

Military Operations Bill

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BILL

TO

Make provision about the authorisation and use of force during or in connection with military operations; to make provision about civil and criminal proceedings, inquests and investigations relating to military operations; to make provision about certain inquiries relating to the use of force during military operations; and for connected purposes.

Be it enacted by the King'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: INTRODUCTION

1 Affirmation of the essential principles of the operation of the military

- (1) The purpose of this Act is to reaffirm that—
 - (a) the Minister, the Defence Council and the Chief of Defence Staff are responsible, on behalf of His Majesty, for establishing the rules of engagement to be followed in active operations, and the design, operational effectiveness and objectives of conduct undertaken on active service by military personnel;
 - (b) military personnel are directed by their commanding officer at each level;
 - (c) military personnel use force in armed conflict (whether of an international or non-international character) that must, of necessity, be regulated exclusively by international humanitarian law, rather than the general law governing the use of force; and
 - (d) save where international humanitarian law is contravened, no court or tribunal shall have any jurisdiction to question the lawfulness of the use of force by military personnel on active service that is authorised by the Minister.
- (2) To advance that purpose, this Act makes provision for the use of force authorised by the Minister to be regulated exclusively by international humanitarian law.
- (3) Any provision made by, or by virtue, of this Act shall be construed so as to further the purpose described in subsection (1) and in a manner which is, so far as possible, compatible with subsection (2).

PART 2: LAWFULNESS OF USE OF FORCE

2 Authorisation of the use of force

- (1) For the purposes of this Act, the use of force by military personnel is authorised where it is permitted by an authorisation granted by the Minister under subsection (2).
- (2) The Minister may grant an authorisation where he is satisfied that the use of force should be regulated exclusively by international humanitarian law (whether or not such use of such force would otherwise be so regulated).
- (3) The Minister may certify that any use of force before the passage of this Act by military personnel when acting in, or in connection with, operations on active service, shall be treated as if it was authorised under subsection (1), if the Minister is satisfied that the use of force should have been regulated exclusively by international humanitarian law (whether or not the use of such force was otherwise so regulated).

3 Authorisation of the use of force: further provision

- (1) An authorisation shall not be granted except –
 - (a) in writing, under the hand of the Minister; or
 - (b) in an urgent case, by the Minister otherwise than in writing, in which case the authorisation shall be reduced to writing as soon as reasonably practicable after it is given and approved under the hand of the Minister.
- (2) Where an authorisation is granted pursuant to subsection (1)(b), a failure to reduce it to writing shall not affect the validity of the authorisation.
- (3) Without prejudice to the generality of the Minister's power to grant an authorisation, an authorisation –
 - (a) may specify that the matters to which it relates shall be treated for all purposes (including for the purpose of the offences specified in section 5(3)) as an armed conflict of an international character or an armed conflict not of an international character (as the case may be), whether or not those matters would otherwise be so treated;
 - (b) may relate to an armed conflict generally, a particular act or acts, to acts of a description specified in the authorisation, or to acts undertaken in the course of an operation so specified;
 - (c) may apply to all military personnel, particular classes of military personnel specified in the authorisation, or to a particular person or persons;
 - (d) may apply in all places, or in any area specified in the authorisation (whether within the United Kingdom or otherwise); and
 - (e) may be subject to conditions specified in the authorisation.
- (4) Without prejudice to the effect of an authorisation when it is in force, the Minister may, at any time, vary or revoke an authorisation (and subsection (1) shall apply to any variation or revocation of an authorisation as it does to the grant of an authorisation).
- (5) An authorisation has effect until –
 - (a) it expires in accordance with terms specified in the authorisation; or
 - (b) if no such terms are specified, such time as it may be revoked by the Minister under subsection (4).
- (6) The Minister shall provide a copy of any authorisation (including any variation or revocation of an authorisation) to the Panel as soon as reasonably practicable after it is granted or made.
- (7) Unless the Minister considers that it would be contrary to the interests of national security to do so, a copy of an authorisation (including any variation or revocation of an authorisation) shall be laid before Parliament after it is granted or made.
- (8) Where the House of Commons resolves that an authorisation should be revoked, the Minister must make a statement on whether to accept that resolution, or explain why a revocation is not necessary.

- (9) This section applies to certificates issued under section 2(3) as it does to authorisations issued under section 2(2), save that –
- (a) subsection (1)(b) shall not apply to any such certificate; and (b) a certificate may not be revoked or varied so as to reduce its scope.

4 Non-justiciability of authorisations

The validity of any authorisation granted or certificate issued by the Minister (or any variation or revocation of such an authorisation or certificate), and purporting to be made in exercise of the powers conferred by sections 2 and 3 of this Act, shall not be called into question in any legal proceedings whatsoever.

5 General effect of authorisation

- (1) Where the use of force by military personnel (including the use of force before this Act was passed) is authorised, the use of force shall, subject to the provisions of this section, be treated as lawful for all purposes.
- (2) Accordingly, subject to the provisions of this section, no person shall be liable under the criminal or civil law of any part of the United Kingdom for the use of force that is authorised.
- (3) Where the use of force is authorised, it shall nonetheless be unlawful for military personnel to use force in such a way as to amount to the commission of an offence under –
 - (a) section 1 of the Geneva Conventions Act 1957;
 - (b) section 1 of the Genocide Act 1969 (before its repeal);
 - (c) section 2(1)(a) of the Chemical Weapons Act 1996;
 - (d) section 2(1)(a) of the Landmines Act 1998;
 - (e) sections 51-52 and 58-59 of the ICC Act;
 - (f) sections 1-2 of the International Criminal Court (Scotland) Act 2001;
 - (g) Part 1 of AFA 2006;
 - (h) section 2(1)(a) of the Cluster Munitions (Prohibition) Act 2010; or
 - (i) an ancillary offence which relates to an offence under paragraphs (a)-(h) of this subsection.
- (4) For the purposes of subsection (3)(g), references to an offence under Part 1 of AFA 2006 do not include an offence under section 42 of AFA 2006 unless the act that is, or would be, punishable by the law of England and Wales is an offence under a provision of an enactment listed in subsection (3)(a)-(f) or (g), or an ancillary offence relating to such an offence.
- (5) The Minister may, by regulations, amend the list of enactments in subsection (3) in consequence of His Majesty's Government becoming, or ceasing to be party to arrangements constituting international humanitarian law.
- (6) The fact that the use of force is not authorised does not of itself render the use of force unlawful.

PART 3: CRIMINAL INVESTIGATIONS AND PROCEEDINGS

6 Effect of authorisation on criminal proceedings and criminal investigations

Where the use of force by military personnel was, or may have been authorised, no criminal investigation or criminal proceedings may be initiated or continued against current or former military personnel except in accordance with this Part.

Commencement of criminal investigations and proceedings

7 Threshold for undertaking significant steps in criminal investigations against military personnel

- (1) No significant step may be undertaken in a criminal investigation in relation to the use of force by a person who at the time of the alleged offence constituted military personnel unless the prosecuting authority is satisfied that carrying on the investigation is in the public interest and there are compelling grounds to believe that—
 - (a) the use of force was not authorised for the purposes of this Act; or
 - (b) if the use of force was authorised for the purposes of this Act, carrying on the investigation is likely to yield evidence that the use of force was nonetheless unlawful (see section 5 above).
- (2) Nothing in subsection (1) precludes the arrest of a person for an offence which would otherwise be lawful where it is reasonably necessary to arrest the person before the prosecuting authority has been able to determine whether it is satisfied of the matters specified in subsection (1).
- (3) Where—
 - (a) a person is arrested in circumstances permitted by subsection (2); or
 - (b) a criminal investigation to which this section applies has been initiated before the passage of this Act, is ongoing on the day on which this Act is passed and is an investigation in which a significant step has been undertaken;the investigation may not be continued unless the prosecuting authority determines within seven days that it is satisfied of the matters specified in subsection (1).
- (4) In this section and section 9, a “significant step” in a criminal investigation means—
 - (a) the arrest of current or former military personnel;
 - (b) questioning of current or former military personnel with a view to determining whether that person has committed an offence; or
 - (c) the exercise, in relation to current or former military personnel, of any power to gather evidence or information by compulsion under any enactment, instrument or rule of law.

8 Threshold for instituting criminal proceedings against military personnel

- (1) No criminal proceedings may be instituted in relation to the use of force by a person who at the time of the alleged offence was military personnel unless the prosecuting authority is satisfied that—
 - (a) it is in the public interest to institute criminal proceedings; and
 - (b) on the basis of compelling evidence, it is more likely than not that the person will be convicted of an offence because—
 - (i) the use of force was not authorised for the purposes of this Act and an offence has been committed; or
 - (ii) if the use of force was authorised for the purposes of this Act, the use of force was nonetheless unlawful (see section 5 of this Act).
- (2) No criminal proceedings to which this section applies which were instituted before the passage of this Act and which are pending on the day on which this Act is passed may be continued unless—
 - (a) the prosecuting authority determines within seven days of the passage of this Act that it is satisfied of the matters specified in subsection (1); and
 - (b) if a certificate is issued pursuant to section 2(3) after this Act is passed which is relevant to the proceedings, the prosecuting authority determines within seven days of the issue of the certificate that it is satisfied of the matters specified in subsection (1).

Reopening of criminal proceedings

9 Threshold for reopening criminal investigations and proceedings

- (1) Where a criminal investigation relating to the use of force by military personnel has concluded (whether before or after the passage of this Act), a significant step in a further criminal investigation relating to the same or substantially the same subject matter as the previous investigation may not be undertaken unless the prosecuting authority is satisfied that—
 - (a) carrying on the further investigation would be consistent with section 7(1);
 - (b) there are reasonable grounds to believe that new and compelling evidence would be adduced in any criminal proceedings instituted at the conclusion of the investigation; and
 - (c) there is a real prospect of criminal proceedings being instituted following the conclusion of the investigation (see section 8 above).
- (2) Where criminal proceedings concerning the use of force by military personnel have concluded (whether before or after the passage of this Act) and new criminal proceedings relating to the same or substantially the same subject matter as the previous proceedings could otherwise lawfully be instituted, such proceedings may not be instituted unless the prosecuting authority is satisfied that—
 - (a) instituting the proceedings would be consistent with section 8(1); and (b) there is new and compelling evidence.

Supplementary provisions

10 Discharge of functions of prosecuting authority

- (1) This section applies when the prosecuting authority is determining whether it is satisfied of the matters in sections 7(1), 8(1), 9(1) and 9(2).
- (2) The prosecuting authority must consult the Panel.
- (3) The prosecuting authority must have regard and give significant weight to—
 - (a) the operational context in which the use of force occurred;
 - (b) the interests of national security;
 - (c) the extent to which reconciliation pursuant to any peace agreement would be undermined;
 - (d) whether the military operation in question has been the subject of any previous inquiry;
 - (e) the potential adverse effect on current and future military operations and military personnel;
 - (f) the age and health of any current or former military personnel who may be the subject of any investigation or proceeding; and
 - (g) the information reasonably available to military personnel at the time the use of force occurred.

11 Requirement for consent in connection with proceedings concerning active service

- (1) No criminal investigation relating to the use of force by military personnel during active service may be commenced, continued or re-opened without the consent of—
 - (a) the Chief of Defence Staff;
 - (b) the Attorney General; and
 - (c) the prosecuting authority, acting personally.
- (2) When determining whether to give consent under subsection (1), the Attorney General and the prosecuting authority must have regard and give significant weight to the matters set out in section 10(3).

- (3) Nothing in subsection (1) precludes the arrest of a person for an offence which would otherwise be lawful where it is reasonably necessary to arrest the person before it has been practicable to obtain consent pursuant to subsection (1).
- (4) Where a person is arrested in circumstances permitted by subsection (3), the investigation may not be continued unless consent is obtained under subsection (1) within seven days of the arrest being made.

12 Time limits for initiating criminal investigations against military personnel

- (1) Subject to subsection (2), a criminal investigation to which this Part applies must—
 - (a) be commenced within the period of 12 months following the end of the operation or matters on active service that is proposed to be the subject of the investigation; and
 - (b) continue for no longer than 2 years from the date that consent is given pursuant to section 11.
- (2) The periods in subsection (1) may be extended with the consent of each of the Attorney General, the prosecuting authority, acting personally and the Chief of Defence Staff where each of them, following consultation with the Panel (except in urgent cases where that consultation must be carried out as soon as reasonably practicable), considers that there are strong grounds of public interest to do so and either—
 - (a) there are reasonable grounds to believe that new and compelling evidence would be adduced in any criminal proceedings instituted at the conclusion of the investigation; or
 - (b) there is an immediate requirement to arrest or detain an individual.

13 Meaning of “new and compelling” evidence

- (1) For the purposes of this Part, evidence is “new and compelling” if and only if—
 - (a) it is admissible in criminal proceedings;
 - (b) it is obtained from a credible source;
 - (c) it was not available at the time of the earlier investigation or proceedings (as the case may be), and could not reasonably have been obtained at the time of the earlier investigation or proceedings;
 - (d) it is not merely corroborative of evidence that was reasonably available at the time of the earlier investigation or proceedings (as the case may be); and
 - (e) it provides compelling evidence that the accused committed the offence.
- (2) Where there has been no earlier investigation or proceedings, references in subsection (1) to evidence available at the time of “the earlier investigation or proceedings” shall be read as a reference to such evidence that would have been available had a reasonably diligent investigation of the facts been undertaken.

PART 4: INQUIRIES AND INQUESTS

Inquiries

14 Procedure for inquiries into particular operations

- (1) No specified inquiry relating to the use of force by military personnel (whether such force was used before or after the passage of this Act) may be commenced or continued without the consent of—
 - (a) the Chief of Defence Staff;
 - (b) the Attorney General; and

- (c) the prosecuting authority, acting personally.
- (2) When determining whether to grant consent under subsection (1), the Chief of Defence Staff, the Attorney General and the prosecuting authority must have regard to the matters set out in section 10(3) and give them significant weight.
- (3) In this Part, subject to subsection (4), a “specified inquiry” means an inquiry which relates to the conduct of military personnel during active service which is-
 - (a) held under-
 - (i) the Inquiries Act 2005, or
 - (ii) the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016;
 or
 - (b) established by a public authority (within the meaning of HRA 1998) under any other statutory provision or otherwise which is reasonably expected to make any determination in respect of the conduct of military personnel during active service, but excludes a service inquiry conducted pursuant to provision made under Part 16 of AFA 2006.
- (4) This section applies to specified inquiries commenced before this Act was passed.

15 Threshold for holding further inquiries

- (1) This section applies to any specified inquiry where there has at any time (including before this Act was passed) already been a specified inquiry into the same or substantially the same circumstances (“the original inquiry”).
- (2) Any specified inquiry to which this section applies may only be commenced, or (as the case may be) continued where the Attorney General certifies that –
 - (a) there is new and compelling evidence, and
 - (b) it is in the public interest to commence, or (as the case may be) continue the inquiry.
- (3) When determining whether to grant a certificate under subsection (2), the Attorney General must have regard to the matters set out in section 10(3) and give them significant weight.
- (4) For the purposes of this section, evidence is “new and compelling” if and only if –
 - (a) it was not available, and could not reasonably have been obtained, at the time of the original inquiry;
 - (b) it would be afforded considerable weight; and
 - (c) it is capable of materially affecting the conclusions of the original inquiry.

Inquests

16 Requirement to consult the Panel in connection with inquests

- (1) In conducting a specified inquest, the coroner and any jury must, in respect of operational military conditions and determining whether to return a verdict of lawful or unlawful killing, consult the Panel—
 - (a) when the coroner considers appropriate, and
 - (b) in any event, before a determination of the inquest.
- (2) In conducting a specified inquest, a coroner and any jury must have regard to any representations made by the Panel and give them significant weight.

Exemption from providing evidence at inquests or specified inquiries

17 Protection against self-incrimination etc

- (1) No person to whom this section applies who is subject to any criminal investigation or criminal proceedings in relation to the matters to be considered at a specified inquest

- or specified inquiry may be compelled to attend that inquest or inquiry for the purpose of giving evidence, or may otherwise be required to produce evidence to that inquest or inquiry.
- (2) No person to whom this section applies who is not subject to any criminal investigation or criminal proceedings may be required to attend any specified inquest or specified inquiry for the purpose of giving evidence, or may otherwise be required to produce evidence to that inquest or inquiry, if doing so would be liable to cause any criminal investigation or proceedings to be commenced against them.
 - (3) No adverse inference may be drawn from a person's refusal to give, or produce evidence under subsection (1) or (2).
 - (4) Any evidence given by a person to whom this section applies at a specified inquiry or specified inquest shall not be admissible in criminal proceedings against that person, except in proceedings for perjury, or for any other offence specified in regulations made by the Lord Chancellor whose purpose is to protect the administration of justice.
 - (5) This section applies to persons who were military personnel at the time of the matters which are being investigated by the specified inquiry or specified inquest.

PART 5: ESTABLISHMENT OF THE EXPERT MILITARY PANEL AND PROCEDURAL REQUIREMENTS FOR CRIMINAL AND CIVIL PROCEEDINGS IN CONNECTION WITH PARTICULAR OPERATIONS

18 Application of this Part

- (1) This Part applies to any criminal or civil proceeding brought against any person in respect of the use of force arising out of, or in connection with, their functions as military personnel during active service.
- (2) This Part also applies to any civil proceedings brought against a public authority (including the Crown) where it is alleged that the authority is liable for the conduct of another person in respect of the use of force arising out of, or in connection with, their functions as military personnel during active service.

19 Expert Military Panel

- (1) The Expert Military Panel ("the Panel") shall comprise three members appointed by His Majesty by warrant under the sign manual.
- (2) The members of the Panel shall be—
 - (a) a Major General serving in His Majesty's forces; and
 - (b) two military personnel, nominated by the Chief of Defence Staff, who have attained the rank of Lieutenant Colonel or lower and who have suitable experience in the type of active service in question.
- (3) The function of the Panel is to provide independent expert advice on matters including, but not limited to –
 - (a) the operational environment in which the alleged use of force occurred;
 - (b) applicable rules of engagement;
 - (c) the scope of any authorisation granted by the Minister under section 2; and
 - (d) any other matters the court considers necessary for the fair determination of the proceedings.
- (4) The Panel must give such evidence and assistance as the court requires when determining any criminal or civil proceedings and for the purpose of carrying out its function.

20 Requirement to consult the Panel in criminal and civil proceedings

- (1) In determining any criminal or civil proceedings to which this Part applies, the court must, in respect of operational military conditions and in determining any issue concerning the lawfulness of the use of force, consult the Panel—

- (a) when it considers appropriate, and
 - (b) in any event, before the determination of those proceedings.
- (2) In determining any criminal or civil proceedings to which this Part applies, a court and any jury must have regard to any representations made by the Panel and give them significant weight.

21 Jurisdiction and venue

- (1) Any criminal proceedings to which this Part applies must be instituted – (a) pursuant to Part 2 of AFA 2006; or
 - (b) before a civilian court (within the meaning of section 374 of AFA 2006) in England and Wales.
- (2) Any civil proceedings to which this Part applies must be brought before the High Court of England and Wales.
- (3) Proceedings brought under subsection (1)(b) or subsection (2) shall be heard in London unless the parties to any proceedings otherwise agree.

22 Legal aid for criminal and civil proceedings

- (1) No later than 3 months from passing of this Act, the Lord Chancellor, must, by regulations, amend provision made by or under Part 1 of LASPO such that –
 - (a) civil legal services are made available to current and former military personnel against whom civil proceedings are brought in connection with active service; and
 - (b) criminal legal aid is made available to current and former military personnel who are the subject of any criminal investigation or criminal proceedings.
- (2) Regulations under subsection (1) shall secure that current and former military personnel shall be exempt from the requirement under section 21(1) of LASPO.
- (3) Regulations under subsection (1) shall secure that legal aid is made available to current and former military personnel without any consideration of the merits of the case against them.
- (4) The Lord Chancellor must, by regulations, make such corresponding amendments to those required by subsection (1) as he considers appropriate to provision made by or under the Legal Aid (Scotland) Act 1986 and Part 2 of the Access to Justice (Northern Ireland) Order 2003.
- (5) The Minister may, by regulations, establish a scheme for the payment of compensation for military personnel in respect of any adverse impact on military personnel who are the subject of civil or criminal proceedings in relation to active operations.

23 Requirement to notify the relevant prosecuting authority of suspension

- (1) Where military personnel are required to cease, suspend, or materially restrict the performance of their duties as a result of any criminal investigation, criminal proceedings, or civil proceedings, the person imposing the cessation, suspension or material restriction (“the suspending authority”) must notify the prosecuting authority or the court within 5 days of the cessation, suspension or material restriction, unless it would be contrary to the interests of national security to do so.
- (2) The exception to the requirement to make a notification under subsection (1) ceases to apply as soon as the suspending authority reasonably determines that it would no longer be contrary to the interests of national security to make the notification.

24 Time limit for conclusion of proceedings where duties are suspended

- (1) Where a notification is given under section 23(1) –
 - (a) the relevant prosecuting authority must take all reasonable steps to ensure that the relevant criminal investigation or criminal proceedings are concluded

- expeditiously and in any event within the period applicable under subsection (2); and
- (b) the court must take all reasonable steps to ensure that any civil proceedings are heard and determined expeditiously and in any event within the period applicable under subsection (2).
- (2) Subject to subsection (3), any investigation or proceedings to which subsection (1) applies must be concluded within 6 months beginning with the date of receipt of the notification under section 23.
- (3) The period specified in subsection (2) may be extended by the court, with the consent of the Attorney General and the Chief of Defence Staff, for a period of a further 6 months where –
 - (a) the complexity or seriousness of the alleged offence, or subject matter of any civil proceedings makes it impracticable to conclude the matter within that period; or
 - (b) the delay is directly attributable to the conduct of the accused or the defendant (as the case may be).
- (4) If an investigation or proceedings are not concluded within the period specified in subsection (2) (including as extended under subsection (3)), the suspending authority may no longer require military personnel to cease, suspend or materially restrict the performance of their duties as a result of that investigation or those proceedings.
- (5) Failure to conclude a criminal investigation within the time limits contained in this section does not prevent the institution of criminal proceedings, or the initiation of a further criminal investigation, without prejudice to the provisions of Part 2 of this Act.

PART 6: MISCELLANEOUS AND FINAL PROVISIONS

25 Primacy of this Act

- (1) The provisions of this Act have effect notwithstanding any provision made by or under –
 - (a) HRA 1998;
 - (b) Parts 2-4 of the ICC Act;
 - (c) the 2009 Act;
 - (d) the Overseas Operations (Service Personnel and Veterans) Act 2021;
 - (e) relevant separation agreement law (within the meaning of the European Union (Withdrawal) Act 2018; and
 - (f) any other enactment, whether made before or after this Act, relating to criminal proceedings, criminal investigations or inquests concerning the use of force by military personnel.
- (2) Accordingly, and without prejudice to the generality of subsection (1) –
 - (a) section 3(1) of the HRA 1998 does not apply to the interpretation of this Act, or subordinate legislation made under this Act;
 - (b) no court shall have any power under section 4 of HRA 1998 to make a declaration that any provision made by or under this Act is incompatible with Convention rights;
 - (c) section 6(1) of the HRA 1998 does not apply, and shall be treated as never having applied to –
 - (i) the discharge by any person of any function in connection with this Act; or
 - (ii) in connection with the use of force by military personnel that is authorised;
 - (d) the power under section 10(2) of HRA 1998 may not be exercised to modify provision made by or under this Act; and
 - (e) no person may be surrendered pursuant to Part 2 of the ICC Act in relation to the use of force by that person as military personnel.
- (3) HRA 1998 does not apply (and shall be treated as never having applied) in connection with the conduct of, or the investigation of the conduct of military personnel – (a) on active service

(whether within the United Kingdom or elsewhere); or (b) occurring before HRA 1998 came into force.

- (4) For the purposes of the law of homicide, where –
- (a) the use of force by military personnel was authorised for the purposes of this Act;
 - (b) an enemy, or a person reasonably believed to be an enemy is killed by military personnel on active service (“the deceased”); and
 - (c) the killing of the deceased is not unlawful (see section 5 above); the killing shall be lawful, and the deceased (if an enemy) shall be treated as not being under the King’s peace.
- (5) No inference shall be drawn from the provision made by subsection (4) as to whether, for the purposes of the law of homicide –
- (a) the killing of the deceased would otherwise have been unlawful; or (b) the deceased would otherwise have been under the King’s peace.

26 Disapplication of inconsistent duties

To the extent that any duty, requirement, or obligation imposed by another enactment (including any enactment passed or made after this Act) or rule of law is inconsistent with a provision of this Act, that duty, requirement, or obligation shall not apply.

27 Extraterritorial application

This Act applies to the use of force outside the United Kingdom by military personnel as it does to the use of force within the United Kingdom.

28 Consequential provisions

- (1) The Secretary of State may by regulations –
- (a) amend or repeal any enactment passed before or in the same session as this Act;
 - (b) amend or revoke subordinate legislation made before the passing of this Act.
- (2) In subsection (1) –
- (a) “enactment” includes an Act of the Scottish Parliament and Northern Ireland legislation;
 - (b) the reference to subordinate legislation includes an instrument made under such an Act or under Northern Ireland legislation.
- (3) Regulations under subsection (1) may be made only for the purposes of – (a) supplementing or giving full effect to this Act; or
- (b) making provision consequential on, or incidental to, the passing of this Act (including transitional or savings provisions).

29 Regulations etc

- (1) Regulations made under this Act are to be made by statutory instrument.
- (2) A statutory instrument containing regulations under this Act shall be laid before Parliament after it has been made and is subject to annulment in pursuance of a resolution of either House of Parliament.

30 Financial provision

The following are to be paid out of money provided by Parliament –

- (a) any expenditure incurred by the Secretary of State, or the Minister, by virtue of this Act; (b) any expenditure incurred by the Panel by virtue of this Act.

31 Interpretation

In this Act—

“the 2009 Act” means the Coroners and Justice Act 2009;

“active service” means service in—

- (a) an action or operation against an enemy, or any person reasonably believed by military personnel to be an enemy,
- (b) an operation outside the British Islands for the protection of life or property, or
- (c) the military occupation of a foreign country or territory;

“AFA 2006” means the Armed Forces Act 2006, and references to AFA 2006 shall, where the context requires, include references to—

- (a) corresponding provision of the Army Act 1955, the Air Act 1955 or the Naval Discipline Act 1957, and
- (b) corresponding provision of any enactment repealed by any of those Acts;

“ancillary offence” means—

- (a) an offence of attempting or conspiring to commit an offence;
- (b) an offence contrary to Part 2 of the Serious Crime Act 2007;
- (c) an offence of inciting a person to commit an offence; or
- (d) an offence of aiding, abetting, counselling or procuring the commission of an offence;

“the Attorney General” means the Attorney General of England and Wales;

“authorisation” means an authorisation granted under section 2, or treated as so granted;

“coroner” includes—

- (a) a senior coroner, area coroner and assistant coroner;
- (b) the Chief Coroner when conducting an investigation under paragraph 1 of Schedule 10 to the 2009 Act;
- (c) a judge, former judge, or former coroner conducting an investigation under paragraph 3 of Schedule 10 to the 2009 Act;

“criminal conduct” means conduct which constitutes an offence under the law of any part of the United Kingdom;

“criminal investigation” means an investigation of any criminal conduct, including an investigation of alleged or suspected criminal conduct;

“criminal proceedings” means proceedings relating to criminal conduct and includes proceedings before a court in respect of a service offence within the meaning of the AFA 2006;

“the Director of Public Prosecutions” means the Director of Public Prosecutions appointed pursuant to section 2 of the Prosecution of Offences Act 1985 or section 2 of the Justice (Northern Ireland) Act 2002;

“an enemy” has the same meaning as AFA 2006 (see section 374 of that Act), and includes any armed terrorist;

“HRA 1998” means the Human Rights Act 1998;

“the ICC Act” means the International Criminal Court Act 2001;

“international humanitarian law” means those parts of international law which the Minister considers the United Kingdom is bound by relating to armed conflict provided that it shall always include the international law which underlies the enactments mentioned in section 5(3) of this Act;

“LASPO” means the Legal Aid, Sentencing and Punishment of Offenders Act 2012;

“military personnel” means a member of His Majesty’s forces (within the meaning of AFA 2006) and other persons subject to service law (for the purpose of AFA 2006), and police officers, special constables, cadets, trainees or other security forces when acting under military command or engaged in operations related to armed conflict;

“the Minister” means the Prime Minister, the Secretary of State for the Home Department, or the Secretary of State for Defence, in each case acting personally;

“the Panel” means the Expert Military Panel established by this Act;

“prosecuting authority” means (as the case may be) –

- (e) the Director of Public Prosecutions;
- (f) the Lord Advocate;
- (g) the Director of Service Prosecutions appointed under section 364 of AFA 2006; or
- (h) any other person of a description prescribed by regulations made by the Lord Chancellor;

“specified inquest” means, in Part 4, an inquiry (other than a specified inquiry) into a death that resulted directly from the use of force by military personnel, whether under the 2009 Act or otherwise, during active service;

“terrorist” means any person who is or has been concerned in the commission, preparation or instigation of acts of terrorism (within the meaning of the Terrorism Act 2000);

“use of force” includes any act or omission in which force of any kind is used by military personnel by any means.

32 Crown application

- (1) This Act binds the Crown.
- (2) Nothing in this Act –
 - (a) affects His Majesty’s prerogative in relation to the command of His Majesty’s forces, the defence of the realm, national security, the conduct of foreign relations, or otherwise;

- (b) affects any statutory provision conferring emergency powers on the Crown, or powers conferred on the Crown for the purpose of the defence of the realm, national security, or the conduct of foreign relations;
- (c) affects any other privilege, right or immunity of the Crown;
- (d) renders the Crown criminally liable;
- (e) enables civil proceedings to be brought against the Crown where they would not otherwise be permitted; or
- (f) affects the provisions of the Crown Proceedings Act 1947 or the defence of Crown act of state.

33 Commencement

This Act comes into force on the day after the day on which it receives Royal Assent.

34 Extent

- (1) This Act extends to England and Wales, Scotland and Northern Ireland.
- (2) His Majesty may, by Order in Council, provide for the provisions of this Act to extend, with or without modifications, to—
 - (a) any of the Channel Islands;
 - (b) the Isle of Man;
 - (c) any of the British overseas territories.

35 Short title

This Act may be cited as the Military Operations Act 20[].

Military Operations Bill

A

BILL

TO

Make provision about the authorisation and use of force during or in connection with military operations; to make provision about civil and criminal proceedings, inquests and investigations relating to military operations; to make provision about certain inquiries relating to the use of force during military operations; and for connected purposes.