



# 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.

- (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.

## 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.

## 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—
  - (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.

## 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.
- (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
  - (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 5 of Schedule 1.
- (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 5 of Schedule 1.
- (6) An offence is not a “relevant offence” if it is an excluded offence by virtue of Part 4 of Schedule 1.

## 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
  - (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.
- (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);
  - (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;
  - (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 \(N.I.\)\)](#).
- (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;

“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;

“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);

“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);

“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;

“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);

“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).

- (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.