

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

OVERSEAS OPERATIONS (SERVICE PERSONNEL AND VETERANS) BILL

Ninth Sitting

Thursday 22 October 2020

(Morning)

CONTENTS

SCHEDULE 2 agreed to.
CLAUSE 9 agreed to.
SCHEDULE 3 agreed to.
CLAUSE 10 agreed to.
SCHEDULE 4 agreed to.
CLAUSE 11 agreed to.
CLAUSE 12 under consideration when the Committee adjourned till this
day at Two o'clock.

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Monday 26 October 2020

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The Committee consisted of the following Members:

Chairs: †DAVID MUNDELL, GRAHAM STRINGER

- | | |
|--|--|
| † Anderson, Stuart (<i>Wolverhampton South West</i>) (Con) | † Lewell-Buck, Mrs Emma (<i>South Shields</i>) (Lab) |
| † Atherton, Sarah (<i>Wrexham</i>) (Con) | † Lopresti, Jack (<i>Filton and Bradley Stoke</i>) (Con) |
| † Brereton, Jack (<i>Stoke-on-Trent South</i>) (Con) | † Mercer, Johnny (<i>Minister for Defence People and Veterans</i>) |
| † Dines, Miss Sarah (<i>Derbyshire Dales</i>) (Con) | Monaghan, Carol (<i>Glasgow North West</i>) (SNP) |
| † Docherty, Leo (<i>Aldershot</i>) (Con) | † Morgan, Stephen (<i>Portsmouth South</i>) (Lab) |
| Docherty-Hughes, Martin (<i>West Dunbartonshire</i>) (SNP) | † Morrissey, Joy (<i>Beaconsfield</i>) (Con) |
| † Eastwood, Mark (<i>Dewsbury</i>) (Con) | † Twist, Liz (<i>Blaydon</i>) (Lab) |
| † Evans, Chris (<i>Islwyn</i>) (Lab/Co-op) | Steven Mark, Sarah Thatcher, <i>Committee Clerks</i> |
| † Gibson, Peter (<i>Darlington</i>) (Con) | |
| † Jones, Mr Kevan (<i>North Durham</i>) (Lab) | † attended the Committee |

Public Bill Committee

Thursday 22 October 2020

(Morning)

[DAVID MUNDELL *in the Chair*]

Overseas Operations (Service Personnel and Veterans) Bill

11.30 am

The Chair: Members will be aware of the need to respect social distancing guidance. I shall intervene if necessary to remind everyone. We now continue line-by-line consideration of the Bill. I have to draw hon. Members' attention to an error: amendment 69, which is currently under debate, has not been printed on the amendment paper, so copies of the text of the amendment are in the room, printed separately.

Amendment proposed (20 October): 69, in schedule 2, page 16, line 5, at end insert "except where it appears to the court that it would be equitable to do so having regard to the reasons for the delay, in particular whether the delay resulted from—

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

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

Question again proposed, That the amendment be made.

The Chair: I remind the Committee that with this we are discussing the following:

Amendment 93, in schedule 2, page 16, line 5, at end insert

"save for exceptional cases where the overriding interest of justice should be served."

Amendment 70, in schedule 2, page 16, line 36, at end insert—

"(2C) Subsections (2A) and (2B) shall not apply where it appears to the court this would be equitable having regard to the reasons for the delay, in particular whether the delay resulted from—

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

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

Amendment 71, in schedule 3, page 21, line 9, at end insert—

"(7A) The court may disapply the rules in subsections (5) to (7) where it appears to the court that it would be equitable to do so having regard to the reasons for the delay, in particular whether the delay resulted from—

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

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

Amendment 72, in schedule 4, page 24, line 5, at end insert

"except where it appears to the court that it would be equitable to do so having regard to the reasons for the delay, in particular whether the delay resulted from—

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

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

Amendment 68, in clause 11, page 7, line 34, at end insert—

"(4A) The court may disapply the rule in subsection (4) where it appears to the court that it would be equitable to do so having regard to the reasons for the delay, in particular whether the delay resulted from—

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

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

Mr Kevan Jones (North Durham) (Lab): May I welcome you to the Chair, Mr Mundell? It is a pleasure to serve under your chairmanship again. I will talk about schedule 2 in general, but I will first refer to amendment 93, which stands in my name and which would amend the end of schedule 2 to say

"save for exceptional cases where the overriding interest of justice should be served."

I will come back to schedule 2 in a minute.

We are again getting to the issue of justice for servicemen and women and veterans, in terms of the conditions they are bound by. I will come on to the Limitation Act 1980 in a minute, of which section 33 disregards the limits on the right of veterans and servicemen and women to make claims. We heard in the evidence sessions and during consideration of the Bill from my hon. Friend the Member for Portsmouth South and others about particular issues affected by this hard stop of six years. We talked about mental health and psychological conditions, but there are also physical conditions. Mental health is a complex area. The Minister tries to hide behind the date of knowledge, and mental illness is

difficult to pin down. I would certainly say that the whole gamut of mental illness should be treated as exceptional cases.

Did the Labour party, when we were in Government, get it wrong on the armed forces compensation scheme? Yes, we did, even though it was a landmark scheme, in the sense that it brought in lump sum compensation for the very first time. I remember people at the time complaining about the levels of lump sum payments. We had a big debate about that in around 2008. However, it brought in lump sum payments for the very first time for those injured in service of their country. Going back to the Falklands war, for example, no such thing existed, so it was quite a landmark.

However, we clearly had not seen the challenge around mental illness. When I was a Minister, I asked Lord Boyce to undertake a review into the effects of service on mental health, so that we could potentially bring into the scope of that scheme people suffering from an array of mental illnesses. That was the right thing to do, and it was an attempt to future-proof the legislation.

Chris Evans (Islwyn) (Lab/Co-op): I draw my right hon. Friend's attention to the Armed Forces Act 2006, particularly the part where the Labour Government pardoned those who had been shot at dawn during world war one. For shell shock to emerge and be accepted took some 60 to 70 years. The Bill was an example of a Government saying that they had got something wrong and were willing to backdate it to ensure that justice was meted out to the families so that they would not think that their grandparents or ancestors were cowards, as they were deemed at the time. If we can do that in that situation, we can surely do it in this as well, as we learn more about the effects of post-traumatic stress disorder and of alcohol and drug abuse as well.

Mr Jones: I do not disagree with my hon. Friend, but the problem I always have with veterans' mental health is the fixation on PTSD. I am not for one minute downgrading PTSD and the numbers of people that suffer from it, but it is one of a range of mental illnesses that might arise later in life. My hon. Friend referred to alcohol abuse, which is sometimes a form of self-medication. Is it automatically recognisable that a mental illness that might come in later life is a result of service? No, it is not. I agree with the Minister here. Most people leave service and have a perfectly good career that is life-enhancing for many servicemen and women. They end up in a variety of careers and have a good quality of life. Obviously, the failures end up as Members of Parliament, but that is neither here nor there. I have always said that military service overall is a good and positive thing for people's life chances because it gives opportunities to people.

However, some individuals can be affected. Is it easy to determine what caused someone's mental health problem? No, I do not think it is. That was recognised in the armed forces compensation scheme. I want to add exceptional circumstances because, by taking section 33 out, we stop recourse to civil law and the ability to claim against the MOD. As Mr Byrne from the Royal British Legion said, this is not about protecting servicemen and women and veterans; it is about protecting the MOD. I have heard the Minister's arguments about the date of knowledge and this, that and the other, but, as I have

said before, if we leave it to the solicitors or lawyers in the MOD, they will use this to strike out these cases, and that cannot be right.

We then come on to physical conditions. I mentioned the other day the issue of cold weather injuries, which can develop later. There are also musculoskeletal conditions that develop not at the time but as the body gets older. If the body has been through large amounts of stress earlier on, whether it is physical or mental, the condition can start later on. That leads to a situation where a lot of individuals will not necessarily think straight away, "It was due to my service". That is why I have always strongly argued—we did it in 2010, but the coalition scrapped it—for the importance of having a flag on people's medical records as they leave the service so that in future doctors can see that people had served and then link the two together. We provided for that in 2010, but an election was called and the coalition seemed to forget about it, but I thought it was important not only in terms of physical injuries but, very importantly, for mental health issues. If a physician, a doctor or a consultant can see that someone has served, that is a red flag and they can ask whether that has had an impact on that individual.

The six-year longstop will stop those individuals taking cases to court. I accept that legally it might be difficult to insert the words "exceptional cases", because we then get into the issue of what is an exceptional case. To be honest, the easiest way of solving it is to retain section 33 of the Limitation Act 1980, because then at least a judge will be able to determine what an exceptional case is. I accept that there are problems with the amendment as it is written, but it goes to the core of the issue of ensuring that, while as few cases as possible are brought out of time, people have the ability to do that.

I am not sure I would leave it to the MOD to make the decision, because I think the kneejerk reaction would be to use the Limitation Act to strike the cases out. I accept that the amendment is not expertly written, but I am not so proud as to prevent somebody from stealing the idea and drawing it up so that, at least in exceptional circumstances, members of the armed forces would be able to take their cases forward for consideration to determine whether they should go beyond the six-year longstop, which limits them at the moment.

We also heard about issues relating to the Human Rights Act 1998. I asked the Minister to write to me to explain how a time limit or a longstop can be put on human rights cases. I do not know whether he has been able to do that yet—I accept that I only asked the other day—but it would be interesting to know that before Report. There is the one-year time limit, but they are covered by section 33 of the Limitations Act. Hilary Meredith said that she found it difficult to understand how it would be possible to have a limitation on the Human Rights Act because it is part of a convention. The Minister responded the other day that it had been cleared and that it was human rights law-compliant. It would be interesting to know what the legal advice is on that, and whether there are any other cases—although there is already a time limit of one year—in which the Limitation Act is not applied to individuals.

As we heard from the Association of Personal Injury Lawyers in the evidence session, that issue was crucial in the Snatch Land Rover case. A widow took a case against the MOD—it was not a civil case, but a Human

[Mr Kevan Jones]

Rights Act case, because a decision had been taken in relation to the right to life. Again, that was about not putting the Human Rights Act on the battlefield but trying to ensure that a decision was taken about Snatch Land Rover's procurement and deployment. It was not about getting the Human Rights Act into the battlespace. I suggest that people read the Smith judgment, because the Supreme Court is very clear about combat immunity and about human rights not applying. People sometimes argue that this Bill is somehow about trying to stop human rights intervening with our right to defend ourselves, but they should read the Supreme Court judgment, because it is very clear that it does not apply there, but it does apply to that important case.

There were two issues in that case. The first was whether it was out of time. Quite clearly it was, because the incident took place in 2006 but the case was not brought until after Chilcot, which was 2015, so it was way out of time. The reason it was taken forward was that, in the first instance, although the MOD argued that it was out of time—I have no complaints that it did that—it was successfully argued that it was not. There were special circumstances that meant that it could not be brought within the time period, and it was allowed to go forward. I understand that the case was settled before it went to court, and the individual widow got a substantial payment. As I said the other day, it also focused, in policy terms, Ministry of Defence thinking about the decisions on the Snatch Land Rover. It gave closure to the widow and some compensation, though no amount of money can ever compensate for somebody's loss, but it also made MOD policymakers say, "Wait a minute. In future, we're going to have to actually think about this."

11.45 am

Had this legislation been in place, could it have been argued that that was an exceptional case? I think so, but it would have been interesting to see how. In that case, however, had this legislation been enacted, that widow and family would not have been able to get redress. Who would have been protected? It would have been the MOD, and none of the searching questions that went on regarding why Snatch Land Rovers were deployed and used in the way that they were would have been asked. The law is not just about compensation for the individual and getting someone the right support; it is about informing and making better policy in the future.

If we cannot have the clause as outlined, can we look at some other way in which a provision could be incorporated into the Bill to allow for those exceptional circumstances, which will occur? The Minister admits that 94% of cases are brought in time. As I said the other day, that means that 6% are not. I accept that there are disputes over the figures, but I reiterate yet again that one serviceman or woman, or family, who cannot get justice is one too many.

The issues around schedule 2 go to the heart of the Bill. Schedule 2, part 1, titled "Court's discretion to disapply time limits", amends section 33 of the Limitation Act 1980:

"Discretionary exclusion of time limit for actions in respect of personal injuries or death".

The schedule introduces, as we have already heard, the presumption that a six-year time limit should be instigated. We have heard a lot about section 33, but it is there for a very good reason. As I said the other day, time limits are there for a very good reason: to ensure fairness not only for the complainant but for the individual who has been accused, in this case mainly the MOD.

Section 33 basically makes a provision for the court to exercise discretion. As I keep saying, it is important that it is a court that decides; not somebody at the MOD who suddenly decides that there is a time limit. It means that in those circumstances where, for whatever reason, a case has not been brought, such as the Snatch Land Rover case, the time limit can be argued for. It is not easy to get. The evidence we received in Committee demonstrated that it is not something that we just nod through; it has to be argued for in exceptional circumstances.

Anyone who pursues one of those cases does so because they think that they have a case. Most people do not take any form of legal case unless they think that they have good, sound legal advice. Most of these cases will be done by solicitors. They will also sometimes be funded by charities, thinking that it could be a test case. The implications of, for example, the Snatch Land Rover case could then be used in other cases. It comes back to what I have said on a number of occasions, that this part of the Bill does not sit happily with me. I understand why it is in the Bill, but the fact is that veterans will have fewer rights than the rest of us—including prisoners, I might add.

I know the Minister said we were trying to compare armed services personnel to prisoners and that it would go down

"like a cup of cold sick"—[*Official Report*, Overseas Operations (Service Personnel and Veterans) Public Bill Committee, 20 October 2020; c. 271.]

We were doing nothing of the sort. Obviously, we were not comparing the two, although there are veterans who become prisoners—a very small number, I hasten to add. No, what we were saying is that prisoners will have more rights to sue the Ministry of Justice than the veterans or servicemen and women and their families will have to sue the Ministry of Defence. In my opinion, it cannot be right that we are excluding people who have served our country and whose families have gone through a lot of trauma.

Perhaps the stench or smell of the cup of cold sick is not revulsion at that comparison being made—not that there is a comparison, as I said. It is revulsion at the armed forces covenant being completely broken, because the Bill would put armed forces families and servicemen and women at a disadvantage, whereas the entire intention behind the covenant was to ensure not just that servicemen and women were on a level playing field with the rest of us, but that they should get extra rights because of their service to their country. I passionately believe in that, and the covenant has widespread support among our constituents.

When I first came up with the concept in about 2009, it was called the welfare pathway. It built on work that Bob Ainsworth, the previous Minister for the Armed Forces, had done in relation to the Command Paper, trying to see how we could ensure that armed forces personnel and veterans were not at any disadvantage

because of their service. The welfare pathway was work that I did on recognising that not everything happened in the MOD and that it was necessary to engage with other partners. And I was pleased that after the 2010 general election, that work carried on and was renamed the armed forces covenant.

The covenant has been welcomed by many of our constituents. I think the first welfare pathway that I was involved with was in Scotland—I cannot remember where, off the top of my head. Councils and others were eager to engage in the process. It gave people a focus to think about when they were doing policy work, whether nationally or locally; it made them think about the armed forces and veterans. It was a tough task. We had armed forces champions in different Departments; they were very good, but it was difficult sometimes when people were developing new policies to say to them, “Hang on—ask the question about veterans and the armed forces. How will this policy affect armed forces families, servicemen and women, and veterans?” What is remarkable is that the Department that led all that work and championed efforts to increase rights is now giving our armed forces—our servicemen and women and their families, and veterans—fewer rights than other people.

That is just wrong and it is not just me saying that. The Royal British Legion says it, too. I know that the Minister had—I was not there, but I read the transcript—a rather challenging discussion, to put it that way, with the secretary general of the Royal British Legion. The points the RBL is making are perfectly reasonable, which is why part 2 must be taken out of this Bill. Otherwise, life for our servicemen and women and our veterans will be worse than it is now.

The Minister for Defence People and Veterans (Johnny Mercer): We are beginning to cover some pretty familiar ground. I will set out the Government’s position clearly on the six-year limit and speak to all the amendments in the group.

As I have already said, the six-year longstop for both personal injury and death claims, as well as claims under the Human Rights Act, is an important part of the Bill. The longstop will provide the much-needed certainty for service personnel and veterans that we are trying to achieve with part 2 of the Bill. I cannot stress enough our belief that the negative impact on the ability of service personnel and veterans to bring claims will be limited. We have not made that up; it is based on our statistics and our evidence.

We are not trying to catch service personnel out or take away their rights to bring claims against their employer, against the MOD or against the Government. They will still be able to bring claims, and the date of knowledge provisions, which are such an important part of the Bill, mean that even in cases when an illness is diagnosed many years down the line, claims can still be brought within six years of that diagnosis, or 12 months for HRA claims.

I have heard the arguments that there are many current and former service personnel who have suffered injuries as a result of their service but who have not yet brought through their claims and would be timed out once this Bill becomes law. I have seen no evidence of that, but I again encourage those people to bring their claims as soon as possible.

Mr Jones: The Minister says he has seen no evidence, but he quotes the figure of 94% being brought in time. What is the number of cases that have been brought under the Limitation Act against the MOD? He says the limit gives certainty; well, it does give certainty to people—certainty that after those six years, they will not be able to take any claims at all.

Johnny Mercer: Many cases have been raised, I agree, such as Snatch Land Rover and the Royal Marines individual who has been mentioned a number of times. However, as I have outlined a number of times, none of those would be affected by this Bill, because the period starts from the point of knowledge. We have had this conversation before. I encourage people who feel that they could be disadvantaged to come forward, to speak to the Department or speak to me, but I have to operate in reality, not saying things that are not true. I include any non-service person who believes that they have a meritorious claim against the MOD, because fundamentally, we are not trying to stop legitimate claims.

Chris Evans: Will the Minister give way?

Johnny Mercer: Not at the moment.

Chris Evans: It is just a quick question.

Johnny Mercer: Of course it is in the best interests of claimants to bring cases in a timely manner, when memories are fresh and access to evidence is easier. We should also remember that the current time limit for bringing claims is three years for personal injury or death and one year for Human Rights Act claims. While the courts have discretion to extend those timelines indefinitely, claimants must persuade them that it is equitable in all the circumstances to do so.

Chris Evans: A quick question for the Minister: last week, in *The Sun on Sunday*, he said he would make it his personal mission to help to ensure that cases that might fall out after six years are brought within six years. Will he clarify how he would do that in action?

Johnny Mercer: Of course. Part of this Bill is a huge education campaign to get people to understand what their rights are. While we have drawn the line at six years, we have a duty to make sure all the people who are in our employment and who served with us understand what the rules are and where the boundaries are, and at the same time are protected from the vexatious sort of claims we have seen over the years. I genuinely believe it is a fair line to be drawn, and I reiterate that lots of cases have been raised, but when we have looked into them, none would have been precluded under the Bill.

Mr Jones: The Minister is not answering my hon. Friend’s question. I accept that there are good reasons for time limits; I have no problems with time limits on civil litigation and other things. I asked him earlier about the number of cases that have fallen outside the limitation period that the MOD has defended. I do not for one minute question the Minister’s commitment, but remember that he and I will not be here when this comes into force. I tell him now that the MOD will use this as a way to stop claims.

12 noon

Johnny Mercer: I accept the right hon. Gentleman's point that there is a risk of any legislation being interpreted in different ways by different Administrations over a period of time. That is the reality of life in this place, but I cannot accept the repeated regurgitation of cases. We have looked into individual cases. When these cases are raised, I write them down and go back to the Department to look into them. They are not affected by this legislation. Members can sigh and so on, but I cannot do anything other than operate within what is actually going on, rather than deal with stuff that is not true.

Members will remember that in one of the evidence sessions for the Bill, the representative of the Association of Personal Injury Lawyers, Mr Al-Nahhas, told us that he frequently rejects clients who want to bring claims that are out of time. Although I would urge everyone to bring meritorious claims as soon as they can, I know that sometimes the courts allow claims to proceed after the primary limitation period has expired. The Bill will not stop that happening. The courts will still be able to extend the primary limitation period for up to six years, but we are stopping claims—often unmeritorious—being brought many years down the track.

The amendments would effectively give the courts the same discretion that they currently have to extend the primary limitation periods indefinitely, but they are contrary to the intent behind the Bill and would reduce the certainty that we want to give to service personnel and veterans. Before I recommend that the amendments be withdrawn, I would love to give way to the right hon. Gentleman again.

Mr Jones: The Minister has raised something that is very complex for the courts. He said that the period will be six years from the date of knowledge, and the courts will be able to give discretion within the six-year period. Is he not expecting—some people will—to take this to court, in terms of saying that it is unjust if a case falls outside the six years? This will end up with a lot more confusion than just keeping what is there at the moment: section 33 of the Limitation Act 1980.

Johnny Mercer: I completely disagree; it is the current situation that we has produced the chaos we are trying to bring order to with the Bill.

Mr Jones: It has not.

Johnny Mercer: The right hon. Gentleman can say it has not, but people such as Bob Campbell, to whom he has alluded a number of times, would strongly disagree. We are trying to bring certainty for our veterans and service personnel going forward. That has been a strong Government commitment from the start of this Government, and I support it. I therefore recommend that the amendments be withdrawn.

Stephen Morgan (Portsmouth South) (Lab): We wish to withdraw amendment 69 and pick up the issue at a later date.

Amendment, by leave, withdrawn.

The Chair: Mr Jones, do you wish to press amendment 93 to a division?

Mr Jones: No, but may I just say one thing to the Minister? He talks about Major Bob Campbell. The legislation was not an issue in that case; it was the investigation that was the issue.

The Chair: Thank you, Mr Jones. You have saved me from saying that it was not a debate on the amendment.

Stephen Morgan: I beg to move amendment 89, in schedule 2, page 17, line 5, at end insert—

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

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

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

Amendment 90, in schedule 3, page 20, line 32, at end insert—

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

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

Amendment 91, in schedule 4, page 25, line 5, at end insert—

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

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

Amendment 88, in clause 11, page 7, line 23, at end insert—

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

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

That the schedule be the Second schedule to the Bill.

That schedule 3 be the Third schedule to the Bill.

That schedule 4 be the Fourth schedule to the Bill.

Stephen Morgan: It is a pleasure to serve under your chairmanship again, Mr Mundell. I rise to speak to amendment 89, which stands in my name. During the proceedings so far, there has been much discussion in recognition of the role that mental health plays in the cases to which the Bill applies. Although the Opposition recognise the importance of the Bill in cases where the court is given discretion to disapply the time limits of three years, the court must also have particular regard for the likely impact of the action on the mental health of any witness or potential witness who is a member of Her Majesty's armed forces. There is still more to be done here. There is an imbalance in the consideration of civil claims in the Bill. I will say it once again: where the Opposition see that the Bill can be improved, we will highlight it.

We have tabled the amendment to ensure that both witnesses' and claimants' interests have been secured. The Bill asks the courts to have

“particular regard to the likely impact of the action on the mental health of any witness or potential witness who is a member of Her Majesty’s forces”,

but we can do better. It is important to ensure that there is equality under the law and that the interests of the claimant are also considered. The intent of the amendments is to balance the considerations UK courts must have particular regard for in determining whether to disapply the standard Human Rights Act limitation period so as to ensure that the claimant’s interest in having their claim proceed is not illegitimately subordinated.

Over the last few days, we have received written evidence highlighting this very issue, including the submission from Rights and Security International, a charity which works to promote just and accountable security policy; it has over 25 years’ experience working in the field of human rights and national security policy in the UK. In its evidence submission, it said that it is concerned about the creation of a one-sided discretion to disapply the standard limitation period within the six-year mark.

“First, the proposed considerations have a discriminatory impact against the claimants. This is because they are illegitimately weighted in favour of the MOD operating solely to the detriment of claimants. They are overly focused on factors tending to preclude claims with no reference to the interests of the claimant in having his or her rights vindicated. This has the effect of creating a hierarchy of values and subordinating the claimant’s interest in bringing the claim”.

Secondly, RSI says that there is a requirement that the court give particular regard to the likely impact of the action on the mental health of the witness or potential witness who is a member of Her Majesty’s forces. They argue this is an inappropriate and disproportionate test because it is heavily weighted in favour of precluding claims from proceeding. This is because giving evidence is almost always stressful to any witness be they members of Her Majesty’s forces or not. It continues:

“It is disproportionate because there are many alternative ways to support vulnerable witnesses that do not have the effect of preventing access to justice for potential victims of human rights abuses, wrongful death or personal injury. Were the Government really serious about protecting members of Her Majesty’s Forces, ensuring the provision of such support services would be the focus of reforms to the law, rather than provisions which have the effect of protecting first and foremost the MOD.

Third, it is questioned whether it is really necessary that the court gives particular regard to the likely impact of the operational context on the ability of individuals to remember relevant events or actions fully or accurately. This is because it has been determined that effective legislation can still take place way after the event occurred. For example, the Malmö litigation proceeded over 50 years after the incident. The courts were still able to identify systematic rights abuses and systematic flaws on the part of the Bill relevant to the British colonial administration. This is evidence of the fallacy of the allegation that effective investigations can never take place well after the fact due to a loss of evidence or decreasing reliability of evidence over time”.

That is a lengthy quote, but I think it makes some very important points, which I will take in turn. Once again, we have heard that the Bill is not designed to protect our service personnel but to protect the Ministry of Defence. The legislation is heavily weighted against the ability of service personnel to proceed with civil claims. These are not my words or Labour’s; they are

from a highly respected organisation that has covered the issues raised here for many years and is highly experienced in this area.

In light of this, will the Minister recognise the mistake that is being made here for the sake of our service personnel? Why is he so intent on rushing through the House a Bill that will disadvantage our troops? There is another theme here, which we have covered before—something that we have called into question before in other areas of the Bill: fairness and balance.

In its current form, this part of the Bill would create a serious imbalance of fairness within the equality of the law. If the Minister will not address these issues for the sake of our armed forces personnel, will he not do it for the sake of equality under the law, for which our country is so well respected and renowned?

We received further written evidence highlighting this problem of an unbalanced weighting. The Centre for Military Justice is a charity established to advise current and former members of the armed forces, or their bereaved families, who have suffered serious bullying, sexual harassment, sexual violence, racism, or other abuse or neglect. In its evidence, the charity outlined the need for the Bill to take into account the mental health of claimants, not just their witnesses. Specifically, the CMJ said that

“there are often very good reasons why some claims or parts of them need to be issued 6 years after date of knowledge or diagnosis; or where some of the damage would have been caused outside of the 6 year limitation period and some within it. If you are suffering from PTSD you may become aware that there is something seriously wrong within the limitation period, but it may be very hard for you to get help then or even for some time after.

Imagine if you are a veteran with undiagnosed PTSD—you are drinking heavily, or having a lot of personal problems (because of what you have been through)—you may know there is something wrong—you may even go to your GP—so that might be said to be your date of knowledge for limitation purposes—but you may not be able to take the next step of getting properly diagnosed and/or be able to get legal advice. Those are the kinds of cases that need to have the option of applying to the court to extend time and it makes no sense to add a hard ‘long stop’. If there are good reasons to extend time, the claimant should be allowed to try and persuade the court and the court should be allowed to apply the existing criteria.

Last year, The Times reported the case of Mark Bradshaw, 44, who suffered from post-traumatic stress disorder (PTSD) since he was involved in a friendly fire attack in 2010 while serving with the Royal Artillery. Despite the immediate onset of nightmares and hypervigilance, the veteran was not given a formal diagnosis until 2016. By then he was drinking heavily, had suicidal thoughts and had left the service and become alienated from his family. He was eventually awarded a settlement, but not without a fight, and he fears that the proposed legislation could discriminate against those who do not develop PTSD, or receive a diagnosis, until many years later. He called the plan to impose a time limit on claims ‘horrendous’. *The Times* reported him saying, ‘I got pushed to the GP. How many people sick with mental health won’t go to the GP?’”

That tragic case, which we have already heard about in Committee, shows that we need a proper and fair weighting of both witnesses and claimants. I hope this will make clear to the Minister the changes required in the Bill. In the light of the fact that his legislation is heavily weighted against the ability of service personnel to proceed with civil claims, will the Minister, for the sake of our service personnel, recognise the mistake that is being made here? Why is he so intent on rushing through this House a Bill that disadvantages our troops?

[Stephen Morgan]

If he will not change his mind for the sake of our armed forces personnel, will he not do so for the sake of the equality under law for which our country is so respected and renowned?

Mr Jones: Do I understand that we are also debating schedule stand part?

The Chair: Yes.

Mr Jones: Thank you—I will ask some questions about the schedules as outlined.

Schedule 3 references Scotland, and schedule 4 is about Northern Ireland. Mr Mundell, your great nation has always had a separate legal system, which in many ways is far superior to the one we have in England, given some of the common sense it contains. I would be interested to know from the Minister what representations were received from the Scottish Law Officers regarding the application of the Bill. It references overseas operations, but is clearly going to affect many servicemen and women, and Scotland is a good recruiting ground for those servicemen and women.

12.15 pm

The other issue is Northern Ireland, which is referred to in the schedule. The Minister has boldly claimed that the Government are going to bring forward a similar Bill to cover Northern Ireland veterans, which—if I can put it in a “Yes, Minister” way—is a very bold statement. It will be interesting to see how that claim is implemented.

I have a lot of sympathy with Northern Ireland veterans, because they are of my generation—people who I went to school with. Some of the cases are, frankly, terrible, as is the idea that they are not being dealt with. I accept that the title of the Bill includes the word “overseas”—I do not want to invite the wrath of the hon. Member for Strabane and others, because Northern Ireland is not overseas—but part of the claims for this Bill is that it will somehow cover and solve all problems. It will not, and I want to understand how it interplays with the legislation that is going to come forward for Operation Banner and other veterans.

I have had experience of Northern Ireland politics as a Minister. On the issue of Northern Ireland veterans, I have spoken to all sides, including Sinn Féin. I accept that the lead is not going to be the MOD, and would be the Northern Ireland Office, but I very much doubt that a similar Bill could be brought forward for Northern Ireland veterans. That might be the tipping point, where we welcome the Minister back to the Back Benches. So it would be interesting to know how those two things are going to be squared.

In terms of the issues raised in the schedules around mental health, my hon. Friend the Member for Portsmouth South makes a good point. There is sometimes no date of knowledge in these situations; it is very difficult to pin that down. In his statement the other day, I think the Minister basically admitted that limitations are going to be set on people’s rights, but the benefits are going to be on the other side. He mentioned the case of Major Campbell. Well, there is nothing in the Bill that will stop another Major Campbell case. If we look at that case, it had nothing at all to do with time limits or

with civil litigation—it was to do with the investigation process. I have moved some new clauses that would improve the Bill in terms of limiting investigations.

Johnny Mercer: Does the right hon. Member understand—I am sure he does—that he is fundamentally wrong to say that the Bill would not have had an impact in the Major Campbell case, which he keeps referring to? He talks about the investigations taking so long. Those investigations are driven by bringing civil or criminal claims. Bringing in the longstop would mean that the worst Major Campbell could have had was going through to 2009; he has repeatedly said that. Those are the facts of the matter, and it is important to bear that in mind going forward. The Campbell case is a very emotional case; however, we have to stick with the facts, and the facts are that this measure would have limited the experiences to 2009, as he has said, and as we have laid out on a number of occasions.

Mr Jones: I am sorry; I totally disagree with the Minister. He is wrong. It was not the claims that drove that case. As Hilary Meredith said in her evidence to the Committee, part of the problem was that the MOD started to pay out large amounts of compensation to individuals. I think I explained the reason why that was done at the time; it was partly to follow a little bit what the Americans were doing, and it was partly a cultural thing in Iraq—for example, if there was a car accident, a certain amount of money was paid and that was that. It even got to where we might call it brutal. I remember sitting once in Basra with a claims officer, dealing with claims. They were everything from a car accident, “My goat’s been shot” and “You’ve run over my dog” right up to, “You’ve ruined my crop landing a helicopter, or flying something into it.” They were paid out, and it even got to a point, which we might find quite cold, that somebody’s death was covered by making a payment—blood money, I think, is how the Americans referred to it. That might seem harsh and callous, but we did the same things, just with a legal process. That led to others.

The Minister and I totally agree about people like Phil Shiner. There is no defence there. However, in Campbell’s case, if an accusation had been made to the MOD, not from a civil case but because someone came forward to say, “This happened,” it was not, then, the claim that kicked it off—it was the accusation. I accept that Shiner, in some cases, was trying to put forward things that were false, or encouraging people—I think there were even cases where he paid people—but the Bill would not stop that case coming forward, because when an accusation is made to the MOD, it will have to investigate it.

That is the problem for the Minister. He has focused in, with something of a gut reaction, against people such as Phil Shiner, and I sympathise with him—I have lots of sympathy with him on that. I have no time for those things, but the MOD created part of the problem itself, in the compensation culture that it engendered. Then it made it worse—I know the Minister was trying to be party political the other day, but I am not going to be, shudder the thought—by setting up the IHAT investigation in 2010, under a Conservative Government. That just fuelled things.

I still plead with the Minister to do now in the Bill what Campbell’s case needed, though I accept his officials will say, “Minister, we must wait until next year’s armed

forces Bill.” No, put it in now. If he includes issues to do with controls over investigations, he will have my 100% support, because that is what will drive down cases such as the Campbell one. It was completely unacceptable that that happened. Yes, political decisions were made about Iraq and Afghanistan about paying compensation. A Conservative Government set up IHAT, and, as happens with a lot of these things, it became like a licking lollipop, in terms of the way they keep growing. However, if the suggestions of the Judge Advocate General, Judge Blackett, about looking at investigations were put in the Bill, that would stop the Major Campbell cases. Just introducing a limitation period will not stop cases. They will still be investigated.

Let us be honest, it is a proud testament to the professionalism of our armed forces that, in the horrendous situations that they have been involved in over the past few years, in Iraq and Afghanistan, we have had small numbers of disciplinary cases. That is testament not only to their courage but to the system of discipline in our armed forces. We have a set of regulations, laws and training that ensure that people know what they are doing, and that they follow. As to the cases that have been brought, such as Marine A, that was not started by an ambulance-chasing lawyer. It happened because someone took a video of Marine A shooting a wounded Taliban fighter, which was clearly contrary to all his training. The Bill would not stop that. In that and other relevant cases—I am racking my brain to think of them—the investigations were complete within two years. That was quite quick, so I think it can work. It is about case management.

There is another point to be made about that. When the service man or woman gets to court, do they get a fair hearing? In that case, he did. My question is why on earth the legal representatives did not argue—quite rightly—at the first hearing that he had suffered mental trauma and other things. He was found guilty by a military court—not a civil court—of murder on the first count. But when it went to appeal, it was reduced to manslaughter, which was quite right, taking into account the circumstances in which the incident occurred, as well as credible evidence from mental health professionals about his mental state at that time. That does not excuse what he did, but it puts context around it.

That is why, as I said before, I am a supporter of the military justice system, because cases are dealt with by people who understand that system. Putting a time limit on cases will disadvantage members of the armed forces by taking them out of section 33 of the Limitation Act, and for what? For something that will not reduce the number of cases.

There is another point we could deal with very easily. I ask the Minister again, how many limitation cases have there been from civilians or anybody else? I suggest there would be very few, but that is not the point. The point is that servicemen and women have a right to go outside of that time if there are exceptional circumstances. Having taken limitation cases—not personally—I know that they are done only in exceptional circumstances, because the threshold is so high. That is why when the Minister said the personal injury lawyers said they sometimes advise clients not to take these cases on limitation, he is quite right. I have done that myself, because I know there is not a cat in hell’s chance of the court ever saying that the reasons are justifiable in terms of the Limitation Act.

The Limitation Act is there for a good reason. It is not—I think this is what the Minister has in mind—a green light for everybody to come out of the woodwork after a huge period of time and say, “Yes, I want to put my case.” It is not like that; it is very difficult. I support that, because there must be time limits for cases, for the reason the Minister gave—I agree with what my hon. Friend the Member for Portsmouth South said—which is that we have to try, if possible, to get cases done as speedily as we can. That is fair for the victim and fair for the accused. But this Bill will not do that.

The other thing that is said is that the Bill will stop investigations. It will not stop investigations at all, and they could go on a long time. As I said in a previous sitting, that must be horrible. We cannot imagine being accused of some of the horrendous crimes that Major Campbell was accused of and having that hanging over us for a long time. That is not fair to that individual.

Johnny Mercer: It has never been the Government’s stated position to stop investigations. I think the right hon. Member knows that. We cannot run a Department and refuse to investigate allegations that people bring forward.

Mr Jones: No, I am not suggesting for one minute that it is. I am suggesting to the Minister—this is what Judge Blackett came forward with—that we need a way of managing those investigations, to ensure that they are speedily done and that there is judicial oversight of the process, not oversight from the MOD or the chain of command, which could lead to accusations. I came forward with three suggestions of how to do that. Get rid of all the minor cases in the system. That is just good case management, and it also helps the individual who has been accused. If the judge thinks there is no evidence, they should throw the case out. That can be done in magistrates courts; why can we not do it in this system? That is a huge missing bit of the Bill.

To reiterate, I am not for one minute accusing the Minister or the MOD of turning a blind eye to serious allegations. If an allegation is made, it has to be investigated. The issue is the way it is investigated and the time it takes to investigate it. The idea is that the time limit process will somehow reduce the number of claims. I do not think it will, because people will bring a claim within six years, it will have to be investigated, and someone will have to ensure that it is case-managed through the system.

12.30 pm

This is also about ensuring a dispute resolution process. If a group consultation can be dealt with quickly, that is better than having it go on for a long time. Accusations will still be made against servicemen and women on operations overseas. It is nothing to do with claims being brought forward by locals or others. Why throw out a basic right that everyone else has, on the misunderstanding that somehow the measure will solve the number of cases being put forward? It will not. The Minister has raised a lot of people’s hopes with this Bill. I said that the other day, and the Minister should be careful about that. People are perhaps saying, “Great, we’ve got somebody doing this, and it’s going to achieve that.” It will not. One of the worst things that can be done in politics is to promise people things that are not delivered, and then the penny drops that people have not got what was suggested.

Another question is why this was not done before in legislation. It is a good question. Do I support the intention behind the legislation? Yes, I do support trying to ensure justice for servicemen and women, but we must also get justice for victims. Considered from the MOD's point of view, if someone is suffering from an injury or a loss, as in the Snatch Land Rover case, are they the victims? Yes, they are. They do not want to be seen as victims, quite rightly, and I hate the word "victim" in that context. If someone's mental health has been completely ruined because of their service, or they have had an injury or disease that has ruined their lives, what is gained by stopping them from taking a case to get compensation? In some cases it is not about compensation, but about making sure that the individual has some type of justice at the end of the day. The Bill will deny them that, and that cannot be right. With those brief remarks, I will conclude.

Johnny Mercer: I have listened at length and for many hours to a lot of the points that have been made, and I fear we are beginning to reach a point where we are repeating ourselves to a large degree.

Mr Jones: There is more to come this afternoon.

Johnny Mercer: Fantastic, fantastic. With any such legislation, I understand that there will be people with fears or concerns, and there will be an element of risk. I cannot honestly stand here and say that the Bill disadvantages troops or service personnel. I accept that there is a difference of opinion here, but I would not even think about introducing legislation that disadvantaged them.

Looked at in the round—and as I have said many times—this is a good, fair and proportionate Bill. I will defend it. I have already outlined that Government are creating new factors to ensure that the courts are directed to consider the uniquely challenging context of overseas military operations when deciding whether to extend the primary limitation periods for personal injury and death payments, and Human Rights Act claims. Amendments 88 to 91 are therefore unnecessary. They introduce a further factor to which the UK courts must have particular regard when determining whether to allow claims beyond the primary limitation periods of one year for Human Rights Act claims and three years for personal injury and death claims. Their stated intention is to ensure that the claimant's interest in having their civil claim proceed is not subordinated to the additional factors being introduced by this Bill, but the courts already take into account the interests of the claimant in having their claim proceed when determining whether it is equitable to allow a case to proceed beyond the primary time limit.

For personal injury and death claims in England and Wales, section 33(1)(a) of the Limitation Act 1980 states that the courts should have regard to any prejudice that might be caused to the claimant if the case is not allowed to proceed beyond three years. Prejudice would include the impact on the claimant's ability to secure their rights through legal proceedings. For personal injury and death claims in Northern Ireland, article 50(1)(a) of the Limitation (Northern Ireland) Order 1989 has the same provisions. For personal injury and death claims in Scotland, section 19A(1) of the Prescription

and Limitation Act Scotland 1973 sets out the equitable tests in more general terms, but that still includes considering the interests of the claimant in securing their rights through legal proceedings.

For Human Rights Act claims, section 7(5)(b) sets out that the court may allow claims to be brought beyond the primary 12-month period if it considers it equitable to do so, having regard to all the circumstances, which would include considering the interests of the claimant in vindicating their human rights through legal proceedings. The factors introduced in clause 11 do not replace the tests set out in section 7(5)(b) of the Human Rights Act; they just outline considerations that reflect the unique context of overseas military operations.

Liz Twist (Blaydon) (Lab): As the Minister is arguing that there is sufficient protection within the law, can he explain the difference in the views taken by very many of the witnesses we saw in the first two days of this Bill Committee, the Centre for Military Justice, and Rights and Security International, whose primary focus is to ensure that our veterans and armed forces are properly represented? There seems to be a mismatch between what so many other people have said and what the Minister is saying.

Johnny Mercer: I accept that there was an imbalance of the views in the evidence that the Committee heard. Those groups, while I accept that they have a degree of concern for the welfare of service personnel and veterans, are not the sole arbiters or owners of that position. We are all here trying to help those who serve and veterans. In the end, we have to make a balanced judgment about what is in their best interests, and that is what this Bill is about.

This is not a sort of anti-human rights thing; it is simply bringing into that debate an understanding of the reality of modern combat that has not been there for many years and has resulted, as we have seen, in the experiences of people such as Major Bob Campbell. Those two things cannot be argued. There is, of course, the human rights element, but there is an application of the ECHR to the battlefield that is not correct and has resulted in what we have seen.

Liz Twist: What these amendments seek to do, and what those witnesses were asking us and the Government to look at doing, is improve the Bill so that it better reflects the broader range of interests. I am surprised that the Minister does not want to reflect on that and build in some of those protections.

Johnny Mercer: That is because I have reflected on those things, and in my and the Government's view, which is allowed to be different, they do not improve the Bill. If we were to take away the six-year limit, we would start diverging away from one of the clearest aims we have, which is to provide certainty for veterans. I understand there are different views, but I am afraid I do not agree, and neither do the Government.

For those reasons, amendment 88 to 91 are not necessary. We have already discussed the reasons why clauses 8 to 10, which introduce schedules 2, 3 and 4, should stand part of the Bill, so I do not intend to repeat them here. I recommend that the amendment be withdrawn and schedules 2, 3 and 4 stand part of the Bill.

Stephen Morgan: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Schedule 2 agreed to.

Clause 9 ordered to stand part of the Bill.

Schedule 3 agreed to.

Clause 10 ordered to stand part of the Bill.

Schedule 4 agreed to.

Clause 11 ordered to stand part of the Bill.

Clause 12

DUTY TO CONSIDER DEROGATION FROM CONVENTION

Chris Evans: I beg to move amendment 57, in clause 12, page 8, line 20, at end insert—

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

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

Good afternoon, Mr Mundell. It is a pleasure to once again serve under your chairmanship as we head into the final straight of this Bill Committee. I rise to speak in support of amendment 57. I have concerns about multiple aspects of the Bill. This amendment is crucial to improving the Bill and safeguarding our reputation at home and abroad, and it can easily be implemented.

The amendment is simple. It asks that the Government seek approval from both Houses of Parliament before the Secretary of State for Defence approves any derogations from the European convention on human rights. I spoke in the last sitting about parliamentary scrutiny of the role that the Bill gives to the Attorney General, and I must once again raise the absolute importance of scrutiny. I remind the Government that the UK is not a presidential system—given what we see from the United States at the moment, amen to that. The Government draw their power from this House. This House must be consulted on matters as serious as derogating from our key international obligations. The Government are in danger of destroying our reputation as a country that upholds and defends international law. They should at the very least let Parliament act as a check on the worst urges that may come out this legislation.

The Bill would use article 15 of the European convention on human rights, the derogation clause. A guide from the Council of Europe says of article 15:

“It affords to Contracting States, in exceptional circumstances, the possibility of derogating, in a limited and supervised manner, from their obligations to secure certain rights and freedoms under the Convention.”

The words that stick out to me are “exceptional” and “limited”. If these cases are exceptional, there should be no problem with the Defence Minister seeking parliamentary approval on the very rare occasions when they deem derogation necessary.

Mr Jones: Does my hon. Friend agree that, although the Human Rights Act is often portrayed as being used by unscrupulous foreigners to attack us, it is very important for our servicemen and women if they are bringing claims against the MOD for injuries that they have suffered?

12.45 pm

Chris Evans: My right hon. Friend is absolutely right. Human rights are a political football that is being kicked around by everybody. If hon. Members want to see the importance of the Human Rights Act, they would do well to look at the debate that I introduced last week about the Uyghur Muslims in China, and at what they are going through. We have had human rights problems with China. On the issue that my right hon. Friend raises, of course human rights are vital when claims are brought against the Ministry of Defence, and that should be considered. We should not attack anybody's right to defend their human rights in court, and we should not view human rights as something bad. They are fundamental rights that we all have as humans.

Parliament can then decide whether a derogation is limited. If we are going to derogate from international obligations, consent must come from Parliament. The Equality and Human Rights Commission said in written evidence:

“At the very least, we recommend support for amendment 57, which would require significant derogations regarding overseas operations proposed by the Government from the ECHR to be approved by Parliament before being made.”

As it points out, the amendment is the very least that we should be doing to ensure that the UK upholds its very proud record of human rights across the world. To set a legal norm for derogation from the European convention on human rights would seriously damage Britain's international standing. It would send a signal that these international conventions and treaties are not taken seriously by our nation, and would have the knock-on effect of harming the integrity of our troops.

In its briefing on the Bill, Redress said:

“the Bill risks undermining the UK's influence on human rights in the global context”.

Derogating from the international conventions on human rights will clearly diminish our integrity on these matters. The Government should be keen to mitigate that in any possible way. The Opposition believe that this amendment is a good start if the option to derogate must be written into the Bill at all.

Martha Spurrier, the director of Liberty, said in one of the evidence sessions:

“The concern, of course, is when you take a wider view and look at this Bill as a whole, which very much signals the desire to water down the human rights arrangements”.—[*Official Report, Overseas Operations (Service Personnel and Veterans) Public Bill Committee*, 6 October 2020; c. 76, Q149.]

Surely the Government want to do everything in their power to counter those views and assure the global community that this country still regards human rights as of the utmost importance.

I echo the words of my hon. Friend the Member for Barnsley Central (Dan Jarvis), who said on Second Reading:

“At a time when we are witnessing an erosion of human rights...it is more important than ever before that we uphold our values and standards and not undermine them.”—[*Official Report*, 23 September 2020; Vol. 680, c. 1109.]

In a similar vein, the Equalities and Human Rights Commission warned:

“At a time when the UK Government's adherence to international law”

and the relationship with Northern Ireland

“is under increased scrutiny, it is imperative that the UK is seen to show the highest regard for the international legal order.”

[Chris Evans]

To write in a system of derogating from European conventions regarding human rights would severely undermine us. This clause, unamended, will determine our international reputation, and therefore the reputation of the brave men and women who serve in our forces.

Amnesty has said that, as it stands, the Bill

“will do irreparable damage to the reputation of the armed forces of this country, undermine basic principles of access to justice and send a bad message internationally.”

The former director of service prosecutions, Bruce Houlder, has called the Bill an “international embarrassment”. David Greene, the vice-president of the Law Society, has added to the voices warning of our loss of international standing, saying that while

“Our armed forces are rightly known across the world for their courage and discipline”,

the provisions allowing for a derogation from human rights conventions and breaking international law

“would undermine this well-deserved reputation”.

Multiple people and organisations say that the Bill will damage our international standing. After all, how can we call on other countries to respect international treaties on human rights, or to honour international obligations, when we are setting a precedent in our legislation for derogating from them? How are service people supposed to carry out missions overseas with the integrity that the British forces have if they know that they might not always be held to international standards by their own Government?

If the Government insist on writing derogations from the European convention on human rights into the Bill, the legislation must be scrutinised at the highest level. It is that important. The Government cannot simply ignore international conventions without getting approval for doing so from both Houses, and ensuring that derogations are considered case by case and are deemed exceptional actions. That would signal to other countries that we still valued international conventions on human rights.

Mr Jones: Does my hon. Friend agree that the problem with the European convention on human rights is that people are confused about how it relates to the European Union? Clearly, there is a dog-whistle approach to anything with the word “Europe” in it. The convention has nothing at all to do with the European Union. It is actually something of which we should be proud. Winston Churchill and others pioneered it at the end of the second world war.

Chris Evans: Yes, my right hon. Friend is absolutely right. He gets to the nub of the issues that we are facing nationally. In the press, and even in some quarters of the House, it seems that putting the word “European” on anything makes it something to do with the European Union, and then we open up a can of worms about Brexit. As he says, the European convention on human rights has a proud history, involving such luminaries as Sir Winston Churchill, who was responsible for setting it up.

My right hon. Friend is absolutely right to say that we have to be careful about confusion. When the word “Europe” or “European” is slapped on something, people think it is all about Brussels and its rules on bendy

bananas, or whatever else people want to throw at us. This is a really important point. Whatever side of the argument people are on—whether they supported Brexit or wanted to remain in the EU—they should realise that the European convention on human rights has nothing to do with the EU. This is fundamentally about human rights.

Mr Jones: Does my hon. Friend congratulate the Members of this House who sit on the Council of Europe? Its role is to ensure that the European convention on human rights is a beacon of freedom and rights throughout the world, but in parts of Europe today—Ukraine being one, and Russia another—the human rights that we take for granted are not practised.

Chris Evans: I echo my right hon. Friend’s comments about the work of the Council for Europe; I know how important it is. If we want to talk about human rights more widely, look at what happened in Nigeria yesterday, and what has happened in Azerbaijan, Belarus, Ukraine and Russia. We are the guardians of the rule of law. This whole country is formed on the rule of law, but we have always had an international and Atlanticist outlook whereby we defend human rights to the hilt. There is a fundamental belief, which I think is shared across the House, that if one person loses their human rights, we all do. That is something we should be guided by.

No member state of the Council of Europe has previously derogated from the European convention on human rights in the manner proposed in the Bill. That is how unusual its provisions are. What we are asked to agree to today would make us an anomaly right across the continent of Europe and beyond. It is therefore clear that intense scrutiny of derogations would be highly sensible.

Mr Jones: I agree. On combat in overseas operations, the Supreme Court was very clear in the Smith case that combat immunity was not in any way prevented by the Human Rights Act 1998. In that case, the MOD was trying to extend the Human Rights Act to cover planning decisions that were taken in Whitehall about Snatch Land Rovers.

Chris Evans: It comes back to the point that my right hon. Friend has so eloquently made over the last few sittings. I tell the Minister this: I have enjoyed my right hon. Friend’s contributions, though they may have been difficult.

Johnny Mercer: So have I, absolutely.

Chris Evans: Sometimes I am not sure.

I was not au fait with the case of the Snatch Land Rovers before I came here. The point my right hon. Friend the Member for North Durham has been making is that one day, in the near future—a nearer future for some than for others—we will not be here, and others will come in, but the legislation will stay. We have to get it right. He knows as well as anyone else, given his experience, that the Ministry of Defence will hide behind its lawyers. In this case, they would have used the Human Rights Act. That is why it is important that we have scrutiny at the highest level. It is important that the provisions are not left open for lawyers to use at will. I absolutely agree with my right hon. Friend.

To me, it is clear that intense scrutiny is highly sensible. It ought to be required when the UK decides to derogate from conventions; otherwise, we will be setting a dangerous precedent. This country has a unique role in global history. We have set the standard for so many countries to follow.

Mr Jones: The provisions may also pose a practical problem for deployment with other forces. Everyone agrees that in the future, many of our deployments will be with other nations, and if we have a derogation, and our situation is different from theirs, that could create problems in building alliances, or UK armed forces deploying with our allies.

Chris Evans: I absolutely agree. We do not know who will lead our combined forces in the future. If we have a piece of legislation that allows us to derogate from the European convention on human rights, that puts us at a disadvantage. This year we celebrated the anniversary of VE and VJ Day. Of course, during the famous D-day landings, we were led by an American, General Eisenhower. We might be putting our forces at risk if we are allowed to derogate from the European convention on human rights.

Given the UK's standing and influence, there is a risk that if this provision remains in the Bill as it is, and is acted on without parliamentary scrutiny or consent, it would set a dangerous precedent to other countries in future conflicts. Having carte blanche to derogate from international conventions is not a precedent that the UK should set. As I said, other countries look to us for the standards that we have set in the past. We should be setting the highest standards in the future.

Other organisations have also raised their concerns about the Bill and giving the Government the ability to ignore international law. Justice stated:

“the Bill would damage the standing of the armed forces by acting contrary to established legal norms—both domestic and international...The Bill risks both contravening the UK's obligations under the European Convention on Human Rights...and other international legal instruments, many of which the UK helped to create.”

Our country has a proud history of upholding international conventions on human rights across the globe, but the Bill threatens to undo our international standing as the rightful champion of human rights. Amendment 57 will make it clear that our country still sees international obligations and human rights conventions as vital. It states that the Government will not derogate from human rights conventions without real and significant cause. It shows a commitment to transparency and parliamentary scrutiny.

1 pm

Mr Jones: Will my hon. Friend give way?

The Chair: The hon. Member for Islwyn has concluded his remarks.

Chris Evans: No, I have not; I have three hours of this. I give way.

Mr Jones: My hon. Friend is just getting into his flow. Does he agree that the problem with the Bill is that it does not define the circumstances in which a derogation will take place? We have a Conservative Government

today, but if there is no definition of the reasons for allowing a derogation, a future Government could use the provision to do anything.

Chris Evans: I agree with my right hon. Friend. We have to be careful; we are in the here and now, but we have to attempt to future-proof the legislation we pass. That is true of anybody. It will be difficult, but if, God forbid, there was an extreme Government in future, they could do whatever they liked, using this anomaly in the Bill, and would be acting within the confines of the law. That is why it is extremely important to remember that the legislation will remain long after each and every one of us has gone.

Mr Jones: That is not in the realms of fantasy. In Europe, we need only look at the way Hungary is going under the leadership of Mr Orbán, who seems to disregard a lot of what we would take to be human rights legislation. This argument is not based on a figment of the imagination, or fantasy.

Chris Evans: This is on our doorstep. Look at the annexation in Ukraine. Hungary is running over human rights like a tank. If we leave these anomalies in the legislation and do not tighten it up, people can do whatever they like in future. It is extremely important that we have certainty; that is the most important element of law. Judicial precedent and statutory interpretation are important, too, but we need certainty, and that is unfortunately not in the Bill. It would be lovely if the Government supported the amendment—it would be the first Opposition amendment that they agree to in the Committee—because it would ensure certainty.

If we cannot give certainty, because we do not know when we will use the provision, we can at least ensure parliamentary scrutiny of derogations. As Justice and other human rights groups have publicly stated, the Bill signals that the Government are willing to break international conventions. It signals a worrying disregard of the European convention on human rights and the Geneva convention. That cannot be allowed to pass unchecked. That is extremely important. Particularly as we leave the European Union, we should be aiming to highlight our commitment to international conventions such as those on human rights. Any derogation from the European convention on human rights must be checked by Parliament, decided on democratically, and subject to the highest level of scrutiny, as any derogation should be.

Mr Jones: My hon. Friend refers to the Geneva convention; there are very good reasons for such conventions. They are not just the right thing to follow, in terms of human rights; they afford protections to our servicemen and women. In the past, we have rightly criticised—and, going back to the Nuremberg trials, taken cases against—individuals who ignored the Geneva convention.

Chris Evans: Absolutely. Our troops must be defended, and they must have the right protection in law.

I point out, Mr Derogation—please forgive me, Mr Mundell; that was my first mistake in a number of sittings. I point out, Mr Mundell, that derogation from treaties is extremely rare. To derogate frequently from

[Chris Evans]

a treaty would be to undermine it. [Interruption.] I see that I am shaping up to be the most unpopular Member present, because I keep speaking and eating into lunchtime, so I will come back later this afternoon.

Ordered, That the debate be now adjourned.—(Leo Docherty.)

1.7 pm

Adjourned till this day at Two o'clock.