

Undermining the Rule of Law Bill

EXPLANATORY NOTES

This document is an amalgamation of three government Bills introduced into parliament during the Autumn of 2020. The intent and effect of each Bill is to undermine the Rule of Law by

- (a) placing action by the Executive Branch of Government beyond the scrutiny of the Judicial Branch of Government
- (b) removing human rights protections for British citizens against criminal activity by government agents, including murder and torture.
- (c) Removing human rights protections for citizens of other countries against torture, murder and other crimes committed by British Military Personnel

In all cases the powers to authorise these acts are granted to the very Ministers who are making the law.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Lord Callahan, Secretary Prit Patel and Secretary Ben Wallace have all made statements under section 19(1)(a) of the Human Rights Act 1998, to the effect that, in their view, the provisions in the Bill are compatible with the Convention Rights.

Before doing so, they will have taken the advice of the Lord Chancellor, Rt. Hon. Robert Buckland QC MP and the Attorney General Rt. Hon. Suella Braverman QC MP, the two law officer who currently remain in post even after the Treasury Solicitor and Advocate General resigned over fundamental misgivings about the incompatibility of government legislation with the rule of law.

Undermining the Rule of Law Bill

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United Kingdom Internal Market Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department for Business, Energy and Industrial Strategy have been ordered to be published as HL Bill 135 – EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Lord Callanan has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the United Kingdom Internal Market Bill are compatible with the Convention rights.

- (8) A Minister of the Crown may by regulations amend this section so that it applies to a type of movement instead of, or in addition to, a type of movement to which it already applies (whether that type of movement is direct movement or another type of movement provided for by regulations under this subsection). 5
- (9) Regulations under subsection (8) are subject to affirmative resolution procedure.
- (10) In this section –
- “appropriate authority” means –
 - (a) a Minister of the Crown; 10
 - (b) the Scottish Ministers;
 - (c) the Welsh Ministers;
 - (d) the First Minister and deputy First Minister in Northern Ireland acting jointly, a Northern Ireland Minister or a Northern Ireland department; 15
 - (e) any other person who exercises functions of a public nature;
 - “declared for a voluntary customs procedure” means declared, in accordance with the Taxation (Cross-border Trade) Act 2018, for a special Customs procedure or temporary storage;
 - “direct movement” means movement that does not involve movement by land in a country or territory other than the United Kingdom; 20
 - “excise duty” means any excise duty under –
 - (a) the Alcoholic Liquor Duties Act 1979,
 - (b) the Hydrocarbon Oil Duties Act 1979, or
 - (c) the Tobacco Products Duty Act 1979; 25
 - “qualifying Northern Ireland goods” –
 - (a) has the same meaning that it has in the European Union (Withdrawal) Act 2018, including any meaning defined for the purposes of that Act from time to time by regulations made under the power conferred by section 8C(6) of that Act (and, if those regulations provide for different meanings to be defined for different purposes of that Act, regulations under section 8C(6) may make provision about the meaning or meanings that are to apply for the purposes of this section); 30
 - (b) is to be taken to have had, immediately before IP completion day, the same meaning that it has (under paragraph (a)) at the time when this section comes into force. 35
- 44 Power to disapply or modify export declarations and other exit procedures**
- (1) A Minister of the Crown may by regulations make provision about the application of exit procedures to goods, or a description of goods, when moving from Northern Ireland to Great Britain. 40
- (2) That includes any exit procedure that is applicable by virtue of the Northern Ireland Protocol or otherwise.
- (3) The following matters (in particular) may be taken into account when a Minister of the Crown is exercising the power conferred by subsection (1) – 45
- (a) the need for Northern Ireland goods to enjoy unfettered access to the rest of the United Kingdom, and

- (b) the need to maintain and strengthen the integrity and smooth operation of the internal market in the United Kingdom.
- (4) Regulations under subsection (1) may (among other things) make provision—
 - (a) disapplying, or modifying the application of, an exit procedure;
 - (b) stating or restating what an exit procedure is, or is not, applicable to. 5
- (5) Such provision may include provision for rights, powers, liabilities, obligations, restrictions, remedies and procedures that would otherwise apply, as a result of relevant international or domestic law, not to be recognised, available, enforced, allowed or followed.
- (6) Regulations under subsection (1)— 10
 - (a) made during the initial period are subject to made affirmative procedure;
 - (b) made after the end of the initial period are subject to affirmative resolution procedure.
- (7) In this section— 15
 - “exit procedure” means a procedure or other formality (including any supervision, restriction or control) applicable to goods moving from Northern Ireland (whether it is applicable before or after goods move from Northern Ireland, and whether it is applicable in Northern Ireland or elsewhere); 20
 - “initial period” means the period of six months beginning with the day on which this section comes into force;
 - “relevant international or domestic law” has the meaning given by section 47(8).

Notifications under Article 10 of the Northern Ireland Protocol 25

45 Regulations about Article 10 of the Northern Ireland Protocol

- (1) The Secretary of State may by regulations make provision for the purposes of domestic law in connection with Article 10 of the Northern Ireland Protocol (State aid).
- (2) Regulations under subsection (1) may (among other things) make provision— 30
 - (a) about the interpretation of Article 10;
 - (b) disapplying, or modifying the effect of, Article 10.
- (3) Such provision may, for example, include provision for—
 - (a) aid not to be recovered except in accordance with the regulations;
 - (b) persons to have no right of action of any sort or of a sort described in the regulations in respect of aid except in accordance with the regulations; 35
 - (c) the circumstances in which Article 10 is or is not to apply in relation to—
 - (i) aid granted to persons in respect of activities outside Northern Ireland; 40
 - (ii) benefits which a person may derive from aid granted to or in respect of another person;
 - (d) Article 10 not to be interpreted—
 - (i) in accordance with case law of the European Court; 45

(ii)	in accordance with any legislative act of the EU, including regulations, directives and decisions, that would otherwise be binding on the United Kingdom;	
(iii)	otherwise than in accordance with the regulations;	
(e)	rights, powers, liabilities, obligations, restrictions, remedies and procedures that would otherwise apply in relation to aid, as a result of relevant international or domestic law, not to be recognised, available, enforced, allowed or followed.	5
(4)	Regulations under subsection (1) –	
(a)	made during the initial period are subject to made affirmative procedure;	10
(b)	made after the end of the initial period are subject to affirmative resolution procedure.	
(5)	In this section –	
	“aid” means aid to which Article 107(1) of the Treaty on the Functioning of the European Union applies;	15
	“initial period” means the period of six months beginning with the day on which this section comes into force;	
	“relevant international or domestic law” has the meaning given by section 47(8).	20
(6)	In this section, references to “Article 10” of the Northern Ireland Protocol include the provisions of EU law listed in Annex 5 to the Northern Ireland Protocol and any other provisions or rules of law, including provisions of the EU withdrawal agreement, that relate to Article 10 or Annex 5.	
46	Notification of State aid for the purposes of the Northern Ireland Protocol	25
(1)	No public authority apart from the Secretary of State may comply with a requirement of a provision of EU law applied to the United Kingdom by Article 10 of the Northern Ireland Protocol (State aid) to give the European Commission a notification or information relating to aid.	
(2)	In subsection (1), “public authority” means a person who exercises functions of a public nature.	30
	<i>Certain provisions to have effect notwithstanding inconsistency or incompatibility with international or other domestic law</i>	
47	Further provision related to sections 44 and 45 etc	
(1)	The following have effect notwithstanding any relevant international or domestic law with which they may be incompatible or inconsistent –	35
(a)	section 44;	
(b)	any regulations made under section 44(1);	
(c)	section 45;	
(d)	any regulations made under section 45(1);	40
(e)	this section;	
(f)	any other provision of this Act so far as relating to the provisions in paragraphs (a) to (e).	
(2)	Accordingly (among other things) –	

- (a) regulations under section 44(1) or 45(1) are not to be regarded as unlawful on the grounds of any incompatibility or inconsistency with relevant international or domestic law (and section 6(1) of the Human Rights Act 1998 does not apply in relation to the making of regulations under section 44(1) or 45(1)); 5
 - (b) all rights, powers, liabilities, obligations, restrictions, remedies and procedures which are, in accordance with section 7A of the European Union (Withdrawal) Act 2018, to be recognised and available in domestic law, and enforced, allowed and followed accordingly, cease to be recognised and available in domestic law, or enforced, allowed and followed, so far and for as long as they are incompatible or inconsistent with a provision mentioned in paragraphs (a) to (f) of subsection (1); 10
 - (c) section 7C of that Act ceases to have effect so far and for as long as it would require any question as to the validity, meaning or effect of any relevant separation agreement law to be decided in a way which is incompatible or inconsistent with a provision mentioned in paragraphs (a) to (f) of subsection (1); 15
 - (d) any other provision or rule of domestic law that is relevant international or domestic law ceases to have effect so far and for as long as it is incompatible or inconsistent with a provision mentioned in paragraphs (a) to (f) of subsection (1). 20
- (3) Regulations under section 44(1) or 45(1) are to be treated for the purposes of the Human Rights Act 1998 as if they were within the definition of “primary legislation” in section 21(1) of that Act. 25
- (4) No court or tribunal may entertain any proceedings for questioning the validity or lawfulness of regulations under section 44(1) or 45(1) other than proceedings on a relevant claim or application.
- (5) The period mentioned in each of the following provisions (standard time limits for seeking judicial review), or any corresponding successor provision, may not be extended under any circumstances in relation to a relevant claim or application – 30
- (a) rule 54.5(1)(b) of the Civil Procedure Rules in relation to England and Wales;
 - (b) section 27A(1)(a) of the Court of Session Act 1988 in relation to Scotland; 35
 - (c) rule 4(1) of Order 53 of the Rules of the Court of Judicature (Northern Ireland) 1980 (S.R. (N.I.) 1980 No. 346) in relation to Northern Ireland.
- (6) The jurisdiction and powers of a court or tribunal in relation to a relevant claim or application are subject to subsections (1) and (2). 40
- (7) In section 7A of the European Union (Withdrawal) Act 2018, in subsection (5) –
- (a) omit the “and” at the end of paragraph (e);
 - (b) at the end of the subsection insert “, and
 - (g) the provisions mentioned in paragraphs (a) to (f) of section 47(1) of the United Kingdom Internal Market Act 2020 (provisions to which this section is subject).” 45
- (8) In this section –
- “relevant claim or application” means –
 - (a) a claim for judicial review in relation to England and Wales,

- (b) an application to the supervisory jurisdiction of the Court of Session in relation to Scotland, or
- (c) an application for judicial review in relation to Northern Ireland,
- where the claim or application is for the purpose of questioning the validity or lawfulness of regulations under section 44(1) or 45(1); 5
- “relevant international or domestic law” includes –
- (a) any provision of the Northern Ireland Protocol;
- (b) any other provision of the EU withdrawal agreement;
- (c) any other EU law or international law; 10
- (d) any provision of the European Communities Act 1972;
- (e) any provision of the European Union (Withdrawal) Act 2018;
- (f) any retained EU law or relevant separation agreement law;
- (g) any other legislation, convention or rule of international or domestic law whatsoever, including any order, judgment or decision of the European Court or of any other court or tribunal, 15
- but does not include the Convention rights within the meaning of the Human Rights Act 1998 (see section 1(1) of that Act);
- “relevant separation agreement law” has the meaning given by section 7C(3) of the European Union (Withdrawal) Act 2018. 20

PART 6

FINANCIAL ASSISTANCE POWERS

48 Power to provide financial assistance for economic development etc

- (1) A Minister of the Crown may, out of money provided by Parliament, provide financial assistance to any person for, or in connection with, any of the following purposes – 25
- (a) promoting economic development in the United Kingdom or any area of the United Kingdom;
- (b) providing infrastructure at places in the United Kingdom (including infrastructure in connection with any of the other purposes mentioned in this section); 30
- (c) supporting cultural activities, projects and events that the Minister considers directly or indirectly benefit the United Kingdom or particular areas of the United Kingdom;
- (d) supporting activities, projects and events relating to sport that the Minister considers directly or indirectly benefit the United Kingdom or particular areas of the United Kingdom; 35
- (e) supporting international educational and training activities and exchanges;
- (f) supporting educational and training activities and exchanges within the United Kingdom. 40
- (2) In this section –
- “infrastructure” includes –
- (a) water, electricity, gas, telecommunications, sewerage or other services (for example, the provision of heat), 45
- (b) railway facilities (including rolling stock), roads or other transport facilities,

Overseas Operations (Service Personnel and Veterans) Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Ministry of Defence, are published separately as Bill 117-EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Secretary Ben Wallace has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Overseas Operations (Service Personnel and Veterans) Bill are compatible with the Convention rights.

Overseas Operations (Service Personnel and Veterans) Bill

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Make provision about legal proceedings and consideration of derogation from the European Convention on Human Rights in connection with operations of the armed forces outside the British Islands.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

RESTRICTIONS ON PROSECUTION FOR CERTAIN OFFENCES

Presumption against prosecution

1 Prosecutorial decision regarding alleged conduct during overseas operations

- (1) Where a relevant prosecutor makes a decision to which this section applies and the conditions in subsections (3) and (4) are met, the prosecutor must, in making the decision— 5
- (a) apply the principle set out in section 2, and
 - (b) comply with section 3.
- (2) This section applies to a decision of a relevant prosecutor as to— 10
- (a) whether or not proceedings should be brought against a person for a relevant offence, or
 - (b) whether or not any proceedings against a person for a relevant offence should be continued,
- (but does not apply to a prosecutor’s decision so far as it relates to whether or not there is sufficient evidence to justify prosecution). 15
- (3) The first condition is that the alleged conduct took place (outside the British Islands) at a time when the person was—
- (a) a member of the regular or reserve forces, or a member of a British overseas territory force to whom section 369(2) of the Armed Forces Act 2006 (persons subject to service law) applies, and 20

- (b) deployed on overseas operations.
- (4) The second condition is that the period of 5 years beginning with the day on which the alleged conduct took place has expired.
- (5) If the offence is alleged to have continued over a period of days, the 5 year period mentioned in subsection (4) is to be taken to begin with the last of those days. 5
- (6) In this Part “overseas operations” means any operations outside the British Islands, including peacekeeping operations and operations for dealing with terrorism, civil unrest or serious public disorder, in the course of which members of Her Majesty’s forces come under attack or face the threat of attack or violent resistance. 10

2 Presumption against prosecution

The principle referred to in section 1(1) is that it is to be exceptional for a relevant prosecutor making a decision to which that section applies to determine that proceedings should be brought against the person for the offence or, as the case may be, that the proceedings against the person for the offence should be continued. 15

3 Matters to be given particular weight

- (1) In making a decision to which section 1 applies, a relevant prosecutor must give particular weight to the matters set out in subsection (2) (so far as they tend to reduce the person’s culpability or otherwise tend against prosecution). 20
- (2) Those matters are –
- (a) the adverse effect (or likely adverse effect) on the person of the conditions the person was exposed to during deployment on the operations mentioned in section 1(3)(b), including their experiences and responsibilities (for example, being exposed to unexpected or continuous threats, being in command of others who were so exposed, or being deployed alongside others who were killed or severely wounded in action); 25
- (b) in a case where there has been a relevant previous investigation and no compelling new evidence has become available, the public interest in finality (as regards how the person is to be dealt with) being achieved without undue delay. 30
- (3) In considering the matter in subsection (2)(a), the prosecutor must have regard to the exceptional demands and stresses to which members of Her Majesty’s forces are likely to be subject while deployed on overseas operations, regardless of their length of service, rank or personal resilience. 35
- (4) In subsection (2)(a) “adverse effect”, in relation to a person, means –
- (a) an adverse effect on their capacity to make sound judgements or exercise self control, or 40
- (b) any other adverse effect on their mental health,
and in this subsection “effect” means an effect at the time of the alleged conduct.

4 Section 3: supplementary

- (1) For the purposes of section 3(2)(b) and this section “relevant previous investigation” means an investigation into the alleged conduct which—
- (a) was carried out by an investigating authority,
 - (b) has ceased to be active, and
 - (c) either did not lead to any decision as to whether or not the person should be charged with an offence, or led to a decision that the person should not be charged with any offence.
- (2) For the purposes of section 3(2)(b), where there has been at least one relevant previous investigation in relation to the alleged conduct, evidence—
- (a) is not “new” if it has been taken into account in the relevant previous investigation (or in any of them);
 - (b) otherwise, is “new”.

Consent to prosecution

5 Requirement of consent to prosecute

- (1) This section applies where—
- (a) the condition in subsection (4) is met in relation to potential proceedings against a person for a relevant offence, and
 - (b) the period of 5 years beginning with the day on which the alleged conduct took place has expired.
- (2) If the offence is a service offence, no proceedings may be instituted against the person for the offence under the Armed Forces Act 2006 except with the consent of the Attorney General.
- (3) No proceedings may be instituted against the person for the offence—
- (a) where the offence is punishable with a criminal penalty by the law of England and Wales, except with the consent of the Attorney General,
 - (b) where the offence is punishable with a criminal penalty by the law of Northern Ireland, except with the consent of the Advocate General for Northern Ireland.
- (4) The condition mentioned in subsection (1)(a) is that the alleged conduct took place (outside the British Islands) at a time when the person was—
- (a) a member of the regular or reserve forces, or a member of a British overseas territory force to whom section 369(2) of the Armed Forces Act 2006 (persons subject to service law) applies, and
 - (b) deployed on overseas operations.
- (5) If the offence is alleged to have continued over a period of days, the 5 year period mentioned in subsection (1)(b) is to be taken to begin with the last of those days.

General

6 “Relevant offence”

- (1) “Relevant offence” means any of the following (but with the exceptions set out in subsections (2) to (5))—

-
- (a) an offence under section 42 of the Armed Forces Act 2006 (criminal conduct) or any provision mentioned in paragraph 1(2)(a) to (c) of Schedule 1 (provisions superseded by that section), and
- (b) an offence punishable with a criminal penalty by the law of any part of the United Kingdom. 5
- (2) An offence is not a “relevant offence” if it is committed against an individual who at the time when the offence is committed is –
- (a) a member of the regular or reserve forces,
- (b) a member of a British overseas territory force,
- (c) a Crown servant, or 10
- (d) a defence contractor.
- (3) A service offence is not a “relevant offence” if it is an excluded offence by virtue of Part 1 of Schedule 1.
- (4) An offence punishable with a criminal penalty by the law of England and Wales, or of Northern Ireland, is not a “relevant offence” if it is an excluded offence in that part of the United Kingdom by virtue of Part 2 or 4 of Schedule 1. 15
- (5) An offence punishable with a criminal penalty by the law of Scotland is not a “relevant offence” if it is an excluded offence in Scotland by virtue of Part 3 or 4 of Schedule 1.
- (6) The Secretary of State may by regulations made by statutory instrument amend Schedule 1. 20
- (7) Regulations under subsection (6) may include transitional or saving provision.
- (8) A statutory instrument containing (whether alone or with other provision) regulations under subsection (6) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament. 25
- 7 General interpretation etc**
- (1) Where –
- (a) the offence mentioned in section 1(2) or 5(1)(a) is murder or any other offence one of the elements of which is causing a person’s death, and 30
- (b) the death occurred after the day on which the person sustained the injury that caused it,
- the day (or time) of the alleged conduct is not to be taken to be different from what it would have been if the death had occurred when the injury was sustained. 35
- (2) In this Part references to the British Islands include the territorial sea adjacent to the United Kingdom and the territorial sea adjacent to any of the Channel Islands or the Isle of Man.
- (3) The following are “relevant prosecutors” for the purposes of this Part –
- (a) the Director of Service Prosecutions and any person appointed under section 365 of the Armed Forces Act 2006 (prosecuting officers); 40
- (b) in England and Wales, the Director of Public Prosecutions, a Crown Prosecutor and any person to whom the institution or taking over of proceedings for the offence mentioned in section 1(2) has been assigned under section 5(1) of the Prosecution of Offences Act 1985; 45

- (c) in Scotland, any prosecutor as defined in section 307(1) of the Criminal Procedure (Scotland) Act 1995 (other than a private prosecutor);
- (d) in Northern Ireland, the Director of Public Prosecutions for Northern Ireland, the Deputy Director of Public Prosecutions for Northern Ireland, a Public Prosecutor and any person to whom the institution or taking over of proceedings for the offence mentioned in section 1(2) has been assigned under section 36(2) of the Justice (Northern Ireland) Act 2002 (c. 26 (N.I.)). 5
- (4) In this Part –
- “alleged conduct”, in relation to proceedings or potential proceedings for an offence, means the act or omission alleged to constitute the offence; 10
- “British overseas territory force” means any of Her Majesty’s forces that is raised under the law of a British overseas territory;
- “Crown servant” means a person employed by or in the service of the Government of the United Kingdom; 15
- “defence contractor” means a person engaged in providing goods or services for the purposes of any of Her Majesty’s forces under contract (whether as, or on behalf of, a party to the contract);
- “Her Majesty’s forces” has the same meaning as in the Armed Forces Act 2006 (see section 374 of that Act); 20
- “investigating authority” means –
- (a) a service police force,
- (b) a UK police force, or
- (c) an overseas police force;
- “overseas operations” has the meaning given by section 1(6); 25
- “overseas police force” has the same meaning as in the Armed Forces Act 2006 (see section 375 of that Act);
- “the regular forces” has the same meaning as in the Armed Forces Act 2006 (see section 374 of that Act);
- “relevant offence” has the meaning given by section 6; 30
- “relevant previous investigation” has the meaning given by section 4;
- “relevant prosecutor” has the meaning given by subsection (3);
- “the reserve forces” has the same meaning as in the Armed Forces Act 2006 (see section 374 of that Act);
- “service offence” has the same meaning as in the Armed Forces Act 2006 (see section 50(2) of that Act); 35
- “service police force” has the same meaning as in the Armed Forces Act 2006 (see section 375 of that Act);
- “UK police force” has the same meaning as in the Armed Forces Act 2006 (see section 375 of that Act). 40
- (5) Subsections (2) and (3) of section 368 of the Armed Forces Act 2006 (references to members of the regular forces) apply for the purposes of this Part as they apply for the purposes of that Act.

PART 2

OVERSEAS OPERATIONS: LIMITATION PERIODS AND HUMAN RIGHTS

Limitation

- 8 Restrictions on time limits to bring actions: England and Wales** 5
- (1) Part 1 of Schedule 2 amends the Limitation Act 1980—
- (a) to limit the court’s discretion to disapply time limits for actions in respect of personal injuries or death which relate to overseas operations of the armed forces, and
- (b) to specify additional factors to which a court must have regard in exercising that discretion. 10
- (2) Part 2 of Schedule 2 amends the Foreign Limitation Periods Act 1984 to modify the effect of foreign limitation law (where such law applies by reason of that Act) in respect of actions which relate to overseas operations of the armed forces.
- 9 Restrictions on time limits to bring actions: Scotland** 15
- (1) Part 1 of Schedule 3 amends the Prescription and Limitation (Scotland) Act 1973—
- (a) to limit the court’s power to override time limits for actions in respect of personal injuries or death which relate to overseas operations of the armed forces, and
- (b) to specify factors to which a court must have regard in exercising that power. 20
- (2) Part 2 of Schedule 3 amends that Act to modify the effect of foreign limitation law (where such law applies by virtue of that Act) in respect of actions which relate to overseas operations of the armed forces. 25
- 10 Restrictions on time limits to bring actions: Northern Ireland**
- (1) Part 1 of Schedule 4 amends the Limitation (Northern Ireland) Order 1989 (S.I. 1989/1339 (N.I. 11))—
- (a) to limit the court’s discretion to disapply time limits for actions in respect of personal injuries or death which relate to overseas operations of the armed forces, and
- (b) to specify additional factors to which a court must have regard in exercising that discretion. 30
- (2) Part 2 of Schedule 4 amends the Foreign Limitation Periods (Northern Ireland) Order 1985 (S.I. 1985/754 (N.I. 5)) to modify the effect of foreign limitation law (where such law applies by reason of that Order) in respect of actions which relate to overseas operations of the armed forces. 35
- 11 Court’s discretion to extend time in certain Human Rights Act proceedings**
- (1) The Human Rights Act 1998 is amended as follows.

(2) After section 7 insert—

“7A Limitation: overseas armed forces proceedings

- (1) A court or tribunal exercising its discretion under section 7(5)(b) in respect of overseas armed forces proceedings must do so—
 - (a) in accordance with subsection (2), and 5
 - (b) subject to the rule in subsection (4).
- (2) The court or tribunal must have particular regard to—
 - (a) the effect of the delay in bringing proceedings on the cogency of evidence adduced or likely to be adduced by the parties, with particular reference to—
 - (i) the likely impact of the operational context on the ability of individuals who are (or, at the time of the events to which the proceedings relate, were) members of Her Majesty’s forces to remember relevant events or actions fully or accurately, and 10
 - (ii) the extent of dependence on the memories of such individuals, taking into account the effect of the operational context on the ability of such individuals to record, or to retain records of, relevant events or actions; 15
 - (b) the likely impact of the proceedings on the mental health of any witness or potential witness who is (or, at the time of the events to which the proceedings relate, was) a member of Her Majesty’s forces. 20
- (3) In subsection (2) references to “the operational context” are to the fact that the events to which the proceedings relate took place in the context of overseas operations, and include references to the exceptional demands and stresses to which members of Her Majesty’s forces are subject. 25
- (4) The rule referred to in subsection (1)(b) is that overseas armed forces proceedings must be brought before the later of—
 - (a) the end of the period of 6 years beginning with the date on which the act complained of took place; 30
 - (b) the end of the period of 12 months beginning with the date of knowledge.
- (5) In subsection (4), the “date of knowledge” means the date on which the person bringing the proceedings first knew, or first ought to have known, both—
 - (a) of the act complained of, and 35
 - (b) that it was an act of the Ministry of Defence or the Secretary of State for Defence. 40
- (6) “Overseas armed forces proceedings” means proceedings—
 - (a) against the Ministry of Defence or the Secretary of State for Defence, and
 - (b) in connection with overseas operations.
- (7) “Overseas operations” means any operations outside the British Islands, including peacekeeping operations and operations for dealing with terrorism, civil unrest or serious public disorder, in the course of 45

which members of Her Majesty’s forces come under attack or face the threat of attack or violent resistance.

- (8) In this section the reference to the British Islands includes the territorial sea adjacent to the United Kingdom and the territorial sea adjacent to any of the Channel Islands or the Isle of Man. 5
- (9) In this section “Her Majesty’s forces” has the same meaning as in the Armed Forces Act 2006 (see section 374 of that Act).”
- (3) In section 22 (short title, commencement, application and extent), after subsection (4) insert—
- “(4A) Section 7A (limitation: overseas armed forces proceedings) applies to proceedings brought under section 7(1)(a) on or after the date on which section 7A comes into force, whenever the act in question took place.” 10

Duty to consider derogation

12 Duty to consider derogation from Convention

After section 14 of the Human Rights Act 1998 insert— 15

“14A Duty to consider derogation regarding overseas operations

- (1) In relation to any overseas operations that the Secretary of State considers are or would be significant, 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 Convention. 20
- (2) In this section—
- “overseas operations” means operations of Her Majesty’s forces outside the British Islands in the course of which members of those forces may come under attack or face the threat of attack or violent resistance; 25
- “Her Majesty’s forces” has the same meaning as in the Armed Forces Act 2006 (see section 374 of that Act).”

PART 3

GENERAL

13 Power to make consequential provision 30

- (1) The Secretary of State or the Lord Chancellor may by regulations make provision that is consequential on any provision made by this Act.
- (2) Regulations under this section are to be made by statutory instrument and—
- (a) may include transitional or saving provision;
- (b) may amend, repeal or revoke any provision of or made under primary legislation. 35
- (3) The provision referred to in subsection (2)(b) does not include a provision of legislation passed or made after the end of the session of Parliament in which this Act is passed.

- (4) A statutory instrument containing (whether alone or with other provision) regulations under this section that amend, repeal or revoke primary legislation may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (5) Any other statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament. 5
- (6) In this section “primary legislation” means –
 - (a) an Act,
 - (b) an Act of the Scottish Parliament, or 10
 - (c) Northern Ireland legislation.

14 Extent

- (1) This Act extends to England and Wales, Scotland and Northern Ireland, subject as follows.
- (2) Section 8 and Schedule 2 extend to England and Wales only. 15
- (3) Section 9 and Schedule 3 extend to Scotland only.
- (4) Section 10 and Schedule 4 extend to Northern Ireland only.

15 Commencement and application

- (1) This Part comes into force on the day on which this Act is passed.
- (2) The other provisions of this Act come into force on such day as the Secretary of State or the Lord Chancellor may by regulations appoint. 20
- (3) Different days may be appointed for different purposes.
- (4) The Secretary of State or the Lord Chancellor may by regulations make transitional or saving provision in connection with the coming into force of any provision of this Act. 25
- (5) Regulations under this section are to be made by statutory instrument.
- (6) None of the provisions of Part 1 applies to proceedings instituted before the day on which the provision comes into force.
- (7) Part 1 of Schedule 2 applies to an action brought on or after the date on which that Part comes into force, whenever the cause of action accrued. 30
- (8) Part 1 of Schedule 3 applies to an action brought on or after the date on which that Part comes into force, whenever the right of action accrued.
- (9) Part 2 of Schedule 3 applies to an action brought on or after the date on which that Part comes into force, whenever the events to which the action relates took place. 35
- (10) Part 1 of Schedule 4 applies to an action brought on or after the date on which that Part comes into force, whenever the cause of action accrued.

16 Short title

This Act may be cited as the Overseas Operations (Service Personnel and Veterans) Act 2020.

SCHEDULES

SCHEDULE 1

Section 6

EXCLUDED OFFENCES FOR THE PURPOSES OF SECTION 6

PART 1

CRIMINAL CONDUCT ETC UNDER ARMED FORCES LEGISLATION

5

Criminal conduct etc under armed forces legislation

- 1 (1) An offence under section 42 of the Armed Forces Act 2006 (criminal conduct) is an “excluded offence” if the corresponding civil offence is an offence referred to in any of paragraphs 2 to 13.
- (2) In sub-paragraph (1) the reference to section 42 of the Armed Forces Act 2006 is to be taken to include a reference to—
 - (a) section 70 of the Army Act 1955 (civil offences),
 - (b) section 70 of the Air Force Act 1955 (civil offences), and
 - (c) section 42 of the Naval Discipline Act 1957 (civil offences).

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Corresponding offences under law of England and Wales (including under repealed provisions)

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- 2 An offence under any provision of the Sexual Offences Act 1956.
- 3 An offence under section 1 of the Indecency with Children Act 1960 (indecent conduct towards child under 14).
- 4 An offence under section 54 of the Criminal Law Act 1977 (inciting child under 16 to commit incest).
- 5 An offence under section 1 of the Protection of Children Act 1978 (indecent photographs of children).
- 6 An offence under section 160 of the Criminal Justice Act 1988 (possession of indecent photograph of a child).
- 7 An offence under any provision of the Sexual Offences Act 2003.
- 8 An offence under section 63 of the Criminal Justice and Immigration Act 2008 (possession of extreme pornographic images).
- 9 An offence under section 62 of the Coroners and Justice Act 2009 (possession of prohibited images of children).
- 10 An offence under section 33 of the Criminal Justice and Courts Act 2015 (disclosing private sexual photographs and films with intent to cause distress).

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| 11 | An offence under section 2 of the Modern Slavery Act 2015 (human trafficking) committed with a view to exploitation that consists of or includes behaviour within section 3(3) of that Act (sexual exploitation). | |
| 12 | An offence at common law of outraging public decency. | |
| 13 | An offence within any of paragraphs 17 to 19 (certain crimes against humanity and war crimes). | 5 |
| 14 | A reference in this Part of this Schedule to an offence (“offence A”) includes— | |
| | (a) a reference to an attempt to commit offence A, | |
| | (b) a reference to a conspiracy to commit offence A, | 10 |
| | (c) a reference to incitement to commit offence A, | |
| | (d) a reference to an offence under Part 2 of the Serious Crime Act 2007 in relation to which offence A is the offence (or one of the offences) which the person intended or believed would be committed, and | |
| | (e) a reference to aiding and abetting, counselling or procuring the commission of offence A. | 15 |

Interpretation etc

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| 15 | (1) In paragraph 1(1) the reference to the “corresponding civil offence” is— | |
| | (a) in relation to an offence under section 42 of the Armed Forces Act 2006, to the corresponding offence under the law of England and Wales within the meaning of that section; | 20 |
| | (b) in relation to an offence under section 70 of the Army Act 1955 or section 70 of the Air Force Act 1955, to the corresponding civil offence within the meaning of that Act; | |
| | (c) in relation to an offence under section 42 of the Naval Discipline Act 1957, to the civil offence within the meaning of that section. | 25 |
| | (2) Section 48 of the Armed Forces Act 2006 (supplementary provisions relating to ancillary service offences) applies for the purposes of sub-paragraph (1)(a) as it applies for the purposes of the provisions of that Act referred to in subsection (3)(b) of that section. | 30 |

PART 2

INTERNATIONAL CRIMINAL COURT ACT 2001

Excluded offences within this Part

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| 16 | An offence under the law of England and Wales or Northern Ireland within any of paragraphs 17 to 23 is an “excluded offence” in that part of the United Kingdom. | 35 |
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England and Wales

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| 17 | An offence under section 51 of the International Criminal Court Act 2001 (genocide, crimes against humanity and war crimes) of committing— | |
| | (a) a crime against humanity within article 7.1(g), or | 40 |
| | (b) a war crime within— | |
| | (i) article 8.2(b)(xxii) (which relates to international conflict), or | |

- (ii) 8.2(e)(vi) (which relates to armed conflicts not of an international character).
- 18 An ancillary offence under the law of England and Wales in relation to an offence within paragraph 17.
- 19 An offence under subsection (1) of section 52 of the International Criminal Court Act 2001 (conduct ancillary to war crimes etc committed outside jurisdiction) where the act referred to in that subsection would, if committed in England and Wales, constitute –
- (a) an offence within paragraph 17, or
 - (b) an offence within this paragraph.
- Northern Ireland*
- 20 An offence under section 58 of the International Criminal Court Act 2001 (genocide, crimes against humanity and war crimes) of committing –
- (a) a crime against humanity within article 7.1(g), or
 - (b) a war crime within –
 - (i) article 8.2(b)(xxii) (which relates to international conflict), or
 - (ii) 8.2(e)(vi) (which relates to armed conflicts not of an international character).
- 21 An ancillary offence under the law of Northern Ireland in relation to an offence within paragraph 20.
- 22 An offence under subsection (1) of section 59 of the International Criminal Court Act 2001 (conduct ancillary to war crimes etc committed outside jurisdiction) where the act referred to in that subsection would, if committed in Northern Ireland, constitute –
- (a) an offence within paragraph 20, or
 - (b) an offence within this paragraph.
- Responsibility of commanders and other superiors*
- 23 An offence under section 65(4) of the International Criminal Court Act 2001 (commanders etc regarded as aiding, abetting, counselling or procuring offence) committed in relation to –
- (a) an offence within paragraph 17, 19, 20 or 22, or
 - (b) an offence ancillary to such an offence.
- Interpretation*
- 24 In this Part of this Schedule references to articles are to articles of the Statute of the International Criminal Court, done at Rome on 17 July 1998.
- 25 In this Part of this Schedule –
- (a) references to an ancillary offence under the law of England and Wales are to be interpreted in accordance with section 55 of the International Criminal Court Act 2001;
 - (b) references to an ancillary offence under the law of Northern Ireland are to be interpreted in accordance with section 62 of that Act.

PART 3

INTERNATIONAL CRIMINAL COURT (SCOTLAND) ACT 2001

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| 26 | An offence within any of paragraphs 27 to 30 is an “excluded offence” in Scotland. | |
| 27 | An offence under section 1(1) of the International Criminal Court (Scotland) Act 2001 (asp 13) (genocide, crimes against humanity and war crimes) of committing – | 5 |
| | (a) a crime against humanity within article 7.1(g), or | |
| | (b) a war crime within – | |
| | (i) article 8.2(b)(xxii) (which relates to international conflict), or | 10 |
| | (ii) 8.2(e)(vi) (which relates to armed conflicts not of an international character). | |
| 28 | An offence under section 2(1) of that Act (conduct ancillary to war crimes etc) of engaging in conduct ancillary to an act that constitutes – | |
| | (a) an offence within paragraph 27, or | 15 |
| | (b) an offence within this paragraph or paragraph 29. | |
| 29 | An offence under subsection (3) of section 2 of that Act of engaging in conduct ancillary to an act committed (or intended to be committed) outside Scotland, where – | |
| | (a) the offence mentioned in paragraph (a) of that subsection is an offence within paragraph 27, or | 20 |
| | (b) (as the case may be) the offence mentioned in paragraph (b) of that subsection is an offence within paragraph 28. | |
| 30 | An offence under section 5 of that Act (commanders etc regarded as aiding, abetting, counselling or procuring offence) committed in relation to – | 25 |
| | (a) an offence within any of paragraphs 27 to 29, or | |
| | (b) an offence ancillary to such an offence. | |

Interpretation

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| 31 | In this Part of this Schedule – | |
| | (a) references to an ancillary offence are to be interpreted in accordance with section 7 of the International Criminal Court (Scotland) Act 2001; | 30 |
| | (b) references to articles are to articles of the Statute of the International Criminal Court, done at Rome on 17 July 1998. | |

PART 4

35

PROVISIONS EXTENDING JURISDICTION IN RESPECT OF CERTAIN SEXUAL OFFENCES

Section 72 of the Sexual Offences Act 2003

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| 32 | (1) Where by virtue of section 72 of the Sexual Offences Act 2003 (offences outside the United Kingdom) an act done outside the United Kingdom constitutes an offence under the law of England and Wales or Northern Ireland, that offence is an “excluded offence” in that part of the United Kingdom. | 40 |
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- (2) Where by virtue of subsection (3) of that section proceedings for an offence may be brought against a person in England and Wales or Northern Ireland in respect of an act done outside the United Kingdom, that offence is an “excluded offence” in that part of the United Kingdom.

Article 76 of the Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)) 5

- 33 (1) Where by virtue of Article 76 of the Sexual Offences (Northern Ireland) Order 2008 (offences outside the United Kingdom) an act done outside the United Kingdom constitutes an offence under the law of Northern Ireland, that offence is an “excluded offence” in Northern Ireland.

- (2) Where by virtue of paragraph (3) of that Article proceedings for an offence may be brought against a person in Northern Ireland in respect of an act done outside the United Kingdom, that offence is an “excluded offence” in Northern Ireland. 10

Section 55 of the Sexual Offences (Scotland) Act 2009 (asp 9)

- 34 (1) Where by virtue of section 55 of the Sexual Offences (Scotland) Act 2009 (offences committed outside the United Kingdom) an act done outside the United Kingdom constitutes an offence under the law of Scotland, that offence is an “excluded offence” in Scotland. 15

- (2) Where by virtue of subsection (2A) of that section proceedings for an offence may be brought against a person in Scotland in respect of an act done outside the United Kingdom, that offence is an “excluded offence” in relation to Scotland. 20

Provisions superseded by provisions mentioned in paragraphs 32 to 34

- 35 Where by virtue of section 7 of the Sex Offenders Act 1997 (sexual offences committed outside the United Kingdom) an act done outside the United Kingdom constitutes an offence under the law of England and Wales or Northern Ireland, that offence is an “excluded offence” in that part of the United Kingdom. 25

- 36 Where by virtue of section 16B of the Criminal Law (Consolidation) (Scotland) Act 1995 (commission of certain sexual acts outside the United Kingdom) an act done outside the United Kingdom constitutes an offence under the law of Scotland, that offence is an “excluded offence” in Scotland. 30

SCHEDULE 2

Section 8

LIMITATION PERIODS: ENGLAND AND WALES

PART 1

35

COURT’S DISCRETION TO DISAPPLY TIME LIMITS

- 1 (1) Section 33 of the Limitation Act 1980 (discretionary exclusion of time limit for actions in respect of personal injuries or death) is amended as follows.

-
- (2) After subsection (1) insert—
- “(1ZA) The court shall not under this section disapply any provision of section 11 in its application to an overseas armed forces action if the action was brought after the expiration of the period of six years from the section 11 relevant date (see subsection (7)).” 5
- (1ZB) An “overseas armed forces action” means an action, or cause of action, which—
- (a) is against the Ministry of Defence, the Secretary of State for Defence, or any member of Her Majesty’s forces,
- (b) is brought in connection with overseas operations (see subsection (7)), and 10
- (c) relates to damage that occurred outside the British Islands.
- (1ZC) In subsection (1ZB), “damage” means—
- (a) in the case of an overseas armed forces action for which a period of limitation is prescribed by section 11, the personal injuries to which the action relates; 15
- (b) in the case of an overseas armed forces action for which a period of limitation is prescribed by section 12(2), the death to which the action relates (and where a person sustains personal injuries outside the British Islands which are a substantial cause of their later death in any of the British Islands, or vice versa, the death is for the purposes of subsection (1ZB)(c) to be treated as occurring where the injuries were sustained).” 20
- (3) After subsection (2) insert— 25
- “(2A) But where the reason why the person injured could no longer maintain an action was because of the time limit in section 11, the court may disapply section 12(1) in its application to an overseas armed forces action only if the person died within the period of six years beginning with the section 11 relevant date (ignoring, for this purpose, the reference to section 11(5) in paragraph (a) of the definition of that term).” 30
- (2B) The court shall not under this section disapply section 12(2) in its application to an overseas armed forces action if the action was brought after the expiration of the period of six years from the section 12 relevant date (see subsection (7)).” 35
- (4) After subsection (5) insert—
- “(5A) In acting under this section in relation to an overseas armed forces action—
- (a) when considering the factor mentioned in subsection (3)(b), the court must have particular regard to— 40
- (i) the likely impact of the operational context on the ability of members of Her Majesty’s forces to remember relevant events or actions fully or accurately, and 45
- (ii) the extent of dependence on the memories of members of Her Majesty’s forces, taking into account the effect of the operational context on their ability to

- record, or to retain records of, relevant events or actions; and
- (b) the court must also 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. 5
- (5B) In subsection (5A) references to “the operational context” are to the fact that the events to which the action relates took place in the context of overseas operations, and include references to the exceptional demands and stresses to which members of Her Majesty’s forces are subject.” 10
- (5) After subsection (6) insert –
- “(6A) In the application of subsection (1ZA), (2A) or (2B) to an overseas armed forces action in respect of which a limitation period has been suspended in accordance with section 1(1) of the Limitation (Enemies and War Prisoners) Act 1945, any reference to the period of six years is to be treated as a reference to the period of six years plus – 15
- (a) the period during which the limitation period was suspended, and
- (b) any extra period after the suspension ended during which the action could have been brought only because of an extension provided for by section 1(1) of that Act.” 20
- (6) For subsection (7) substitute –
- “(7) In this section –
- “the court” means the court in which the action has been brought; 25
- “Her Majesty’s forces” has the same meaning as in the Armed Forces Act 2006 (see section 374 of that Act);
- “overseas operations” means any operations outside the British Islands, including peacekeeping operations and operations for dealing with terrorism, civil unrest or serious public disorder, in the course of which members of Her Majesty’s forces come under attack or face the threat of attack or violent resistance; 30
- “the section 11 relevant date” means the latest of the following – 35
- (a) the date from which the period of three years starts to run in accordance with section 11(4) or (5);
- (b) where section 28 applies, the date from which the period of three years mentioned in subsection (1) of that section (as that subsection has effect with the modification made by subsection (6) of that section) starts to run; 40
- (c) where section 32(1)(a) or (b) applies, the date from which the period of three years starts to run in accordance with subsection (1) of that section; 45
- “the section 12 relevant date” means the latest of the following –
- (a) the date from which the period of three years starts to run in accordance with section 12(2); 50

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- (b) where section 28 applies, the date from which the period of three years mentioned in subsection (1) of that section (as that subsection has effect with the modification made by subsection (6) of that section) starts to run.”
- (7) In subsection (8), after “this section” in the first place it occurs, insert “–
- (a) to the British Islands include the territorial sea adjacent to the United Kingdom and the territorial sea adjacent to any of the Channel Islands or the Isle of Man (and the reference to any of the British Islands is to be read accordingly);
- (b) to a member of Her Majesty’s forces, in relation to an overseas armed forces action, include an individual who was a member of Her Majesty’s forces at the time of the events to which the action relates;
- (c) ”.

PART 2

RESTRICTION OF FOREIGN LIMITATION LAW

- 2 (1) The Foreign Limitation Periods Act 1984 is amended as follows.
- (2) In section 1 (application of foreign limitation law), in subsection (1)(a), after “subject to” insert “section 1ZA and”.
- (3) After section 1 insert –
- “1ZA Overseas armed forces actions: restriction of foreign limitation law**
- (1) Subsection (3) applies where –
- (a) the law of another country relating to limitation applies by reason of section 1(1)(a) in respect of a matter for the purposes of an overseas armed forces tort action, and
- (b) the commencement condition applies in relation to that action,
- and in this section the law relating to limitation that applies for the purposes of that action is referred to as “the relevant foreign limitation law”.
- (2) The commencement condition applies in relation to an overseas armed forces tort action if the action commenced on a date which is after the end of the period of six years beginning with –
- (a) the date on which any limitation period specified in the relevant foreign limitation law began to run, or
- (b) where the relevant foreign limitation law has the effect that the action may be commenced within an indefinite period, the first date on which the action could have been commenced.
- (3) The relevant foreign limitation law is to be treated as providing the defendant with a complete defence to the action so far as relating to the matter (where that would not otherwise be the case).
- (4) An “overseas armed forces tort action” means an action –
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- 40

- (a) which is an overseas armed forces action as defined in section 33(1ZB) of the Limitation Act 1980, and
 - (b) which (under the law of the other country that falls to be taken into account) corresponds to—
 - (i) an action to which section 11 of that Act applies (personal injuries), 5
 - (ii) an action in respect of false imprisonment, or
 - (iii) an action under the Fatal Accidents Act 1976 (death).
- (5) In the application of subsection (2) to an action in respect of which—
 - (a) in accordance with the relevant foreign limitation law, a limitation period specified in that law has been suspended or interrupted for a period by reason of a person’s lacking legal capacity or being under a disability, or 10
 - (b) in accordance with the relevant foreign limitation law, a period during which a person lacks legal capacity or is under a disability has been disregarded in computing a limitation period specified in that law, 15

the reference to the period of six years is to be treated as a reference to the period of six years plus the period of suspension or interruption or (as the case may be) the period that was so disregarded. 20
- (6) In the application of subsection (2) to an action in respect of which a limitation period specified in the relevant foreign limitation law has been suspended in accordance with section 1(1) of the Limitation (Enemies and War Prisoners) Act 1945, the reference to the period of six years is to be treated as a reference to the period of six years plus— 25
 - (a) the period during which the limitation period was suspended, and
 - (b) any extra period after the suspension ended during which the action could have been brought only because of an extension provided for by section 1(1) of that Act.” 30
- (4) In section 7 (short title etc), after subsection (3) insert—
 - “(3A) Section 1ZA (overseas armed forces actions: restriction of foreign limitation law) applies to an action commenced in England and Wales on or after the date on which that section comes into force, whenever the events to which the action relates took place.” 35
- (5) In section 8 (disapplication of provisions where the law applicable to limitation is determined by other instruments), in the heading and in subsection (1), after “1,” insert “1ZA,”. 40

SCHEDULE 3

Section 9

LIMITATION PERIODS: SCOTLAND

PART 1

COURT’S POWER TO OVERRIDE TIME-LIMITS

- | | | |
|---|---|--|
| 1 | <p>(1) The Prescription and Limitation (Scotland) Act 1973 is amended as follows.</p> <p>(2) In section 19A (power of court to override time-limits etc), in subsection (1), after “that provision” insert “(but see section 19AA)”.</p> <p>(3) After section 19A, insert –</p> <p style="padding-left: 20px;">“19AA Restriction of court’s power to override time-limits: overseas armed forces actions</p> <p style="padding-left: 40px;">(1) This section applies where the court is considering whether to exercise its power under section 19A to override time-limits in respect of an overseas armed forces action (see subsection (11)).</p> <p style="padding-left: 40px;">(2) The court must exercise its power –</p> <p style="padding-left: 80px;">(a) in accordance with subsection (3), and</p> <p style="padding-left: 80px;">(b) subject to the rules in subsections (5) to (7).</p> <p style="padding-left: 40px;">(3) The court must have particular regard to –</p> <p style="padding-left: 80px;">(a) the effect of the delay in bringing the action on the cogency of evidence adduced or likely to be adduced by the parties, with particular reference to –</p> <p style="padding-left: 120px;">(i) the likely impact of the operational context on the ability of members of Her Majesty’s forces to remember relevant events or actions fully or accurately, and</p> <p style="padding-left: 120px;">(ii) the extent of dependence on the memories of members of Her Majesty’s forces, taking into account the effect of the operational context on their ability to record, or to retain records of, relevant events or actions; and</p> <p style="padding-left: 80px;">(b) 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.</p> <p style="padding-left: 40px;">(4) In subsection (3)(a) references to “the operational context” are to the fact that the events to which the action relates took place in the context of overseas operations, and include references to the exceptional demands and stresses to which members of Her Majesty’s forces are subject.</p> <p style="padding-left: 40px;">(5) The first rule referred to in subsection (2)(b) is that an overseas armed forces action for which a limitation period is specified in section 17 must be brought within the period of 6 years beginning with the section 17 relevant date.</p> | <p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> <p>40</p> |
|---|---|--|

- (6) The second rule referred to in subsection (2)(b) is that an overseas armed forces action for which a limitation period is specified in section 18(2) must be brought within the period of 6 years beginning with the section 18 relevant date.
- (7) The third rule referred to in subsection (2)(b) is that, in respect of an overseas armed forces action to which section 18 applies, the court may exercise its power to override section 18(4) only if the injured person in question died within the period of 6 years beginning with the section 17 relevant date. 5
- (8) In the application of the rule in subsection (5) or (7) to an action in respect of which (in accordance with section 17(3)) any time has been disregarded when computing the limitation period specified in section 17(2) for the purposes of section 17 or 18(4) (as the case may be), the reference to the period of 6 years is to be treated as a reference to the period of 6 years plus the period that was so disregarded. 10
- (9) In the application of the rule in subsection (6) to an action in respect of which (in accordance with section 18(3)) any time has been disregarded when computing the limitation period specified in section 18(2), the reference to the period of 6 years is to be treated as a reference to the period of 6 years plus the period that was so disregarded. 15
- (10) In the application of the rule in subsection (5) or (7) to an overseas armed forces action in respect of which a limitation period has been suspended in accordance with section 1(1) of the Limitation (Enemies and War Prisoners) Act 1945 (as modified by section 4 of that Act), any reference to the period of 6 years is to be treated as a reference to the period of 6 years plus – 25
 - (a) the period during which the limitation period was suspended, and
 - (b) any extra period after the suspension ended during which the action could have been brought only because of an extension provided for by section 1(1) of that Act. 30
- (11) In this section, an “overseas armed forces action” means an action which, or an action which includes a claim which – 35
 - (a) is against the Ministry of Defence, the Secretary of State for Defence, or any member of Her Majesty’s forces,
 - (b) is brought in connection with overseas operations (see subsection (13)), and
 - (c) relates to damage that occurred outside the British Islands.
- (12) In subsection (11), “damage” means – 40
 - (a) in the case of an overseas armed forces action for which a limitation period is specified in section 17, the personal injuries to which the action relates;
 - (b) in the case of an overseas armed forces action for which a limitation period is specified in section 18(2), the death to which the action relates (and where a person sustains personal injuries outside the British Islands which are a substantial cause of their later death in any of the British Islands, or vice versa, the death is for the purposes of 45

subsection (11)(c) to be treated as occurring where the injuries were sustained).

- (13) In this section –
- “Her Majesty’s forces” has the same meaning as in the Armed Forces Act 2006 (see section 374 of that Act); 5
 - “overseas operations” means any operations outside the British Islands, including peacekeeping operations and operations for dealing with terrorism, civil unrest or serious public disorder, in the course of which members of Her Majesty’s forces come under attack or face the threat of attack or violent resistance; 10
 - “the section 17 relevant date” means the date from which the period of 3 years starts to run in accordance with subsection (2) of section 17;
 - “the section 18 relevant date” means the date from which the period of 3 years starts to run in accordance with subsection (2) of section 18. 15
- (14) In this section, references –
- (a) to the British Islands include the territorial sea adjacent to the United Kingdom and the territorial sea adjacent to any of the Channel Islands or the Isle of Man (and the reference to any of the British Islands is to be read accordingly); 20
 - (b) to a member of Her Majesty’s forces, in relation to an overseas armed forces action, include an individual who was a member of Her Majesty’s forces at the time of the events to which the action relates.” 25

PART 2

RESTRICTION OF FOREIGN LIMITATION LAW

- 2 (1) The Prescription and Limitation (Scotland) Act 1973 is amended as follows.
- (2) In section 23A (private international law application) – 30
- (a) in subsection (1), after “to enforce the obligation” insert “, subject to section 23B,”, and
 - (b) in subsection (4), after “This section” insert “and section 23B”.
- (3) After section 23A, insert –
- “23B Overseas armed forces actions: restriction of foreign prescription and limitation law** 35
- (1) Subsection (3) applies where –
- (a) the law of a country other than Scotland relating to the extinction of an obligation or the limitation of time within which an action may be brought to enforce an obligation is to be applied by virtue of section 23A(1) in an overseas armed forces personal injuries action, and 40
 - (b) the commencement condition applies in relation to that action,

- and in this section the law mentioned in paragraph (a) that is to be applied in that action is referred to as “the relevant foreign limitation law”.
- (2) The commencement condition applies in relation to an overseas armed forces personal injuries action if the action commenced on a date which is after the end of the period of 6 years beginning with—
- (a) the date on which any limitation period specified in the relevant foreign limitation law began to run, or
 - (b) where the relevant foreign limitation law has the effect that the action may be commenced within an indefinite period, the first date on which the action could have been commenced,
- and in this section “limitation period” includes a prescriptive period (however expressed in the relevant foreign limitation law).
- (3) The relevant foreign limitation law is to be treated as providing the defender with a complete defence to the action so far as relating to the obligation (where that would not otherwise be the case).
- (4) An “overseas armed forces personal injuries action” means an action—
- (a) which is an overseas armed forces action as defined in section 19AA(11), and
 - (b) which (under the substantive law of the other country that falls to be applied) corresponds to an action to which section 17 or 18 applies (actions in respect of personal injuries or death).
- (5) In the application of subsection (2) to an action in respect of which—
- (a) in accordance with the relevant foreign limitation law, a limitation period specified in that law has been suspended or interrupted for a period by reason of a person’s lacking legal capacity or being under a disability, or
 - (b) in accordance with the relevant foreign limitation law, a period during which a person lacks legal capacity or is under a disability has been disregarded in computing a limitation period specified in that law,
- the reference to the period of 6 years is to be treated as a reference to the period of 6 years plus the period of suspension or interruption or (as the case may be) the period that was so disregarded.”

SCHEDULE 4

Section 10

LIMITATION PERIODS: NORTHERN IRELAND

PART 1

40

COURT’S DISCRETION TO DISAPPLY TIME LIMITS

- 1 (1) Article 50 of the Limitation (Northern Ireland) Order 1989 (S.I. 1989/1339 (N.I. 11)) (court’s power to override certain time limits) is amended as follows.

(2) After paragraph (1), insert –

- “(1A) The court must not under this Article disapply any provision of Article 7 in its application to an overseas armed forces action if the action was brought after the expiration of the period of six years from the Article 7 relevant date (see paragraph (8)).” 5
- (1B) An “overseas armed forces action” means an action, or cause of action, which –
- (a) is against the Ministry of Defence, the Secretary of State for Defence, or any member of Her Majesty’s forces,
 - (b) is brought in connection with overseas operations (see paragraph (8)), and 10
 - (c) relates to damage that occurred outside the British Islands.
- (1C) In paragraph (1B), “damage” means –
- (a) in the case of an overseas armed forces action for which a period of limitation is fixed by Article 7, the personal injuries to which the action relates; 15
 - (b) in the case of an overseas armed forces action for which a period of limitation is fixed by Article 9(3), the death to which the action relates (and where a person sustains personal injuries outside the British Islands which are a substantial cause of their later death in any of the British Islands, or vice versa, the death is for the purposes of paragraph (1B)(c) to be treated as occurring where the injuries were sustained).” 20

(3) After paragraph (3) insert –

- “(3A) But where the reason why the person injured could no longer maintain an action was because of the time limit in Article 7, the court may disapply Article 9(2) in its application to an overseas armed forces action only if the person died within the period of six years beginning with the Article 7 relevant date (ignoring, for this purpose, the reference to Article 7(5) in paragraph (a) of the definition of that term).” 25
- (3B) The court must not under this Article disapply Article 9(3) in its application to an overseas armed forces action if the action was brought after the expiration of the period of six years from the Article 9 relevant date (see paragraph (8)).” 30 35

(4) After paragraph (6) insert –

- “(6A) In acting under this Article in relation to an overseas armed forces action –
- (a) when considering the factor mentioned in paragraph (4)(b), the court must have particular regard to – 40
 - (i) the likely impact of the operational context on the ability of members of Her Majesty’s forces to remember relevant events or actions fully or accurately, and
 - (ii) the extent of dependence on the memories of members of Her Majesty’s forces, taking into account the effect of the operational context on their ability to 45

- record, or to retain records of, relevant events or actions; and
- (b) the court must also 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. 5
- (6B) In paragraph (6A) references to “the operational context” are to the fact that the events to which the action relates took place in the context of overseas operations, and include references to the exceptional demands and stresses to which members of Her Majesty’s forces are subject.” 10
- (5) After paragraph (7) insert –
- “(7A) In the application of paragraph (1A), (3A) or (3B) to an overseas armed forces action in respect of which a limitation period has been suspended in accordance with section 1(1) of the Limitation (Enemies and War Prisoners) Act 1945, any reference to the period of six years is to be treated as a reference to the period of six years plus – 15
- (a) the period during which the limitation period was suspended, and
- (b) any extra period after the suspension ended during which the action could have been brought only because of an extension provided for by section 1(1) of that Act.” 20
- (6) For paragraph (8) substitute –
- “(8) In this Article –
- “the Article 7 relevant date” means the latest of the following – 25
- (a) the date from which the period of three years starts to run in accordance with Article 7(4) or (5);
- (b) where Article 48 applies, the date from which the period of three years mentioned in paragraph (1) of that Article (as that paragraph has effect with the modification made by paragraph (5) of that Article) starts to run; 30
- (c) where Article 71(1)(a) or (b) applies, the date from which the period of three years starts to run in accordance with paragraph (1) of that Article; 35
- “the Article 9 relevant date” means the latest of the following –
- (a) the date from which the period of three years starts to run in accordance with Article 9(3);
- (b) where Article 48 applies, the date from which the period of three years mentioned in paragraph (1) of that Article (as that paragraph has effect with the modification made by paragraph (5) of that Article) starts to run; 40
- “the British Islands” means the United Kingdom, the Channel Islands and the Isle of Man; 45
- “the court” means the court in which the action has been brought;
- “Her Majesty’s forces” has the same meaning as in the Armed Forces Act 2006 (see section 374 of that Act);

“overseas operations” means any operations outside the British Islands, including peacekeeping operations and operations for dealing with terrorism, civil unrest or serious public disorder, in the course of which members of Her Majesty’s forces come under attack or face the threat of attack or violent resistance.” 5

- (7) In paragraph (9), after “this Article” insert “–
- (a) to the British Islands include the territorial sea adjacent to the United Kingdom and the territorial sea adjacent to any of the Channel Islands or the Isle of Man (and the reference to any of the British Islands is to be read accordingly); 10
 - (b) to a member of Her Majesty’s forces, in relation to an overseas armed forces action, include an individual who was a member of Her Majesty’s forces at the time of the events to which the action relates; 15
 - (c) ”.

PART 2

RESTRICTION OF FOREIGN LIMITATION LAW

- 2 (1) The Foreign Limitation Periods (Northern Ireland) Order 1985 (S.I. 1985/754 (N.I. 5)) is amended as follows. 20
- (2) In Article 3 (application of foreign limitation law), in paragraph (1)(a), after “proceedings” insert “, subject to Article 3A”.
- (3) After Article 3 insert –
- “3A Overseas armed forces actions: restriction of foreign limitation law**
- (1) Paragraph (3) applies where – 25
 - (a) the law of another country relating to limitation applies by reason of Article 3(1)(a) in respect of a matter for the purposes of an overseas armed forces tort action, and
 - (b) the commencement condition applies in relation to that action, 30
 and in this Article the law relating to limitation that applies for the purposes of that action is referred to as “the relevant foreign limitation law”.
 - (2) The commencement condition applies in relation to an overseas armed forces tort action if the action commenced on a date which is after the end of the period of 6 years beginning with – 35
 - (a) the date on which any limitation period specified in the relevant foreign limitation law began to run, or
 - (b) where the relevant foreign limitation law has the effect that the action may be commenced within an indefinite period, the first date on which the action could have been commenced. 40
 - (3) The relevant foreign limitation law is to be treated as providing the defendant with a complete defence to the action so far as relating to the matter (where that would not otherwise be the case). 45

- (4) An “overseas armed forces tort action” means an action –
- (a) which is an overseas armed forces action as defined in Article 50(1B) of the Limitation (Northern Ireland) Order 1989, and
 - (b) which (under the law of the other country that falls to be taken into account) corresponds to –
 - (i) an action to which Article 7 of that Order applies (personal injuries),
 - (ii) an action in respect of false imprisonment, or
 - (iii) an action under the Fatal Accidents (Northern Ireland) Order 1977 (death).
- (5) In the application of paragraph (2) to an action in respect of which –
- (a) in accordance with the relevant foreign limitation law, a limitation period specified in that law has been suspended or interrupted for a period by reason of a person’s lacking legal capacity or being under a disability, or
 - (b) in accordance with the relevant foreign limitation law, a period during which a person lacks legal capacity or is under a disability has been disregarded in computing a limitation period specified in that law,
- the reference to the period of 6 years is to be treated as a reference to the period of 6 years plus the period of suspension or interruption or (as the case may be) the period that was so disregarded.
- (6) In the application of paragraph (2) to an action in respect of which a limitation period specified in the relevant foreign limitation law has been suspended in accordance with section 1(1) of the Limitation (Enemies and War Prisoners) Act 1945, the reference to the period of 6 years is to be treated as a reference to the period of 6 years plus –
- (a) the period during which the limitation period was suspended, and
 - (b) any extra period after the suspension ended during which the action could have been brought only because of an extension provided for by section 1(1) of that Act.”
- (4) In Article 8 (transitional provisions), after paragraph (2) insert –
- “(3) Article 3A (overseas armed forces actions: restriction of foreign limitation law) applies to an action commenced in Northern Ireland on or after the date on which that Article comes into force, whenever the events to which the action relates took place.”
- (5) In Article 9 (disapplication of provisions where the law applicable to limitation is determined by other instruments), in paragraph (1), after “Articles 3” insert “, 3A”.

Overseas Operations (Service Personnel and Veterans) Bill

A

B I L L

To make provision about legal proceedings and consideration of derogation from the European Convention on Human Rights in connection with operations of the armed forces outside the British Islands.

*Presented by Secretary Ben Wallace
supported by
the Prime Minister,
Secretary Robert Buckland,
Secretary Brandon Lewis, Suella Braverman,
Jeremy Quin, James Heapey
and Johnny Mercer*

*Ordered, by The House of Commons,
to be Printed, 18th March 2020.*

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PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS

Covert Human Intelligence Sources (Criminal Conduct) Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Home Office, are published separately as Bill 188-EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Secretary Priti Patel has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Covert Human Intelligence Sources (Criminal Conduct) Bill are compatible with the Convention rights.

Covert Human Intelligence Sources (Criminal Conduct) Bill

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A
B I L L

TO

Make provision for, and in connection with, the authorisation of criminal conduct in the course of, or otherwise in connection with, the conduct of covert human intelligence sources.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Criminal conduct authorisations

1 Authorisation of criminal conduct

- (1) Section 26 of the Regulation of Investigatory Powers Act 2000 (conduct to which Part 2 of that Act applies) is amended in accordance with subsections (2) and (3). 5
- (2) In subsection (1)—
- (a) omit the “and” at the end of paragraph (b);
 - (b) at the end of paragraph (c) insert “; and
 - (d) criminal conduct in the course of, or otherwise in connection with, the conduct of covert human intelligence sources”. 10
- (3) After subsection (8) insert—
- “(8A) In this Part references to criminal conduct in the course of, or otherwise in connection with, the conduct of a covert human intelligence source are references to any conduct that— 15
- (a) disregarding this Part, would constitute crime, and
 - (b) consists of, is in the course of, or is otherwise in connection with, the conduct of a covert human intelligence source.”
- (4) In section 29 of that Act (authorisation of covert human intelligence sources), after subsection (6) insert— 20
- “(6ZA) An authorisation for the conduct or the use of a covert human intelligence source does not authorise any criminal conduct in the course of, or otherwise in connection with, the conduct of a covert

human intelligence source (but see section 29B for provision for the authorisation of such conduct).”

(5) After section 29A of that Act insert –

“29B Covert human intelligence sources: criminal conduct authorisations

- (1) Subject to the following provisions of this Part, the persons designated for the purposes of this section each have power to grant criminal conduct authorisations. 5
- (2) A “criminal conduct authorisation” is an authorisation for criminal conduct in the course of, or otherwise in connection with, the conduct of a covert human intelligence source. 10
- (3) A criminal conduct authorisation may only be granted in relation to a covert human intelligence source after, or at the same time as, an authorisation under section 29 which authorises the conduct or the use of the covert human intelligence source concerned.
- (4) A person may not grant a criminal conduct authorisation unless the person believes – 15
 - (a) that the authorisation is necessary on grounds falling within subsection (5);
 - (b) that the authorised conduct is proportionate to what is sought to be achieved by that conduct; and 20
 - (c) that arrangements exist that satisfy such requirements as may be imposed by order made by the Secretary of State.
- (5) A criminal conduct authorisation is necessary on grounds falling within this subsection if it is necessary – 25
 - (a) in the interests of national security;
 - (b) for the purpose of preventing or detecting crime or of preventing disorder; or
 - (c) in the interests of the economic well-being of the United Kingdom.
- (6) In considering whether the requirements in subsection (4)(a) and (b) are satisfied, the person must take into account whether what is sought to be achieved by the authorised conduct could reasonably be achieved by other conduct which would not constitute crime. 30
- (7) Subsection (6) is without prejudice to the need to take into account other matters so far as they are relevant (for example, the requirements of the Human Rights Act 1998). 35
- (8) The conduct that is authorised by a criminal conduct authorisation is any conduct that –
 - (a) is comprised in any activities –
 - (i) which involve criminal conduct in the course of, or otherwise in connection with, the conduct of a covert human intelligence source, and 40
 - (ii) are specified or described in the authorisation;
 - (b) consists in conduct by or in relation to the person who is so specified or described as the covert human intelligence source to whom the authorisation relates; and 45

- (c) is carried out for the purposes of, or in connection with, the investigation or operation so specified or described.
- (9) If an authorisation under section 29, which authorises the conduct or the use of a covert human intelligence source to whom a criminal conduct authorisation relates, ceases to have effect, the criminal conduct authorisation also ceases to have effect so far as it relates to that covert human intelligence source (but this is without prejudice to whether the criminal conduct authorisation continues to have effect so far as it relates to any other covert human intelligence source). 5
- (10) The Secretary of State may by order – 10
- (a) prohibit the authorisation under this section of any such conduct as may be described in the order; and
- (b) impose requirements, in addition to those provided for by subsections (3) and (4), that must be satisfied before an authorisation is granted under this section for any such conduct as may be so described.” 15

Authorising authorities

2 Authorities to be capable of authorising criminal conduct

- (1) Section 30 of the Regulation of Investigatory Powers Act 2000 (persons entitled to grant authorisations under sections 28 and 29 of that Act) is amended in accordance with subsections (2) to (8). 20
- (2) In the heading, for “and 29” substitute “, 29 and 29B”.
- (3) In subsection (1), for “and 29” substitute “, 29 and 29B”.
- (4) In subsection (2)(a), for “or 29” substitute “, 29 or 29B”.
- (5) In subsection (3)(a), for “and 29” substitute “, 29 and 29B”. 25
- (6) In subsection (4) –
- (a) in paragraph (a), for “I or II” substitute “A1, 1 or 2”;
- (b) omit the “and” at the end of paragraph (a);
- (c) in paragraph (b), for “I” substitute “A1 or 1”;
- (d) at the end of paragraph (b) insert “; and” 30
- (c) in relation to section 29B if it is specified in Part A1 of that Schedule”.
- (7) In subsection (5) –
- (a) in paragraph (a), for “I or II” substitute “A1, 1 or 2”;
- (b) in paragraph (c), for “the other” substitute “another”. 35
- (8) In subsection (7) –
- (a) in paragraph (a), for “I or II” substitute “A1, 1 or 2”;
- (b) in paragraph (b), for the words from “from” to the end of that paragraph substitute “from –
- (i) Part 1 or 2 to Part A1 of that Schedule, or 40
- (ii) Part 2 to Part 1 of that Schedule,”.
- (9) In Schedule 1 to that Act (relevant public authorities for the purposes of Part 2 of that Act), before Part 1 (relevant authorities for the purposes of sections 28

and 29 of that Act) insert—

“PART A1

RELEVANT AUTHORITIES FOR THE PURPOSES OF SS. 28, 29 AND 29B

Police forces etc

A1	Any police force.	5
B1	The National Crime Agency.	
C1	The Serious Fraud Office.	

The intelligence services

D1	Any of the intelligence services.	
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The armed forces

E1	Any of Her Majesty’s forces.	10
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Revenue and Customs

F1	Her Majesty’s Revenue and Customs.	
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Government departments

G1	The Department of Health and Social Care.	15
H1	The Home Office.	
I1	The Ministry of Justice.	

Other bodies

J1	The Competition and Markets Authority.	
K1	The Environment Agency.	20
L1	The Financial Conduct Authority.	
M1	The Food Standards Agency.	
N1	The Gambling Commission.”	

Scotland

3	Corresponding provision for Scotland	25
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Schedule 1 contains amendments to the Regulation of Investigatory Powers (Scotland) Act 2000 (asp 11) which correspond to those made by this Act to the Regulation of Investigatory Powers Act 2000.

*Oversight by the Investigatory Powers Commissioner***4 Oversight by the Investigatory Powers Commissioner**

- (1) The Investigatory Powers Act 2016 is amended as follows.
- (2) In section 229 (main oversight functions), after subsection (4), insert—
- “(4A) In keeping matters under review in accordance with subsection (3)(e) or (g), the Investigatory Powers Commissioner must, in particular, keep under review the exercise of the power to grant authorisations under section 29B of the Regulation of Investigatory Powers Act 2000 or (as the case may be) section 7A of the Regulation of Investigatory Powers (Scotland) Act 2000 (criminal conduct authorisations).”
- (3) In section 234 (annual and other reports of the Investigatory Powers Commissioner), in subsection (2), after paragraph (b) insert—
- “(ba) information about the use of the power to grant authorisations under section 29B of the Regulation of Investigatory Powers Act 2000 or section 7A of the Regulation of Investigatory Powers (Scotland) Act 2000 (criminal conduct authorisations).”

*General and final provision***5 Consequential provision**

Schedule 2 contains consequential amendments.

6 Commencement and transitional provision

- (1) This section and section 7 come into force on the day on which this Act is passed.
- (2) The other provisions of this Act come into force on such day as the Secretary of State may by regulations appoint; and different days may be appointed for different purposes or areas.
- (3) The Secretary of State may by regulations make transitional or saving provision in connection with the coming into force of any provision of this Act.
- (4) The power to make regulations under subsection (3) includes power to make different provision for different purposes or areas.
- (5) Regulations under this section are to be made by statutory instrument.

7 Extent and short title

- (1) Subject to subsection (2), this Act extends to England and Wales, Scotland and Northern Ireland.
- (2) Any provision of this Act which amends or repeals an enactment has the same extent as the enactment amended or repealed.
- (3) In subsection (2), “enactment” includes an Act of the Scottish Parliament.
- (4) This Act may be cited as the Covert Human Intelligence Sources (Criminal Conduct) Act 2020.

SCHEDULES

SCHEDULE 1

Section 3

CORRESPONDING AMENDMENTS TO THE REGULATION OF INVESTIGATORY POWERS
(SCOTLAND) ACT 2000

<i>Introductory</i>		5
1	The Regulation of Investigatory Powers (Scotland) Act 2000 (asp 11) is amended as follows.	
	<i>Authorisation of criminal conduct</i>	
2	(1) Section 1 (conduct to which that Act applies) is amended as follows.	
	(2) In subsection (1) –	10
	(a) omit the “and” at the end of paragraph (b);	
	(b) at the end of paragraph (c) insert “; and	
	(d) criminal conduct in the course of, or otherwise in connection with, the conduct of covert human intelligence sources”.	15
	(3) After subsection (7) insert –	
	“(7A) In this Act references to criminal conduct in the course of, or otherwise in connection with, the conduct of a covert human intelligence source are references to any conduct that –	
	(a) disregarding this Act, would constitute crime, and	20
	(b) consists of, is in the course of, or is otherwise in connection with, the conduct of a covert human intelligence source.”	
3	In section 7 (authorisation of covert human intelligence sources), after subsection (5) insert –	
	“(5A) An authorisation for the conduct or the use of a covert human intelligence source does not authorise any criminal conduct in the course of, or otherwise in connection with, the conduct of a covert human intelligence source (but see section 7A for provision for the authorisation of such conduct).”	25
4	After section 7 insert –	30
	“7A Covert human intelligence sources: criminal conduct authorisations	
	(1) Subject to the following provisions of this Act, the persons designated for the purposes of this section each have power to grant criminal conduct authorisations.	

- (2) A “criminal conduct authorisation” is an authorisation for criminal conduct in the course of, or otherwise in connection with, the conduct of a covert human intelligence source.
- (3) A criminal conduct authorisation may only be granted in relation to a covert human intelligence source after, or at the same time as, an authorisation under section 7 which authorises the conduct or the use of the covert human intelligence source concerned. 5
- (4) A person may not grant a criminal conduct authorisation unless that person is satisfied –
- (a) that the authorisation is necessary for the purpose of preventing or detecting crime or of preventing disorder; 10
 - (b) that the authorised conduct is proportionate to what is sought to be achieved by that conduct; and
 - (c) that arrangements exist that satisfy such requirements as may be imposed by order made by the Scottish Ministers. 15
- (5) In considering whether the requirements in subsection (4)(a) and (b) are satisfied, the person must take into account whether what is sought to be achieved by the authorised conduct could reasonably be achieved by other conduct which would not constitute crime.
- (6) Subsection (5) is without prejudice to the need to take into account other matters so far as they are relevant (for example, the requirements of the Human Rights Act 1998). 20
- (7) The conduct that is authorised by a criminal conduct authorisation is any conduct that –
- (a) is comprised in any activities – 25
 - (i) which involve criminal conduct in the course of, or otherwise in connection with, the conduct of a covert human intelligence source, and
 - (ii) are specified or described in the authorisation;
 - (b) consists in conduct by or in relation to the person who is so specified or described as the covert human intelligence source to whom the authorisation relates; and 30
 - (c) is carried out for the purposes of, or in connection with, the investigation or operation so specified or described.
- (8) If an authorisation under section 7, which authorises the conduct or the use of a covert human intelligence source to whom a criminal conduct authorisation relates, ceases to have effect, the criminal conduct authorisation also ceases to have effect so far as it relates to that covert human intelligence source (but this is without prejudice to whether the criminal conduct authorisation continues to have effect so far as it relates to any other covert human intelligence source). 35 40
- (9) The Scottish Ministers may by order –
- (a) prohibit the authorisation under this section of any such conduct as may be described in the order; and 45
 - (b) impose requirements, in addition to those provided for by subsections (3) and (4), that must be satisfied before an authorisation is granted under this section for any such conduct as may be so described.”

Authorising authorities

- 5 (1) Section 8 (persons entitled to grant authorisations under sections 6 and 7 of that Act) is amended as follows.
- (2) In the heading, for “and 7” substitute “to 7A”.
- (3) In subsection (1), for “and 7” substitute “to 7A”. 5
- (4) In subsection (2)(a), for “and 7” substitute “to 7A”.
- (5) After subsection (3) insert –
- “(3A) A public authority is a relevant public authority for the purposes of this section in relation to section 7A above if it is –
- (a) the Police Service; or 10
- (b) the Scottish Administration.”
- (6) In subsection (4) –
- (a) after “subsection (3)” insert “or (3A)”; 15
- (b) in paragraph (a) for “that subsection” substitute “the subsection concerned”.

Police authorisations

- 6 In section 11 (rules for grant of authorisations), in subsection (1), for “or 7” substitute “, 7 or 7A”.

General rules about grant, renewal, duration and cancellation

- 7 (1) Section 19 (general rules about grant, renewal and duration) is amended as follows. 20
- (2) In subsection (3)(b), after “source” insert “or is an authorisation under section 7A”.
- (3) In subsection (6), after “source” insert “or an authorisation under section 7A”. 25
- 8 (1) Section 20 (cancellation of authorisations) is amended as follows.
- (2) In subsection (1) –
- (a) in paragraph (a), after “7(2)(a) and (b)” insert “, 7A(4)(a) and (b)”; 30
- (b) omit the “or” at the end of that paragraph;
- (c) at the end of paragraph (b) insert “; or
- (c) in the case of an authorisation under section 7A, if satisfied that any arrangements for the source’s case required to satisfy any requirements mentioned in subsection (4)(c) of that section no longer exist”.
- (3) In subsection (2), for “either” substitute “any”. 35
- (4) In subsection (2A), for “either” substitute “any”.
- (5) In subsection (2B), for “either” substitute “any”.

SCHEDULE 2

Section 5

CONSEQUENTIAL AMENDMENTS

PART 1

REGULATION OF INVESTIGATORY POWERS ACT 2000

<i>Introductory</i>	5
1 The Regulation of Investigatory Powers Act 2000 is amended as follows.	
<i>Orders under section 30 for Northern Ireland</i>	
2 In section 31 (orders under section 30 for Northern Ireland), in subsection (1), after “authorisations” insert “under section 28 or 29”.	
<i>Police and Revenue and Customs authorisations</i>	10
3 (1) Section 33 (rules for grant of authorisations) is amended as follows.	
(2) In subsection (1), for “or 29” substitute “, 29 or 29B”.	
(3) In subsection (1ZB), for “or 29” substitute “, 29 or 29B”.	
(4) In subsection (1ZC)(b), for “or 29” substitute “, 29 or 29B”.	
(5) In subsection (1A), for “or 29” substitute “, 29 or 29B”.	15
(6) In subsection (2), for “or 29” substitute “, 29 or 29B”.	
4 (1) Section 33A (further provision about granting authorisations in cases where the National Crime Agency is party to a collaboration agreement) is amended as follows.	
(2) In subsection (2), for “or 29” substitute “, 29 or 29B”.	20
(3) In subsection (3), for “or 29” substitute “, 29 or 29B”.	
(4) In subsection (4), for “or 29” substitute “, 29 or 29B”.	
<i>General rules about grant, renewal, duration and cancellation</i>	
5 (1) Section 43 (general rules about grant, renewal and duration) is amended as follows.	25
(2) In subsection (3)(b), after “source” insert “or is an authorisation under section 29B”.	
(3) In subsection (6), after “source” insert “or an authorisation under section 29B”.	
6 (1) Section 45 (cancellation of authorisations) is amended as follows.	30
(2) In subsection (1) –	
(a) in paragraph (a), after “29(2)(a) and (b)” insert “, 29B(4)(a) and (b)”; (b) omit the “or” at the end of that paragraph;	

- (c) at the end of paragraph (b) insert “; or
 (c) in the case of an authorisation under section 29B, the person is satisfied that any arrangements for the source’s case required to satisfy any requirements mentioned in subsection (4)(c) of that section no longer exist”.
- (3) In subsection (2), for “either” substitute “any”.
- (4) In subsection (3), for “either” substitute “any”.
- 7 In section 46 (restrictions on authorisations extending to Scotland), in subsection (2)(d), after “conduct of” insert “or in relation to”.

Authorising authorities

- 8 (1) Part 1 of Schedule 1 (relevant authorities for the purposes of sections 28 and 29) is amended as follows.
- (2) In the heading of the Part, after “purposes” insert “only”.
- (3) Omit –
- (a) paragraph 1 (any police force);
 - (b) paragraph 2 (National Crime Agency);
 - (c) paragraph 4 (Serious Fraud Office);
 - (d) paragraph 5 (intelligence services) and the italic heading before it;
 - (e) paragraph 6 (armed forces) and the italic heading before it;
 - (f) paragraph 7 (Her Majesty’s Revenue and Customs) and the italic heading before it;
 - (g) paragraph 12 (Department of Health and Social Care);
 - (h) paragraph 13 (Home Office);
 - (i) paragraph 13ZA (Ministry of Justice);
 - (j) paragraph 18 (Environment Agency);
 - (k) paragraph 19 (Financial Conduct Authority);
 - (l) paragraph 20 (Food Standards Agency);
 - (m) paragraph 20A (Gambling Commission);
 - (n) paragraph 20B (Competition and Markets Authority).

PART 2

OTHER ENACTMENTS

Police Reform Act 2002

- 9 In section 19 of the Police Reform Act 2002 (use of investigatory powers by or on behalf of the Director General), after subsection (4) insert –
- “(5) But the reference in subsection (1)(b) to the conduct of covert human intelligence sources does not include conduct which may be authorised under section 29B of that Act (criminal conduct authorisations).”

Gambling Act 2005

- 10 In Schedule 16 to the Gambling Act 2005 (minor and consequential amendments), omit paragraph 14 and the italic heading before it.

Serious Crime Act 2007

- 11 In Schedule 12 to the Serious Crime Act 2007 (Revenue and Customs: regulation of investigatory powers), omit paragraph 28. 5

Crime and Courts Act 2013

- 12 The Crime and Courts Act 2013 is amended as follows.
- 13 In Schedule 1 (the National Crime Agency and its officers), in paragraph 6A, after sub-paragraph (3)(a)(ii) insert – 10
“(iia) section 29B (covert human intelligence sources: criminal conduct);”.
- 14 In Schedule 8 (minor and consequential amendments and repeals), omit paragraph 99.

Undermining the Rule of Law Bill

A

BILL

To grant government ministers powers to break international law, break domestic law, and to derogate from human rights conventions; and to prevent judicial oversight of such activities.

*Presented by Lord Callahan,
Secretary Priti Patel
and Secretary Ben Wallace*

*Supported by
the Prime Minister,
the Lord Chancellor, Secretary Robert Buckland
Ad the Attorney General, Suella Braverman*

*Ordered by the House of Commons
To be printed, October 2020*

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