in Part 1 of the Bill, the practical effect of which would, at the least, risk conferring immunity on the torturer after five years, would run counter to everything that the convention stands for. For that to happen would be a manifest breach of international law. As for the offender, such immunity as he may obtain in this country would be no protection against his being brought to justice elsewhere, as Senator Pinochet was to discover. It is not only the risk of having to face the International Criminal Court; it is the risk of being prosecuted for his crime in any other state that is a party to the convention to which he may go. The damage to our reputation, if that humiliating situation were to occur, would be incalculable. How could we be taken seriously in our attempts to promote the rule of law in those countries that least respect it? Torture should be on the list of exclusions.

Article 15 of the convention on human rights allows the state to

"take measures derogating from its obligations … In time of war or other public emergency threatening the life of the nation"

but only to the extent that this is "strictly required". The words

"threatening the life of the nation"

are understood to mean an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organised life of the community. The standard that these words set is very high. Furthermore, derogation from protection of the right to life, for which we should note our own Armed Services personnel may also benefit, is permitted only for lawful acts of war, and no derogation at all is permitted from the prohibition of torture or inhuman or degrading punishment. This leaves the right to liberty, derogation from which would allow indefinite detention without charge, as the Secretary of State looked for in the case of A.

We are concerned in this Bill only with overseas operations, in which members of the Armed Forces come under attack or face the threat of attack or violent resistance. It seems that the need to conduct operations overseas, however significant, is very unlikely on its own to meet the test for derogation. Could it be said in these circumstances that the Secretary of State was facing a crisis or emergency which affects the whole population of this country and constitutes a threat to the organised life of the community? If not, prompting him nevertheless to consider derogation from the convention would be pointless, as the attempt would fail. In any event, do we really think that the Secretary of State would need to be reminded of this provision if the extreme situation that really does justify derogation were to occur? This clause looks like mere window-dressing. I suggest that it should be removed from the Bill.

3.07 pm

Lord Garnier (Con) [V]: My Lords, the speech just given by the noble and learned Lord, Lord Hope, was characteristically clear and compelling. I hope that in

Committee we can expand on what he has brought to us. On 20 July last year my noble friend the Minister, whom I thank for her opening remarks today and for her helpful briefing on the Bill last week, repeated an Answer given in the other place to an Urgent Question about this Bill. In essence, my noble friend said that the policy behind the Bill was to protect our Armed Forces from being relentlessly harassed by investigations into their alleged conduct when on dangerous overseas operations, often many years ago. She said that the Government wanted to be fair to complainants and to the military personnel under investigation, hence the provisions in the Bill; she said as much again today.

I understand the policy. I can think of nothing worse for a serving or retired member of the Armed Forces of any rank than to have to live under the shadow of prolonged investigations to do with operations in Kenya, Northern Ireland—although that is not in the Bill—Iraq or Afghanistan, never knowing whether being absolved of blame meant the end of the matter or was the prelude to a new investigation. Lasting exoneration on the one hand, and a just but concluded finding of civil or criminal liability on the other, are essential in these matters. Justice and the public interest demand finality. Delay and uncertainty sap a soldier's peace of mind and entitlement to finality; nor do they assist the complainant.

Although I listened with care to the noble Lord, Lord Thomas of Gresford, I will support the Bill today. That said, I am not convinced that, having posed the right question, the Government have arrived at the right answer to the problem. Like the noble Lord, Lord Dannatt, and the right reverend Prelate the Bishop of Portsmouth, I see this as a Bill that promises more than it can deliver. While its proponents are well motivated, I am fearful that expectations will be disappointed. It will need close scrutiny hereafter.

In this short contribution, I cannot cover every part of the Bill so I will concentrate on Part 1. But before doing so, when my noble friend the Minister comes to wind up, can she define the word "significant", which is to be inserted by Clause 12 into Section 14A of the Human Rights Act? Last July I asked my noble friend why, if the factors set out in Clause 3 that support a decision not to prosecute five years after an offence are so powerful, they do not apply before five years have elapsed. I was told that they do, but not in statutory form.

We do not have limitation periods in our criminal law and, properly considered, this Bill does not introduce one. However, some may be confused into thinking that Clause 1(4) means that after five years there is immunity from prosecution. It does not and there is not. Under this Bill, certain crimes committed by service personnel on overseas operations can be prosecuted long after the event, so long as the Attorney-General consents and the statutory considerations have been undertaken. The need for exceptionality in Clause 2 is not going to prevent a 75 year-old veteran being prosecuted many years hence on a charge of torturing or murdering a prisoner or committing war crimes 50 years before—nor should it. But, rather than allowing people to get the impression that the Bill will create a new regime when it will not, why not just be straightforward?

Instead of these complicated provisions, we should provide that, no matter when the offence took place, there can be a prosecution with regard to an overseas operation only with the consent of the Attorney-General in England and Wales or the Lord Advocate in Scotland. Clause 5(3)(b) refers to the consent of the Advocate-General for Northern Ireland for proceedings under the law of that jurisdiction. That office is held coterminously by the Attorney-General, not by a Northern Ireland law officer, but in all UK jurisdictions the relevant law officer's consent should be required for a prosecution at all times and not just after five years.

It is not—and here, as a former Solicitor-General, I disagree with the noble Lord, Lord Thomas of Gresford —the political decision of a political Minister, but a legal decision of an independent law officer. Political convenience or the Government's preferences are irrelevant. I note that presently the Bill does not appear to require the Lord Advocate's consent for a Scottish law prosecution five years after the event. The same requirement should apply across the whole of the United Kingdom. This simpler approach means that the relevant law officer will always apply the prosecutors' code before initiating a prosecution to ensure that there is both a sufficiency of evidence and that it is in the public interest to prosecute.

The matters in Clause 3, which are to be given particular weight, can be considered under the public interest limb of the code either side of a five-year timeline. It is not necessary, still less permissible, to rape or sexually abuse anybody, military or civilian, in pursuit of a military objective, so crimes of that nature are rightly excluded from the Bill's current qualifications on a prosecution. While I heard the Minister's explanation of why torture is not to be excluded, I hope, like my noble friend Lord King, the noble Lord, Lord Robertson, and the noble and learned Lord, Lord Hope, that in Committee we will be able to test that reasoning more fully than we can today.

3.12 pm

Baroness Liddell of Coatdyke (Lab) [V]: My Lords, it is indeed unfortunate that the Government did not reach across this House in constructing this piece of legislation, as my noble friend Lord Touhig said. It has been clear this afternoon that there is a range of respect for, and also knowledge of, our armed services that should have been in the mix as this Bill was put together. I was pretty shocked when I read the remarks of the Advocate-General, the most senior judge in the armed services, that the Bill is "ill-conceived" and

"brings the UK armed forces into disrepute."

I am not a lawyer and I had intended to concentrate my remarks on Clause 2 of the Bill. Before I do that, I have to say I have a particular concern that the Bill does not take into account the repeated reinvestigation of cases. That must have a much greater impact on the mental health of those who are the subject of accusations, as the noble Lord, Lord Dannatt, pointed out, than the timescale for complaints. The MoD investigation effort is underresourced, insufficiently independent and not timely. This point was made with some force by the Joint Committee on Human Rights. I am pleased that the Secretary of State has now said that there will be an ongoing opportunity to investigate

[Baroness Liddell of Coatdyke]
that, but it should have been done before the Bill was put together and it should have been acknowledged in the Commons.

I move now to Clause 2. This is a clear area where Armed Forces personnel and their families are very much at a disadvantage compared with civilians who have similar complaints against other employers. As outlined by others, there is a complete cliff-edge at six years that the MoD has set. According to the MoD it promotes "greater protection", but in reality it means less protection for the armed service personnel and more protection for the Ministry of Defence. In some cases, health conditions show up only at death. Asbestosis is one such case and there are other conditions, such as PTSD and deafness, that can take many years to show up. Why should the MoD as an employer get off scot free from claims that do not show up to a timetable? We all have a duty of care to our service men and women, and I am surprised that this was not amended when it was exposed in the House of Commons. Indeed, no amendments were passed in the House of Commons, and that is why I feel very concerned about the ability of this House to bring about amendments.

Like many others, I received a very helpful briefing from the Royal British Legion which shows that 500 claims have been made since the Iraq and Afghanistan wars, some of them by bereaved families. It makes the very specific point that safeguards already exist to ensure that claims brought forward are judged appropriate.

Others have referred to the Armed Forces covenant. There is a specific clause in it that says members of the Armed Forces

"should face no disadvantage compared to other citizens."

During the passage of this Bill in the Commons, it was suggested that the principle of no disadvantage in the covenant could not apply when comparing those injured or bereaved as a result of overseas operations with the general civilian population. But no caveat such as that exists, and nor should it exist—and it certainly was not in the Armed Forces Act 2011 that brought the Armed Forces covenant together. The covenant explicitly states that those who are injured or bereaved are additionally eligible for special recognition as they have given most in service and should be given greater, rather than lesser, protection.

In the passage of this Bill in this House, we have the opportunity to amend it and make it a better Bill. I would like to see us do that, but we need the humanity that should exist in the House of Commons to make sure that it is passed again. It is very unfair to our armed services, and God forbid that any one of us should suffer some of the disadvantage we see outlined in the background to the Bill.

3.18 pm

Lord McCrea of Magherafelt and Cookstown (DUP) [V]: My Lords, in general I welcome this Bill, insofar as it seeks to provide fair protection to our armed personnel who served overseas from vexatious and repeated investigations long after they have served. Whether it actually does this is open to question, and many believe that it promises more than it can deliver—but we shall surely examine that in our debate.

In this Bill, the threshold for prosecution of current and former personnel is raised for alleged offences committed on operations outside the British Isles more than five years ago. I join with the Minister in paying tribute to the bravery of our serving personnel and the burden their families carry when they are on duty.

For those of us from Northern Ireland, our genuine concern is not so much what is in the Bill but what is not in it. Missing from this Bill is equal protection for those brave service men and women who served in Northern Ireland, facing a vicious and evil onslaught from the IRA. Government Ministers in the other place have pledged to progress the principle of equal treatment, but their actions to date have certainly not matched the spirit of their promises.

In March 2020, the Secretary of State for Northern Ireland, Brandon Lewis, made this Statement to coincide with the introduction of the overseas operations Bill:

"Today the Government announced the introduction of legislation to provide greater certainty for service personnel and veterans who serve in armed conflicts overseas. Alongside this, we are setting out how we propose to address the legacy of the past in Northern Ireland in a way that focuses on reconciliation, delivers for victims, and ends the cycle of reinvestigations into the Troubles in Northern Ireland that has failed victims and veterans alike—ensuring equal treatment of Northern Ireland veterans and those who served overseas."—[*Official Report*, Commons, 18/3/20; col. 168WS.]

During debate on this Bill in the other place, Parliamentary Under-Secretary of State Johnny Mercer said:

"We are very clear that we will not leave Northern Ireland veterans behind. The commitment of equal treatment in any Northern Ireland Bill that comes forward will be absolutely adhered to. This Government will not resile from their commitments to those individuals. We recognise, value and cherish the service and sacrifice of everyone who served in those operations."—[*Official Report*, Commons, 23/9/20; col. 1022.]

We are told that Northern Ireland's absence from the Bill is largely down to differences in the legal framework in which soldiers in Northern Ireland operated compared to those operating outside UK jurisdiction. However, this can often be misconstrued. It is vital that noble Lords recognise the valiant service and sacrifice of those who fought to keep peace for so many years in Northern Ireland, bring stability and protect democracy in our Province. I suggest that this is no different from those who defend our interests abroad. Our nation entered into a covenant with members of our Armed Forces; it ought to apply equally in scope and content to all personnel, regardless of where they serve. The progression of this Bill without legislation granting the same protection to our Northern Ireland veterans is wholly unacceptable.

My colleagues and I have often stressed that we do not support an amnesty or any equivalence of our soldiers with paramilitaries. That is why we cannot support the Government's insistence on the need to separate Northern Ireland legacy issues from the overseas operations Bill. This serves only to differentiate or set apart the service of men and women in Northern Ireland from the sacrifice of our Armed Forces elsewhere, which could be considered discrediting to their contribution.

Let me be clear: I do not support an amnesty for soldiers who have committed criminal acts, but I am deeply concerned about the practice of veterans in their senior years being arrested and brought to Northern

Ireland to respond to allegations which have already been investigated, often on multiple occasions, and for which no new compelling evidence is provided. In my humble opinion, that is persecution of our veterans. It is an intolerable burden to place on those veterans who ought to be enjoying, in their later years, the appreciation we give to their sterling service.

I have listened and will listen carefully to other noble Lords as they point out weaknesses and flaws in this Bill. I will certainly give them genuine consideration. I hope that, together, we can take forward legislation that is worthy of our support.

3.23 pm

Lord Burnett (LD) [V]: My Lords, I draw attention to my entries in the register of interests. I had the honour to serve in the Royal Marines, during which time I was involved in overseas operations.

Before I speak to the Bill, I will highlight matters relevant to it, in relation to courts martial, which I believe should be changed. These matters arise from the successful campaign to rectify the terrible miscarriage of justice in the case of Marine A, to which my noble friend Lord Thomas referred. His name is Sergeant Blackman, then of 42 Commando, Royal Marines. He is an exemplary individual. I have referred to these matters in the House before; I should remind the House that, in the seven years or so leading up to the incident, Sergeant Blackman had been deployed on operational service six times in Iraq and Afghanistan—six six-month tours of intensive combat operations in seven years. No one in the Royal Marines complains of that level of deployment, but the Court Martial Appeal Court recognised that this causes great stress for even the best-trained, bravest and most determined of our elite troops. These are individuals of the highest calibre, who deprecate any torture or war crimes.

I will reiterate what I have said before. First, when charges such as these are contemplated, no expense should be spared in mentoring and assisting a defendant, who will need an experienced individual to guide him through the maze of criminal law and procedure. The defendant should have access to the very best legal team available and be able to access medical assistance to engage with the effect of the stress of operations, including being in mortal danger most of the time, and often in searing heat. This should all be at public expense.

Secondly, there should be a duty on the Judge Advocate-General to bring the possibility of battle fatigue and diminished responsibility to the attention of the panel.

Thirdly, and most importantly, a simple majority at a court martial can convict a person; in Sergeant Blackman's case, five of the panel found him guilty and two found him not guilty. This would be insufficient for a conviction in a civilian criminal court. The court martial majority rule should be changed to follow the civilian criminal law standard.

Fourthly, the ethos of a court martial is that a person is supposed to be tried by his peers who have served in similar combat operations as the defendant, and who therefore appreciate the burdens and demands of such operations. No one who has not served through the horrors of the front line in Iraq and Afghanistan or similar conditions can appreciate the stresses and dangers that will affect even the strongest and best-trained human being. All members of the panel in a court martial should have had similar experiences to those of the defendant. No one who has never heard a shot fired in anger should be on the panel of any combat military personnel. Fifth, and finally, panel members should be drawn from suitable people of all ranks.

I have considerable sympathy for the Bill in that it seeks to overcome problems, but I have grave concerns about some of the solutions it proposes. The Access to Justice Act 1999 greatly extended the scope for conditional fee agreements. Basically, the lawyer is paid on a no-win no-fee basis; if there is a win, the lawyer receives considerably more money. Therefore, the lawyer has a substantial financial stake in the outcome. This has tempted a number of lawyers to trawl for work in countries where service personnel were deployed, sometimes many decades ago. There are cases where evidence has been fabricated and individual complainants have sometimes been bribed to perjure themselves. The lives of innocent serving and retired personnel have been ruined. The Government should examine the extent, consequences and impact of these conditional fee agreements.

It deserves to be emphasised that the vast majority of members of our Armed Forces have exemplary standards and give fantastic service to this country. There can occasionally be an individual who falls short of these high standards and blemishes the wonderful service given by so many.

I am concerned about the short time limit for making claims and the fact that these claims often arise from long-term conflicts, where it takes time for the dust to settle. I believe the time limit should be extended. I agree that sexual offences should have continuing liability—so should torture and war crimes. Furthermore, I am concerned by the relatively short time limits sought to be imposed on the service personnel's ability to sue the Ministry of Defence.

Finally, I take this opportunity to pay tribute to all members of our Armed Forces and their families, who give such courageous, unselfish and superb service to our country.

3.28 pm

Baroness Buscombe (Con) [V]: My Lords, I declare several interests: a son serving in the Fleet Air Arm; as a recent former Lords Minister with responsibility for the Armed Forces and veterans at the Department for Work and Pensions; and as a barrister, not proud of those in my profession who have profited from vexatious claims, making life pure hell for some of our courageous veterans.

As a past member of the Joint Committee on Human Rights, I have an abiding memory of its current chair either failing or refusing to understand the import of what the then Secretary of State, Michael Fallon, was saying as he explained the very high bar for process and protocols that the MoD and our Armed Forces must meet against a tight timeframe prior to making the decision to release an unmanned missile.

[Baroness Buscombe]

It is abundantly clear to me, having read recommendation 8 of its report on the Bill, that the JCHR still cannot or will not accept that life can be very different for the military. One cannot begin to compare the environment, actions, challenges and decisions that, in real time, face our military on overseas operations with that of a civilian's life choices. The Bill strikes a proportionate balance between the rights of genuine victims' access to justice in a reasonable time and fairness to those who defend our country. A good starting point should be: what is proportionate, what is the environment within which an action is taking place, and what is reasonable in all the circumstances?

The Bill is about raising the threshold of prosecution to reduce the likelihood of investigations being repeatedly reopened without new and compelling evidence. Our rules of engagement for our Armed Forces are extraordinarily stringent and, as it is, we send our young into battle with one-and-half arms tied behind their backs, sometimes in the most appalling conditions. In order to satisfy tough but necessary rules of engagement, our serving men and women understand entirely that they are not above the law, and the Bill is not about any immunity from the law. In short, this Bill does not allow our Armed Forces personnel to act with impunity.

In addition, recommendation 13 of the JCHR report demonstrates a lamentable lack of knowledge of life in the Armed Forces. Believe me, Armed Forces personnel are constantly at risk of being stepped down from duties if they show the slightest sign of illness, physical or mental. I urge all noble Lords to read the government responses to the JCHR report. So much of military life is nuanced, and that is the nub of why the Bill is before us—and rightly so. It is not perfect, but it is a symbolic step in the right direction.

Concern was expressed in another place regarding the exclusion of torture from Part 1 of the Bill. In addition to the Government's clear response on this matter, I refer to paragraph 2.2435 of *The Report of the Al-Sweady Inquiry*, which I attended briefly. It provides a stark example of why the issue of torture is not clear-cut. It illustrates the utterly dreadful impact of modern weaponry, which can undeniably create a presumption of torture in the eyes of anyone unaccustomed to seeing bodies following battle—most particularly their families. I make that point simply to emphasise the brutal and nuanced reality of combat. Torture is never, ever acceptable, and the Bill does not in any way undermine the UK's adherence to the UN Convention Against Torture, its commitment to international law or its willingness to investigate and prosecute any alleged criminal offences.

I have two questions for my noble friend the Minister. First, what is the latest thinking at the MoD regarding the issue of investigations being fully addressed in the Bill? Secondly, with reference to the definition of "overseas operations" as it applies throughout the Bill, does it include operations beyond our territorial waters—for example, acts of piracy and the seizure of drugs and other contraband?

In conclusion, in paying tribute to the heartening, intelligent and articulate voices of our ex-Armed Forces Members in another place, I shall quote the honourable Member for Bracknell, James Sunderland, who, when referring to Armed Forces personnel, said:

> "They aspire to better protected in law. They want to know … they will be supported if they pull the trigger lawfully and, after the misery of the ambulance-chasing years, they want the threshold for prosecution to be raised so that the endless knocks at the door finally stop. This is a no-brainer."—[*Official Report*, Commons, 3/11/20; col. 239.]

3.34 pm

Lord Carlile of Berriew (CB) [V]: My Lords, it is a great pleasure to follow the noble Baroness, Lady Buscombe. She made a clear and compelling case for the Bill. One thing on which I agree with her is that we need clarity, so that troops and former troops who have served our country well have clarity.

I thank the Minister, the noble Baroness, Lady Goldie, for engaging with Members of the House who wish to engage with her on the Bill. It has been helpful and, if I may say so, she is a remarkably good listener. I want to add to her tribute to Her Majesty's forces. As is clear from my entry on the Register of Members' Interests, I have a connection with the Royal Navy for a charity that I chair and I very much wish to ensure that we do the best that we can for all those who so courageously serve their country. We need to take all reasonable and proportionate steps to protect them against injustice. I fear, however, that the Bill, in its present form at least, fails to do just that.

The Bill has its origins in a 2013 report by the respected think tank, Policy Exchange. I look forward to its director, my great friend Dr Dean Godson's arrival in this House, I believe in early February. His interventions in future stages of the Bill could well be instructive. Yesterday, Policy Exchange issued a document entitled, *Ten Ways to Improve the Overseas Operations Bill*. I take that as recognition by Policy Exchange, seven years after its report, *The Fog of Law*, of 10 material deficiencies in the Bill. It is a little shocking that after a gestation of seven years, with all the scans, scrutiny and consideration that it will have had, the Bill comes to this House having left the Commons with so many deficiencies.

What Policy Exchange highlights fairly is that, for all the cases envisaged to be dealt with, there must be efficiency, expedition and fairness. Unfortunately, I cannot accept at least five of its 10 suggested improvements to the Bill. For example, Policy Exchange has suggested changes in the approach to the public interest test for prosecution but appears to have done so without even having taken the elementary step of carefully reading paragraphs 4.9 to 4.13 of the Crown Prosecution Service code dealing with the public interest test. Clear care is already taken with such decisions and it is possible in exceptional circumstances for a public interest decision to be taken before examination of the evidence. Policy Exchange has suggested the Attorney-General's consent to prosecutions. I listened with enormous respect to the noble and learned Lord, Lord Garnier, who is a former law officer, and an excellent one. I admire him enormously. However, I wonder why the independent Director of Public Prosecutions, who is appropriately accountable to the law officers, is not sufficiently independent to make the requisite decisions.

I suggest to your Lordships that, despite a seven-year gestation period, this Bill is far from being oven-ready, to coin a phrase. It still has many deficiencies, as

Policy Exchange has recognised, and will need concentrated work in Committee if it is to be given a Third Reading. I am grateful to the highly respected Bingham Centre, which has made thoughtful and well-argued criticisms, with which I agree—one of which is that the Bill undermines our obligations under the Geneva conventions and the UN Convention Against Torture, and this would take us outside international law. I commend to your Lordships the Bingham Centre's rule of law concerns about the Bill.

In truth, the Bill as it stands would diminish the United Kingdom's enviable reputation for adherence to the rule of law. We cannot accept that in your Lordships' House. Major amendment is required.

3.39 pm

Lord Robathan (Con): My Lords, a soldier is not as other men. When he thinks that he is, he ceases to be their guardian. I was told many years ago that that was a quotation from Julius Caesar. I have tried to verify it, but I am afraid that I could not find it, so it may not be a quote. However, it is apposite because it shows that we expect higher standards from our soldiers.

In this debate, I should like to put the Bill in some context, using examples—some of which will be from Northern Ireland, of which I have some personal experience, although it is not in the Bill. The context is both complex and confused. We—that is, this Parliament—send young people of 18 and 19 years of age into an alien environment in which people who are not in military uniform but in civilian clothes are trying to kill them. All civilians are therefore suspect because we cannot identify terrorists. We send the soldiers to protect us and the national interest, often in ghastly and uncomfortable conditions. We expect them to carry out their duty at our behest. So let us start by being grateful. I should declare a family interest in that my son recently passed out of Sandhurst.

Soldiers are not perfect but they usually try their best. They are not lawyers with many years of study and training. They are not policemen. They are trained to defend us by killing people, if necessary, with rifles and bayonets; that is why they have them. Training is mandatory in the Geneva conventions and the law of armed conflict. Every solider knows, for instance, that torture is illegal. When I was in Northern Ireland, we used to have a yellow card that told you when you could open fire. There are always rules of engagement, and the watchword is "restraint".

I want to give two examples from Northern Ireland. The first is the pitchfork murders, carried out near Newtownbutler in Fermanagh in October 1972 by soldiers of the Argyll and Sutherland Highlanders. They had lost eight men, murdered on a four-month tour. Newtownbutler itself saw five murders in the preceding seven months, including those of a Garda instructor, off-duty local soldiers and Protestants. Nothing excuses these murders. When, finally—after several years—the ex-solider murderers were convicted, they were rightly jailed for life. However, the context is relevant. Nobody has been tried for a huge number of the murders of soldiers, UDR and policemen in Northern Ireland, some of whom were friends of mine.

My second example is particularly pertinent to this debate: the murders in March 1988 of Corporals Howes and Wood, who inadvertently drove into a funeral in Andersonstown. When trying the murderers, the judge described the murders as "particularly savage and vicious". Both corporals had 9 millimetre pistols but were uncertain whether they could use them when surrounded by a screaming mob, which included IRA gunmen. These soldiers did not shoot the 20-odd people they could have done if they had been so minded.

I also have two examples from Iraq. The first is the Battle of Majar al-Kabir, where six Royal Military Policemen, each armed with 50 rounds, were killed in June 2003. They were surrounded by a hostile crowd of some 600 people, including the gunmen who shot them in the end. They were murdered because the RMP's standard operating procedures do not include firing on a crowd.

The second example is that of Trooper Williams, who in August 2003 was in a patrol that stopped a group of Iraqis pushing a cart full of mines and ammunition. A scuffle ensued and 18 year-old Williams shot a man whom he believed to be about to shoot another solider. This was properly investigated by the Special Investigations Branch and the Army Legal Services Branch advised that there was no case to answer, so it was dismissed. However, the Adjutant-General later wrote a letter in March 2004, saying:

> "With the current legal, political and ginger-group interests in the deaths of Iraqi civilians … there is a significant possibility that … our investigation and subsequent failure to offer for prosecution could become a cause célèbre for pressure groups."

Williams was put on open arrest for a year before being tried in the High Court. For a 19 year-old boy, it was pretty traumatic. When he finally got to court, on day one, the Crown offered no evidence and Mrs Justice Hallett formally acquitted him.

Finally, I refer to a well-known case that has already been mentioned: that of Sergeant Blackman, who was filmed as he criminally and foolishly shot a Taliban fighter—who was probably dying anyway—saying, "Shuffle off this mortal coil." More than 400 British soldiers may have been killed by the Taliban and he may have been under huge stress and pressure—he had seen comrades blown to pieces—but he was rightly tried and sentenced for his crime.

These and other cases, which are sometimes confusing, mean that young soldiers now spend a long time debating when they may open fire. When I worked in the MoD under the coalition Government, the appalling Phil—not Paul—Shiner and other lawyers were scouring Iraq and using public money to fund spurious cases against soldiers. Shiner was found to have been paying people to bring vexatious complaints, and some allegations were found to be "deliberate and calculated lies". In Northern Ireland, which is not part of the Bill, Sinn Féin and the IRA are pursuing 14 year-old cases against soldiers. The IRA is now winning the peace.

So, on the one hand, we have public servants putting themselves in harm's way and doing their duty to defend us, our country and the national interest, often in terrifying, dangerous and ghastly circumstances. On the other, we have pressure groups and very clever lawyers—often not well disposed towards the Armed Forces and often left wing—sitting in comfortable,

[Lord Robathan]
warm offices in London and picking over every split-second decision made in a foreign country by scared young people doing their duty. Soldiers do not always get it right. Some behave maliciously or criminally, and some rightly go to jail, but I stand up for the young men doing their duty to the best of their ability who have been pursued by smug, overpaid lawyers.

I thought that my noble friend the Minister's speech was excellent; I agreed with almost every part of it. I am disappointed by some of the criticism that has been dragged up, but I found it entertaining to be lectured on moral leadership by a Liberal Democrat. The Bill may not be perfect in this difficult context and it may warrant amendment, but it goes a long way to protect those who put their lives on the line to defend us.

3.45 pm

Lord West of Spithead (Lab) [V]: My Lords, the Government are to be congratulated on bringing forward this Bill, which aims to put an end to the egregious injustice of historical allegations and prosecutions made again and again against members of our Armed Forces for past actions overseas in conflict and its aftermath. It is not before time. Successive Governments have failed to take action, not least because it has such complex legal implications. It is so much easier, is it not, for people to say, "It's much too difficult. Let them continue to suffer". I am very glad that the Government are moving this forward.

When I entered the Royal Navy in 1965, we assumed that, if we undertook actions in good faith in war and peace, the nation would protect us. That has seemed a false hope in the past few years, with the hounding of personnel for actions that they took in good faith abroad and overseas on operations and afterwards, often decades ago. What has not changed is that our sailors, soldiers and airmen hold themselves to the highest of standards: a force for good, and seen to be so, both at home and abroad.

While I salute the Minister's wish to support those serving in the military and our veterans, who give so much to this nation of ours, the Bill as it stands has a number of—to put it mildly—wrinkles that need much fuller explanation; indeed, a number of them must be ironed out. In its current form, this legislation would seem to decriminalise acts of torture by members of the Armed Forces if they are reported after five years; a lot of previous speakers have covered this point. This cannot be the intention and serves the interests of no one. Indeed, in their attempt to protect the military the Government may well do individual personnel and our international standing serious harm. We must be wary of creating a perception, and certainly not a reality, that this is the case.

The Government seem to understand that it is in the interests of all for allegations of torture to be investigated fully whenever they might arise. In the initial consultation on this legislation it was suggested that time limits would not be imposed on allegations of sexual offences or torture being investigated. The latter was quietly removed with no explanation. Notwithstanding what the Minister said, it is somewhat bizarre that sexual offences are covered and torture is not—as is also true of genocide and war crimes.

On the subject of war crimes, referring back to what the noble Lord, Lord Robathan, said about lawyers, when I was at a debate on the subject a senior citizen told us about tying a German officer to the front of his scout car before fighting back through enemy lines in Normandy. I asked him what unit he was in. He said, "Oh, the Inns of Court & City Yeomanry". I found out that he was a highly decorated judge. So I do not want to judge lawyers too harshly.

An added concern is that the legislation seems to make our service men and women more likely to be hauled before the International Criminal Court. Surely this cannot be what the Government want. It is something that we work very hard to avoid. There must some error there; something must be changed.

Another issue that needs clarification is claims against the MoD; a number of noble Lords touched on this. The de facto six-year time limit for claims being brought against Ministers and the MoD arising from active service abroad seems at first sight far from protecting our people, but rather reducing the rights of individual service personnel. Again, I am sure that that cannot be the intention. Something must be changed.

I firmly believe that th0065 Bill is needed, but if I had to mark it out of 10 I would give it a five. If the Government truly want to get a 10 and do their best to support our brave service men and women, they must accept a number of amendments to the Bill, which are really necessary.

3.50 pm

Lord Ramsbotham (CB) [V]: My Lords, as the noble Lord, Lord West, has pointed out, although the Government are to be congratulated on the intention behind the Bill, there are several wrinkles to be ironed out. First and foremost, there must be no provisions within it that would lead members of our Armed Forces to believe that they are sanctioned to break the rule of domestic or international law. In 1965, during confrontation with Indonesia, every company cross-border operation had to be authorised by the Cabinet, because in effect it involved an invasion—but that was an extreme.

Like many other noble Lords, during the remainder of the time allowed I shall concentrate on torture, which has been prohibited in this country ever since 1640. The most recent renewal of this prohibition was the Criminal Justice Act 1988, which designated it as a domestic offence, covering the torture of anyone, anywhere in the world. MoD doctrine makes clear that there are no circumstances in which torture, inhuman or degrading treatment can ever be justified. In the public consultation that the Government conducted prior to the Bill, HMG suggested that torture might not be covered by any presumption against prosecution. In the published Bill, however, only sexual offences are excluded from this presumption, acts of torture remaining subject to the Bill's triple lock.

In the other place, 269 voted in favour of an amendment tabled by two ex-military MPs, David Davis and Dan Jarvis, to remove torture from the scope of the Bill. I give notice that I intend to table a similar amendment in Committee, or to attach my name to one removing it if another noble Lord should table one. Moreover, the Bill's granting of immunity

from prosecution to perpetrators of torture would not only break the UK's obligations under the Geneva conventions, the UN Convention against Torture, the International Covenant on Civil and Political Rights, the Rome statute and customary international law, it would leave members of our Armed Forces more rather than less likely to face prosecution at the International Criminal Court in The Hague.

I join all other noble Lords who have praised and thanked the members of our Armed Forces, and I will always be proud of having served on overseas operations. Unfortunately, this Bill breaches the long-standing principle of military law that soldiers are subject to the same laws as all ordinary citizens, particularly with regard to torture, and we owe it to all service veterans and service men and women to scrutinise the Bill most thoroughly.

3.55 pm

Lord Stirrup (CB): My Lords, the Government's purpose in introducing the Bill, to provide greater certainty for service personnel and veterans regarding their potential criminal liability for purported actions taken during overseas operations, gives rise to two general questions. Is there a problem that needs to be addressed and, if so, how effective is the Bill in doing that? The answer to the first question is, I think, yes. The UK Armed Forces place the highest importance on carrying out their duties within the law. They fully understand that the rationale for having a uniformed military is that it, as an organisation, is permitted under international law to exercise destructive and lethal force, provided that it complies with the provisions of that law. In other words, adherence to the law is fundamental to the military's very existence. This is why some senior serving personnel are nervous about the Bill. They do not wish there to be any doubt in people's minds about their commitment in this regard.

It is also true that, despite this fundamental tenet, some military personnel do commit crimes on overseas operations. Our Armed Forces personnel in general exercise incredible judgment and restraint in the most dangerous and trying circumstances, but it would be unreasonable to expect that they should be entirely free of the faults and frailties that are part of the wider society from which they spring. When such crimes are suspected, they should be investigated thoroughly—and the investigation process itself would certainly bear improvement—and, if the evidence is sufficient, the perpetrators should be prosecuted. However, it is also the case that legal process has been increasingly used to pursue political and other non-legal objectives in relation to overseas operations. Members of the Armed Forces, who have often risked all at the behest of the Government and in the service of their country, have been caught in the middle of this procedural struggle. This has created immense mental stress for them and their families—stress that has been piled on top of the inevitable psychological impact of warfare with which they must already deal. We have a moral obligation to reduce that additional suffering to the maximum extent we can within the bounds of the rule of law.

So, how effectively does the Bill before us today achieve that objective? It attempts to strike a balance, but whether it is the best that can be done is not entirely clear. It certainly will not achieve its aim if it simply moves the legal process from UK jurisdiction to that of the International Criminal Court—quite the opposite, in fact. In addition, the Bill focuses on the issue of criminal prosecutions, but I am not sure that they are really the most significant problem. After all, the tests that the Bill introduces for prosecutors are mostly ones that they follow already, and that generally protect all people, civilian and military, from speculative trials. The stress on personnel arises less from actual prosecutions and more from protracted investigations, even when these come to nothing. We need look no further than at the notorious Metropolitan Police investigations under Operation Midland to see the truth of this. The lack of an eventual prosecution is not necessarily a protection against mental suffering. There is a doubt in my mind as to whether the Bill really gets at this issue.

Then there is the question of the extent to which the Bill aims to support members of the Armed Forces, and the degree to which it seeks to protect the Ministry of Defence. A department of state is well able to deal with vexatious claims. It may find them irritating and frustrating, but it is not subject to mental anguish in the way that individuals are, and I would have thought that it needs no special provision under the law.

Having said that, I am not clear that the provisions of the Bill are quite so dramatic as some have suggested. They do not condone or permit torture; nor is there a new time limit on pursuing such cases, only a more tightly but not obstructively defined set of conditions for doing so.

I for one entirely understand the rationale for excluding sexual offences from those conditions. It is not that a particular kind of offence is worse than another, but in one case an admitted outcome—death or injury—may reasonably be the result of lawful military action, while in the other a sexual assault can never be anything but criminal, whatever the circumstances. This seems to me a valid basis for excluding that category of offence from the provisions of the Bill.

So while I welcome the Bill, I believe that it can and should be improved. I look forward to hearing the Minister's response to the concerns that I have raised today, and to developing some of these themes further in Committee.

4 pm

Lord Arbuthnot of Edrom (Con) [V]: My Lords, following the noble and gallant Lord, Lord Stirrup, is a daunting task, but the fact that I agree with what he said makes it easier.

The Bill has my support. It may not be perfect and it may need to be amended, but it helps to address the twin issues of, first, our service men and women living under a constant threat of litigation and prosecution years after events in which they were involved, and, secondly, enemies of our country and of our values using our legal system and our liberal values against us in a way that was never intended when our laws were drafted.

We are a country that believes in and upholds the rule of law. It is sad that it should be necessary to say this, but the disgraceful inclusion in the United Kingdom Internal Market Bill of clauses designed to break the

[Lord Arbuthnot of Edrom]
law both makes this necessary and weakens the Government's arguments. However, those clauses would never have passed your Lordships' House, so the country was able to reassert that we indeed believe in the rule of law. I disagree with the assertion by the noble Lord, Lord Touhig, that this Bill is anything like the internal market Bill in that respect.

We have received extensive briefing against the Bill. I have to say that I found it unconvincing. I do not believe that there is anything wrong with reasonable time limits for civil litigation, nor that the Bill legitimises or decriminalises torture. Above all, I do not think there is anything wrong with a limited rebuttable presumption against prosecutions after a lengthy time. Our service men and women do a lot for us, and I believe that we should give them this.

4.02 pm

Baroness Chakrabarti (Lab) [V]: My Lords, on the day when so many around the world breathe a sigh of relief at the departure of Donald Trump from the US presidential office that he has so tarnished, I fear that we must debate a policy that has at times, though not here, been almost Trumpian in its promotion and, if enacted, will in my view do considerable damage to the UK's standing in the world. This is not a British loyalty test. The Bill does not give greater meaningful protection to the brave men and women of our Armed Forces. It is not at all as hitherto advertised.

The Government are fortunate indeed to have the Minister presenting the Bill to your Lordships' House; in my experience, she is one of the most courteous and skilful advocates in either Chamber. Sadly, though, I cannot say that for those who presented the Bill in the other place, with blanket attacks on human rights and lawyers as an entire species. At one point the atmosphere was so toxic that a young and new Conservative Member, speaking from the very back of those Benches during the truncated debate, appeared almost to apologise for once having studied law. Is that what our democracy has come to?

I do not want anyone, let alone those that we put in harm's way in open or covert conflicts not of their own making, to fear lengthy, shoddy repeat or politicised investigations, but Part 1 of the Bill does nothing at all to address the speed, finality or robustness of criminal investigations arising from overseas conflicts. Instead, as has been pointed out by a host of critics, many of them of distinguished military rank and service, it creates a de facto presumptive five-year statute of limitations on even grave crimes such as torture and restricts the decision to prosecute after that point to a politician, the Attorney-General.

I fear that the distinction made by the Minister between torture and sex offences was not convincing as, sadly, both can be the subject of false allegation. Five years is a particularly short time in relation to secret operations. Such a limitation, as has been said, will only increase the possibility of British personnel facing the jurisdiction of international courts in future. That would be a perverse outcome.

On the involvement of the Attorney-General, I am afraid I have to agree with the noble Lord, Lord Carlile, not the noble and learned Lord, Lord Garnier, however much I admire him. The involvement of the Attorney-General risks a prosecution being prevented by the very same law officer who previously advised on the legality of the precise military operation now impugned. Alternatively, it risks a prosecution being brought by a subsequent Government's principal lawyer whose party may have been very publicly critical of the conflict now in question. Both scenarios risk politicisation or at least jeopardising the trust of both the public and, crucially, service personnel themselves.

Part 2 of the Bill is just as troubling, not least because it would strip away the vital protection for veterans and their families who may have had no advice or bad advice or been completely unable to establish a causation between their suffering, which they may well have known about, and negligence by the MoD within the six-year period. Instead, the courts are currently well capable of handling their discretion under the Limitation Act and MoD lawyers are well able to robustly defend the Government. This is clearly a protection for a government department, perhaps even for its political masters, but not for those veterans who too often have been put in the most dangerous and damaging circumstances with inadequate kit, training and planning. It is a breach of trust with them.

As for the duty to consider derogations from the Convention on Human Rights, this provision is either totally unnecessary, dangerous showboating or an attempt domestically to dilute the convention's own very high bar for derogation, which is, as we have heard from the noble and learned Lord, Lord Hope, strict necessity

"in time of war or other public emergency threatening the life of the nation".

That will not cover all overseas operations, and of course no derogation at all is allowed from the absolute prohibition on torture.

The overwhelming majority of Armed Forces personnel and veterans I have ever had the privilege of meeting are decent, disciplined and brave. They do not fear human rights or the rule of law; to the contrary, they are inspired to fight for them, sometimes at devastating personal cost. This Bill neither honours nor protects them—quite the opposite.

4.08 pm

Lord Anderson of Ipswich (CB) [V]: My Lords, I applaud the motivations behind the Bill, which are to address vexatious claims and repetitive investigations, yet, along with other noble Lords, I have difficulty in seeing how either objective is furthered by what is described as the presumption against prosecution in Part 1 of the Bill. It is common ground, I think, that there is no problem of vexation prosecutions of service personnel; indeed, prosecutions have been conspicuous by their rarity. Nor does Part 1 have anything to do with civil claims or the Human Rights Act. Its effect would be to prevent prosecutions after five years for even the most serious criminal offences, save in exceptional circumstances and with the permission of the Attorney-General. Its specific purpose is to prevent the prosecution of cases that would currently be brought to trial after an independent prosecutor had judged the exacting evidential and public interest tests to be satisfied.

The Brereton report of last November illustrates what this would mean in practice. It found evidence of 39 murders of civilians and prisoners of war in Afghanistan between 2009 and 2013 involving 25 Australian service personnel: crimes committed on overseas operations, but not in the heat of battle. If Australia had a similar law to Part 1 of this Bill, who is to say that any of those people would be prosecuted? The matters to be given particular weight under Clause 3 are all factors that militate against prosecution. Nor would the severity of the crime establish exceptionality, given what will rightly be said to be Parliament's clear intention, if we pass the Bill unamended, that even torture, war crimes and genocide should be subject to the presumption against prosecution.

Part 1 is indeed particularly problematic in its application to crimes which fall within the jurisdiction of the International Criminal Court. It is not just the obvious injustice of a law which would allow a soldier to be prosecuted for the sexual assault of a civilian but not, despite equally strong evidence, for her murder; nor is it just the risk that the Bill would violate our obligations to prosecute under the treaties listed at paragraph 57 of the Joint Committee's report, including, but not limited to, the torture convention; it is also what Judge Advocate-General Blackett described to the Defence Secretary in a leaked letter, since echoed by the ICC prosecutor's office, as the increased likelihood of UK service personnel being brought before the ICC.

The noble and learned Baroness, Lady Scotland, said in this House on 15 January 2001, during debate on what became the International Criminal Court Act:

> "If there should ever be any allegation that a British citizen or member of the British Armed Forces has committed one of these crimes we shall be able to launch our own investigation. Any such accusations will be tried in British courts."—[*Official Report*, 15/1/01; col. 927.]

If the Judge Advocate-General is correct, Part 1 of the Bill dilutes that promise. How counterproductive it would be, and how shaming, if, by reducing the scope for prosecutions in this country, we were to increase the scope for prosecutions in The Hague.

The timely prosecutions of those at the appropriate level of command and the nipping in the bud of vexatious civil claims would both be made easier if investigators got it right first time around, undefeated by the "wall of silence" or by attempts at cover-up. As Mark Goodwin-Hudson, NATO civilian casualty and mitigation team lead in Afghanistan, told the Bill Committee, the best way to stop what he called the "spiralling of reinvestigation" would be

> "the ability to conduct accurate and timely investigations in theatre".

I therefore welcome the Government's announcement last October of a review led by Sir Richard Henriques, which

> "will consider options for strengthening internal investigation processes and skills".—[*Official Report*, Commons, 2/11/20; col. 17.]

I shall welcome it even more if the Minister can confirm that the remit of the Henriques review extends to the independent element of the investigation, and to recommending any statutory changes that might be needed to reinforce the powers and independence of the service police.

4.13 pm

Lord Lancaster of Kimbolton (Con): My Lords, I declare my interest as a serving member of the Army Reserve.

I support the Bill, which in my mind is long overdue. But I recognise that it seeks to walk a tightrope between giving reassurance to members of the Armed Forces and veterans that they will not be unfairly pursued or suffer repeated investigation and that they will be prosecuted only in exceptional circumstances for historic events, while maintaining our standing in the international community by not seeming to countenance criminal behaviour within our military or by disrespecting international humanitarian law or organisations such as the International Criminal Court.

Nobody is suggesting that a tiny minority of members of our Armed Forces have not committed crimes while on operations; the examples are there for us all to see. But these rare events must not be allowed to overshadow the facts that, despite often being under the most extraordinary pressure, the overwhelming majority of our Armed Forces behave impeccably on operations; and that their professionalism and high moral standards in ensuring that the rules of war are observed are second to none.

This is because of not only the quality of the individuals but the quality of the mandatory annual training and—as I experienced myself before deploying to Bosnia, Kosovo and Afghanistan—the operational pre-deployment training they undertake. This training ensures that the high values and standards of the British military and our respect for international law are ingrained in our service personnel. I know that they would be the first to say that it is imperative that any legislation Parliament passes must not undermine their sense that they deploy on operations firmly on the moral high ground.

Aspects of the Bill are certainly open to criticism but, in reading much of the commentary, I have been struck by how little of it actually relates to the words written on the face of the Bill. What is clear is that the Bill does not create, nor come close to creating, "de facto immunity" for serving or former service personnel, even in respect of offences that are not excluded by Schedule 1. This is for several reasons.

First, the Bill at most creates a test of exceptionality for prosecution only after the period of five years has expired. Although the clause heading is "Presumption against prosecution", what is being provided for is an exceptionality test and what is "exceptional" will be provided for by an independent prosecutor and the Attorney-General. Secondly, nothing in the Bill limits the investigation of offences. While some have questioned, probably fairly, the effectiveness of MoD investigations in the past, I must say that during my time at the MoD I witnessed a considerable improvement in the quality of investigations, from the IHAT investigations in Iraq to the Op Northmoor investigations relating to Afghanistan. That said, I too am pleased that the eminent retired judge Sir Richard Henriques has been appointed by Ben Wallace to conduct a review of MoD investigations; this is a most welcome move.

[Lord Lancaster of Kimbolton]
Thirdly, nothing in the Bill limits the determination by prosecutors of whether in any case the evidential test has been met.

But taken together, the Bill's provisions constitute what could be described as an enhanced filter on prosecution after the lapse of five years. The purpose of this filter is clearly that service personnel should have some assurance that they are much less likely to face prosecution once five years have passed from the events in question. Having received many letters from distressed veterans living in fear of the uncertainty of prosecution, I can say that it is the lack of finality of investigation that has caused so much stress for so many. The Bill's requirement for prosecutors to take into account the public interest in finality, where there has been an investigation and no new evidence found, and to take due consideration of the challenging circumstances to which UK forces are subject while on overseas deployment seem to me perfectly sensible.

If—and it is a big if—the Bill delivers what it seeks to achieve, the positive impact on veterans' mental health should not be underestimated. But let us be clear: it is not preventing anyone from being prosecuted for a crime they have committed. No person is above the law and, unlike a civilian, UK forces rightly are also subject to service law and the law of armed conflict. It would be a cause for justified alarm if the Bill were to seek to permit UK forces to breach this legal regime with impunity, but it does not.

Time does not allow me to comment in detail on all aspects of the Bill today, but there are several areas I look forward to exploring in Committee—for example, in Schedule 1, under excluded offences, why sexual offences are specifically excluded but torture is not, as many other noble Lords have highlighted; in Part 2, the circumstances under which the Secretary of State would consider derogating from the European Convention on Human Rights regarding future overseas operations; why the Bill treats overseas territories differently from how they are treated in the Armed Forces Act; and, finally, exploring the Government's view towards some of the points raised by Judge Jeff Blackett during his evidence session to the committee.

As other noble Lords have said, this Bill needs work, but I will support it at Second Reading.

4.18 pm

Baroness Jones of Moulsecoomb (GP): My Lords, with every Bill this Government present to this House, we see a further erosion of civil liberties, the rule of law reduced and, of course, a constant attack on parliamentary democracy—and this Bill is no different. It is pretty terrible. I am really heartened to have listened to the comments so far, which clearly indicate that there is a lot of dissatisfaction about the Bill, and I presume that it will be very heavily amended.

The Bill is very much at odds with the United Nations special rapporteurs. The Government, Ministers in particular, have consistently expressed some horrific sentiments over the years which seek to marginalise and undermine the UN special rapporteurs as being somehow politically motivated. This has come up in relation to the Government's treatment of people who are in poverty or homeless, people with disabilities, and now victims of torture and other crimes at the hands of British troops. It undermines any claim that the United Nations might be a global leader for peace, justice and human rights.

Beyond the United Nations, many other experts have warned about how the Bill undermines the UK's so-called commitment to human rights and a rules-based international order. Indeed, today in the *Daily Mail* there is a headline: "Theresa May blasts Boris's 'moral failure'". She has criticised Boris Johnson, our Prime Minister, "for abandoning British values" and

"slammed his threat to break international law and tear up foreign aid."

The article says:

"The former prime minister says the two actions were not ones that 'raised our credibility in the eyes of the world'. If Britain is to lead internationally, she says, we must live up to 'our values'."

The Bill clearly does not live up to our values. It is based on fiction and conspiracy theories—it could have been written by the *Daily Mail* comment section. It stems from a false assertion that there is some sort of crisis of vexatious claims against UK forces, although in truth, hardly any criminal prosecutions have been brought against service personnel in relation to Iraq and Afghanistan. On the contrary, the inquiry into the death in of Baha Mousa in September 2003 revealed torture, unlawful killing and the use of prohibited techniques by British soldiers. It makes harrowing reading.

Instead of fiddling with prosecutorial discretion and the statute of limitations, Parliament should instead be implementing a comprehensive, effective, independent system of investigation of complaints against military personnel. Repeat investigations are ordered by courts because the original investigations were so shoddy that they needed to be conducted again. We are talking about interference by the chain of command and refusal to pass on to military police and prosecution. Service personnel would be greatly helped if they knew that future allegations would be fairly, reasonably, independently and rigorously investigated within a sensible amount of time, and one way or another resolved. However, this legislation does not address any of that, and the provisions in the Bill are nonsense.

The courts already have a very wide range of case management powers. They can throw out unmeritorious and vexatious claims at a very early stage and can make court orders against vexatious claimants. The Government must explain why this is not sufficient to deal with these claims, and then explain why the military needs a special system of dealing with unmeritorious claims which is not available to other defendants in legal proceedings.

Then there is the downright stupid fact that this legislation, rather than protecting service personnel, would in fact be likely to open up British forces to the jurisdiction of the International Criminal Court, as other noble Lords have already mentioned. This prospect renders the whole Bill counterproductive and downright dangerous. Rather than face investigation and prosecution in the UK, troops would be exposed to the risk of international arrest and, of course, prosecution and trial at The Hague.

I asked a former general for his advice on the Bill. After some thought, he gave a considered answer, saying that it could be dangerous for our troops because it might mean that other regimes and the troops of other countries would be more inclined to torture our troops or treat them badly, in return for our lack of concern about torture.

I therefore feel that the Government should pause the Bill and start to think quite seriously about whether it is needed and, if it is needed, about how to improve it.

4.24 pm

Lord Browne of Ladyton (Lab) [V]: My Lords, during my time as Secretary of State, I had the privilege to work closely with our Armed Forces. I have the highest regard for those who serve and for their integrity. Sadly, we are all too familiar with stories of our Armed Forces personnel being hounded for years and years. The Bill is to be commended for seeking to address such abuses. It seeks to find a balance between the difficult truths that, sometimes, service personnel have been the subject of prolonged legal jeopardy, while sometimes they have broken the laws of war, as we have heard—acts which must be investigated and, where the evidence is sufficient, reliable, and credible, prosecuted and punished.

We all have a responsibility for taking too long to deal with these issues, but the fact is that the Bill does not resolve the problem of repeated and prolonged investigations because the Government have chosen to frame the issue as a legal problem, when the truth is that it is a problem about the timeliness and quality of investigations. Further, the Minister responsible for the passage of the Bill, Johnny Mercer, knows this to be the case. In a *Guardian* podcast in 2019, he was challenged about the existence of video evidence of apparent abuse, specifically "torture and beatings of civilians". His interviewer suggested to him that "something has gone very wrong there surely?" I will read out his reply in full, because it is important: "You are absolutely right, and it is a very fair point, that actually one of the biggest problems with this was the military's inability to investigate itself properly and the standard of those investigations, and it is that precise point which is being challenged by other lawyers and I totally understand that, and this behaviour has been totally unacceptable and the military has a role to play in this as well, and can't just blame everybody else. If those investigations were done properly and self-regulation had occurred, we probably wouldn't be here today."

It is no answer to this criticism that the Government have now belatedly set up a further inquiry into how these investigations are conducted. Not only is the Bill aimed at the wrong target, it will see Britain reneging on its international legal commitments, none more so than our legal commitments to investigate allegations of torture and international crimes and, where appropriate, prosecute.

The Government rightly have decided to exclude sexual offences from the Bill. In response to the public consultation, the MoD said that

"the use of sexual violence or sexual exploitation during conflict is never acceptable in any circumstances."

Nor is torture. Torture is not only ineffective but illegal. For these reasons, we need unqualified safeguards on torture. Ministers who deny that the triple lock will weaken our stance on torture dismiss these arguments with a wave of a hand, even though a growing and diverse coalition of military, legal and other experts maintain that it will do exactly that, and explain comprehensively why.

The Bill undermines our obligations under the Geneva conventions and the UN Convention against Torture to investigate and prosecute grave breaches of international humanitarian law. It promotes the dangerous idea—recently attempted, unsuccessfully, during the passage of the UK Internal Market Act—that the UK can simply set aside international obligations in law. Its entry into force will be yet more evidence of what Theresa May today called the abandonment of the UK's moral leadership on the world stage.

Additionally, what is effectively a de facto statute of limitations on the prosecution of war crimes makes it much more likely that British soldiers will be prosecuted by the International Criminal Court, which acts only where countries are unwilling to prosecute their own citizens. Recently, the Office of the Prosecutor of the International Criminal Court warned that if a proposed presumption against prosecution were introduced, it

"would need to consider its potential impact on the ability of the UK authorities to investigate and/or prosecute crimes allegedly committed by members of the British armed forces … against the standards of inactivity and genuineness set out in Article 17"

of the Rome Statute. We should remember that we have a solemn commitment to our Armed Forces, given on ratification, that no member would ever be at risk of appearing in The Hague.

Finally, the provision in the Bill which requires the Government to consider derogating from the European Convention on Human Rights has been described as

"legally meaningless and only has rhetorical value."

What exactly is the objective? Do the Government think that they can simply state that human rights do not apply? Do they appreciate that they cannot derogate from the prohibition of torture and can do so only in respect of killing if it happens because of lawful acts of war, which then engages the Geneva conventions?

I end with a question for the Minister. For what precisely do the Government want this provision, and how will they use it?

4.29 pm

Lord Houghton of Richmond (CB): My Lords, I sense that no-one who speaks on the Bill today will not have the interests of British service men and women at heart, and that is certainly my primary consideration. Undoubtedly, the situation that many service people have found themselves in over recent years in respect of vexatious claims absolutely demands government action. I seriously worry, however, that the political desire to resolve this problem has primarily resulted in a wish to change the law. My worry is twofold. First, I believe that this issue is a practical not a legal one. Secondly, I worry that legal solutions may bring with them unforeseen consequences, some of which will be absolutely contrary to the stated intent. I will summarise my views in five points.

[Lord Houghton of Richmond]

The first is context. As we have heard, much of the source of the current problem has nothing to do with shortcomings in the legal framework. Rather, it is due to the Government's inability to properly resource adequate investigative capacity and a weakness—indeed a failure, I admit—of the whole chain of command to ensure that investigations have been pursued with vigour and integrity. As a priority, we should correct these deficiencies.

My second point concerns the legal framework itself and the dangers of exceptionalism. It is true that the framework is a complex aggregation of historical conventions and both international and national law, but it is an acceptance of this evolved framework and a determination to function within it that gives our Armed Forces both their legitimacy and their moral authority. To seek to legislate to make ourselves exceptions to this framework, even in cleverly construed legal ways, produces multiple risks: to our international standing; to our reputation as a trusted ally; to the true status of our moral authority; to the justification of reprisals from our enemies; and ultimately, as many have mentioned, to the unquantifiable risk that our people will be brought before the International Criminal Court rather than our own national ones.

My third point concerns effective training. As I have said, the legal framework for the use of force and wider conduct of operations is complex. It is a challenge to convert this framework into a set of rules and procedures that are easy to both teach and comprehend. Our Armed Forces have, over the years, developed some very effective means of simplifying the legal framework and of employing sophisticated methods of judgmental training in how to operate within it. The aim has always been to make what is legal and what is morally proper also that which is natural and instinctive.

Therefore, to introduce even greater complexity into the legal framework, complexity that at least appears to differentiate between the gravity of certain acts—between murder, torture, rape and sexual violence for example—all of which are illegal, seriously prejudices the intuitive understanding of service men and women. I have heard it said that the Bill presents some external presentational challenges. It would also create some significant and potentially dangerous internal ones.

My fourth point is about command responsibility and leadership. Recent experience clearly shows that, particularly when operations are intensive, prolonged and conducted from remote and isolated bases, the requirement for strong leadership and command oversight, while more difficult, is even more vital. I do not believe that the law has ways of holding the chain of command to account, but I am absolutely certain that the chain of command cannot distance itself from the responsibility to actively mitigate the conditions that can contribute to individual failings. I am interested to know what lessons we have learned about this for the future and what action we intend to take.

My final thought on this issue is more esoteric. In the military, we often say that the nature of warfare endures, but the character of warfare changes. Perhaps one recent facet of this changing character has been the advent of lawfare. This represents a new vector of attack, where our enemies will exploit our vulnerabilities to delegitimise our use of force and the moral authority we hold. If our response to this threat is a recourse, however well intentioned, to legal exceptionalism, I fear we will actually be showing weakness. We will risk surrendering our moral advantage and our enemies will be encouraged, not deterred.

I will finish where I started. No one who speaks today will not have the interests of our servicemen and women at heart, but my strong view is that we will not legislate ourselves out of this problem through amendments to the law. There is a very strong chance that, regardless of good intentions, we may make things worse for the very people we are trying to protect.

4.34 pm

Baroness Warsi (Con) [V]: My Lords, I start where my noble friend just ended. Like him, many colleagues and the Minister, I begin by paying tribute to the brave men and women of our Armed Forces, including brave men and women from my own family—from my paternal and maternal grandfathers to my daughter, who once again has chosen a life in uniform and dedicated her life to defending the freedoms and values that we hold precious. It is in this vein that I make my remarks today.

No one can doubt the Government's stated intentions. I support those stated intentions, but I worry that the Bill as drafted does not. We must always protect our Armed Forces from vexatious claims. Families and lives have been destroyed through such claims, and I would not want my family—indeed, any family—to be on the receiving end of such claims. However, alongside that and in seeking to do so, we must not undermine the very values we seek to protect, including through military action.

Tragically, the wars that form the backdrop to the Bill are often remembered not for what good we achieved but for the harm our intervention unleashed, including the tragic loss of life, torture and sexual violence. Thankfully, much of what I can term rogue behaviour was the action of troops other than UK troops, but sadly, as your Lordships have heard, our young men and women were not immune from conduct that was, at best, unethical and immoral, and, at worst, serious criminal acts leading to death. We have heard examples today. Those individual incidents are appalling singularly, but collectively impact on our reputation and thus, I would say, our military's ability to function at its most effective in the multiple roles in which we deploy it in these times.

My question for my noble friend is one that has been previously asked: why is sexual violence—rightly, in my view—excluded from the triple lock, but not torture and war crimes: something we, sadly, saw in both Iraq and Afghanistan? My noble friend referred to the unique nature of warfare in her opening remarks and said that this means that in exceptional circumstances the lock will not apply. Torture is, by its very nature, exceptional. It should not have to be deemed as such on a case-by-case basis for the triple lock not to apply, and we certainly should not be providing blanket legal protection. We must be sure that individuals who partake in torture, whoever they may be, have a clear message that such acts will not go unpunished.

It cannot be that absolute accepted positions of our commitment to the Geneva Convention are left unclear by the Bill. Our commitment, over generations, to human rights conventions forms the bedrock of many an argument that we are intervening in places around the world—to protect and promote human rights and to prevent human rights abuses. It would be hard for us to justify such interventions if the first step we take before intervention is to derogate from our own human rights obligations.

What is further troubling is Clause 6(2), which would exempt from the triple lock prosecuting offences committed against members of the Regular Forces or Reserve Forces, members of a British Overseas Territory force, Crown servants and defence contractors. I find this hard to reconcile with our commitment that all are equal before the law. Perhaps my noble friend can explain the reasoning behind why the murder of a fellow British co-worker is more serious than that of, say, an Iraqi or Afghan civilian. Surely the crime cannot be judged differently depending on the victim, rather than the act and intention of the perpetrator.

In 2014, during my time as FCO Minister with responsibility for the International Criminal Court, we were engaged in meetings with the prosecutor Fatou Bensouda about claims of abuse made against our troops in Iraq. In discussions about where these matters would be tried and what role the ICC would play, our strongest argument was our domestic system, both investigations and prosecutions. The Bill may undermine what has been the strongest protection for our Armed Forces: that even those who may have engaged in criminal conduct will be dealt with here, in our courts. We must make sure that, in this Bill, we do not make the error of changing that.

4.40 pm

Lord Dodds of Duncairn (DUP) [V]: My Lords, I thank the Minister for her introductory remarks. I too begin by paying tribute to members of the Armed Forces of the United Kingdom of Great Britain and Northern Ireland. Their courage and professionalism are truly remarkable and it is important that we recognise them not just by our words, but in the actions that we as a country take to protect those who work so hard to protect us. I therefore welcome the Bill. It introduces important safeguards and protections for our veterans, who have the right to know that we take their concerns on these issues very seriously indeed. We have all heard and read tragic stories of veterans being dragged through the courts. They are often elderly and suffering terrible mental anguish at being subjected to repeated, unwarranted legal processes.

Of course, as many have said we must have a system that allows proper, fair investigation and prosecution, where appropriate, of wrongdoing by members of the Armed Forces, but what we have seen, particularly in Northern Ireland, is a one-sided approach to investigations into the past. That cannot endure. I want to make it clear that we do not believe in any form of amnesty. The Bill does not include any such provision, and it would never be accepted.

It is important to remember that the Bill ensures compliance with Article 6 of the European Convention on Human Rights, namely, the entitlement to

"a fair and public hearing within a reasonable time by an independent and impartial tribunal".

It is important that any allegations of wrongdoing are investigated as close to the event as possible, but the problem that has arisen has been the relentless pursuit, often for nefarious reasons, of veterans who are being hounded time after time long after the events in which they are accused of wrongdoing. Surely everybody can agree that it is important to end the vexatious pursuit of service personnel in later life, so I welcome the fact that under the Bill prosecutors will be obliged to have due regard to the impact on soldiers, sailors and air men and women of being prosecuted long after the event.

The Bill applies to veterans who served on overseas operations. I add my voice to the plea that has already gone forth in the House that the Government look at the situation of some 300,000 veterans who served in Northern Ireland in Operation Banner. The Government gave a solemn commitment in March in a Statement to Parliament that those who served in Northern Ireland would get equal protection along with the veterans covered by the Bill. Will the Minister confirm very clearly this evening that a Bill will be introduced very soon to honour that commitment? I would be very grateful if she can indicate a timescale for the introduction of that legislation.

The Bill is the Overseas Operations (Service Personnel and Veterans) Bill, and we understand the difference between protecting veterans who served overseas and protecting veterans undertaking domestic operations within UK jurisdiction, such as those involved in Operation Banner in Northern Ireland. But it important that the brave service men and women who served in Northern Ireland over so many years are included in the protections and safeguards being offered to those who served overseas. As the Secretary of State for Northern Ireland has said, it is also important to note that members of our police suffered terribly during the so-called Troubles and more than 300 of them died. Their cases need to be looked at in the same way, and I am glad that the Government have made commitments in that regard.

I look forward to the Bill being further debated and the issues that have been raised in this general Second Reading debate being pursued in more detail in further stages of deliberation. I look forward most of all to the Government honouring their commitment in relation to protecting service men and women who served in Northern Ireland, as well as those who served overseas.

4.44 pm

Baroness Whitaker (Lab) [V]: My Lords, I declare an interest as a member of the advisory board of the British Institute of Human Rights. I speak as someone who became aware of the conduct and, especially, the high reputation of our Armed Forces overseas in the actual areas where they operated when I was involved in international development. We are fortunate in the high standards of our Armed Forces and can be rightly proud of them.

That is the main reason why I find parts of the Bill distressing and inappropriate. The level of prosecutions hitherto has been very low. There has not been

[Baroness Whitaker]
victimisation of soldiers through due process. A recent freedom of information request by the Minority Rights Group found that from all operations in Iraq, from 2003 to the present, there was only one prosecution under the ICC Act and in the lesser category of offences alleged by members of the public there were only five prosecutions. In Afghanistan from 2001 to the present—some 20 years—there were only nine convictions. This is hardly a picture of soldiers needing supralegal protection, even if it were desirable. For that matter, since the Bill deals only with prosecutions, it would not prevent vexatious litigation in the course of investigations, and even those cases have been speedily thrown out under our current legislation.

Yet the Bill appears to assume that very serious crimes may be committed by service personnel and proposes to reduce substantially their openness to prosecution, even in cases of torture, war crimes and genocide, after only five years. As a signatory to the UN convention against torture the UK has always repudiated torture, and freedom from torture is the only absolute unqualified right in the whole armoury of human rights. It would tarnish our reputation indelibly to allow it tacitly in any circumstances. That is not the only international standard that the Bill breaches—those which by definition cannot be set aside, not excluding the law of armed conflict itself. The result will be that our servicemen, in the unlikely event that there is such an allegation against them, will, as has been said very widely in your Lordships' House, go before the International Criminal Court, which was hitherto reserved for states which are too undemocratic to hold a fair and legal trial. That is a matter of shame.

Then there is the issue for service personnel of the deprivation of the right to profit by the discretion of the court if claiming after the expiration period is over, of which there have again been very few examples. This would adversely affect veterans who have served their country, and those veterans' families. The provision may even breach the Armed Forces covenant, according to the Royal British Legion. There would indeed be merit in a better investigation procedure, as the noble Lord, Lord Anderson, said, and there is certainly a case for more certainty, but that is what the Bill lacks.

Our Armed Forces deserve better. I echo Lord Guthrie, General Sir Nick Parker, the Royal British Legion and many noble and noble and gallant Lords this evening in saying that we have no justification for abandoning our respected tradition of upholding international human rights law, nor for jeopardising our reputation and that of our soldiers in the international community.

4.49 pm

Baroness D'Souza (CB) [V]: My Lords, all that needs to be said about the Bill has already been said, and I will merely reiterate my main concerns in the interests of both my conscience and solidarity.

I welcome the Bill. It is long overdue and will greatly contribute, above all else, to improving morale in the Armed Forces. That said, there are many elements of it that were queried through amendments which were rejected in the other place but which would, I believe, have added clarity to the Bill and, more crucially, would have ensured that the UK remained within its obligations under several international treaties to which it is a state party.

Clearly, I am among many who have raised these issues. I refer to the clauses that allow certain war crimes to remain uncontested and unprosecuted due to an in-built statute of limitations. It appears that there are three specific issues of concern that not only contravene several conventions—the European Convention on Human Rights, the International Covenant on Civil and Political Rights, and the convention against torture—but leave survivors of torture without redress. Here, I might add, having worked with torture survivors for many years, that many of them yearn for a formal acknowledgment, in terms of a prosecution, of the wrongs that have been done to them so that they might begin their recovery.

There is a triple lock of presumption against prosecution, the requirement that prosecutions against torture can happen only in exceptional cases and the right of the Attorney-General to exercise a veto against prosecution. Taken together, these are in effect a decriminalisation of torture. Astonishingly, it is conceded in the Bill that sexual offences are never acceptable under any circumstances, the implication being that torture, by its omission, is acceptable.

The passing of the Bill into statute in its current form would undermine the UK's long and good reputation for having championed legislation against war crimes and would negate its actions on the atrocities in Cambodia, Rwanda and the former Republic of Yugoslavia.

The statute of limitations for prosecution is unrealistic, to say the least. Given that most investigations are nearly always very slow to start and often subject to many delays, the presumption of no prosecution will in fact apply to almost every case. It would be both counterproductive in providing a dubious precedent to other, less democratic states and embarrassing for UK officials to call for prosecution of war crimes at international forums on, say, Syria, Iraq or Myanmar, while denying victims in the UK the same legal freedoms. Those concerns will undoubtedly be addressed in later stages of the Bill.

4.52 pm

Lord Caine (Con): My Lords, the motives and purpose behind the Bill ought to be regarded across the whole House as unimpeachable. Our Armed Forces are the very best of us and they do a superb job to keep the people of this United Kingdom safe and secure in an ever-dangerous world. In return, they should command our respect and admiration, and enjoy our strongest possible support, not only in the tools they have to do the job we ask of them but through the legal framework in which they operate.

As the noble and gallant Lord, Lord Stirrup, made very clear, our Armed Forces should always carry out their duties to the highest standards of professionalism and integrity, and within the law, as the vast majority do. Where individuals fall short of those standards and in some cases act unlawfully, they should always face proper investigation and the consequences. At the same time, they should not have to act in a conflict situation fearful that at some unspecified point in the

future they will be subject to spurious and vexatious claims or hounded by corrupt individuals, such as the odious Mr Shiner.

That is what the Bill seeks to address, and I look forward to the detailed scrutiny of its provisions in Committee and on Report. In this context, I too commend the paper published today by Policy Exchange entitled *Ten Ways to Improve the Overseas Operations Bill*, by Professor Richard Ekins and the former Northern Ireland Attorney-General, John Larkin QC.

In the short time I have today, I wish to focus on the one area not covered by this legislation and to explain why, importantly, it is right that it is not. I refer of course to Northern Ireland.

The purpose of the Bill is to protect service personnel deployed in military conflict or war situations. I am conscious that for many soldiers there is little distinction between the dangers they faced in Basra or in Belfast—a point made to me forcefully by the Veterans Commissioner for Northern Ireland, Danny Kinahan, in a conversation this morning.

However, there is a critical legal and political distinction between the two. Operation Banner in Northern Ireland was never an overseas military conflict or a war. The role of the Armed Forces was to provide support for the civil power in upholding democracy and the rule of law against a criminal terrorist threat in an integral part of our United Kingdom. To characterise it any differently or by referring to what happened in Northern Ireland as a conflict or, even worse, as a war, as some have done, risks playing directly into the hands of those who wish to rewrite history, legitimise terrorism and promote some kind of moral equivalence between those who upheld the law and those who sought to destroy it. These are things that the United Kingdom Government must always resist. We should avoid anything that allows former terrorists to justify past misdeeds or, indeed, helps dissidents to recruit today.

It follows, therefore, that Northern Ireland requires bespoke arrangements that give protections to former members of our Armed Forces and the Royal Ulster Constabulary while, at the same time, providing potentially better outcomes for victims and survivors. They need to reflect the fact that 90% of deaths during the Troubles were caused by terrorists, both republican and loyalist, and they must be consistent with the rule of law. I have always opposed amnesties or statutes of limitation that would have to apply equally across the board to include former terrorists—something that many of us would find absolutely repellent.

As noble Lords have pointed out, on the day that this Bill was published in March last year, my right honourable friend the Secretary of State for Northern Ireland issued a Written Statement setting out the Government's latest thinking on legacy issues in Northern Ireland. Like other noble Lords, I wonder whether the Minister, in winding up, will be in a position to update the House on where we are with that process.

In conclusion, all of us who believe in the union, and indeed all of us in these islands who cherish democracy and the rule of law, owe those who served throughout Operation Banner—both the RUC and the Armed Forces—the most enormous debt of gratitude. As I have said on many occasions, they are the unsung heroes of the peace process, and it was their efforts—and, sadly, in too many cases their sacrifice—that provided the space for politics eventually to succeed in Northern Ireland.

We need to repay that debt but never in ways that, unwittingly or otherwise, undermine all that we stood for in ensuring that the future of Northern Ireland would always be determined by democracy and consent. So I fully support the fact that Northern Ireland remains outside the scope of the Bill as we give it its Second Reading, but I look forward to the Government's proposals in due course.

The Deputy Speaker (Lord Faulkner of Worcester) (Lab): The noble Lord, Lord Rogan, has withdrawn from the debate, so the next speaker is the noble Lord, Lord Hain.

4.57 pm

Lord Hain (Lab) [V]: My Lords, if the Bill passed unamended, it would put the UK at serious risk of being in breach of the Geneva conventions and other international treaties. Far from protecting veterans from prosecution, it would

"increase the risk of service personnel appearing before the International Criminal Court."—[*Official Report*, Commons, Overseas Operations (Service Personnel and Veterans) Bill Committee, 8/10/20; col. 118.],

as Armed Forces Judge Advocate General, Jeff Blackett, pointed out. By reneging on the UK's legal obligations, what is set out in the Bill would in fact betray those who serve our country with bravery. How can high standards of professionalism in our Armed Forces be reconciled with giving them effective legal immunity?

But on the back of the introduction of the Bill in the other place, another related issue was raised—referred to by the noble Lord, Lord Caine—which gave an ominous insight into the Government's dangerously flawed understanding of the Northern Ireland peace process and the central importance to it of dealing sensitively with the legacy of the past.

On 18 March 2020, the Secretary of State for Northern Ireland issued a two-page Written Ministerial Statement, thus conveniently avoiding scrutiny on the Floor of the House, outlining proposals to

"ensure equal treatment of Northern Ireland veterans and those who served overseas"

and to address the broader legacy issues of Northern Ireland's violent past. Unilaterally and without reference to any victims and survivors stakeholder groups, political parties or the Irish Government, he announced that the cross-party-backed Stormont House agreement and the legacy proposals contained it in were to be set aside. Instead, he proposed a speedy—for "speedy", I fear we can read "cursory"—desk-top review of all unresolved cases and, unless there was compelling new evidence that could lead to prosecution, they would be closed for ever, never to be reopened.

This would be a de facto amnesty that would cover the vast majority of murders that were carried out by republican and loyalist paramilitaries. Not only would the permanent closure of unresolved cases be without legal precedent, but it would deal a devastating blow to all those bereaved—including the families of many

[Lord Hain]
of the over-500 military personnel killed during the Troubles—to be told that the state no longer has any interest in what happened to their loved ones. The Northern Ireland Affairs Committee initiated an inquiry into these proposals by Brandon Lewis in April, and I gave evidence to it, along with the noble Lords, Lord Caine and Lord Cormack. However, in a damning interim report, the committee reached the unanimous conclusion that the proposals were "unilateral and unhelpful".

I welcome the fact that the Secretary of State will belatedly give evidence to NIAC this afternoon—he may already have done so—and I also welcome his acknowledgement that the Operation Kenova model is worth looking at because it has won widespread support from victims. What victims and survivors want above all is to know that the life and death of their loved one mattered and that their murder has been properly investigated. That can only be achieved through a robust investigative process, one that is truth-seeking rather than prosecutorial, like Kenova.

I am struck by the link between the words "amnesty" and "amnesia": the great fear that many victims and survivors have is that they are forgotten. It is one of the cornerstones of our democracy that everyone is equal before the law and subject to the rule of law. To tamper with those precepts, in the case of the overseas operations Bill, by granting partial immunity to veterans should be done only when there is an absolutely compelling case that some greater good will result. The Government have not made that case with this legislation, and what the Secretary of State proposed in relation to the legacy in Northern Ireland takes us even further into dangerous territory. Both should be firmly resisted.

5.02 pm

Lord Boyce (CB) [V]: My Lords, I declare my interests as set out in the register. This Bill is to be welcomed in principle as an attempt to mitigate the pernicious effect that "lawfare" can have on the fighting efficiency and morale of our Armed Forces. However, there are aspects of this Bill that could be improved, such as the way that allegations of torture should be handled and the Government's proposed six-year limit on service people bringing civil claims, which means, in effect, that service personnel will have fewer rights than the general public in seeking damages against their employer, as we heard earlier this afternoon—surely, this must be a breach of the Armed Forces covenant. Some noble Lords have covered these two points already, and I am sure that more will do so before this debate winds up.

I will focus on two other points, which, again, have already been mentioned by earlier speakers. First, I note the length of time a service person often has to endure while lengthy investigations into an alleged offence take place, sometimes having to suffer a second or third investigation, or more, into the same matter, even when the accused has been cleared at the first investigation. It is interminable investigations, which too often have been vexatious or unmeritorious, rather than the threat of prosecution, that so drain the morale. The Bill needs to be tougher in showing how this problem might be addressed. In particular, there has to be a way of terminating investigations when it becomes clear that they are going nowhere: there needs to be a timetable for those investigations to ensure they are as short as possible, do not become fishing expeditions and provide an opportunity for a judge to stop an unmeritorious or vexatious investigation early.

On the implications that surround the Bill, which have been mentioned, about having the stress of someone under investigation alleviated by having a presumption against prosecution after five years, as proposed in the Bill, I say that this absolutely does not remove the Damoclean sword of prosecution, because it is still possible for prosecution to take place after the five years if the Attorney-General so instructs, as the Minister reminded us in her opening speech.

Secondly, as we have heard often this afternoon, by not proceeding to prosecution under the conditions set out in the Bill, we lay ourselves open to investigation by the International Criminal Court. Many experienced and learned commentators would agree with this view. I am afraid that I am not convinced by the placatory words of Ministers and others on this. Once the ICC decides to investigate a person's conduct, we are looking at an extremely lengthy process, as I have cause to know.

Frankly, given what I have already said, a presumption against prosecution should be withdrawn from the Bill. It would do little, if anything, to relieve the stress on our service personnel who had been accused of an offence and it would take us into the territory of the ICC having an excuse to bring a prosecution.

The Deputy Speaker (Baroness Morris of Bolton) (Con): The noble Baroness, Lady Altmann, has withdrawn, so I now call the noble Baroness, Lady Blower.

5.05 pm

Baroness Blower (Lab) [V]: My Lords, it is always a pleasure to join a debate in your Lordships' House and to follow such erudite speakers as the noble Lord, Lord Thomas of Gresford, the right reverend Prelate the Bishop of Portsmouth and, of course, my noble friend Lady Chakrabarti.

I have taken the opportunity of this debate to read widely on the issues which the Bill seeks to address. I have found that a wide range of organisations and individuals consider the Bill to be flawed in its entirety. It is on that basis that I advance just a few of the arguments that I have found persuasive in coming to a position of opposition to the Bill.

I am well aware that giving the Armed Forces more legal protection was a Conservative Party manifesto commitment, but, as Professor Michael Clarke, former director of the Royal United Services Institute and visiting professor in the Department of War Studies at King's College, has written:

"The Bill is effectively in two parts, both of which stand to affect the UK's international reputation"—

he did not mean in a good way. His commentary concludes:

"As for 'Global Britain', the Bill sends some very disturbing messages to allies who are as concerned as us about the health of the rules-based international order, and opens up some intriguing

possibilities for our adversaries, who love to claim international legitimacy for their blatantly illegal behaviour."

It seems that many who have drawn up commentaries on the Bill agree that it undermines Britain's obligations under the UN Convention against Torture and the Geneva conventions. On that basis, neither part of the Bill is acceptable.

Testimony submitted by the Royal British Legion in appendices to its evidence on Part 2 of the Bill lays out clearly that the six-year limit is a problem. The legion expresses concern that such a limit creates "a unique deviation" from the Limitation Acts of the UK. Rather than helping armed services personnel and their dependants, this would seem explicitly designed to reduce the number of claims against the Ministry of Defence.

The Royal British Legion offers a long but not exhaustive list of reasons why claims might not be made within six years, including: concern over impact on a career; progressive conditions such as hearing loss; conditions where attributability may not be established or realised until much later; lack of knowledge of the ability to make a claim, especially in the case of bereaved families who may not see the MoD as a liable employer; changing external knowledge in cases where new evidence comes to light on the health impact of historic MoD decision-making; and, possibly, ingrained help-seeking stigma in the Armed Forces community. These would all suggest that, rather than being of assistance to forces personnel, such a limit will precisely deter claims against the Ministry of Defence or diminish the possibility of their success.

Part 1 of the Bill is equally flawed. Its intention is ostensibly, as we have heard, to reduce and therefore protect the armed services from investigation and reinvestigation of historical events. However, the Bill does not address, as the briefing from Justice explains, the measures that could be taken to ensure that allegations are properly investigated and resolved within a reasonable period of time. Investigations should of course always be prompt and thorough. The presumption against prosecution after five years would breach obligations under Articles 2 and 3 of the ECHR to conduct an effective investigation into unlawful killings and torture.

There is much to be said about the proposed triple lock, which would ensure that prosecution after five years could happen but would be exceptional. I leave it to the lawyers in your Lordships' House to discuss the role in the triple lock of the Attorney-General, and whether a presumption against prosecution offends against the articles of the Rome statute of the International Criminal Court. However, it must be the case that, if this Bill once again calls into question adherence to the rule of law, it puts us all on a perilous path.

Sally Yates, US Deputy Attorney-General, appointed by President Obama in 2015, famously quoted Martin Luther King Jnr saying that

"the arc of the moral universe is long, but it bends toward justice".

But she added a flourish of her own when she said that it does not get there on its own. I am sure that she had in mind that the international rule of law needs to be securely in place and observed to assist in this, as I am sure the Minister agrees.

5.11 pm

Lord Woolf (CB) [V]: My Lords, it is with satisfaction that I follow the last speaker, because I have very little to say about this Bill, other than that it is clearly in need of drastic treatment.

The Bill has two sides, one in relation to the criminal law and the other in relation to the civil law. With regard to the civil law, the obvious course to take is for a consultation to take place with the Lord Chief Justice on the handling of civil claims, with a degree of expertise being built up in the judiciary to ensure that the claims are properly handled. This could be readily done, and it would not involve the departure that Part 2 of the Bill involves, with inconsistencies that are impossible to justify.

So the Bill must go on now—we owe no less to our gallant forces, who have been affected by—[*Inaudible*]—investigated.

5.13 pm

The Earl of Shrewsbury (Con) [V]: My Lords, I declare an interest as a former honorary colonel of A Squadron, RMLY, the Staffordshire Yeomanry. I pay tribute to our Armed Forces who, in often appalling circumstances, keep us protected. Our debt to them is substantial.

We should take great note of the words of the noble and gallant Lord, Lord Stirrup, the noble Lord, Lord West, and my noble friend Lord Robathan, and the many former military noble Lords taking part in this debate. They are the vastly experienced voices of sense and wisdom, and we ignore their words at our peril.

I shall take up very little of your Lordships' time in giving a welcome to the Bill, which of course, among a number of other matters, delivers my party's manifesto commitment to tackle the disgraceful issue of vexatious claims. Noble Lords will doubtless recall the scandalous behaviour of Phil Shiner and Public Interest Lawyers. I and many others are delighted not only that they received their just comeuppance but that Her Majesty's Government sought to tackle this issue full-on by the publication of this Bill. It is not before time, and I shall give it my support.

As have most noble Lords, I have received communications from a number of bodies, mainly objecting to, or questioning the contents of, Part 2 of the Bill. I have taken considerable notice of the comments made by the Royal British Legion, an excellent organisation for which I have the highest regard. It does a fantastic job and I support it whenever I am able to. I am less sympathetic to many of the others who have sent lobbying notes that I have received. I understand exactly where the Legion is coming from, and I am certain that your Lordships will scrutinise the arguments it promotes during the passage of the Bill. This is what this House exists for: scrutiny and improvement. It has to be said, however, that the Bill had a clear journey through the other place. We shall have to see what happens in this House. There would appear to be a need for a variety of amendments, and the Government would be very wise to listen carefully and to exercise an amount of flexibility when the time comes. But in conclusion, I wish the Bill well and I shall support it.

5.15 pm

Lord Walney (Non-Afl): My Lords, it is a pleasure to follow the noble Earl and, by coincidence, to almost mirror his opening in saying that it is a privilege to listen to the weight of expertise and experience in your Lordships' House on this profoundly important matter.

We have heard from three former Chiefs of the Defence Staff, the noble and gallant Lords, Lord Stirrup, Lord Houghton and Lord Boyce; a former Chief of the General Staff, the noble Lord, Lord Dannatt; a former First Sea Lord, my noble friend Lord West; and a former Secretary-General of NATO, my noble friend Lord Robertson. All of them have raised serious questions over the constitution of this Bill as it currently stands, and I hope that that alone will prompt Ministers to pause, reflect and reconsider before we enter Committee.

I will focus my brief remarks on consideration of the potential impact of these measures on Britain's wider national security and place in the world. In other settings, a number of noble Lords who have contributed today have set out the view that the chief threat to the United Kingdom in decades hence will come from hostile powers seeking to loosen and subvert the rules-based order that binds the international community together; to sow disharmony and despair among those who built up the multilateral system after the Second World War; and to build a new world order governed not by the consent of member states but by naked authoritarian power and fear, in which honour and the global rule of law is swept aside as a naive irrelevance.

There is a clear need for legislation, as has been compellingly set out again today, and the Government should be commended for maintaining their commitment to bring forward a Bill and get something on to the statute book. Yet this is not a case of simply choosing between practical measures to protect our troops and an academic debate over the strategic drivers of geopolitics. Those in our Armed Forces who deserve increased protection are of course the same men and women who will be placed in harm's way in any future conflict.

The laws governing such conflict are but one part of the rules-based framework over which there is an ongoing struggle, but they are not an insignificant part, so we should be aware of the potential for significant change, as several of these measures would currently constitute, and the way in which this could influence what may be a fragile balance of power between ourselves and our adversaries in the years ahead. We should proceed only if we can be confident that what we propose will not produce a damaging ripple effect, weakening vital global safeguards such as the Geneva conventions, which have been mentioned a number of times today, and indeed the threat of opening up the United Kingdom to the International Criminal Court.

Professor Michael Clarke, formerly of RUSI, who was mentioned by a recent speaker, put it well recently when he warned that, if we overstep the mark with this Bill, malign actors may gleefully seize on the precedent that we set, dragging our reputation down as part of a tactic to avoid international sanctions and condemnation for significantly worse and more damaging measures. The way that the United Kingdom projects itself matters greatly. We should not disavow or diminish the impact of our determination to uphold vital international norms on the battlefield and beyond.

So let us test the arguments thoroughly in Committee to ensure that the final Bill presented to Her Majesty is one in which we can all genuinely take pride.

5.20 pm

Lord Dubs (Lab) [V]: My Lords, I am a member of the Joint Committee on Human Rights, which recently produced a report on the Bill and the whole issue. I hope this will be helpful later, in Committee and on Report. I acknowledge that many Members of this House who have spoken have enormous senior military or ministerial experience in defence. I cannot claim to emulate that, but I will mention one thing. A few years ago, I was invited by the MoD to join a delegation to visit Afghanistan; we went to Camp Bastion and Kandahar. Although I spent only a few days there, it was a totally revealing, fascinating and helpful experience. I came away with an even greater respect for our Armed Forces than I had at the outset. They dealt with very adverse conditions; their morale, friendship and positive attitudes were pretty good. At that time, there were some concerns about the quality of the Army's equipment, and I asked them about that. Very loyally, they would not bite and did not want to comment at all about whether their equipment was up to standard. My respect for the Armed Forces was enhanced enormously, and they deserve a bit better than this Bill.

I will look at two considerations in particular. First, what does the Bill do for the reputation of the Armed Forces? Not all that much. Secondly, what does it do for our international reputation? The international reputation of this country is at stake and I fear that, as drafted, the Bill will lead to damage to how we are seen abroad. The House has already heard many mentions of the possible problem of members of the Armed Forces being brought before the International Criminal Court. The Bill makes that much more likely.

The JCHR learnt that MoD investigations were frequently prolonged and that there were repeat investigations. This is quite unacceptable, because there was no sense of finality for the soldiers charged; it put them in an impossible position. It was generally agreed that MoD investigations had not been adequate. This is not addressed in the Bill, but I understand that the Government have agreed to look at it. This is really urgent because it is disgraceful that our Armed Forces have to put up with this type of threat when it is simply the inefficiency of the investigation system that is putting them in this difficulty.

I do not like the five-year period for presumption against prosecution. If the MoD Service Prosecuting Authority is satisfied by the evidence, why is there a need for a further limit? Surely what is in the public interest must be the test, not an arbitrary time limit. Initially, this was going to be 10 years, but the Government reduced it to five. I wonder why.

My most fierce anxiety, which has been reflected in many of this afternoon's speeches, is that the presumption against prosecution does not exempt torture, war crimes, crimes against humanity and genocide. The presumption must surely be amended so that it does not apply to

these. This is the most disgraceful part of the Bill and, judging by the debate so far, it is reasonable to predict that this House will reject it. Let us hope that it does, because it is a slur on this country, and the Armed Forces, that we have to protect them in this way when the likelihood of any of them being subject to this provision is very small, and that is my concern.

The JCHR report says that

"the introduction of a presumption against prosecution may mean that members of the British Armed Forces are at risk of being prosecuted either in another State or before the International Criminal Court. This is a real risk if it is considered that this presumption (combined with the existing concerns about the inadequacy of MoD investigations) leads other States or the ICC to conclude that the UK is unwilling or unable to investigate and prosecute for war crimes."

We have heard quite a lot about the need for powers to strike out vexatious claims. They are utterly reprehensible but, fortunately, very rare. In any case, the MoD Service Prosecuting Authority has the power to strike down such claims, as I am sure it has done and will always do.

Finally, I appreciate what my noble friend Lord Hain said about Northern Ireland. We will have some tough debates about it in the future. He certainly set down some clear indications of how many of us will wish to debate that issue.

5.25 pm

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, it is a pleasure to follow the noble Lord, Lord Dubs, who served along with us in Northern Ireland as a Northern Ireland Minister. I have some deep concerns about the provisions in the Bill, as I believe they would act contrary to human rights conventions and put a time limit on justice by decriminalising torture after five years. The Joint Committee on Human Rights, of which he is a member, has pointed to the various failures in the Bill, with its lack of proper regard for well-known human rights conventions. Other commentators have stated that the new Bill plans to ignore conventions in protecting military personnel and civilians in overseas operations. The Bill seems more about protecting the Ministry of Defence than veterans or civilians.

In fact, the Law Society of England and Wales has been critical of the Bill; it believes it goes beyond the Government's stated aim of reducing spurious claims against service personnel and victims. The Equality and Human Rights Commission has stated that the "presumption against prosecutions" in Part 1 is

"akin to a statute of limitations".

I note what the Minister has said—that that is not the intention—but the commission has said that Part 1 will clearly be

"seen as incompatible with the international human rights framework and customary international law."

The Joint Committee on Human Rights published its report on the Bill on 29 October, following the end of Committee in the House of Commons. It criticised the Bill and argued that several changes needed to be made, saying that there was

"little to no evidence that … cases with no case to answer"

were being allowed to proceed in the courts. It said that the statutory presumptions against prosecution in the Bill were unjustified, and that it was concerned that the Bill could breach the UK's obligations under international humanitarian law, international human rights law and international criminal law. The report included a recommendation that Clauses 1 to 7 should be removed from the Bill. The Joint Committee also criticised the introduction of a time limit to human rights and civil litigation, arguing that this risked breaching the UK's human rights obligations and preventing access to justice, and that the more important problem was of long-running and flawed investigations. It said that the MoD needed to improve the way investigations were conducted.

The noble Lord, Lord Hain, like other noble Lords, has already referred to the situation in Northern Ireland. I note that the Bill does not refer to Northern Ireland but there are serious issues there. On 18 March 2020, when the Bill was published, the Secretary of State for Northern Ireland published in tandem a letter about the way that issues to do with veterans and legacy there would be dealt with. Can the Minister update us on that? Like the noble Lord, I believe that the only way to deal with legacy issues in Northern Ireland is to go to back to the Stormont House agreement to deal with them in that methodical, fair and equitable way—and where no organisation, whether the Armed Forces or the paramilitaries, republican or loyalist, gets any amnesty for any wrongdoing that may have taken place which resulted in untold misery right across our community.

I look forward to Committee, but there is one important premise: time limits should not be placed on accountability and justice. I hope that the Minister will make that the hallmark of this legislation and seek to redress the problems of the Bill with further amendments.

5.30 pm

Lord Craig of Radley (CB) [V]: My Lords, I shall concentrate on Clause 12. The international court will accept that it is primarily a matter for the state requiring derogation to judge the imminence and severity of the threat faced. But the court is not going to give a free pass. Has the state gone beyond what is strictly required by the exigencies of the situation? The danger must be actual, clear, present and imminent. Derogation will not be allowed because of a mere apprehension of potential danger.

The link between a public emergency threatening the life of the nation and an overseas operation must be established. To quote Lord Bingham:

"It is hard to think that these conditions"—

of Article 15—

"could ever be met when a state had chosen to conduct an overseas peacekeeping operation, however dangerous the conditions, from which it could withdraw."

Put simply, there is no guarantee that the Secretary of State will gain derogation for an overseas operation. A prior hurdle for the Secretary of State would almost certainly be that parliamentary approval, possibly even beforehand, must be gained.

There are further historical issues. When the Human Rights Act 1998 was being debated, and I first raised concerns about the legal conflicts between it and the Armed Forces Acts, the Lord Chancellor for the Government argued that it would always be possible

[Lord Craig of Radley]
to derogate and clear the high bar required. But since then the Act's reach, both territorially and temporarily, has been extended by judgments in the European court and our own Supreme Court.

There is a further problem. Much of the UK's resistance to these enlarging findings was based on the submission that the HRA applied territorially only to the UK. Were the Secretary of State to seek derogation in support of an overseas operation, this would mean the UK's acceptance of increased territorial reach, and so would be inconsistent with our previous, strongly argued position.

So my conclusion is that Clause 12 is flawed. I agree with the noble and learned Lord, Lord Hope of Craighead, that it is no more than window dressing and it would be more honest to delete it. The Secretary of State does not need a statutory diktat to consider derogation. The possibility was accepted way back when the Human Rights Act became law.

When the forthcoming human rights legislation review takes place, it should consider how to resolve its incompatibilities with the Armed Forces Act. The most critical concern should be how to protect a commander in the heat of battle from having to weigh up the concerns of human rights legislation with the command and direction of armed conflict when the pressure of events leaves little or no time to consider anything more than the successful execution of a military action. The boundaries of combat immunity should be clear before conflict, not established seriatim years later in a court of law. I regret that this even more worrying aspect of the interaction between the convention and armed conflict has not been addressed fully in the Bill.

I have one final thought. Legislation of critical importance to the activities of our armed forces should be consolidated into the Armed Forces Act. Having a single source of legislation critically important to the Armed Forces would help those in the forces and their legal authorities and would avoid inconsistencies in the separate legislation. This Bill does that for the Human Rights Act and the Limitation Act: why not, where relevant, for the Armed Forces Act? The quinquennial reviews would then ensure that these difficult issues were regularly considered.

5.35 pm

Lord Kirkhope of Harrogate (Con) [V]: My Lords, I first declare my interest as a practising solicitor and as the president of the West Yorkshire branch of the Soldiers', Sailors' and Airmen's Families Association. No one could or has claimed that the issues bringing about this legislation are straightforward. One only has to look at the way it has progressed through the other place to recognise that there are many complexities, and the emotions which have been shown are a further indication of how much is at stake.

I support this Bill. It is a clear and timely attempt to find a way through. It acknowledges the vital and valued role of our Armed Forces in carrying out their duties to protect us and our values all over the world. It also acknowledges that being engaged on military operations is not like any other occupation. Fighting battles is both dangerous and testing. All those who do so need our support and gratitude. Sometimes the pressures of conflict inevitably result in behaviour which is outside the norms of civilian conduct, and when that results in unauthorised actions and other adverse results, it is perfectly proper to investigate it in a way that is appropriate and controlled, and to prosecute if necessary.

The international community has recognised the special features of conflict over the years. The Geneva convention, which has been referred to by many speakers, dates from 1929. It laid down requirements, especially for wartime prisoner treatment, and established the basis for the protection of civilians in a war zone. It was ratified by 196 countries and remains in effect. International humanitarian law is based on a series of accepted treaties which appreciate the legitimate use of force and is the basis for military operations. Abuse of those provisions can ultimately be brought to the international criminal tribunals.

Within the armed services there are clear codes of discipline and punishment and I would suggest, despite some noble Lords suggesting otherwise, that our country leads the world in maintaining those codes. I would submit that, with modifications, these should remain as the first base for our military engagements and would normally offer the right balance between our ability to take action and the need to avoid unnecessary suffering or abuse.

However, as other speakers have said, the complications afforded by the European Convention on Human Rights and the Human Rights Act 1998 are now matters which have had direct implications for this area. The two codes simply do not mix. Some noble Lords are, in my view, trying to confuse even further by trying to mix them. This has unfortunately resulted not only in confusion but, in some cases, great unfairness. The emergence of the so-called shocking "lawfare", with bad and egregious lawyers trying to apply strict human rights law to conflict situations, has produced results which I do not believe are acceptable. Even the European Court of Human Rights, in the 2014 case of Hassan, accepted that any application of the convention should be respectful of the wider and more understood international humanitarian law.

Because no previous Government have effectively tackled these contradictions, large numbers of vexatious claims have been encouraged, which sadly have eclipsed some genuine and disturbing cases but which—based on the wrongful use of domestic legislation—have left service men and women in unfair jeopardy. The proposals in this Bill are rather modest, but necessary. Unfortunately, they cannot be retrospective, and I hope the Government will consider making amendment to ease the terrible burdens lying on the shoulders of some veterans.

I know some noble Lords are unhappy about the possibility of any derogation from the European Convention on Human Rights. I am, in general, a supporter of the convention and would certainly not wish us to abandon it or emasculate domestic application. However, I do not think that a specific derogation when we are engaged in conflict will be anything other than the proper course, and any derogation is a permissible step under Article 15, which refers to being

"in time of war or other public emergency threatening the life of the nation."

Ultimately, anything we can do to clarify the responsibilities of our Armed Forces when engaged in warfare must be helpful. We owe it to those who risk their lives to protect us to offer them understanding and full support.

5.40 pm

Lord Hendy (Lab) [V]: My Lords, I share, without repeating them, the concerns expressed by so many noble Lords over Part 1 of the Bill and the proposal in Clause 12 to consider derogation from the European convention. I wish to focus my few minutes on Part 2, on civil claims. As a barrister, I resent and refute the denigration of members of that honourable profession uttered by some noble Lords today, but I will not indulge myself by developing that further.

Some years ago, I was instructed in a matter that was very different from my usual diet of industrial relations cases. Mrs Smith, as I will call her to protect her anonymity, was a dignified lady who lost her son in the Iraq war of 2003. He was a tank commander, killed with a fellow crew member when his tank was hit by two high-explosive shells.

The facts emerged over time. First, she learned that the shells were fired by a British tank in an adjacent battle group. She felt not the slightest urge to sue the commander of that tank—friendly-fire accidents are all too frequent—but over the years more relevant material emerged. There was an inquest. Reports from various prolonged official inquiries by the MoD and the military police were obtained. Documents slowly came to light. A military expert was instructed on behalf of the bereaved.

Eventually it became clear that there had been serious failings on the part of the Ministry of Defence. Modern sophisticated combat identification equipment, urged on the MoD long before 2003 by the National Audit Office and a Commons Select Committee, had not been fitted. Up-to-date identification training courses had not been provided to either of the tank commanders. There were other errors too, involving the demarcation of arcs of fire and so on. Nearly 15 years after her son's death, without any suggestion of any delay on her part or indeed that of her lawyers, the case was finally settled with the payment of a significant sum to her by the MoD—as usual, without an admission of liability.

My point is that it takes a very long time in such complex cases, where an individual is up against a well-resourced bureaucracy such as the MoD, for that person, having dealt with her own grief and change of circumstances, to appreciate that there might be a claim to be brought; to find someone to act for her; to make inquiries; to obtain documents; to seek the evidence of witnesses and experts; and then to evaluate the prospects of success and decide whether to bring a case and face the possible ordeal of going to court.

There is already a statute of limitation; no more is needed. My concern with Part 2 of the Bill is that the absolute six-year time limit will deny many—not all but certainly some—of our Mrs Smiths access to justice. Let us be clear: shutting the door of the court to our Mrs Smiths is a denial of justice to their sons and daughters who served this country. Who benefits from such a bar? Certainly not serving men and women or their families. This part of the Bill is plainly intended to protect the MoD against genuine and meritorious claims. I do not see how it is supportable, and I ask the Minister how she justifies people like Mrs Smith being barred from the doors of the court if their claim takes more than six years to formulate.

I say that especially given that the Government have announced that they will not proceed with plans to introduce a new combat compensation scheme for Armed Forces personnel and veterans, pursuant to the Better Combat Compensation consultation. Part 2 is neither necessary nor acceptable.

5.44 pm

Baroness Bennett of Manor Castle (GP) [V]: My Lords, it is a great pleasure to speak after the noble Lord, Lord Hendy, whose powerful account the Government would do well to listen to.

In introducing this debate, the Minister referred, with apparent disapproval, to the increasing judicialisation of war. That surprised me. Over a significant period, this party in government has shown strong international leadership against rape as a weapon of war. I hope that the Minister's words do not signal a move away from that; perhaps she can reassure me on that point.

My noble friend Lady Jones of Moulsecoomb, who has considerable experience and expertise in the oversight of criminal investigation and policing, focused on the detail of the Bill, so I will focus more on what it could do, if passed, to our international position and standing. I say "if passed" because, while other noble Lords have talked about seeking to improve it, it has become clear that the Bill is profoundly ill conceived. Many respected human rights organisations are calling for it to be stopped, as the noble Baroness, Lady Northover, noted.

It is worth thinking for a second about the international context in which this Bill appears before us. What does the UK look like to the rest of the world? From today, Boris Johnson is vying with Jair Bolsonaro as the most prominent remaining global leader of Trumpism, and is demonstrating that with his plan to reverse election promises on international aid. We also have the continuing chaos of Brexit and the tragically world-leading disaster that is our Covid-19 death rate. In summary, the UK is not starting from a great place in the international arena—a point made powerfully by the Prime Minister's predecessor on the front page of today's *Daily Mail*.

This Bill is clearly in line with the Trumpisation, tabloidisation, coarsening and simplification of our national dialogue—reduced down to slogans and knee-jerk reactions—that has marked the past few years, as the noble Baroness, Lady Chakrabarti, noted. We have been in line with developments in other parts of the world but, if we continue down this path, we will look increasingly isolated. The threat to our reputation was noted even by a supporter of the Bill—the noble Lord, Lord Lancaster of Kimbolton—as well as by the noble Baroness, Lady Blower, who highlighted the risk it presents in encouraging other human rights abuses around the world.

The Bill does not square with some of the other directions that the Government are taking on human rights—notably their stance on China, where they are showing tentative signs of stepping up over the genocide against the Uighurs. I am confident that your Lordships'

[Baroness Bennett of Manor Castle]
House will try to assist the Government with that in the Trade Bill, speaking out as a signatory to the Joint Declaration on Hong Kong over China's breaking of that international treaty. I declare my position on the All-Party Parliamentary Group on Hong Kong.

It is almost as though we have two different Governments tugging in opposite directions. It is a great pity that the Integrated Review of Security, Defence, Development and Foreign Policy has been delayed by the Covid-19 pandemic. It will surely look at these issues and whether it is, as I strongly suggest it is, in the interests of our national security and the stability of the global order on which we depend for us to line up with nations that are seen as global leaders on human rights, sustainability and poverty alleviation. This includes nations such as New Zealand, Norway and Costa Rica, whose diplomacy would be greatly boosted by the presence of the UK among the ranks of those who understand that co-operation, not competition; peace, not war; aid, not weapons; healthcare, not corruption; and stability, not runaway climate change, are the way forward to a genuinely secure world.

However, this Bill points absolutely in the opposite direction. The highly regarded Nation Brands Index already has us ranked relatively low for governance. The Bill would surely be a huge blow in that regard. To quote no less a body than the Equality and Human Rights Commission, the Bill runs the risk of

"harming the UK's reputation as a global leader on human rights, and weakening our compliance with universal standards".

So, we are at a crunch point. There is a real risk that, even if the integrated review comes up with a truly transformative visionary plan for the UK to become a leading force for peace and democracy—living within the planetary limits—we have already damaged so badly the world's view of us with this Bill, the CHIS Bill and the Trade Bill that such a plan is not possible.

Finally, the Minister talked in her introduction about reflecting the governing party's commitment to armed forces personnel and veterans. How much more that might reflect reality if it were a move to provide better wages and conditions—particularly better housing and mental health services—and to ensure that they are not put into deadly situations without better planning and equipment, as the noble Baroness, Lady Chakrabarti, noted, rather than to take away their rights, as the noble Lords, Lord Touhig and Lord Hendy, pointed out.

5.50 pm

Baroness Deech (CB) [V]: My Lords, this is a difficult subject: a complex Bill, which, despite its detractors, is not as bad from the perspective of human rights as it looks on first reading. Members of the Armed Forces should not be hounded for the rest of their lives, having acted to protect us in, and from, circumstances that most of us could never imagine, so I hesitate to pontificate on their actions.

However, there is a feeling of unfairness, given the perception that so many terrorists escape justice. Also, one's instincts are that there should not be a statute of limitations for war crimes—I would be the first to say that Nazi criminals should be pursued and prosecuted for the rest of their lives—so it is worth considering whether to exclude all war crimes from the five-year regime.

The Bill will not prevent prosecution of serious allegations of torture which are supported by evidence, but filters prosecutions that take place after the lapse of five years. During those five years, all the usual rules for prosecutions apply, with no holds barred, and there is no guarantee of immunity from prosecution after five years. A judgment that it should happen might still be made if it is in the public interest and the evidence is sufficient, as well as other pertinent considerations. A similar limitation is present in Part 2, which imposes a six-year time limit on claims by service personnel injured through negligence during overseas operations. It might be better, in the alternative, to set up a scheme of no-fault compensation rather than putting the injured and their families through the court system.

The Bill emphasises the possibility of derogation from the European Convention on Human Rights in relation to overseas operations. That derogation should only ever be exceptional and should certainly not be normalised. It must be remembered that derogation can be challenged in our courts and in the Court of Human Rights. There are other situations in the law where the consent of the Attorney-General is required before prosecution; this is therefore not exceptional.

The important standard in all these discussions should be the law of the International Criminal Court. I posit that it should be avoided at all costs and that decisions and operations in scope of this Bill should be carried out in the shadow of the law—namely, the International Criminal Court's jurisdiction. None of the largest states with the largest armed forces is party to the treaty of Rome which established the court—China, India, Russia and the US—with the honourable exception of this country, though the Government have rightly indicated that the court needs reform. The court was set up for war crimes, crimes against humanity and genocide. One has but to mention genocide to see how ineffective the court's jurisdiction has been: too slow, too late, too retrospective and, some say, too Africa-focused.

However, once indicted, an individual's reputation is gone for ever, even if subsequently cleared. The ICC has recently examined alleged crimes committed by UK nationals in the context of the Iraq conflict and occupation from 2003 to 2008, including murder and torture. After some six years of consideration, the court prosecutor said in December that, although it was reasonable to believe that crimes had been committed and command failures had occurred, the UK was genuinely willing to investigate them and to prosecute.

What should drive decisions to prosecute or not prosecute under this Bill is the standard laid down by the ICC—thoroughness and genuineness. Arguably, military investigations into incidents have been inadequate, insufficiently resourced, insufficiently independent and not done in a timely manner. Nevertheless, what the Bill should control are repeated investigations; it would be wise to restore the view of Lord Bingham, whose name is synonymous with the rule of law, that the Human Rights Act should not have extraterritorial application. Quality of decision-making rather than length of time should be the goal. I suggest that the Bill, once passed, should not start in operation until the investigation scheme has been reformed.

5.54 pm

Lord Naseby (Con) [V]: My Lords, I am a former—[*Inaudible*]—RAF pilot who nearly saw service and action at Suez. My son was in the front line in the retaking of Kuwait.

This is an important Bill, not just because it was in the manifesto of the Conservative Party but because its progress will be watched overseas, particularly by the Commonwealth and our fellow members of NATO. It is a sad reflection on modern society that the Bill is needed at all. I reflect on the end of the Second World War, when there was a huge effort to make peace work. The vehicle conceived was the Geneva Convention of 1949 and subsequent additional conventions attached to it. It was a convention that sought to ensure a proper legal framework if war should break out again—the relevant law for armed conflict.

I shall quote the late Sir Desmond de Silva, a former UN-sponsored chief prosecutor for a war crimes tribunal. He said that the European Convention on Human Rights, on which the British Human Rights Act is based, was wholly inappropriate for application in combat and battlefield conditions. The law that should operate in such circumstances is the law of armed conflict, otherwise known as international humanitarian law. This greatly respected man, who is no longer with us, went on to say that

"I am quite satisfied that accountability in war is best dealt with by applying law that is specifically designed for war conditions."

There we have it.

At the same time, society has been changing. Issues of human rights have been expanding. The European Convention on Human Rights and its territorial applicability grows ever wider. Organisations such as Amnesty International, Freedom from Torture and dozens of others have sprung up—all of them very different from the International Committee of the Red Cross, which we all respect. As those organisations expanded, so did the media. Untrammelled, instant responses with no independent verification were taken to extraordinary lengths by some of our TV companies, such as Channel 4 and its fake films and propaganda in "Sri Lanka's Killing Fields". There are other examples affecting Syria and Iraq.

The House knows that the broad thrust of the Bill is there to establish new restrictions on bringing procedures against current and past UK Armed Forces on overseas assignments. I, for one, absolutely support the Bill.

Let me give an example of a challenge in another country. As Members of the upper House, noble Lords will be well aware that I have been deeply involved, in detail, with Sri Lanka. That country had a 30-year insurrection from the Tamil Tigers, a proscribed organisation that killed off all the moderate Tamils. That war came to fruition, starting on 1 January 2009 and finishing on 18 May. I made a Freedom of Information Act inquiry because I was told by the UN that there were 40,000 casualties. I asked the Foreign Office about Colonel Gash's independent dispatches, which took two years to obtain. They made it clear that no war crimes were carried out in Sri Lanka in that war. Therefore, my request is that maybe we also need to use the Freedom of Information Act to ensure that our Foreign Office releases dispatches from our observers who watch war anywhere around the world.

6 pm

Lord Judd (Lab) [V]: My Lords, consider the worldwide message, not least for the people of—those subject to the Governments of—Russia, China, Myanmar, Uganda and any other places suffering under manipulative oppressive regimes, that we are even considering this legislation, with all its inherent questioning of what has been the aspiration of the international rule of law. At this time of so much ruthlessness and turmoil in the world, we should, by contrast, be seen to strengthen, not diminish, the ideals that inspired Eleanor Roosevelt and her fellow pioneers in their tireless efforts, in the aftermath of World War II, to enshrine the Universal Declaration of Human Rights as the indispensable cornerstone of peace, stability and social well-being across the world.

We can be proud of the key part consistently played by the UK and its legal profession in carrying this cause forward. This is no time to weaken, especially just as Joe Biden and Kamala Harris take the helm in Washington: they need and deserve our unwavering commitment to human rights. Here, again, I quote the words of Lord Guthrie, former colonel commandant of the Special Air Service and former Chief of the Defence Staff:

"Torture is illegal. It is a crime in both peace and war that no exceptional circumstances can permit ... There can be no exceptions to our laws, and no attempts to bend them. Those who break them should be judged in court."

Is this Bill evidence-based? Just what is the specific evidence to begin to justify it? Why is there no recognition of all the provisions that exist to meet its supposed concerns—not least in the European Convention on Human Rights itself? The international rule of law is not an end in itself; it embodies the values of civilised consensus, which, recognising the demands of our highly interdependent world, gives it a moral authority that we disrespect at our peril and to our shame. The responsibility for sustaining our commitment must never be allowed to fall solely on those on the front line of conflict, with all its barbaric and cruel provocation; it has to be a culture of responsibility that runs throughout society as a whole, not least in government and the leadership within the armed and security services at all levels.

It is essential to spell out why the provisions of international law, and the provisions it encompasses, are so essential. It is also essential to spell out why we must therefore be second to none in our commitment to them, why any weakening in our resolve plays into the hands of the very people who seek to destroy our society, and why, in effect, this is treasonable. Time limits have no place whatever in this. Adherence to timeless justice must obviously apply to our own personnel, seeking compensation for mental or physical harm during active service.

The Bill is unworthy of the United Kingdom and its people. It endangers a historical recognition of what so many have loyally contributed to the defence of civilisation. It undermines the many service men and women who strive to uphold the values by which we should be judged. Essentially, we must never forget that we are engaged in a historic battle for hearts and minds. As President Biden said today, "Democracy has prevailed"; he also called for hope, not fear, to be the lodestar. We are challenged; let us rise to that challenge.

6.05 pm

Lord Brown of Eaton-under-Heywood (CB) [V]: My Lords, I believe the Bill has its heart in the right place, and much of it I support, particularly Part 1. However, occasionally it loses its bearings and it is certainly open to misunderstanding.

I start with two brief matters. First is a declaration of interest, although really it is a proud boast: over 60 years ago, as a national serviceman, I was on active—but happily not too active—service abroad. Secondly, in preparing for today, I have been helped by the Policy Exchange paper by Professor Ekins and the former Attorney-General for Northern Ireland, John Larkin, Queen's Counsel.

Some appear to regard Part 1 as giving immunity or impunity to our forces after five years. In truth, it does no such thing. That point has been made several times but cannot be overemphasised. What it is designed to achieve is the clear recognition by those responsible for deciding, as the years pass, whether it is in the public interest to prosecute that, generally speaking, the more time that has passed, the less likely it is that prosecution will be appropriate. This is so for obvious good reasons. First, the longer that has passed, the less likely it is that prosecution will produce a true and fair outcome. Recollections fade, witnesses disappear, and the singular challenges faced in battlefield conflict come to be overlooked. Second is the important principle of finality, which becomes particularly compelling when the question arises after earlier investigations—often, as we have heard, a whole series of these—and especially when the person has been told that he is not to be prosecuted. Our brave forces, as the right reverend Prelate said, should not be hung out to dry.

But the five-year provision is subject always to exceptions, and the Bill expressly provides for some in the case of sexual offences: they are excluded from the Bill by Schedule 1. The noble Lord, Lord King, wondered why, and I suggest it is for good reason. First, such offences often do take longer to come to light, and they are altogether less likely to arise in the context of battlefield conflict. Secondly, late prosecutions may well be appropriate where, despite previous investigations, "compelling new evidence" comes to light. This is a concept well known to the law in particular; it allows, as an exception to the double jeopardy rule, the possibility of a second prosecution even where the accused has already been acquitted by a jury.

I acknowledge that late prosecution may well also be appropriate, and this is not currently dealt with in the case of allegations of torture. But even then, the passage of time may well be of relevance, as the whole series of post-Iraqi judicial inquiries established. The noble Baroness, Lady Buscombe, referred to one of these. It is all too possible to fabricate these claims and for false allegations of this sort to be made.

In short, therefore, there is no impunity—if public interest remains in prosecution, the Bill does not preclude it. What it does, importantly, is to dictate the basic policy to be followed: to highlight the particular considerations which the prosecution should have in mind when deciding not only if there is sufficient evidence but whether it is in the public interest to prosecute. Of course, that explains the requirement in Clause 5 for the consent of the Attorney-General in England and a law officer in Northern Ireland. Indeed, one may suggest that provision should be made for a law officer in Scotland too and, perhaps, for law officers' consent before the five years are even up.

I turn very briefly to Part 2 of the Bill, which is much more problematic. I recognise that there are difficulties arising from the 4/3 majority decision of the Supreme Court in Smith in 2013. I rather share the view of the noble Baroness, Lady Deech, that, instead of time limiting these claims, one should introduce a generous no-fault compensation scheme.

Finally, on the human rights aspect, again in common with the noble Baroness, Lady Deech, I share the doubts of the noble and learned Lord, Lord Hope, on the value of Clause 8. I would prefer to limit the extraterritorial application of the Human Rights Act itself, as Lord Bingham would have done in the Al-Skeini case in the House of Lords in 2007.

6.10 pm

Lord Astor of Hever (Con) [V]: My Lords, I join my noble friend the Minister in paying tribute to our Armed Forces and their families. I welcome the intent of the Bill and believe that it will provide greater certainty for service personnel and veterans in respect of vexatious claims concerning the prosecution of historical events that occurred in armed conflict overseas.

I am only too aware that many claims were made without foundation and have subsequently been discredited. This caused unnecessary distress through repeated investigations of members of the Armed Forces. I therefore welcome the Bill's further safeguards to address the impact of those claims. I also welcome the introduction of measures to consider the impact of the mental health of veterans involved in legal proceedings as a result of overseas operations.

This Bill polarises opinion, so it is important to bring back some objectivity in the scrutiny of this legislation. It is understandable that we can lose objectivity when discussing issues such as torture, war crimes and genocide. However, there is nothing in the Bill that prevents the prosecution of such acts, even outside the period of five years. There is nothing in the Bill that prevents the investigation of such offences, and there is nothing that suggests that those tasked with defending our country are able to act with impunity. If any criminal behaviour is alleged to have taken place, individuals can be prosecuted.

The triple lock will give service personnel and veterans greater certainty that the unique pressures placed on them during overseas operations will be taken into account when prosecution decisions are made concerning alleged historical offences. My reading of the Bill is that there is no lock to prosecutions—only three additional steps in the decision-making process for a prosecution to proceed.

The first step is an exceptionality test, to be applied by an independent prosecutor. Although I cannot say how a prosecutor should apply this test, I would guess that serious breaches of the Geneva conventions, for instance, are not the norm but would be exceptional.

The second step ensures that the context of the overseas operation is rightly considered. Yes, the prosecutor will take such factors into account, but making this a

statutory requirement sends a strong signal to our Armed Forces that their unique circumstances will be at the forefront of the decision-making process.

The final step is the consent of the Attorney-General. This consent function is not new; an AG already has responsibility for giving consent to war crimes prosecutions. These three additional steps do not amount to the state being unwilling or unable to prosecute, which means that we would continue to adhere to our international obligations and does not increase our risk of the International Criminal Court seeking to prosecute our Armed Forces personnel.

May I ask my noble friend the Minister: what do veterans think about the measures? Is there general support from our veterans? How have the proposals changed as a result of public consultation?

Finally, several noble Lords have referred to the Northern Ireland Troubles. Having served in the Army there, I look forward to seeing the legislation to address the legacy of Operation Banner being prepared by the Northern Ireland Office. When might we see this?

6.15 pm

Baroness Hoey (Non-Afl): My Lords, I welcome this Bill and look forward to the detailed scrutiny that will be given it by the many experts and ex-senior Armed Forces people who serve in your Lordships' House. I pay tribute to the Parliamentary Under-Secretary, Johnny Mercer, in the other place, who fought very hard to get this Bill right through Committee unscathed.

Of course, the Long Title excludes the Armed Forces acting within the borders of the United Kingdom, as has been mentioned by other noble Lords today—those involved in the Northern Ireland Troubles, the Operation Banner soldiers. They are not just soldiers but police and members of the security services, civil servants and even politicians. The object of some of the lawfare operations is to get Members of this House, even former Ministers, into court so that history can be rewritten and an equivalence proved between terrorists and the Army.

Operation Banner ran for three decades from 1969 and was the greatest civil conflict in Europe since 1945—that is, until the break-up of Yugoslavia. While our military casualties were never exceeded in the 70 years after the Korean War—neither in Iraq nor Afghanistan—those sacrifices are largely forgotten. The names of the 700 dead soldiers, many of them young teenagers from "red wall" seats, do not even appear on the Commonwealth War Graves Commission website. It is almost as if Governments of all persuasions are embarrassed to mention them.

The repeated promises, from the Prime Minister down, for Northern Ireland veteran equivalence in some future legacy legislation is very welcome, but it must not be delayed or watered down. They need to get on with it, and I believe that it should be separated out from all the other legacy issues in Northern Ireland. The Army and police stopped a civil war from breaking out completely in Northern Ireland, for which they get few thanks, just vexation prosecutions and unending reinvestigations—due in large part to overinterpretation of, ironically, the "right to life" in Article 2 of the European Convention on Human Rights.

They paid a colossal price in blood—some 700 murdered soldiers, including from the Ulster Defence Regiment and some 300 in the Royal Ulster Constabulary. That excludes the very many who died in accidents or suicides, or whose lives were shortened by terrible injuries. The equivalent number of police officers killed on a UK-wide basis would be 10,000. That says it all. Yet it is former RUC officers who are now being arraigned in reinvestigations, reopened inquests or pointless public inquiries, with their reputations trashed and all without the benefit of being able to respond.

I praise the many recently formed veterans groups without whose efforts and organisation this Bill would not have happened. The power of social media has, in this instance, proved invaluable. Their immediate concerns are about new prosecutions. I accept that reopening investigations of old cases will continue if sufficient credible evidence of wrongdoing is provided to justify it, but it must be a high evidential hurdle, as high as the Bill provides in relation to prosecutions, not just for political harassment.

Let us not forget that the only cases now involving veterans are ones pending in Northern Ireland, which concern events of 50 years ago or more. For that reason, we need to get on with a Northern Ireland equivalent law, especially as this Bill usefully carries permission in Clause 1 for prosecutors to consider whether or not any proceedings against a person for a relevant offence should be continued.

In conclusion, much has been made by certain civil liberties groups about Clause 12, which requires the Government, in any significant new overseas conflict, to consider derogating from the European Convention on Human Rights. This is useful, but Clause 12 does not mean more than what it says, and probably no more than what normally happens. The new duty simply requires the Government to consider derogation so the process cannot be discreetly avoided. The convention, as we know, is a living instrument, but enforcement is not necessarily a one-way street—something our representatives in Strasbourg need to bear in mind when responding to pressure from the Irish Government in cases involving so-called Article 2 compliance.

I hope that the Minister will, as she has been asked by many noble Lords today, give us a date for the Bill to repay the debt to all who served in Northern Ireland. They deserve our support and for us to value them just as much as we value those who served overseas.

6.20 pm

Baroness Kennedy of The Shaws (Lab) [V]: I start by adding my voice to the tributes that have been paid to our Armed Forces, who put themselves in harm's way to keep us safe, to uphold our values and protect our society and to do things that are so important, as they are doing now during this pandemic. I also understand completely the concerns of this House that members of the Armed Forces should be protected from unfounded allegations. The idea of a lawyer ambulance-chasing and trawling for clients to launch civil actions against our serving military is repellent; however, the idea that crimes should go unpunished, or that victims of wrongdoing or of injury should not receive justice, is also unworthy —and, of course, that affects our veterans too.

[Baroness Kennedy of The Shaws]

I support all those who have already said it: torture should be excluded from the remit of the Bill, just as rape and sexual violence have been. Veterans should not be protected from investigations into allegations of torture. Like the noble and learned Lord, Lord Hope, I cannot accept the derogation from the European Convention on Human Rights correctly having a place in the Bill. I shall not rehearse his arguments, but I agree with them entirely.

This legislation breaches international human rights law and international humanitarian law, and I shall just mention the ways in which it does that. The absolute prohibition on torture is sacrosanct; it really is. It is not something where there can be equivalence. The idea that we might be creating a statutory presumption against the prosecution of an international crime such as torture is shocking. Secondly, we have a duty in international law to investigate and prosecute crimes against international law, and this Bill undermines that commitment.

The third thing I want us to look at is that this is creating a de facto amnesty. International law prohibits amnesties for grave breaches of the Geneva conventions: for torture and other serious crimes. Yet the Bill effectively prohibits prosecutions except in exceptional circumstances. That amounts to a de facto amnesty. The other concern we should have is about justice for victims, as I mentioned. The right of victims to justice, to truth and to appropriate compensation is fundamental to the rule of law.

Finally, I will raise the business about vexatious prosecutions. There is something of a coalition of the civil and the criminal here, and I speak as a criminal lawyer. Vexatious litigants are usually linked to civil claims. I know that there are concerns about the Ministry of Defence having to make settlements which amount to a lot of money, but let us just think about the area of crime—we should not conflate the civil and the criminal. Concerns about vexatious prosecutions are totally misplaced. There are very few prosecutions, and I would like the Minister to tell us just how many there have been, for example, in the last 10 or 20 years.

I want to tell the House about a letter that was sent to the Prime Minister. It has been circulated a bit, but it is important for this House to hear it. It was sent just before Second Reading in the other place in September. The letter states:

"Dear Prime Minister, we are writing to you in connection with the Overseas Operations (Service Personnel and Veterans) Bill, due to receive its second reading on 23 September. We believe that this Bill has dangerous and harmful implications, for the reputation of the armed forces and for the safety of British troops who risk their lives in overseas operations. This Bill purports to protect soldiers. In reality, it risks making them more vulnerable. The Geneva Conventions form the cornerstone of International Humanitarian Law and exist to protect all parties. Accountability is an essential part of that. Vexatious claims are an important issue, which should be addressed. We find it disturbing, however, that the Government's approach in Part 1 of this Bill creates a presumption against prosecution of torture and other grave crimes … We believe that the effective application of existing protocols removes the risk of vexatious prosecution. To create de facto impunity for such crimes would be a damaging signal for Britain to send to the world. This Bill would be a stain on the country's reputation … We urge the Government to reconsider these ill-conceived plans."

Who wrote that letter? It was written by Field Marshal Lord Guthrie, a former Chief of the Defence Staff. It was signed also by General Sir Nicholas Parker, a former Commander-in-Chief of UK Land Forces. It was signed also by the right honourable Sir Malcolm Rifkind, Queen's Counsel, a former Foreign Secretary and Defence Secretary. It was signed also by the right honourable Dominic Grieve, QC, a former Attorney-General, and it was signed by a colleague with whom I have often worked who has been a really fine judge and was Director of Service Prosecutions, Bruce Houlder, QC. All of them are calling on us to ensure that this Bill is reconsidered or, at the very least, that we amend it to ensure that it has the confidence of the world and that we remain one of the great protectors of the rule of law.

6.26 pm

Viscount Trenchard (Con): My Lords, I am grateful to my noble friend Lady Goldie for introducing this debate today and for following through on an important manifesto commitment. More than 600 British service men and women lost their lives in the conflicts in Iraq and Afghanistan. It is essential that we protect our Armed Forces from the growing number of vexatious legal claims that undermine the ability of our Armed Forces to achieve their objectives in what may be inhospitable and dangerous territory.

Furthermore, our Armed Forces are rightly renowned as the best in the world because they are well trained and well led, but the growing incursion of human rights legislation, and in particular the European Convention on Human Rights, into the area previously reserved for international humanitarian law has undermined the effectiveness of the military chain of command. This reduces the ability of a serviceman to claim that he was acting under orders and places on him an obligation to question whether an order his superior officer has given him is legal.

Paradoxically, and in spite of what opponents of the Bill argue, the incursion of human rights law into the military arena has increased the risks and dangers facing our service men and women on the battlefield. I was particularly struck by the evidence given to the Public Bill Committee in another place by General Sir Nick Parker, in which he repeatedly stressed the need for the Armed Forces to keep accurate records to ensure that any claim can be quickly and efficiently investigated. The Bill seeks to change the rules on prosecutions but does nothing to improve the efficiency and accuracy of investigations, which would deal with the problem of repeated investigations and vexatious claims.

The noble and learned Lord, Lord Hope of Craighead, is quoted in the frontispiece to the 2013 Policy Exchange paper *The Fog of War* by Tom Tugendhat and Laura Croft as saying:

"It is of paramount importance that the work that the armed forces do in the national interest should not be impeded by having to prepare for or conduct active operations against the enemy under the threat of litigation if things should go wrong."

The noble and learned Lord did not mention this in his characteristically forensic speech earlier today, but I trust he still holds to his opinion.

Like the noble Lord, Lord Carlile of Berriew, I much look forward to the arrival in your Lordships' House of Mr Dean Godson of Policy Exchange and to his future contributions.

Hilaire Belloc is quoted as saying in *The Pacifist*, published in 1938:

"Pale Ebenezer thought it wrong to fight,
But roaring Bill (who killed him) thought it right."

My right honourable friend Theresa May had recognised in 2016 that we should derogate from the ECHR in future conflicts and said that the Government would put an end to the industry of vexatious claims that had pursued those who served in previous conflicts. Those who think that we should not derogate should acknowledge that the European judiciary looks at the law of armed conflict differently from the way in which our British judges traditionally have done. That is why the armed forces of many European countries are considered to be less reliable partners in conflict situations: their soldiers are not allowed to do anything warlike on the battlefield. As Policy Exchange suggests in its new paper, Clause 12 might usefully be strengthened by requiring the Secretary of State normally to derogate or account to Parliament as to why the Government have decided in any particular case not to derogate.

Both the five-years threshold and the exceptionality test give the impression that the Bill amounts to a statute of limitations, which it is not. Can the Minister explain why the exceptionality rule in Clause 2 is necessary given that other provisions in Part 1 specify the conditions that the prosecutor should consider? Should they not be taken into account at any time before or after five years have elapsed? Does the Minister not share my concern that the Bill may encourage the International Criminal Court wrongly to conclude that the UK is failing to discipline its own forces?

While in general I welcome the Bill and the Government's resolve to address an undoubted problem, there are many questions which your Lordships will wish to examine in Committee, not least of which is the apparent illogicality of treating sexual offences differently from torture and other war crimes.

6.31 pm

Lord Ricketts (CB) [V]: Like many speakers in this debate, I took the original objective of this legislation to be to deal with the issue of vexatious claims. As National Security Adviser, I saw at close quarters the MoD having to devote huge resources of people and money to dealing with the deluge of 3,400 civil claims that it received after the Iraq operation. In the vast majority of them, there turned out to be no case to answer. It was evident to me then that there was a real problem with vexatious civil claims against members of the Armed Forces. That still needs addressing, but, somewhere along the line, this Bill seems to have become much more concerned with criminal prosecution, where, as many noble Lords have said, there is no evidence of vexatious pursuit of military personnel.

It seems that the heart of the problem that the Bill is trying to address is the overlap between the laws of armed conflict as enshrined in the Geneva conventions and human rights law as set out in the European convention. As many noble Lords have said, the Geneva conventions were developed over more than a century, with British jurists playing a very distinguished part, to take account of the fact that war necessarily involves violence and death. They distil the experience of two world wars in a series of principles that recognise the realities of war and aim to protect as far as possible the rights of civilians and other non-belligerents. They are designed to apply in wartime. The ECHR, for all its great merits, was patently not framed to apply to the special circumstances of war. That is why it has Article 15 to provide the right to derogate in such circumstances. The difference of purpose between the two legal frameworks was well captured for me as a lay man by the comments of a British military prosecutor in evidence to the Defence Select Committee in 2014, when he said:

"The need to arrest and detain enemy combatants and insurgents in a conflict zone should not be expected to comply with peace-time standards such as those exercised by a civilian police force in Tunbridge Wells on a Saturday night."

The issue of overlapping jurisdiction was not a problem during the extended British military operations in Bosnia and Kosovo. It really only came to the fore in Iraq. Why is that? It seems that there is a crucial point here that has not received much attention in our debate: Iraq was not just a peacekeeping operation on the territory of a sovereign power; Britain became an occupying power, with British forces exercising public powers of law and order, including detention, over the civilian population. We have learned in successive military operations that custody and detention present formidable problems for military commanders. They were a cause of controversy again in Afghanistan, although the Operation Northmoor investigation showed no cases to answer by British forces.

As my noble and learned friend Lord Hope and others have underlined, Article 15 of the ECHR sets a very high bar for derogation with its reference to

"an exceptional situation of crisis or emergency that affects the whole population and constitutes a threat to the organised life of the community".

However, the House of Commons Library briefing prepared for the Bill noted that the High Court, in the Mohammed judgment of 2014, recognised that the extension of the ECHR's jurisdiction into the area of international military operations, as a result of the Strasbourg judgments, had implications for the interpretation of Article 15. The court found that Article 15 could be construed as referring to a threat to organised life in the country in which British forces were operating, not just in the UK. I realise that I am venturing on to legal territory here, but if I have understood that correctly it seems an important point. In my view, a future British Government would do well to consider derogating from Article 15 if a future overseas operation was likely to involve the UK again exercising occupying powers, although I doubt a Secretary of State would need that to be enshrined in statute to remind him to consider it.

Much more briefly, I also support the strong view of many noble Lords that this Bill needs significant amendment to prevent it having damaging unintended consequences. I hope that the Government will listen to the strength of legal and military opinion expressed in our debate that the Bill should exclude war crimes

[LORD RICKETTS]
and other crimes against humanity, including torture, as well as sexual offences from the presumption against prosecution. I hope that the Government will accept that the Bill as drafted could lead members of the UK Armed Forces to face prosecution at the International Criminal Court. That would be the very opposite of the support to our Armed Forces that the Bill is intended to provide, and it would be a disaster for the reputation of this country for upholding international law.

6.37 pm

Lord Bhatia (Non-Afl) [V]: My Lords, the conduct of parties during armed conflict has traditionally been regulated by international humanitarian law, and the law of conduct of the UK's Armed Forces has traditionally been, in armed conflict, UK domestic law. Over the past two decades, a number of rulings have expanded the territorial application of the European Convention on Human Rights. There has also been an increase in the number of legal proceedings brought against the Armed Forces and the Ministry of Defence relating to the conduct of military personnel on operations overseas.

The Government have argued that action needs to be taken to provide greater certainty for service personnel and veterans involving what are described as vexatious claims concerning the prosecution of historical events. Part 1 of the Bill establishes new restrictions to bringing proceedings against current and former members of the Armed Forces, including the presumption against prosecution after five years and the requirement to take into consideration the conditions that members of the Armed Forces are in during overseas operations. Part 2 introduces time limits on some civil claims and claims made under the Human Rights Act.

The Bill has been criticised by the Joint Committee on Human Rights, which has argued that it could undermine the UK's obligations under international humanitarian law, international human rights law and international criminal law. Several amendments to the Bill were tabled during Committee and on Report by Members of the Opposition and other parties and some Conservative MPs. MPs voted on several of them, but they were all defeated.

Our Armed Forces are considered to be very disciplined. They put their lives in front of enemies who breach international law. Our soldiers have taken split-second decisions. Therefore, the Bill should rightly have cross-party support.

6.40 pm

Lord Foulkes of Cumnock (Lab Co-op) [V]: My Lords, I thank the Minister for her usual helpful and comprehensive introduction. Like my colleagues, I have a number of concerns about the Bill, but today I want to concentrate on the power given to Ministers to derogate from the European Convention on Human Rights, which seems like an encouragement to do so. I raise this as one of the delegates from the United Kingdom Parliament to the Parliamentary Assembly of the Council of Europe, which is responsible for the convention. Unlike the noble Viscount, Lord Trenchard, I believe that universal human rights apply under all these circumstances.

This debate gives the House of Lords yet another opportunity, as we have had with so many Bills, to consider in detail the provisions of this Bill, in a way that the Commons did not. I hope we will amend and improve it before we send it back. There are good intentions behind the Bill—in particular, to protect our Armed Forces from vexatious claims—but in its current form it is not fit for purpose as it does not do what the Government claim, as others have said.

May I also take this opportunity to commend my colleagues on the Opposition Front Bench, in both the Commons and the Lords? In dealing with this Bill, they have consulted widely with all the stakeholders, including bodies representing officers and other ranks—the Royal British Legion and the Association of Personal Injury Lawyers, for example. Their aim has been to build a broad consensus. Many of these organisations have sent representations to us, and I have been particularly impressed and moved by those from the Quakers, Freedom from Torture and Survivors Speak OUT.

The Parliamentary Assembly of the Council of Europe, of which, as I said, I am one of the UK delegates, actually elects the judges to the European Court of Human Rights in one of the most impressive democratic processes. Indeed, we will be electing the judges from two countries—Greece and Switzerland—from nominees put forward by their Governments, at the hybrid meeting of the assembly next week. These judges then sit on the court, which considers cases involving breaches of the European Convention of Human Rights referred from any of the 47 member countries of the Council of Europe, including Russia, Turkey and Azerbaijan. It is significant that only Belarus is not a member—and, given its current actions, not qualified to be a member.

If we pass this Bill in its current form, our position in the parliamentary assembly will be undermined, as the Quakers say in their submission to us. The representations from Survivors Speak OUT and Freedom from Torture add:

> "The presumption against prosecution is incompatible with obligations under the ECHR."

So, if the Bill is passed in its current form, British delegates at PACE would find it much more difficult to pursue violations of human rights in other member states, as we have done with the murder of Daphne Caruana Galizia in Malta, the arrests of journalists and opposition leaders such as Alexei Navalny in Russia, corruption in Azerbaijan, and many more. This is just one of many concerns about the Bill as drafted. I hope the Minister will give us an assurance that we will be able to remedy it when we get to Committee and Report.

6.43 pm

Lord Campbell of Pittenweem (LD) [V]: My Lords, it is a pleasure to follow all who have spoken in this debate, because it has been of rare quality. Like others, I want to begin by expressing my admiration and affection for the Armed Forces and recognising the particular imposition their families are subject to when they find their loved ones are engaged in extended deployment across the world, often in harm's way.

As the debate has progressed it has become clear that the Bill enjoys considerable sympathy for its intentions, but it has little support for its substance. This is all the

more surprising since there was prior consultation in relation to it. This necessarily creates a dilemma: should the Bill be supported and energy invested in amendments, or should it be rejected?

My noble friend Baroness Northover pointed out early in the debate that, in spite of a wealth of amendments in the other place—many of them similar to the observations and criticisms made today—the Government refused to accept any of them. So, what confidence can we have that amendments made in this House on, for example, the matters of torture or war crimes would not simply be rejected again? If we accept that it is our responsibility to do our best to put this Bill into proper order, we are entitled to expect a change of heart from the Government and certainly no repeat of their apparent unwillingness to accept any amendment or notion which deviates in any way from the exact terms of the Bill.

If the Bill remains in its present form, how can we possibly accept provisions which constitute a breach of international law? This is not new territory, as the noble Lord, Lord Touhig, reminded us at the outset of the debate. He recalled, as others have done, the now enacted United Kingdom Internal Market Bill.

The noble Baroness, Lady Kennedy, made a powerful case regarding our responsibilities according to those elements of international law relevant to our consideration. Would we really be willing to consider a possible breach of the United Nations Convention against Torture? Would we really, in spite of the observations made about the creation of the Geneva conventions, be willing to consider breaching them? If any individual member of our Armed Forces found himself or herself subject to prosecution by the International Criminal Court, would we really be willing to act in a way that constitutes a breach of the Rome statute of that court?

In a very short report, no doubt under the pressure of time, your Lordships' Constitution Committee raised a number of issues. I wish to return to one raised by the Minister, who opened the debate in, as has already been pointed out, her characteristically frank and helpful fashion. The committee said:

"The House may wish to seek the reasons for including most war crimes and crimes against humanity in the presumption against prosecution."

The Minister offered some kind of explanation for that. I say to her, with all due deference, that she will have to find something rather better than what she offered today, because up to now I do not accept—and I believe I am not alone—that the Government have found sufficient justification for the way they have framed the presumption. That, in many respects, is the most damaging feature of this Bill. I hope we will have the opportunity to get the Bill into a condition which achieves the Government's intentions, even though it cannot now necessarily be read as capable of achieving these intentions at all.

6.49 pm

Lord Faulks (Non-Afl) [V]: My Lords, the reason for the Bill is clear and was foreshadowed by the Conservative Party manifesto. For some time, there has been a need to do something about vexatious claims against our Armed Forces and repeated investigations into events, often a long time ago. Noble Lords have already heard reference to Policy Exchange, which has for some time done work in this area, most recently in a paper published today about the Bill by Professor Ekins and John Larkin QC. I should declare a personal interest, having introduced a debate in your Lordships' House on the juridification of war in 2013—inspired significantly by Tom Tugendhat's paper, *The Fog of Law*. I am also a practising barrister acting for public authorities, among others, in relation to claims for negligence and under the Human Rights Act.

No one suggests that military operations should be in any way a law-free zone but the exploits of Phil Shiner and others in manufacturing claims have brought lawyers and, of much more importance, the law into disrepute. Such is the incursion of law into warfare that other countries' armed forces have perceived us as indulging in what is called legal freeloading, by which is meant not that we are reluctant to do our bit in any military enterprise. Rather, the perception is that our vulnerability to legal claims and investigations is such that it is better for others to do the heavy lifting. I find that really dispiriting, given the extraordinary reputation that our Armed Forces quite rightly have.

Part 1 of the Bill is well intentioned but capable of serious misinterpretation, as we have heard, although with great respect to the noble Lord, Lord Robertson, it does not create impunity. It creates a presumption in certain circumstances against prosecution. I also do not accept what the noble Lord, Lord Thomas, and the noble Baroness, Lady Chakrabarti, said: that a law officer deciding whether to prosecute is making a political decision. That seems directly contrary to the law officers' oath and I regret that it was said.

I am not overenthusiastic about Part 1. The optics are very far from good but I hope it provides veterans with some reassurance. Of course, the real problem is not prosecution but repeated investigation. The noble Lord, Lord Anderson, is quite right that timely and accurate investigations are what we need. Of the various suggestions made by Ekins and Larkin, I am quite attracted to the proposal that once a decision has been made not to prosecute, unless cogent new evidence has arisen—and it should be certified by a senior prosecutor—there should be finality, and our veterans should continue their lives without the fear of being disturbed.

Other areas of the Bill which need attention include the question of extraterritorial application of the Human Rights Act, as referred to by the noble and learned Lord, Lord Brown, and the noble Baroness, Lady Deech. The Strasbourg jurisprudence was wrong, I think, while Lord Bingham and others were right. I hope that Sir Peter Gross and his panel may reconsider this matter.

The changes to the limitation periods are unnecessary. The law is perfectly capable of dealing with stale claims, but I suspect that this is not some sinister conspiracy by the Ministry of Defence to avoid liability. What lies behind this part of the Bill is the protection of individual servicemen against claims, which would of course be indemnified by the Ministry of Defence. In fact, the provisions circumscribe claims by those servicemen, which I think is an unintended consequence.

[LORD FAULKS]

The Bill does not say anything about combat immunity, which was a key point in the original *Fog of Law* paper by Policy Exchange. So are judges, with the assistance of what the noble Lord, Lord Robathan, described as smug lawyers, going to have to decide the difficult question of proportionate response in military operations? That is certainly the view of some, following the decision of the Supreme Court in Smith v Ministry of Defence. We need clarity on this, as was pointed out by the noble and gallant Lord, Lord Craig, and the Bill does not provide it.

The Bill is clearly aimed in the right direction but, at the moment, I am afraid it does not quite hit the target. It is not at all an easy target to hit but we must do our very best to improve the Bill.

6.54 pm

Baroness Massey of Darwen (Lab) [V]: My Lords, like my noble friend Lord Dubs, I am a member of the Joint Committee on Human Rights, which carried out legislative scrutiny on the Bill and published its report in October last year. We interviewed many distinguished witnesses with expertise in international law and in combat situations. I am not an expert in law or in military matters, unlike many noble Lords who have contributed tonight. However, I have learned much during the progress of the Joint Committee on Human Rights inquiry, from briefings from several organisations and from this excellent debate today.

Our Armed Forces are generally admired for their commitment, high standards and bravery—that has rightly been said many times. There are uncomfortable truths about the Bill, including its incompatibility with the UK's obligations under multiple international treaties, and its potential for unintended consequences of increasing legal costs while denying injured service personnel, veterans and their bereaved relatives compensation. Some people oppose the Bill on the grounds of human rights violations and the jeopardising of the UK's role as a global defender of human rights and a leader in the fight for international criminal justice. It would certainly be sad to lose that reputation.

Part of chapter 2 of the Joint Committee on Human Rights report on the Bill is entitled "Inadequacy of Ministry of Defence Investigations". There are lists of a number of key inquiries, litigation and investigations relating to Iraq and Afghanistan, which have been mentioned already. However, many investigations have been protracted and repeated due to the inadequacy of the MoD's systems. This has had unfortunate consequences and has not served the best interests of justice.

The Bill has as a stated objective:

"The MoD must, as a priority, establish an independent, skilled and properly funded service for investigations … so that there is no longer any need for repeated or protracted investigations."

Investigations will still be required, despite this legislation, but that inadequacy will not be addressed by the Bill, and it does nothing to address the issue of repeat investigations. A review has been announced by the Defence Secretary to ensure that

"those complex and serious allegations or wrongdoing against UK forces which occur overseas on operations",—[*Official Report*, Commons, 13/10/20; col. 507WS.]

can be addressed. The JCHR looks forward to receiving updates on that review.

It is concerning that the Bill has had repercussions nationally and internationally for the reputation of our Armed Forces. The JCHR report says:

"Some have seen this as a cynical effort to remove accountability. The Judge Advocate General, the most senior judge in the Armed Forces, has said that this Bill is 'ill-conceived' and 'brings the UK armed forces into disrepute'."

Clause 12, mentioned by many other noble Lords, including the noble and gallant Lord, Lord Craig of Radley, and my noble friend Lord Foulkes, inserts new Section 14A into the Human Rights Act, which provides that the Secretary of State

"must keep under consideration whether it would be appropriate for the United Kingdom to make a derogation under Article 15(1)"

of the ECHR in relation to

"any overseas operations that the Secretary of State considers are or would be significant."

Of course, no derogation can be made from certain articles of the ECHR, and the JCHR suggests that the Government may wish to consider restricting this provision to only Article 5, on detention, and Article 8, on the right to respect for private and family life. The report also calls for greater clarity about the parliamentary procedure to be followed in advance of any derogation. The JCHR has called on the Government to

"make an undertaking to consult with the Committee in advance of any proposed derogation under the ECHR. They should provide Parliament with sufficient time to consider any proposed derogation in advance of the UK derogating from its international obligations."

The committee also expects

"to receive from the Secretary of Defence, a detailed Memorandum explaining how the Article 15 ECHR criteria are met in the case of any proposed or actual derogation."

With our knowledge of the conditions surrounding the Bill, we should challenge, in the name of justice, any weakening of the laws of human rights. We should amend the Bill according to the suggestions made today, and monitor the consequences.

7 pm

Lord Truscott (Ind Lab) [V]: My Lords, I recognise that the Bill is highly contentious, as today's excellent debate has indicated, but I generally welcome it. For a long time now, I have been concerned about the number of vexatious complaints about members of our Armed Forces and the effect that this has had on them and their families. The debt that this country owes to its service personnel and veterans, as noble Lords have said, should never be forgotten.

Of course the Minister should ensure that the Bill adheres to the Geneva conventions and our obligations to the International Criminal Court. Her Majesty's Government, as a number of noble Lords have said, and as the noble Baroness, Lady Massey, just mentioned, should improve the speed and quality of investigations—something lacking in this Bill—and streamline how they are carried out. Veterans should also retain the right to make civil claims against the MoD well after six years. As many noble Lords have argued, in addition to excluding sexual offences from the presumption against prosecution after five years, Her Majesty's Government should also exclude crimes of torture,

war crimes, crimes against humanity and genocide. All these despicable crimes should face the full force of the law, however long ago they were committed.

In the other place, the Minister for Defence People and Veterans stated that Part 1 of the Bill did not constitute a statute of limitations and argued that, because the Bill still allowed criminal prosecutions and to take decisions on whether to prosecute even after five years, it was consistent with the UK's international obligations, and I believe the Minister in this House confirmed that earlier today.

With regard to other alleged offences, I think the five-year hurdle is about right. Ten years, as some have suggested, is simply too long. If prosecutors cannot put together a criminal case in five years, they are not doing their jobs properly. That is not because I do not believe in human rights or the rights of victims; it is simply because I believe that 10 years is too long for those people who are innocent and facing investigation and accusations to endure without resolution. That goes for potential victims too. We should also remember the human rights of our service personnel and their families and the resulting strain, which can lead to marriage break-up, mental health issues and even suicide.

One of the greatest principles of the civilised world is the presumption of innocence—an international human right under Article 11 of the UN's Universal Declaration of Human Rights, strangely not mentioned by any of the lawyers today. Sadly, a whole legal industry grew up in this country to pursue vexatious cases against our Armed Forces purely for financial gain and to monetise others' misery. Service personnel and veterans faced totally unfounded allegations, and many found the presumption of innocence replaced with the presumption of guilt and trial by media. Noble Lords will well remember the example of the late Field Marshall Lord Bramall, tried by both the media and the Metropolitan Police without a shred of evidence. Although for different reasons, many veterans have had similar experiences.

Paul Shiner, the solicitor who was struck off, also mentioned several times today, made a fortune from persecuting innocent Armed Forces personnel, veterans and their families. More than £30 million of public money went through Shiner's hands, and he passed literally thousands of bogus cases to the Iraq Historic Allegations Team, or IHAT. Shiner made millions out of others' misery, and he was not the only lawyer. Red Snapper Group, with its 127 staff serving IHAT, cost the taxpayer £4.8 million and failed to secure a single successful prosecution. Red Snapper staff turned up at service personnel's homes, pretended to be police officers and illegally threatened those being investigated with arrest. IHAT was closed down in 2017 after taking up 3,500 allegations of abuse in Iraq, mostly without any credible evidence whatsoever. Some informants, as has also been mentioned today, had been paid or encouraged to give false evidence against British soldiers. MPs called IHAT an unmitigated disaster. It should never be allowed to happen again.

Our Armed Forces personnel should not fear unwarranted prosecution when putting their lives on the line for our country. Of course, one of the problems at the moment is that the law is constructed in such a way that those seeking bogus cases know that, under the law, they can pursue allegations that can result in the potential prosecution of members of the Armed Forces. That is what puts them and their families under strain. Of course the guilty should be prosecuted, but we should try to protect the innocent too—both members of our Armed Forces and potential victims of abuse.

In short, the Bill should be amended but if it helps to protect our Armed Forces and veterans from vexatious, venal and vile allegations then it should be supported.

7.04 pm

Lord Rooker (Lab) [V]: My Lords, I congratulate the Minister and wish her well in handling the Bill as it goes through the Lords.

Having listened to the vast majority of the speeches today, I have to say that it crossed my mind that it might have been a good idea if the business managers had started the Bill in your Lordships' House, rather than in the other place. In my experience, several major Bills in the past have benefited from starting in the Lords. However, the history is there.

I claim no experience. Indeed, the closest I came was in 1959 when I tried to end my engineering indentured apprenticeship to join the Fleet Air Arm as an artificer apprentice. My apprentice master refused; the rest is history. I pay tribute to all the Armed Forces —the front line and the vital back-up.

I can see how seductive the Bill might appear to some rank-and-file service personnel. My view of how the MoD treats service personnel comes from my 27 years' service in the other place. It includes direct contact regarding poor-quality service accommodation, a lack of mental health help, post-traumatic stress disorder, veterans on the street, and those affected by nuclear tests in Australia. I never found the MoD, under either party, to be very supportive.

I do not agree with the apparently endless pursuit of members of the Armed Forces, whose lives are being ruined. We fail them if we continue to allow this abuse. Our forces are brave, professional and trained—yes, trained to kill within the rules of war; they are not trained to torture. As many have said, torture is prohibited by law and by the UN convention, the Geneva conventions and other statutes.

I have read all the briefings, but I want simply to rely on the views of two ex-service parliamentary colleagues: Field Marshal Lord Guthrie and Dan Jarvis MP. Dan Jarvis pointed out that the UK has a dark recent past when it comes to torture. As a former major, he powerfully pointed out:

"At a time when we are witnessing an erosion of human rights and leaders turning their backs on international institutions, it is more important than ever before that we uphold our values and standards and not undermine them."—[*Official Report*, Commons, 23/9/20; col. 1009.]

In a Commons debate on 3 November last year, he said that torture,

"is never acceptable in any circumstances. … The rules on detention and interrogation are clear. The British Army's training on detainee handling and tactical questioning is rigorous and leaves no room for doubt."—[*Official Report*, Commons, 3/11/20; col. 223.]

[LORD ROOKER]

I do not see how we can claim that we are professional and the best trained if we seek to give people immunity for no other reason than that they are members of the Armed Forces. The Government appear to have gone soft on this. Lord Guthrie said in what is now quite a famous letter to the *Sunday Times* in June last year that the Bill

"provides room for a de facto decriminalisation of torture."

He went on to point out that the Bill's

"proposals appear to have been dreamt up by those who have seen too little of the world to understand why the rules of war matter."

Those points have been made by many others today. In this respect, the Bill does great harm to the reputation of the Armed Forces and puts them at risk. As such, it must be amended.

7.08 pm

Baroness Smith of Newnham (LD) [V]: My Lords, I start, as did the noble Baroness, Lady Goldie, my noble friend Lord Campbell of Pittenweem and the noble Lord, Lord Touhig, by paying my debt of gratitude to the Armed Forces, to our service personnel and to the veterans and their families. One thing that unites everyone who has spoken in this debate is our commitment to our Armed Forces and the sense that it is vital that they have the support they need.

As the Minister pointed out in her opening remarks, the Government had a manifesto commitment to try to deal with vexatious claims. Although the remarks of my noble friend Lord Thomas of Gresford may have suggested that these Benches would like to throw out this Bill at Second Reading—that seemed to be the understanding of the noble Lord, Lord King—that is not the case. We are certainly not proposing suddenly to demand a vote at Second Reading against the Bill.

I am slightly less sceptical than my noble friend on first reading, but the Bill appears on the face of it to be dealing with a problem which many noble Lords have pointed out is particularly difficult. As the noble Lord, Lord Truscott, said, we want to deal with vexatious, venal and vile cases but, as the right reverend Prelate the Bishop of Portsmouth pointed out, there is a very significant difficulty with this piece of legislation. There is a marked difference between what Her Majesty's Government say that they wish to do—that the Bill delivers the Conservative manifesto commitment to address vexatious claims, as said on the fact sheet that the Secretary of State's special adviser sent to speakers in this debate this morning—and what is actually in the Bill.

There are serious concerns about unintended consequences. As my noble friend Lady Northover pointed out, the Bill is very seriously flawed. She suggested that she did not think that she had ever participated on a piece of legislation that was so flawed. It has been pointed out that the legislation passed through the other place unscathed, as the noble Baroness, Lady Deech, put it, and unamended. However, that was not because it was not flawed; it perhaps passed because the Government have an 80-seat majority. Very important amendments were put forward by David Davis and Dan Jarvis, many of which I believe I and my colleagues on the Liberal Democrat Benches and noble Lords across the House will seek to retable in Committee, because there are many problems with this Bill.

Dealing with vexatious claims is important. Nobody wishes members of our Armed Forces to be subject to vexatious claims, nor do repeated investigations serve anybody well. However, there is a very serious question and concern about this Bill, about whether it does anything at all to stop vexatious claims and whether it will stop repeated investigations. The only point that offers some hope that it might deal with vexatious issues is in Clause 3(2)(b), which deals with previous investigations. Beyond that, the Bill does not talk about investigations; it talks about prosecutions.

The noble Baroness, Lady Buscombe, seemed to suggest that the higher threshold for prosecutions was going to deal with the problem of investigations. I could not understand the logic of that point. Could the Minister explain whether she thinks that the points in the legislation about prosecution will do anything at all to deal with the number of investigations, which is what causes the mental stress for so many of our service men and women and veterans? The issue of dealing with vexatious claims may not be helped by this legislation and, as many noble Lords have pointed out, including the noble Viscount, Lord Trenchard, there is a concern that the ICC may take an interest in our service men and women if our legislation is changed in accordance with the Bill. Surely that is an unintended consequence that the Government do not wish to come about.

There are various problems with the Bill. One is the basic presumption against prosecution after five years but, in particular, the concern that many noble Lords talked about: the exclusion of torture from Schedule 1. I do not understand why torture, war crimes and genocide are not there, and that seems to be very much the view across the House. The Minister in her introductory remarks seemed to suggest that sexual offences were part of Schedule 1 because they would never be authorised in war or any other context—they are always illegal. Surely torture is always illegal. When do Her Majesty's Government ever envisage saying, "Go ahead, please torture"? Surely the exception to the presumption should also be included in Schedule 1. An amendment to that effect is necessary. My right honourable friend Alistair Carmichael MP said in the other place that he wanted to focus on the use of torture because it illustrates well the lack of logic in not including torture in Schedule 1. Where there is evidence of torture, no prosecutor sitting in his or her office should say, "Well, there's evidence of torture but it is presumed that we would not prosecute it." What sort of signal does that send?

We can see that the Bill's architecture is such that torture is clearly designed to belong in Schedule 1, along with sexual offences. That makes perfect sense. It is a matter of logic, not law. The provisions in that schedule cover eventualities whose use is never in any circumstances acceptable. Does the Minister agree that torture is never acceptable? Will she consider taking back to her colleagues in the Ministry of Defence a suggestion that torture needs to be added to Schedule 1? If the Government do not bring forward an amendment, she can rest assured that these Benches and noble Lords across the House will bring forward amendments.

Clause 12 on the derogation from the European Court of Human Rights is also a clause too far. It is an area where the Liberal Democrats will certainly bring forward an amendment.

The Bill might have good intentions but, as the noble Lord, Lord Faulks, suggested, the optics of Part 1 are not good. Indeed, the optics of most of the Bill are not good. We need to think what signals we are sending, both to our allies across the world and to countries that we might think of as our opponents or enemies. As my noble friend Lord Thomas of Gresford asked, how would we feel if other countries adopted the same provisions that the Government are putting forward here, and we were told that cases could not be brought in allegations of torture of our own service men and women or, indeed, anybody else, precisely because there was a presumption against prosecution?

The measures that we are putting forward will have global resonance. Is that the sort of leadership that global Britain wants? Should we not seek to lead by example? On the day in which Joe Biden was inaugurated as President of the United States and said that the US should seek to

"lead not merely by the example of our power, but by the power of our example",

should the United Kingdom not seek to draw on our long legacy of leading calls for the prohibition of torture and say that we will always stand up against torture and include that in Schedule 1?

The Bill is deeply flawed. For it to pass your Lordships' House and be appropriate as a piece of legislation for the United Kingdom, it needs significant amendment. At present, it is not acceptable. As the noble Lord, Lord McCrea, said, I hope that together we can bring forward legislation that is worthy of support. I hope that the Minister might provide some amendments in Committee in order that we can indeed take the Bill forward.

7.19 pm

Lord Tunnicliffe (Lab) [V]: My Lords, I thank everyone who has contributed to today's debate. I am struck by the overwhelming support for the Armed Forces on all sides, the desire to stop troops being plagued by vexatious claims, the passion to respect our international obligations, and the need to get this legislation right. I join colleagues in paying tribute to all the men and women who keep our country safe, especially those currently helping with the Covid-19 response. They make us proud to be British.

Labour and the Armed Forces ultimately want the same thing: to protect troops who might be sent overseas. We recognise that there has been a long-running problem of baseless claims arising from Iraq and Afghanistan. We need to overhaul investigations, and set up safeguards that are consistent with our international obligations and that ensure troops have the right to compensation. But the Bill, as it stands, is not the solution.

During today's debate, I have been struck by the broad coalition of concerns around the Bill—a coalition that spans from the Royal British Legion to Human Rights Watch. On the main oversight—the failure to tackle endless investigations—the former Judge Advocate-General, Jeff Blackett, has said:

"The presumption against prosecution does not stop the investigation".—[*Official Report*, Commons, Overseas Operations (Service Personnel and Veterans) Bill Committee, 8/10/20; col. 127.]

The former Commander Land Forces, General Sir Nick Parker, has said:

"The emphasis appears to be on prosecution. In reality, it should be on what is happening in the investigative process".—[Official Report, Commons, Overseas Operations (Service Personnel and Veterans) Bill Committee, 8/10/20; col. 96.]

Why was the Bill drafted to be entirely silent on investigations?

On presumptions against prosecution, Human Rights Watch has said that

"this Bill, unamended, would probably significantly increase the risk of UK service personnel … facing investigations from the International Criminal Court".—[*Official Report*, Commons, Overseas Operations (Service Personnel and Veterans) Bill Committee, 6/10/20; col. 65.]

Does the Minister want to see British troops being dragged to the ICC?

On the failure to exclude other crimes against humanity, Conservative MP David Davis said that the Government were

"right to exclude sexual offences, and the Government should exclude torture on exactly the same grounds."—[*Official Report*, Commons, 3/11/20; col. 227.]

Why are torture and genocide not already included in exclusions?

Concerning civil claims against the MoD, the director-general of the Royal British Legion has said that

"the six-year longstop could be a breach of the armed forces covenant".—[*Official Report*, Commons, Overseas Operations (Service Personnel and Veterans) Bill Committee, 8/10/20; col. 83.]

The Association of Personal Injury Lawyers has even said that the longstop means that service personnel will have fewer rights than prisoners. Why do the Government continue to ignore the impartial advice of the Royal British Legion that the Bill risks breaching the Armed Forces covenant? These concerns come from former service personnel, organisations representing our troops, and human rights and legal experts. Their concern—as is Labour's concern—is for Armed Forces personnel. The Government need to listen.

Ministers also need to recognise that important parts of this Bill are missing. My noble friend Lord Touhig outlined how the Bill does nothing to tackle repeat investigations. But, as well as this, when legal steps are taken, we need to make sure that troops have the support they need. We will be supporting a new MoD duty of care in relation to legal, pastoral and mental health support for personnel involved in investigations or litigations. Legal aid, too, is an essential part, and there needs to be a review of access for service personnel.

We also need to improve the transparency of derogation and decisions taken by the Attorney-General. We will therefore be arguing that derogations from the ECHR should be approved by Parliament and that the Attorney-General should also lay out to Parliament why they granted or refused consent to prosecute. These steps will enhance the accountability of such important decisions.

Britain's Armed Forces are renowned worldwide for their dedication, professionalism and skill. We owe it to them to get the Bill right, but we cannot do that if the hard-line, and somewhat naive, position the Government took in the other place continues. No

[Lord Tunnicliffe]
Government will get legislation right when it is first presented to Parliament. As legislators we seek improvements; that is our job. I say with admiration for the Defence Minister in our House that I hope she will change tack and engage with all colleagues positively on the Bill. Those of us on this side of the House strongly wish to do so, and to build a constructive consensus for our troops, our international commitments and our reputation, to solve the problem for good.

7.25 pm

Baroness Goldie (Con) [V]: My Lords, it has been a privilege to participate in and listen to this debate. I want to express my appreciation for the thoughtful and profound contributions that have been made, as well as for the tributes and gratitude extended from all parts of the Chamber to our Armed Forces, recognising the vital job that they do. They are at the heart of what we are discussing; we must not forget that.

Predictably, a wide variety of views has been expressed about the Bill. On the part of some, there is disagreement with there being a Bill at all; that seemed the approach of the noble Lord, Lord Thomas of Gresford, and the noble Baroness, Lady Northover. While I respect their views, I cannot support them. For me to bridge that gap would obviously be challenging.

I detected a slightly different nuance from the noble Baroness, Lady Smith, but I detected on the part of many other noble Lords a recognition that there is an issue that should be addressed—even if there is a multiplicity of views on how that should be done. The noble Lord, Lord Touhig, accepted that premise, as did the noble and gallant Lord, Lord Stirrup, the noble Lord, Lord Dannatt, and my noble friend Lord Lancaster. Indeed, the right reverend Prelate the Bishop of Portsmouth accepted that principle, although he had significant reservations about other aspects.

The noble Lord, Lord West, was explicit about the need for legislation, although I noted his mark of five out of 10 for the Bill. In this broad context of the questions of whether there is an issue and whether we need legislation, two of the most balanced contributions came from the noble and gallant Lord, Lord Stirrup, and my noble friend Lord Arbuthnot.

Your Lordships have assisted in amending some of the misconceptions about what the Bill does, but I detected a continuing theme of reference to perceived wrongs created by the Bill when, I suggest, some of the more extravagant descriptions are not supported by a clinical dissection of it. My noble friend Lord King of Bridgwater identified that and spoke helpfully about it. I say gently to the noble Lord, Lord Robertson of Port Ellen, for whom I have great respect, that the Bill is not a statute of amnesty. Having said all that, there are sharp divergences of view about the provisions, their legal interpretation and how that relates to international law. This has been an informed and thought-provoking debate. I cannot deal with every contribution in the time available, but let me try to address the principal issues raised.

To start, the issue of investigations was raised by a number of your Lordships, including the noble Baronesses, Lady Liddell, Lady Buscombe and Lady Jones, the noble Lords, Lord Anderson and Lord Browne of Ladyton, and the noble and gallant Lord, Lord Boyce. It is correct that the measures in Part 1 of the Bill do not have a direct impact on repeated investigations. Credible allegations will continue to be investigated. However, over time, prosecutors may be able to advise the police earlier in the process on whether the new statutory requirements in Part 1 would be met in a particular case and whether investigations are likely to be worth continuing. The Government are committed to ensuring that we have the best possible processes for timely and effective investigations into allegations arising from military operations overseas. As I mentioned, the Bill will work in parallel with the recently announced review, led by Judge Henriques, which will focus on the processes of overseas operations investigations and prosecutions.

I say to the noble Lord, Lord Anderson of Ipswich, that the review by Sir Richard Henriques will not revisit past investigations or prosecution decisions. Instead, the focus will be on the future, allowing the consideration of options for strengthening internal processes and skills while ensuring that our Armed Forces continue to uphold the highest standards of conduct when serving on complex and demanding operations around the world.

The presumption will not prevent investigations. These are necessary to provide prosecutors with the information upon which to make their decisions. Allegations of serious offences, including breaches of the Geneva conventions, must, and will, continue to be investigated and, where appropriate, prosecuted.

There were some comments about the quality of investigations. In the early part of operations in Iraq, there were certainly very limited numbers of service police and investigators were competing for scarce resources, such as helicopters to visit scenes and troops to provide force protection. These investigations were taking place in the most complex and hostile of environments. In these circumstances, some investigations took place that were later reviewed and identified as having shortcomings. Where appropriate, these matters were subsequently reinvestigated, but much was learned from these experiences. All branches of our Armed Forces, including the service police have taken the lessons identified and have been seeking to improve how they operate.

A number of noble Lords, particularly the noble Lord, Lord Dubs, and the noble Baroness, Lady Chakrabarti, raised concerns that the prosecution provisions in Part 1 of the Bill amounted to impunity from prosecution. I reassure them that the five-year timeframe for the measures in Part 1 is not a time limit, after which service personnel cannot be prosecuted. The presumption against prosecution is not an amnesty or a statute of limitations and does not amount to an unwillingness to investigate or prosecute alleged offences. It leaves open the possibility of prosecution of all cases, subject to the prosecutor's decision. Service personnel who break the law can still be held to account and the presumption does avoid interfering with prosecutorial independence. It will still allow for prosecutions to proceed where appropriate. It definitely will not allow personnel to act with impunity. As I indicated earlier, the Bill does not prevent investigations or prosecutions taking place.

The issue of international law compliance was, understandably, a source of both interest and concern for many of your Lordships. A number of noble Lords, including the noble Lords, Lord Thomas of Gresford, Lord Robertson, Lord Anderson of Ipswich and Lord Tunnicliffe, and the noble Baronesses, Lady Northover and Lady Jones, also asked questions about whether the Bill increases the risk that our service personnel would be prosecuted by the International Criminal Court. We are confident that the Bill does not increase the risk of our service personnel or veterans being prosecuted by that court or in any other jurisdiction. While Article 17 of the Rome statute makes provision for the International Criminal Court to step in and investigate or prosecute if it assesses that a state is unwilling or unable to do so, the presumption is not an amnesty or a statute of limitations for service personnel. It therefore does not amount to an unwillingness or inability to investigate or prosecute, and the presumption is consistent with the Rome statute. UK Armed Forces will continue to operate under international law, including, of course, the Geneva conventions, and we will expect others to do likewise. The Bill cannot be used as an excuse for offences committed by others against UK Armed Forces personnel.

A number of your Lordships, including the noble Lords, Lord Touhig and Lord Carlile of Berriew, and the noble Baronesses, Lady Northover and Lady Smith, raised the question of whether the presumption against prosecution breaches the Geneva conventions, the Rome statute, the ECHR and other international agreements, including the United Nations Convention against Torture. I can reassure them that the Bill does not diminish the Government's commitment to upholding and strengthening the rule of law. Military operations will continue to be governed by international humanitarian law, including the Geneva conventions, taking into account the UK's obligations under the Rome Statute of the International Criminal Court.

The UK Government unreservedly condemn the use of torture and remain committed to their obligations under international humanitarian and human rights law, including the United Nations Convention against Torture. The UK does not participate in, solicit, encourage or condone the use of torture for any purpose. We believe that preventing torture and tackling impunity for those who do torture are essential components of safeguarding our security and are integral to a fair legal system and the rule of law.

I now turn to Schedule 1 and the inclusions in it. This proved to be an area of considerable concern for many of your Lordships. Indeed, the right reverend Prelate the Bishop of Portsmouth, the noble Baroness, Lady Smith, and other Members of your Lordships' House raised a number of important concerns on the subject of torture, and it is important that I try to deal with them. The exclusion of sexual offences from the application of the Part 1 measures does not mean that we will not continue to take other offences, such as war crimes and torture, extremely seriously, because they are extremely serious crimes. Indeed, in my opening speech I described them as appalling.

We have not excluded torture offences because this goes right to the heart of the environment of overseas operations: what we call on our personnel to do when they are required to serve in that arena. In the course of their duties on overseas operations, we expect our service personnel to undertake activities which are intrinsically violent in nature. These activities can expose service personnel to the possibility that their actions may result in allegations of torture. By contrast, although allegations of sexual offences can still arise, the activities we expect our service personnel to undertake on operations overseas cannot possibly include those of a sexual nature. It is for this reason that we do not believe it appropriate to afford personnel the additional protection of the presumption in relation to the allegations of sexual offences.

In relation to other offences, the presumption against prosecution still allows the prosecutor to continue to take decisions to prosecute, and the severity of the crime and the circumstances in which it was allegedly committed will always be factors in the prosecutor's consideration.

Many of your Lordships also alluded to the matter of the Attorney-General's consent. This was raised by the noble Baroness, Lady Northover, the noble Lord, Lord Tunnicliffe, and by other Members of your Lordships' House. They were concerned that this somehow undermines the independence of the prosecuting authorities, but I suggest that this is absolutely not the case. In deciding whether to grant consent to prosecutions, the Attorney-General will act quasi-judicially and independently of government, applying the well-established prosecution principles of evidential sufficiency and the public interest. This means that the Government will play no role in the decision on consent. The Attorney-General acts as guardian of the public interest in other issues; there are already a number of offences and circumstances for which the Attorney-General's consent for prosecution is needed, including for war crimes and the prosecution of veterans through the service justice system if they have left service more than six months previously.

My noble and learned friend Lord Garnier also asked why the Lord Advocate for Scotland had not been included. The consent mechanism does not extend to Scotland because there is no requirement for it to do so; all criminal prosecution decisions in Scotland are already taken by or on behalf of the Lord Advocate in the public interest.

I will move on the Part 2 and the civil litigation restrictions. Again, this was a source of fertile debate, with a multiplicity of views being offered. The noble Lord, Lord Thomas, raised the point that not all claims are unmeritorious. I agree: many, though not all, of these claims had merit, but the scale of them and the fact that they were brought years after the events has prompted us to look again at the legal framework to ensure that it is applied consistently and promptly to deliver justice for all concerned.

The noble Baroness, Lady Liddell, asked whether the measures in Part 2 that place an absolute time limit on civil claims breach the Armed Forces covenant. This was also of concern to the noble Lord, Lord Tunnicliffe. The Bill does not breach the Armed Forces covenant: the new factors and limitation longstops apply only to claims in connection with overseas operations, and they will apply to all claimants in the same way.

[Baroness Goldie]

A number of points were raised by various noble Lords, including the noble Lord, Lord Hendy, the noble and gallant Lord, Lord Boyce, and the noble Baroness, Lady Blower, about the Bill removing the discretion of the court to extend the time for compensation beyond six years. The noble Lord, Lord Touhig, argued that, for the past 15 years, only one in 25 cases was brought by alleged victims against our troops. I do not recognise the figures he referred to, but I would be pleased to hear from him if he can provide me with further information.

It is important to note that the Bill will apply to only a subset of claims made by UK Armed Forces personnel. The vast majority of claims brought by them are not brought in relation to overseas operations and would therefore not be impacted. Among claims brought against the MoD resulting from overseas operations in Iraq, claims from local nationals far exceed those from service personnel. There were over 1,000 claims from local nationals, compared with 552 from service personnel, arising from our operations in Iraq and Afghanistan. An analysis of the available figures indicates that around 94% of these claims brought by current and former service personnel relating to incidents in Iraq and Afghanistan were brought within six years.

As such, the longstops are not designed to prevent meritorious claims being made against the UK Government, whether by our personnel or anyone else. They are included as part of a number of measures to provide a better, clearer framework for dealing with claims arising from historical operations overseas. Indeed, this may arguably encourage claimants to bring claims within a reasonable period, which will certainly benefit them, as memories will be fresher and evidence less likely to have gone stale. It will also help to provide our personnel with greater clarity that they will not be called upon to give evidence about historical events.

Many have suggested that the measures in Part 2 will benefit only the MoD. This is not the case, because the six-year longstops will help to reduce the uncertainty faced by service personnel, who may be called on to give evidence in civil proceedings about often traumatic experiences many years after the events took place. Again, I think the measure would be beneficial to claimants because there is a better likelihood of success if the claims are made as soon as possible after the event or date of knowledge.

The Bill does not change how the time limit is calculated for death and personal injuries claims. That time limit will still be calculated from the date either of the incident or, importantly, of knowledge.

Derogation powers were the other matter that attracted considerable debate. The noble Lord, Lord Dannatt, with many others, asked whether derogating from the ECHR would weaken the UK's reputation and put soldiers at greater risk on the battlefield. We disagree that considering derogation for significant future operations would put our soldiers at risk. The derogation measure does not undermine the UK's commitment to human rights and liberties, domestically and internationally; we fully intend to maintain our leading role in the promotion and protection of human rights, democracy and the rule of law. The UK remains committed to the ECHR.

My noble and learned friend Lord Garnier asked how "significant" is defined. The duty to consider derogation arises only in relation to overseas operations that the Secretary of State considers meet a minimum threshold. The operation must be significant; whether it is will depend on its nature. This is intended to avoid imposing a duty in relation to any operations that manifestly would not meet the criteria for derogation set out in Article 15 of the convention.

I am conscious of the time. I have been unable to cover a number of specific technical points, but I will undertake to look at *Hansard* and write to your Lordships with responses to any substantive issues that I have not managed to address.

In conclusion, I want to deal with the important issue of Northern Ireland. A number of your Lordships —the noble Lords, Lord McCrea and Lord Dodds, my noble friend Lord Caine, the noble Baroness, Lady Ritchie, and others—asked for an update on the Northern Ireland legacy Bill. As elegantly put by my noble friend Lord Caine, veterans who served in Northern Ireland are not covered by the Bill, which focuses on improving the legal framework for overseas military operations. The Government have been clear that they will bring forward separate legislation to address the legacy of the Troubles that focuses on reconciliation, delivers for victims and ends the cycle of investigations. We are committed to making progress on this as quickly as possible. The Government remain committed to making progress on legacy issues and engaging as quickly as possible with the Irish Government, the Northern Ireland parties and civic society, including victims' groups, on the way forward.

This has been an excellent debate. I have tried to address the main areas of concern, because many technical, legal issues have arisen out of the debate. As I said earlier, I am aware that I have been unequal in covering them, but as I indicated I will look at *Hansard* and address by letter any points of significance that I have omitted to deal with.

It remains for me to thank all noble Lords who have contributed. The debate has certainly teased out a lot of issues and provided matters that require reflection. I think it was the noble Lord, Lord Tunnicliffe, who said he hoped I was minded to engage. I wish to reassure him: I am very happy to engage with your Lordships, and I give that undertaking. In conclusion, I thank noble Lords very much for their participation. I look forward to reading *Hansard* and to engaging with your Lordships further.

Bill read a second time and committed to a Committee of the Whole House.

National Security and Investment Bill

First Reading

The Bill was brought from the Commons, read a first time and ordered to be printed.

Trade Bill

Returned from the Commons

The Bill was returned from the Commons with reasons and amendments. The Commons reasons and amendments were ordered to be printed.

High Speed Rail (West Midlands-Crewe) Bill

Returned from the Commons

The Bill was returned from the Commons with the amendments agreed to.

House adjourned at 7.48 pm.