



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 Des,

During the Second Reading of the Overseas Operations (Service Personnel and Veterans) Bill on 20 January 2021, you asked a question about why the Government wants the Clause 12 provision, and how it would be used.

The proposed legislation would require the Government of the day to consider derogation ahead of any significant overseas engagement, and to keep under consideration whether it would be appropriate to derogate. It does not require derogation to take place, but mandates Government consideration of whether derogation should be sought.

A decision to derogate would need to be assessed on a case-by-case basis, and it is therefore not possible to derogate on a blanket basis. Derogation is only possible if the very high threshold and strict criteria, which are set out in the ECHR, are met. These are necessarily context-specific, and the facts around each operation would first have to be considered.

Any consideration of derogation would be done within the limits of applicable international obligations. For example, there are certain obligations which we will always remain bound by, such as the prohibition of torture and slavery. However, in the right circumstances and where the conditions are met, we will consider derogating from the articles which allow derogation to allow us to maintain operational effectiveness. For instance, in future conflicts that require our Armed Forces to conduct detention operations, it may be appropriate to derogate from Article 5 of the ECHR. Even in those instances, Service personnel will still be required to abide by the Law of Armed Conflict, as well as any other relevant international and domestic law.

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

*Yours sincerely,  
Annabel Su Hooie*

**BARONESS GOLDIE DL**

The Rt Hon. the Lord Browne of Ladyton  
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