



Ministry
of Defence

MINISTRY OF DEFENCE
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THE RT HON BARONESS GOLDIE DL
MINISTER OF STATE IN THE HOUSE OF LORDS

MSU/4/8/2/3/ap

5 February 2021

Dear Hugh,

During the Second Reading of the Overseas Operations (Service Personnel and Veterans) Bill on 20 January 2021, you asked why the exceptionality test in Clause 2 is necessary, given that other provisions in Part 1 specify the conditions that the prosecutor should consider.

The statutory presumption against prosecution is assessed to be the most appropriate measure for ensuring that we provide greater certainty to our Service personnel and veterans in relation to the threat of prosecution for events which happened many years ago. Clause 2 will ensure that, where five years have elapsed since an alleged offence on an overseas operation, the prosecutor must determine whether the case meets the higher "exceptional" threshold for a prosecution to proceed, in addition to the other considerations.

You also asked whether the other measures in Part 1 should be taken into account at any time, before and after five years have elapsed.

We recognise that alleged misconduct by Service personnel is dealt with most effectively if individuals are investigated and, where appropriate, subject to disciplinary or criminal proceedings, as soon as possible after the event. However, this is not always possible in the circumstances of overseas operations, even for investigations taking place at the time of the event. Allegations made years after the event are even more challenging and can make the delivery of timely justice extremely difficult. It is in these circumstances that we are seeking to provide reassurance and certainty to our Service personnel and veterans. Having consulted on this particular issue, there was clear support for the measures being applied after a period of five years.

I am placing a copy of this letter in the Library of the House.

*Yours sincerely,
Annabel Su Goldie*

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