

Annex A: Ministry of Defence Equality Analysis Impact Assessment template (Initial Assessment)

Name of the Policy or Service: Legal Protections for Armed Forces personnel and veterans for alleged offences on historical overseas operations	New Proposal or Change to Existing: New proposal
Person completing the assessment: People-AFPP and Defence Legal Protections Project Team	Initial/Full assessment and date: Initial - May 2019 to January 2021
Purpose of the policy or service <p>The Overseas Operations (Service Personnel and Veterans) Bill, which was introduced on 18 March 2020, delivers the manifesto/election commitments to "introduce new legislation to tackle the vexatious claims that undermine our Armed Forces".</p> <p>Part 1 of the Bill contains the criminal measures, which create a "triple lock" in order to give Service personnel and veterans greater certainty that the unique pressures placed on them during overseas operations will be taken into account when a prosecutor decides whether to prosecute for alleged offences. The "triple lock" consists of:</p> <ul style="list-style-type: none"> • a presumption that once five years have elapsed from the date of an incident, it is to be exceptional for a prosecutor to determine that a Service person or veteran should be prosecuted for alleged offences on operations outside the UK; • a requirement that a prosecutor, when deciding whether to rebut the presumption, gives particular weight to certain matters - including the public interest in finality where there has been a previous investigation and no compelling new evidence; and, • if a prosecutor determines that a case should go forward for prosecution, notwithstanding the presumption and the circumstances of the case, the consent of the Attorney General must be obtained before a prosecution can proceed. 	
Scope <p>The measures are only available to current or former members of the UK Armed Forces, including Reserves, and to members of British Overseas Territories Forces when operating with UK Armed Forces, on operations outside of the UK. It does not apply to other Crown Servants or Defence contractors deployed in support of UK Armed Forces. The measures apply to alleged offences arising more than 5 years ago while on overseas operations.</p>	
Responsibility and Ownership Deputy Director, Judicial Engagement Policy and Defence Legal Protections Project	

Consultation and Involvement (including legal advice as appropriate)

- Other Government Departments, including No 10, Cabinet Office, NIO, MOJ, FCO - involved in the development of aspects of the policy (including legal) between 2016-2020, and instructing the Office of Parliamentary Counsel on drafting of the legislation.
- Public Consultation on proposed Legal Protections measures - 22 July to 14 October 2019 (+4,200 responses). All MOD personnel (military and civilian) encouraged to participate via article on MODNet; Service personnel through chain of command, and Veterans through contact networks.
- House of Commons Defence Committee - as part of their inquiry into a Statute of Limitations - Protecting Veterans.
- Scottish Government, including Crown Office and Procurator Fiscal - discussions on how proposed measures will work in Scotland.
- Crown Prosecution Service - discussions on impacts on prosecutors.
- Service Prosecuting Authority - discussion on impacts on prosecutors.
- Legal advice sought and considered in relation to compliance of the Bill's measures with domestic and international legal frameworks.

Summary of Evidence

[ECHR Memorandum](#)

[Response to the public consultation](#)

[UK Armed Forces biannual diversity statistics 1 April 2020](#)

[HCDC Report on a Statute of Limitations - Protecting Veterans](#)

[Government Response to the HCDC Report - Protecting Veterans](#)

Impact on Protected Groups and Mitigation: Evidence and Analysis								
Equality Group	Positive Impact			Negative Impact			No differential impact	Reason and evidence to support your assessment for each of the equality groups
H = High (substantial, relevant impact), M = Medium (some relevant impact), L = Low (unlikely to be relevant)	H	M	L	H	M	L		
Age							X	<p>The measures are not directly discriminatory based on age.</p> <p>The criminal measures apply equally to all current and former serving members of the UK Armed Forces, across the full spectrum of ages. Those who are yet to serve (or yet to serve on an overseas operation) may benefit from the presumption against prosecution in the future; whereas those who have already served may benefit for events that happened more than 5 years ago.</p> <p>The measures <u>may</u> have an indirect impact on the protected characteristic of age, as approximately 85% of serving Armed Forces personnel are aged between 20 and 44. (We do not, however, have statistics for the protected characteristics of individuals involved in criminal cases referred to the prosecutor.)</p> <p>Average age in the Regular Armed Forces: Officers - 37 years; Other Ranks - 30 years. Average age in Future Reserves 2020: Officers - 44 years; Other Ranks - 36 years. (UK Armed Forces Biannual Diversity Statistics 1 April 2020)</p> <p>As we do not know what involvement UK Armed Forces may have in future overseas operations (or where these might occur), it is not possible to assess the impact of the measures on the protected characteristics of alleged victims of UK Armed Forces' activities.</p>

								The measures will not, however, prevent victims from bringing allegations of wrongdoing by the Armed Forces.
Disability							X	<p>The measures are not directly or indirectly discriminatory based on disability.</p> <p>The criminal measures apply equally to all current and former serving members of the UK Armed Forces, and will therefore have no differential impact in relation to disability.</p> <p>Having a disability precludes many people from serving in the military. However, there are people in the military with disabilities, but only those with disabilities which do not impact upon their role in an operational setting would be permitted to deploy. This is likely to be a small sub-set of the deployed force, but the criminal measures would still apply to them in the circumstances outlined above.</p> <p>(While the MOD collects data on wounded, injured and sick, it does not currently collect data on military personnel with a disability.)</p> <p>As we do not know what involvement UK Armed Forces may have in future overseas operations (or where these might occur), it is not possible to assess the impact of the measures on the protected characteristics of alleged victims of UK Armed Forces' activities. The measures will not, however, prevent victims from bringing allegations of wrongdoing by the Armed Forces.</p>
Race							X	<p>The measures are not directly discriminatory based on race.</p> <p>The criminal measures will apply equally to all current and former serving members of the UK Armed Forces (as well as members of British Overseas Territory Forces when serving as part of the UK</p>

							<p>Armed Forces), and will therefore have no differential impact in relation to an individual's race/nationality.</p> <p>However, the measures <u>may</u> have an indirect impact on the protected characteristic of race, as non-BAME personnel make up the majority of the Armed Forces. BAME personnel make up only 8.8% of Regular Armed Forces, and 5.7% of Future Reserves 2020. (UK Armed Forces Biannual Diversity Statistics 1 April 2020.) (We do not, however, have statistics for the protected characteristics of individuals involved in criminal cases referred to the prosecutor.)</p> <p>As we do not know what involvement UK Armed Forces may have in future overseas operations (or where these might occur), it is not possible to assess the impact of the measures on the protected characteristics of alleged victims of UK Armed Forces' activities. The measures will not, however, prevent victims from bringing allegations of wrongdoing by the Armed Forces.</p>
Religion or belief						X	<p>The measures are not directly discriminatory based on religion or belief.</p> <p>The criminal measures will apply equally to all current and former serving members of the UK Armed Forces, and will therefore have no differential impact in relation to religion or belief, in the circumstances outlined above.</p> <p>However, the measures <u>may</u> have an indirect impact on the protected characteristic of religion or belief as there are more Armed Forces personnel who self-identify as Christian (64% of Regular Forces and 70.9% of Future Reserves 2020), than those who self-identify as "Other" (3.4% and 2.6%) or no religion (31.7% and 26.5%). (UK Armed Forces Biannual Diversity Statistics 1 April 2020.) (We do not, however, have statistics for the protected</p>

							<p>characteristics of individuals involved in criminal cases referred to the prosecutor.)</p> <p>As we do not know what involvement UK Armed Forces may have in future overseas operations (or where these might occur), it is not possible to assess the impact of the measures on the protected characteristics of alleged victims of UK Armed Forces' activities. The measures will not, however, prevent victims from bringing allegations of wrongdoing by the Armed Forces.</p>
Sex (Gender)						X	<p>The measures are not directly discriminatory based on sex (gender).</p> <p>The criminal measures will apply equally to all current and former serving members of the UK Armed Forces, and will therefore have no differential impact in relation to sex (gender).</p> <p>However, the measures <u>may</u> have an indirect impact on the protected characteristic of sex (gender), as there are more male Service personnel than female, and because they currently make up the vast majority of deployed operational forces. It is therefore likely that more male Service personnel than female will find themselves facing allegations of wrongdoing. (We do not, however, have statistics for the protected characteristics of individuals involved in criminal cases referred to the prosecutor.)</p> <p>10.9% of the Regular Armed Forces personnel are female; 14.9% of Future Reserves 2020. (UK Armed Forces Biannual Diversity Statistics 1 April 2020)</p> <p>As we do not know what involvement UK Armed Forces may have in future overseas operations (or where these might occur), it is not possible to assess the impact of the measures on the protected</p>

								characteristics of alleged victims of UK Armed Forces' activities. The measures will not, however, prevent victims from bringing allegations of wrongdoing by the Armed Forces.
Sexual orientation							X	<p>The measures are not directly or indirectly discriminatory based on sexual orientation.</p> <p>The criminal measures will apply equally to all current and former serving members of the UK Armed Forces, and will therefore have no differential impact in relation to sexual orientation, in the circumstances outlined above.</p> <p>(MOD does not hold figures on sexual orientation in the Armed Forces. Published statistics only show the percentage who have declared an orientation, not what the orientation is.)</p> <p>As we do not know what involvement UK Armed Forces may have in future overseas operations (or where these might occur), it is not possible to assess the impact of the measures on the protected characteristics of alleged victims of UK Armed Forces' activities. The measures will not, however, prevent victims from bringing allegations of wrongdoing by the Armed Forces.</p>
Pregnancy and Maternity							X	<p>The measures are not directly or indirectly discriminatory based on pregnancy and maternity.</p> <p>The criminal measures will apply in the circumstances where an individual is pregnant or on maternity leave when a relevant case is referred to a prosecutor.</p> <p>Pregnant personnel or those on maternity leave do not serve on overseas operations, so there is no differential impact in those circumstances.</p>

								<p>As we do not know what involvement UK Armed Forces may have in future overseas operations (or where these might occur), it is not possible to assess the impact of the measures on the protected characteristics of alleged victims of UK Armed Forces' activities. The measures will not, however, prevent victims from bringing allegations of wrongdoing by the Armed Forces.</p>
Gender reassignment							X	<p>The measures are not directly or indirectly discriminatory based on gender reassignment.</p> <p>The criminal measures will apply equally to all current and former serving members of the UK Armed Forces, and therefore have no differential impact on Service personnel who have undergone gender reassignment, in the circumstances outlined above.</p> <p>As we do not know what involvement UK Armed Forces may have in future overseas operations (or where these might occur), it is not possible to assess the impact of the measures on the protected characteristics of alleged victims of UK Armed Forces' activities. The measures will not, however, prevent victims from bringing allegations of wrongdoing by the Armed Forces.</p>
Marriage and civil partnership (for elimination discrimination only)							X	<p>The measures are not directly or indirectly discriminatory based on marriage and civil partnership.</p> <p>The criminal measures will apply equally to all current and former serving members of the UK Armed Forces.</p> <p>As we do not know what involvement UK Armed Forces may have in future overseas operations (or where these might occur), it is not possible to assess the impact of the measures on the protected characteristics of alleged victims of UK Armed Forces' activities.</p>

								The measures will not, however, prevent victims from bringing allegations of wrongdoing by the Armed Forces.
Other identified groups (social mobility / PT workers / carers etc)							X	N/A

Record Decisions

X	<p>a) No change to the proposed policy or service required. (No adverse impact or opportunity to advance equality/foster good relations identified; or negative impact identified can be justified.)</p> <p>Rationale and evidence: As described above, the criminal measures do not have any differential impact on the protected equality groups. Changes to the policy are not therefore required.</p>
	<p>b) Adjust the proposed policy or service</p> <p>Rationale and evidence:</p>
	<p>c) Continue with proposed policy or service despite potential negative impacts on equality and/or failure to advance equality</p> <p>Rationale and evidence:</p>
	<p>d) Stop and remove the policy or service unless an alternative approach is found</p> <p>Rationale and evidence:</p>

Implementation and Monitoring

<p>Describe how you are going to monitor the policy or service going forward, including monitoring any adverse or negative impacts identified in this equality analysis. Outline any action plans or next steps underway or proposed to address any challenges or priorities identified.</p> <p>When the Bill becomes law, we will consider the value of tracking the application of the statutory presumption through the prosecuting authorities.</p>
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Sign-off (decision-maker)

I am satisfied that due regard has been given to the three equality goals as described in Section 149 of the Equality Act 2010

Signed:

Name/Rank/Post/Date:

Contact details: If you require further information about this report please contact: **Defence Legal Protections Project Team**