

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

MSU/4/8/2/3/ap

4 March 2021

Dear Lord Lancaster,

Thank you for making the time to attend my briefing on the Overseas Operations (Service Personnel and Veterans) Bill with fellow Peers on 14 January 2021, and for your contributions during the Bill's Second Reading on 20 January 2021. I undertook to write to you to respond to your question about the application of the Bill to British Overseas Territory Forces (BOTF), and in particular the new regiments that were established last year in the Cayman Islands, and Turks and Caicos. My apologies for the time it has taken to respond on this matter, but it is a complex issue and I wanted to make sure that I provided you with the fullest response.

The points you raised focussed on the territorial extent of the Bill and the definition of "overseas operations". I would like to reassure you that full consideration has been given to the ways in which the Bill will impact upon the BOTF, and I am confident that the below detail should help mitigate concerns on the points you raised.

You will be aware that Section 369 of the Armed Forces Act provides that, where BOTF personnel are serving with UK Armed Forces they will be subject to Service law as set out in the Act (although, as you have observed, the position is different in Gibraltar). To be clear, the Bill does not change anything about how or to whom the Armed Forces Act 2006 currently applies.

In respect of its **territorial extent**, the Bill extends to England, Wales, Scotland and Northern Ireland because it is intended to address concerns in relation to historical allegations facing UK Armed Forces personnel on overseas operations.

Part 1 of the Bill places obligations on the Service Prosecuting Authority and other UK prosecutors and, in all cases, these prosecutors will be based in the UK. Part of your query was why we did not include the Overseas Territories in the territorial extent of the Bill, to which I would clarify that we did not feel it appropriate to place obligations on prosecutors who are based in the British Overseas Territories. If a British Overseas Territory wishes to give protections equivalent to those in the Bill to BOTF who deploy independently of UK Armed Forces, this is something that they can of course legislate to do.

Lord Lancaster of Kimbolton TD VR PC
House of Lords
London
SW1A 0PW

The extent provisions in the Bill do not, as you have pointed out, mirror the broader extent provisions in the Armed Forces Act 2006, and the Part 1 protections will not apply to prosecutors who consider criminal allegations made against BOTF personnel who deploy independently of UK Armed Forces. In this instance, these personnel will be subject to the civil and criminal law of their British Overseas Territory.

However, we felt that BOTF should receive the same protection under Part 1 as other members of the Armed Forces when they are serving together and subject to the same Service law, and the Bill achieves this aim.

Turning to the **definition of “overseas operations”**, you have observed that if there was a deployment of BOTF within their own home territory in support of UK Armed Forces, they would be treated as being “overseas” and would therefore be within scope of Part 1 of the Bill - despite the fact that UK forces, serving on their home territory (within the UK), would not be. We do not see this as somehow disadvantaging our own personnel or being inconsistent, as the Bill measures are aimed at UK Armed Forces on operations outside the British Islands. In such circumstances, we felt that it was more important to ensure that, when these are joint UK Armed Forces and BOTF operations, all personnel would be covered by the Part 1 measures in the event of allegations of historical offences on these operations. In practice, we consider this situation is unlikely to arise.

As I noted to you when we spoke earlier this week, I do hope this letter provides suitable information to answer your question, but I would be more than happy to discuss it further if that would be helpful.

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

Yours sincerely,
Annabel Su Looie

BARONESS GOLDIE DL