



Overseas Operations (Service Personnel and Veterans) Act 2021

2021 CHAPTER 23

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—
 - (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—
 - (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).
- (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
 - (b) deployed on overseas operations.

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- (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.
- (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.

Commencement Information

II S. 1 in force at 30.6.2021 by S.I. 2021/678, reg. 2

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.

Commencement Information

I2 S. 2 in force at 30.6.2021 by S.I. 2021/678, reg. 2

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).
- (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);
 - (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.
- (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.
- (4) In subsection (2)(a) “adverse effect”, in relation to a person, means—

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- (a) an adverse effect on their capacity to make sound judgements or exercise self control, or
 - (b) any other adverse effect on their mental health,
- and in this subsection “effect” means an effect at the time of the alleged conduct.

Commencement Information

I3 S. 3 in force at 30.6.2021 by S.I. 2021/678, reg. 2

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”.

Commencement Information

I4 S. 4 in force at 30.6.2021 by S.I. 2021/678, reg. 2

Changes to legislation:

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