



Joint Committee on Human Rights

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From Rt Hon Harriet Harman MP, Chair

Sir Bernard Jenkin MP
Chair of the Liaison Committee

By email.

5 November 2020

Dear Sir Bernard,

I am writing to raise a concern with the refusal of permission by the Chief Whip to tag the Joint Committee on Human Rights Report Legislative Scrutiny: Overseas Operations (Service Personnel and Veterans) Bill to the Order Paper for the Report and Third Reading of the Bill on Tuesday 3 November.

The House of Commons, through its Standing Orders, ask the JCHR to consider matters relating to Human Rights in the United Kingdom. The JCHR has, since its inception, published legislative scrutiny reports on Bills which raise human rights concerns in order to inform the debates on such bills in both Houses of Parliament. The Overseas Operations Bill raises a number of significant and undisputed human rights concerns – for example, it includes a duty to consider derogating from the European Convention on Human Rights in relation to overseas operations.

The Committee launched a call for evidence on the Overseas Operations Bill on 27 July 2020 and then held two oral evidence sessions on the Bill, including one with Ministry of Defence Ministers. Our report was agreed on Wednesday 21 October and published the following Thursday 29 October. Embargoed copies of the report were made available on 28 October, including to officials in the Ministry of Defence.

The Business Statement on 22 October announced that remaining stages of the Bill would take place on 3 November. The House returned from recess on Monday 2 November and the Commons Clerk of the Committee made a request in the usual way of the office of the Chief Whip to tag the report to the Order Paper the next day. The request was made at 12.50pm. At 7.22pm an official responded to say the request to tag had been declined.

I wrote to the Chief Whip asking why the request to tag had been denied. He responded:

“The Committee’s report deals with many important issues which must be carefully considered by the Ministry of Defence, who will respond to the Report in the usual way in due course. Her Majesty’s Government has an outstanding record of facilitating reasonable requests to tag reports. However, the Ministry of Defence were unwilling to agree to the proposed tag on this occasion as they did not have a reasonable amount of time to fully consider this late request and the contents of the Report.

It is unclear to me why the request was left to the eve of the debate, but I refer you to the Clerk of the Committee who will be able to advise.”

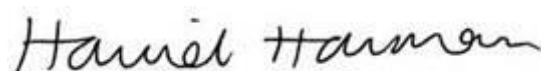
I understand that the Government may from time to time and in exceptional circumstances refuse a request for a tag. However, the reason given – that the request to tag was late – is problematic. The request to tag was made by the Clerk on the first sitting day between the publication of the report and the Report Stage of the Bill. The contents of the Report were clearly related to the subject of the debate. Furthermore, the Ministry of Defence had had the report since the Wednesday prior to the tag being requested. Reports are regularly tagged to the Order Paper that have not yet received a Government response. Lastly, there is no rule known to me or my Committee’s officials about deadlines for a request to tag. Items may be added to the Order Paper by the rise of the House the previous day.

This course of events is concerning for my Committee as we have a unique role as part of the system of checks and balances put in place after the Human Rights Act came into force in the relationship between the executive, Parliament and the Courts. We draw attention to, raise concerns over, and suggest amendments to Bills where we see it fit to do so in the hope that we help protect the rights of individuals whilst also protecting the government from legal challenge further down the line. Our reports provide relevant information and evidence to Members which they can use to scrutinise, question and form judgement. We work to a timetable for these bills which is set by the Government’s own legislative programme and work at speed in order to inform debate.

The refusal to grant permission to tag is not a problem solely for the JCHR but for all Committees who seek to inform debate in the House. If Committees are to be subject to new and seemingly arbitrary deadlines for tagging, or if tagging is to be denied when there is no Government response published to a report, this will fundamentally change the system which has been in place since 1979.

Our report of the Overseas Operations Bill was critical of the Government. If this was in fact the real reason why the permission to tag was not granted, it sets an even more disappointing and worrying precedent.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Harriet Harman', written in a cursive, flowing style.

Rt Hon Harriet Harman QC MP
Chair of the Joint Committee on Human Rights