

Research Briefing

10 June 2022

By Louisa Brooke-Holland

Defence procurement reform

Summary

- 1 The challenges of defence procurement
- 2 Who buys defence equipment for the MOD?
- 3 Reforming defence acquisition (1997 to 2021)
- 4 The DSIS: A new approach to defence procurement
- 5 Regulatory framework and reform
- 6 The equipment plan
- 7 Strategic capabilities
- 8 International collaboration and direct sales

Contributing Authors

Esme Kirk-Wade, Social and General Statistics

Disclaimer

The Commons Library does not intend the information in our research publications and briefings to address the specific circumstances of any particular individual. We have published it to support the work of MPs. You should not rely upon it as legal or professional advice, or as a substitute for it. We do not accept any liability whatsoever for any errors, omissions or misstatements contained herein. You should consult a suitably qualified professional if you require specific advice or information. Read our briefing [‘Legal help: where to go and how to pay’](#) for further information about sources of legal advice and help. This information is provided subject to the conditions of the Open Parliament Licence.

Sources and subscriptions for MPs and staff

We try to use sources in our research that everyone can access, but sometimes only information that exists behind a paywall or via a subscription is available. We provide access to many online subscriptions to MPs and parliamentary staff, please contact hoclinaryonline@parliament.uk or visit commonslibrary.parliament.uk/resources for more information.

Feedback

Every effort is made to ensure that the information contained in these publicly available briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated to reflect subsequent changes.

If you have any comments on our briefings please email papers@parliament.uk. Please note that authors are not always able to engage in discussions with members of the public who express opinions about the content of our research, although we will carefully consider and correct any factual errors.

You can read our feedback and complaints policy and our editorial policy at commonslibrary.parliament.uk. If you have general questions about the work of the House of Commons email hcenquiries@parliament.uk.

Contents

Summary	5
The challenges of defence procurement	5
A new policy approach	6
Regulatory framework, reform and the Procurement Bill 2022	6
1 The challenges of defence procurement	7
1.1 A unique sector	7
1.2 Delivery: a long-standing issue	8
1.3 Dependence on single source procurement	8
1.4 MOD management of programmes	10
1.5 Role of Senior Responsible Owners	11
1.6 Impact of delays and cost increases	11
1.7 International collaboration	13
2 Who buys defence equipment for the MOD?	15
2.1 Defence Equipment and Support	15
2.2 Other bodies	15
2.3 Oversight	15
3 Reforming defence acquisition (1997 to 2021)	17
3.1 Reforms under the Labour Government (1997-2010)	17
3.2 Reforms under the Coalition Government (2010-15)	19
3.3 Reforms under the Conservative Government (2015 to present)	21
4 The DSIS: A new approach to defence procurement	26
4.1 A new policy	26
4.2 A change in approach	26
5 Regulatory framework and reform	29
5.1 Reforming the DSPCR	29

5.2	Single source contracts regulations and reform	34
6	The equipment plan	36
6.1	Scrutiny of the plan	36
6.2	What does the plan tell us?	36
6.3	Is it affordable?	37
7	Strategic capabilities	39
7.1	Identifying strategic capabilities	40
7.2	Current strategic capabilities	41
8	International collaboration and direct sales	42
8.1	International collaboration	42
8.2	US Foreign Military Sales	43
8.3	EU and PESCO	44

Summary

The Ministry of Defence (MOD) spends billions each year buying new equipment and supporting existing equipment for the armed forces. It has [allocated £238 billion](#) on equipment procurement and support over the ten years from 2021 to 2031.

However, successive governments have struggled to deliver key equipment capabilities within agreed costs and timescales.

There have been many reviews and reforms of procurement over the years. In 2021 the Government set out a new approach in the Defence and Security Industrial Strategy. In 2022 the Government introduced new legislation that will reform the regulations that oversee defence procurement.

This paper explores the challenges of defence procurement, tracks the reforms introduced since 1997, discusses the new policy and the regulatory framework.

The challenges of defence procurement

Buying equipment for the armed forces brings a unique set of challenges.

Historically there have always been certain capabilities that the MOD has sought to retain a domestic industrial base. This may be for national security reasons or to ensure critical supply chains are not dependent on allies or vulnerable to embargoes.

Major equipment programmes can take years or even decades to come to fruition. This means governments may inherit programmes begun under very different financial circumstances. Requirements may change, which can inflate costs and extend delivery times.

Historically the MOD has allocated a significant proportion of contracts to single source suppliers. A [third of contracts in 2020-21](#) were awarded without competition, amounting to £9.3 billion.

The Defence and Public Accounts Committees, and the National Audit Office, have repeatedly criticised the MOD's management of major programmes, identifying budget overruns and the late delivery of major programmes in reports dating back decades.

Since 2012 the MOD has published an annual equipment plan outlining its planned expenditure on equipment and support over a rolling ten-year

period. In January 2021 the National Audit Office said “[for the fourth successive year, the equipment plan remains unaffordable](#)”. In February 2022, the NAO said that the multi-year spending review settlement “[gives the Department a rare opportunity to break old habits and set the plan on course to be affordable.](#)”

A new policy approach

In 2021 the MOD adopted a new approach to defence procurement in the [Defence and Security Industrial Strategy](#) (DSIS). This replaced the former policy of “global competition by default” with a “more flexible and nuanced approach”.

The MOD will use competition “where appropriate”, but will also consider other approaches. As with other central Government departments, the MOD will include [social value](#) in procurement (above the threshold). The MOD will pilot a revised industrial participation policy and will “encourage and support defence suppliers, whether headquartered here or overseas, to consider carefully what can be sourced from within the UK.”

Regulatory framework, reform and the Procurement Bill 2022

There are two sets of regulations that oversee defence procurement: The Defence and Security Public Contracts Regulations (DSPCR) and the Single Source Contract Regulations (SSCR).

The Government intends to reform and streamline public procurement in 2022 and replace several different regulatory regimes, including the DSPCR, with a single set of rules. This is set out in the [Procurement Bill](#), announced in the Queen’s Speech 2022, and introduced in the House of Lords on 11 May 2022. The Bill allows for a limited number of derogations that meet the specific needs of defence and security procurements, and a national security exemption. It will also enable reforms to the SSCR.

This paper explains how the regulations have evolved. It will be updated once the Procurement Bill has received Royal Assent to reflect the new regulatory system. It replaces Library paper CBP8486 [an introduction to defence procurement](#).

Forthcoming Library papers will discuss the DSPCR and SSCR in detail, including the proposed reforms set out in the Procurement Bill.

1 The challenges of defence procurement

Equipment acquisition is a complex process beset by financial and time constraints, the political impact of legacy programmes and is influenced by both strategic perceptions and domestic industrial priorities. Successive governments have struggled with these often-conflicting dynamics and made various attempts over the years to improve the process.

This section reflects some of the challenges of defence procurement identified by some of the independent reviews and select committee reports over the years.

1.1 A unique sector

Buying equipment for the armed forces brings with it a unique set of challenges.

National security might dictate that some capabilities, such as nuclear-powered submarines, can only be developed and built within the UK. This may mean there is only one trusted national supplier available, which can make it difficult to ensure value for money.¹

There may be a very limited supplier base for the equipment needed because of the highly technical and specialised nature of military equipment. Consolidation within the defence sector in recent decades may also limit options for credible competition.

Major equipment programmes can take years or even decades to come to fruition. This means governments may inherit programmes begun under very different financial circumstances.

Requirements may change after a contract is awarded, which can inflate costs and extend delivery times. This can create additional unplanned expenditure if aging equipment has to remain in service beyond its expected lifetime to avoid creating a gap in capability.

These tensions have long been the subject of Parliamentary scrutiny and debate, and often crystallise around specific capabilities.

¹ National Audit Office, '[Improving value for money in non-competitive procurement of defence equipment](#)', HC 412 2017-19, 25 October 2017, para 1.3

1.2 Delivery: a long-standing issue

Successive governments have struggled to deliver key equipment capabilities within agreed costs and timescales.

“The MOD’s broken system for acquiring military equipment needs an urgent rethink.”

PAC, 2021

The Defence Committee said in 1998 procurement is “prone to escalating costs and late delivery”.² The Public Accounts Committee (PAC) said in 2005 the MOD “has yet to demonstrate that it can consistently manage individual projects to deliver the planned operational benefits to the Armed Forces to cost and time.”³ In 2009 the Government commissioned Bernard Gray to review defence procurement. Gray concluded:

The Ministry of Defence has a substantially overheated equipment programme, with too many types of equipment being ordered for too large a range of tasks at too high a specification. This programme is unaffordable on any likely projection of future budgets.⁴

The PAC observed in 2011 that the Department “continues to struggle with managing its equipment programme on an affordable basis, resulting in the cancellation or deferral of major projects and a damaging impact on value for money.”⁵

In 2021, the PAC said that, despite numerous reviews of procurement over the past 35 years, it is “extremely disappointed and frustrated by the continued poor track record of the Department and its suppliers... and by wastage of taxpayers’ money running into the billions”.⁶

In response, the MOD said it recognised the challenges with delivering equipment capabilities and acknowledges there is no single over-arching solution.⁷

1.3 Dependence on single source procurement

Historically the MOD has allocated a significant proportion of the defence equipment budget to single source suppliers, without competition. Most commonly this is for national security reasons, or because there is only one specialist supplier available. In 2020-21 34% of contracts were awarded

² Defence Committee, [The Strategic Defence Review](#), 10 September 1998, HC 138-I

³ Public Accounts Committee, Ministry of Defence: Major Projects Report 2005, 27 June 2006, HC 889, para 1

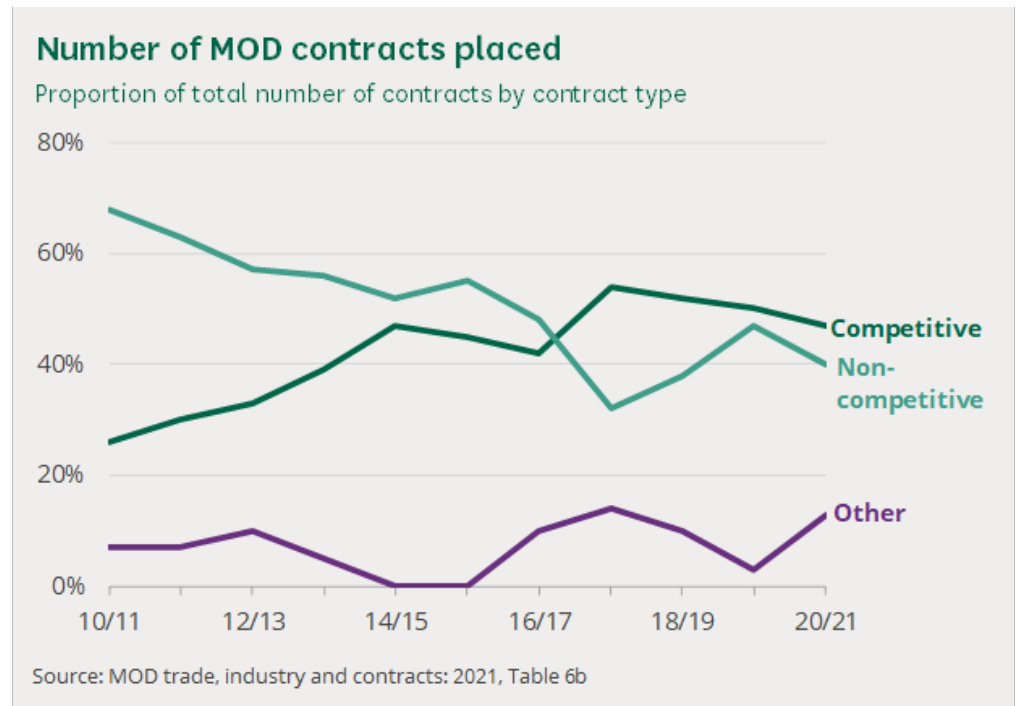
⁴ [Review of Acquisition for the Secretary of State for Defence](#) (PDF), October 2009

⁵ Public Accounts Committee, Ministry of Defence: Major Projects Report 2011, 10 February 2012 HC 1678 2010-12

⁶ Public Accounts Committee, [Improving the performance of major defence equipment contracts](#), 3 November 2021, HC 185 2021-22

⁷ Treasury Minutes, [Government response to the Committee of Public Accounts Session 2021-22](#) (PDF), January 2022, p2

without competition, amounting to £9.3 billion.⁸ The National Audit Office found the proportion of contracts non-competitively between 2013-14 and 2016-17 was around 50%⁹ The table below illustrates the number of contracts placed by contract type.¹⁰



However, the absence of competition means the MOD may not receive value for money; suppliers can set prices without the worry of being under-cut by competitors and lack incentive to improve performance or efficiency.¹¹ Industry competitors may also complain of an unfair playing field.

⁸ MOD, [MOD trade, industry and contracts 2021](#), 3 February 2022

⁹ National Audit Office, [‘Improving value for money in non-competitive procurement of defence equipment’](#), HC 412 2017-19, 25 October 2017, figures 3 and 5

¹⁰ Excluded from data up to 2016/17 are Pan Government Enabling Contracts that will also incur expenditure from other Government departments. From 2017/18 onwards the quality of the data does not allow Pan Government Enabling contracts to be identified so they are included in the totals.

¹¹ Ministry of Defence, [“An Overview: Single Source Procurement Framework”](#), June 2014, version 1.0

1 Case study: Surveillance aircraft

MPs took a keen interest in the replacement of the RAF's Sentry fleet of surveillance aircraft with Boeing's E-7 Advanced Early Warning and Control 'Wedgetail' aircraft.

Both the [Shadow Defence Secretary](#) and the [Defence Committee](#) questioned the Government's decision in 2018 to begin discussions with Boeing directly.

Saab UK, a competitor to Boeing, took the unusual step of publicly expressing its unhappiness with the lack of competition for Sentry's replacement, suggesting its "significant investment" in the UK was premised on the expectation that the MOD's procurement methods "reflect the Government's commitment to fair and transparent free-market competition".¹²

In March 2019 the MOD signed a \$1.98 billion contract (£1.51 billion¹³) to buy E-7 aircraft with Boeing, after the Minister for Defence Procurement argued "there was no other proven capability that could provide the same level that we need and the Wedgetail provides" and a longer competition would have delayed its acquisition.¹⁴ The contract is subject to oversight by the Single Source Regulations Office.¹⁵

1.4

MOD management of programmes

The MOD's management of major programmes has come under repeated criticism.

The 2009 Gray review found the armed forces have a "systematic incentive" to underestimate the likely cost of equipment, and because few programmes were ever cancelled, had little incentive to fear the repercussions of over-ordering and under-costing.

Gray also identified shortcomings in Defence Equipment and Support (DE&S), the MOD's delivery arm. He recommended better project management and management information systems and improving the skills of those in charge of programme and project management.¹⁶ Gray

¹² Defence Committee, '[Letter from Andrew Walton, head of Saab UK to the chair of the Defence Select Committee](#)', 15 October 2018

¹³ The £1.51bn figure is given in the Defence Equipment Plan 2019, page 58

¹⁴ [HC Deb 27 June 2019 c414WH](#)

¹⁵ [PQ HL16203 \[AWACS: Procurement\], 17 June 2019](#)

¹⁶ [Review of Acquisition for the Secretary of State for Defence](#) (PDF), October 2009

subsequently introduced some of these changes when he became Chief of Defence Materiel in 2011 and placed in charge of DE&S.

1.5

Role of Senior Responsible Owners

The troubled Ajax armoured vehicle programme had five SROs between 2011 and 2021.

The SRO was only made full-time in October 2021, after difficulties with the programme emerged.

The PAC has highlighted the policy of regularly changing Senior Responsible Owners (SROs, officers who are given responsibility for specific projects). The NAO's 2021 report on managing major equipment projects found that individuals are in post "for a fraction of the contract lifecycle".¹⁷ The NAO found the median time in post for an SRO was 22 months, compared to a median running time of 77 months for the 19 programmes it examined. The NAO found SROs were typically expected to spend 25% of their time on the programme. The NAO also found SROs lacked key skills commonly associated with effective contract management, and a tension between their accountability for programme delivery and lack of budgetary control.¹⁸

Jeremy Quin, the Minister for Defence Procurement, said in February 2022 that the MOD is working to "improve the capability and availability" of SROs.¹⁹ In an update on the Defence and Security Industrial Strategy DSIS in May 2022, The Minister said the department was introducing an SRO talent pool and "ensuring that our SRO skills are matched to the challenges of the projects". He also said SROs on its biggest projects should be allocating at least 50% of their time to the task.²⁰ A [list of SRO's](#) is published on Gov.uk.

1.6

Impact of delays and cost increases

There are many examples of programmes that have gone over budget and/or far beyond their expected in-service date. The National Audit Office has chronicled such delays in its examination of defence major projects [going back to the 1990s](#), and, since 2014, the MOD's [defence equipment plans](#).

- In 1997 the National Audit Office (NAO) estimated that many of the top 25 defence equipment projects were over budget and would not achieve their in-service date.²¹

¹⁷ Public Accounts Committee, [Improving the performance of major defence equipment contracts](#), 3 November 2021, HC 185 2021-22

¹⁸ National Audit Office, [Improving the performance of major equipment contracts](#), 24 January 2021, HC 298 2021-22

¹⁹ [HCWS611, 21 February 2022](#)

²⁰ [HCWS36, 18 May 2022](#)

²¹ Ministry of Defence, "The Strategic Defence Review: Supporting Essays"

- Bernard Gray studied 40 programmes for his 2009 report and found that on average, those programmes cost 40% more than originally expected, and were delivered 80% later than first estimates predicted.²²
- In 2021 the NAO found the MOD faces cumulative forecast net delays to equipment entering into service of 254 months (or 21 years) across 13 of the major programmes it examined (see table).²³

Forecast delays for selected major programmes	
Astute attack submarine boat 5	25 months
Protector unmanned aerial vehicle	28 months
Crowsnest radar system	29 months
Marshall air traffic management system	47 months
Warrior armoured vehicle upgrade (cancelled by 2021 Integrated Review)	56 months
A400M transport aircraft	79 months

Source: National Audit Office, *Improving the performance of major equipment contracts*, HC 298 2021-22, 24 January 2021, figure 5 (edited by author)

This matters because delays mean the armed forces are without the equipment or capabilities the MOD believes they require. It means aging equipment may have to be retained in service for longer than expected, with all the associated costs of unexpected maintenance, being at greater risk of breaking down and not being available for operations.

2 Case study: Ajax armoured vehicles

Programme delays can also affect planned force restructures. The Army’s [Future Soldier guide](#) (PDF) placed the new Ajax armoured and Boxer mechanised vehicles at the heart of its deployable fighting forces, having decided to retire rather than continue with the Warrior infantry fighting vehicle upgrade programme. The 2022 Land Industrial Strategy similarly sets out an ambition to build the army around a “core nucleus of digitalised capabilities” which includes Ajax.²⁴

However, after encountering significant problems with Ajax, including with noise and vibration, the MOD said in March 2022 that “it is not possible to determine a realistic timescale for the introduction of Ajax vehicles into

²² [Review of Acquisition for the Secretary of State for Defence](#) (PDF), October 2009

²³ National Audit Office, [Improving the performance of major equipment contracts](#), HC 298 2021-22, 24 January 2021, figure 5

²⁴ [Land Industrial Strategy](#), Ministry of Defence, 18 May 2022

operational service with the Army.”²⁵ The Defence Procurement Minister said in May 2022 “we will not accept a vehicle that is not fit for purpose.”²⁶ The Defence Committee questioned the Defence Procurement Minister about the potential impact of cancelling Ajax. Jeremy Quinn expressed the MOD’s commitment to the programme.²⁷ Ajax has been the subject of reports by the [NAO](#) (March 2022) and the [Defence Committee](#) (March 2021

1.7 International collaboration

International collaboration has long been a feature of defence procurement.

The most obvious reason for this is cost – big ticket items like combat aircraft are extremely expensive and additional partners can help (in theory) to diffuse both developmental and through-life costs. It can maximise capabilities, support cooperation in research and technology and increase interoperability. For example, US Marine Corps F-35B aircraft [flew from the Royal Navy’s new aircraft carrier](#), HMS Queen Elizabeth, on her first deployment.

The drawback is the potential for complicated management structures, slow decision making and political issues, particularly if a consensus is required from all the partner nations.

The RAF’s Typhoon aircraft is the result of a multinational collaborative effort between Germany, Italy, Spain and the UK. However, in a 2011 report, the National Audit Office found the international collaborative decision making on the Typhoon was inefficient, taking up to seven years to agree and deliver some key upgrades. There are also complicated arrangements for sharing work between countries.²⁸ The 2012 White Paper acknowledged the advantages and disadvantages of multilateral collaboration when it set out plans to work with other countries where there is a clear benefit to the UK:

These offer potentially greater economies of scale and can also increase interoperability. However, they also need to be appropriately structured and managed, as they can be hampered by contractual and political issues and can suffer from over-complexity.²⁹

²⁵ [HCWS739, 29 March 2022](#)

²⁶ [HCWS42, 19 May 2022](#)

²⁷ Defence Committee, [Oral evidence Ajax: recent developments](#), HC 550, 20 July 2021 q123-132

²⁸ National Audit Office, [Management of the Typhoon project](#) HC 755 2010-2011, 2 March 2011

²⁹ [National Security through Technology: Technology, Equipment, and support for UK Defence and Security](#), Cm 8278, 1 February 2012, para 87

2 Who buys defence equipment for the MOD?

2.1 Defence Equipment and Support

Defence Equipment and Support (DE&S) is responsible for buying equipment and providing through-life support for the armed forces.

Established in 2007, it became a bespoke trading entity in 2014, an arms-length body of the MOD. Library paper [Defence Equipment and Support](#) (June 2014) explains its history and status.

2.2 Other bodies

The Submarine Delivery Agency is responsible for procuring and disposing of all the Royal Navy's submarines, including the submarine-based nuclear deterrent. It was established in 2018 as an executive agency of the Ministry of Defence. The Defence Nuclear Organisation acts as the customer within the MOD to the Submarine Delivery Agency.³⁰

Other enabling services, such as infrastructure, are provided by the Defence Infrastructure Organisation, while information technology is the responsibility of Defence Digital.

2.3 Oversight

Major programmes are subject to the Investment Approvals Committee, which acts on behalf of the Defence Board, as the senior body responsible for decisions on major investment proposals. The Department's major programmes may also require approval from the Treasury or Cabinet Office.

³⁰ National Audit Office, [The Defence Nuclear Enterprise – a landscape review](#), HC 1003 2017-19, 22 May 2018, Annex 3

The Infrastructure and Projects Authority undertakes independence assurance reviews for those major defence projects that are included in the Major Projects Portfolio. The IPA sits in the Cabinet Office.³¹

The defence sector

The defence sector in the UK is dominated by a relatively small number of major companies. This is partly a result of significant rationalisation and consolidation over the years, the highly specialised nature of its work and its limited customer base. The MOD [publishes annually](#) data on its spending with industry and commerce. In 2020/21:

- 43% of total MOD procurement expenditure was with top ten suppliers.
- BAE Systems PLC is the MOD's highest paid supplier. It received the most expenditure of any holding company, £3.8 billion, of which 94% was through non-competitive contracts. BAE Systems PLC received just under 14% of the total MOD spend with top ten suppliers in 2020/21.
- The other top ten suppliers are, in order, Babcock, Airbus, Ferrovial, Rolls-Royce, Lockheed Martin, QinetiQ, Leonardo, Boeing, General Dynamics.
- Babcock and QinetiQ are the most dependent of the top ten suppliers on MOD business. 58% of QinetiQ Group PLC's and 54% of Babcock International Group PLC's global revenue comes from MOD payments.
- The MOD has a target that 25% of its procurement spend will go to SME's by 2022. The percentage value of contracts placed with SME's relative to the value of all new MOD contracts has remained around 10% since 2018/19.³²

³¹ National Audit Office, [Improving the performance of major equipment contracts](#), HC 298 2021-22, 24 January 2021

³² Ministry of Defence, [MOD trade, industry and contracts 2021](#), Gov.uk, 16 September 2021

3 Reforming defence acquisition (1997 to 2021)

Bernard Gray, commissioned by the Government to review defence procurement in 2009, wryly observed “acquisition reform, as it is generally known, is a subject only about five minutes younger than the acquisition of military equipment itself”.³³ Tom McGuffog, in his analysis of defence procurement, pointed out Samuel Pepys, in 1660, was among the first to attempt to inject some rigour and financial acumen into the procurement system.³⁴ UK defence contracting in the 1970s had a reputation for being a “highly lucrative and not very competitive business” with the MOD have a “cosy relationship” with defence contractors.³⁵

As the Public Accounts Committee has noted, there have been “numerous reviews of defence procurement over the past 35 years”.³⁶ This section sets out some of the major changes made since 1997.

3.1 Reforms under the Labour Government (1997-2010)

“Too often in the past our new equipment has been too expensive and delivered too late.”

George Robertson,
Defence Secretary

³³ [Review of Acquisition for the Secretary of State for Defence](#) (PDF), October 2009

³⁴ T McGuffog, “[Improving value and certainty in defence procurement](#)”, *Public Money and Management*, 14 September 2011, vol 31: 6

³⁵ Gianni de Fraja and Keith Hartley, “Defence Procurement: Theory and UK Policy”, *Oxford Review of Economic Policy*, Vol. 12, no. 4, December 1996

³⁶ Public Accounts Committee, [Improving the performance of major defence equipment contracts](#), 3 November 2021, HC 185 2021-22

The 1998 Strategic Defence Review (SDSR) prioritised procurement policy reform.³⁷

The Government introduced the 'Smart Procurement Initiative', which then evolved into 'Smart Acquisition', to try and reduce cost and budget overruns. The Government also created two new organisations in 1999: the Defence Procurement Agency (DPA) and the Defence Logistics Organisation (DLO).

The 2006 report, *Enabling Acquisition Change*, subsequently introduced the programme to deliver aspects of the 2005 [Defence Industrial Strategy](#) white paper (PDF). One of the most significant organisational changes to emerge from the Change programme was the merger of the DPA and the DLO to form the Defence Equipment and Support (DE&S) in 2007. DE&S became responsible for procuring equipment and support for the UK armed forces.³⁸

In 2008 the Government commissioned Bernard Gray to examine progress made under the Acquisition Change programme.³⁹ His [Review of Acquisition for the Secretary of State for Defence](#) (PDF) was published in October 2009 and was largely critical of the way defence acquisition was conducted by the MOD. As outlined above, the Gray Review studied 40 programmes and found that on average, those programmes cost 40% more than originally expected and were delivered 80% later than first estimates predicted.⁴⁰

The Government at the time rejected his proposal to establish DE&S as a Government-owned, Contractor-operated (GOCO) entity. However, it did set out its initial thoughts and recommendations for change in the [Defence Strategy for Acquisition Reform](#) (PDF), a complementary document to its Green Paper published in February 2010 entitled [Adaptability and Partnership: Issues for the Strategic Defence Review](#) (PDF).⁴¹

All three main political parties promised to undertake a Strategic Defence Review after the 2010 election.

³⁷ [The Strategic Defence Review White Paper](#) (PDF), Library Research Paper 98/91, 15 October 1998, section VII.

³⁸ Two House of Commons Library Research Papers provide a historical account of defence procurement: C Taylor, [British defence policy since 1997](#), Library Research Paper 08/57, 27 June 2008 and C Taylor, [UK Defence Procurement Policy](#), Library Research Paper 03/78, 20 October 2003

³⁹ [HC Deb 11 December 2008 c67WS](#)

⁴⁰ *Review of Acquisition for the Secretary of State for Defence*, October 2009

⁴¹ Commons Library Paper, 'Strategic Defence Review Green Paper: Preliminary Observations', SN05341, 11 February 2010

3.2 Reforms under the Coalition Government (2010-15)

The Coalition Government announced a wholesale review of the Ministry of Defence shortly after taking office. The [Strategic Defence and Security Review](#), published in October 2010 (Cm 7948), said a review of defence acquisition would be considered as part of the overarching programme of defence reform.

The Defence Materiel Strategy and reforming DE&S

In May 2011 the Government announced a new [Defence Materiel Strategy](#), which focused on internal organisational changes of DE&S, under the new chief of Defence Materiel, Bernard Gray. This was driven in part to address some of the issues identified in his 2009 Review of Acquisition.

Contrary to the previous Labour government, the Coalition Government opted to pursue Gray's proposal to establish DE&S as a government-owned, contractor-operated entity. It outlined its plans in a White Paper, [Better Defence Acquisition](#) (Cm 8626), in June 2013. Enabling legislation was introduced the following month in the Defence Reform Bill. The proposal drew considerable debate among MPs during the Bill's progression.⁴² However, the competition was halted in December 2013 after only one bid was received.

The MOD instead opted to transform it into a bespoke trading entity, an arms-length body of the MOD, which it became in 2014. One immediate change was giving DE&S some flexibility in setting staff salaries, to compete with the private sector. Library briefing paper [Defence Equipment and Support \(DE&S\)](#) examined the GOCO proposal and the proposed transformation into a trading entity.

A new regulatory framework for single source procurement

The [Defence Reform Act 2014](#) established a new statutory framework for single source procurement and created an independent regulator to oversee the framework. This is discussed further in section 5.

⁴² See Commons Library briefing paper '[In brief: outsourcing defence procurement](#)', SN06633, 10 May 2013 and Commons Library briefing papers on the Bill: [Defence Reform Bill](#), RP13-45, 11 July 2013 and [Defence Reform Bill: Lords amendments](#), SN06869, 24 April 2014

A new policy approach

In 2012 the Government laid out its approach to defence procurement in a white paper [National Security through Technology](#) (Cm 8278). This set out the MOD's overarching principles towards defence procurement:

Wherever possible, we will seek to fulfil the UK's defence and security requirements through open competition in the domestic and global market, buying off-the-shelf where appropriate, in accordance with the policies set out in this paper. Procurement in the defence and security areas is, however, fundamentally different from other forms of procurement, so we will also take action to protect the UK's operational advantages and freedom of action, but only where this is essential for our national security.⁴³

Operational advantage is defined as “the ability to find and maintain an edge over potential adversaries” to increase the chances of success and increase the protection of UK assets and people. Freedom of action is defined as “the ability to determine our internal and external affairs and act in the country's interests free from intervention by other states or entities, in accordance with our legal entities”. The MOD describes this freedom as “the essence of national sovereignty”.⁴⁴

An annual equipment plan

In 2012 the MOD began publishing an annual equipment plan. Each plan forecasts expenditure over a rolling ten-year period. It includes spending on both new equipment and support costs for equipment already in use. The evolution of the plan is discussed in section six.

Parliamentary scrutiny

During the 2010-15 Coalition Government Members largely concentrated on the operational impact of the cuts to equipment holdings laid out in the 2010 SDSR. The gaps in maritime patrol aircraft and aircraft carrier capabilities were frequently raised in Parliament. The proposed reforms to DE&S were also discussed at length during the progress of the Defence Reform Bill in 2013-14.⁴⁵

⁴³ [“National Security through Technology: Technology, Equipment, and support for UK Defence and Security”](#). February 2012, Cm8278, p8

⁴⁴ ‘National Security through Technology: Technology, Equipment, and support for UK Defence and Security’, Cm 8278, 1 February 2012, section 3.1.1

⁴⁵ See Commons Library briefing papers on the Bill: [Defence Reform Bill](#), RP13-45, 11 July 2013; [Defence Reform Bill: Lords amendments](#), SN06869, 24 April 2014; [‘In brief: outsourcing defence procurement’](#), SN06633, 10 May 2013

3.3

Reforms under the Conservative Government (2015 to present)

New strategies

In November 2015 the Government published the National Security Strategy and Strategic Defence and Security Review (the SDSR).⁴⁶

The early election in 2017 prompted calls for a fresh Strategic Defence and Security Review. The Labour party committed to undertake a full strategic defence and security review in its 2017 election manifesto.

However, the Conservative-led Government opted instead for a [National Security Capability Review](#) (NSCR), out of which spun a separate strand on Defence that became the [Modernising Defence Programme](#) (MDP), published in December 2018. This programme focused on innovation and the need for defence to keep on top of technological advances.⁴⁷ Library briefing paper '[The Modernising Defence Programme](#)' looks more closely at the MDP.

Since 2017 the Ministry of Defence has published several strategy documents that affect defence procurement. These have either fuelled or facilitated discussion in Parliament on sovereign capabilities, supporting domestic industries (particularly shipbuilding), value for money and competitive tendering.

The Government published a **National Shipbuilding Strategy** in September 2017, fulfilling a commitment made in the 2015 Strategic Defence and Security Review. The Strategy was informed by Sir John Parker's independent report on shipbuilding (November 2016). Sir John was deeply critical of the procurement of naval ships and recommended overhauling the Navy's procurement process for its surface vessels, starting with the new general-purpose frigate (the Type 31e).

Shortly before Christmas 2017, the Government refreshed its **defence industrial policy**. [Industry for Defence and a Prosperous Britain](#) reaffirmed "competition and strategic choice remain at the heart of our approach to defence procurement" but also recommitted to take measures to protect freedom of action and operational advantage on national security grounds.

In July 2018 the **Combat Air Strategy** laid out the Government's ambition to be at the forefront of developing a new combat air system for the 2030s.

⁴⁶ National Security Strategy and Strategic Defence and Security Review, Cm 9161; November 2015; Commons Library briefing paper '[The Strategic Defence and Security Review 2015](#)', CBP7462, 12 January 2016

⁴⁷ Commons Library, [The Modernising Defence Programme](#), 21 December 2018, CBP 8469

This will replace Typhoon when it leaves service in 2040. ‘Team Tempest’, an MOD/industry working group, is driving the initial examination of options.

The Government commissioned former defence procurement minister Philip Dunne to examine how defence can increase its contribution to UK prosperity. The **Dunne Report** was published in July 2018 and made 41 recommendations.

During this time the Labour party consistently called on the Government to develop a full, overarching defence industrial strategy. In July 2018 Nia Griffith, then shadow Defence Secretary, led a motion making such a call, arguing that there is an “overwhelming case” for a strategy that “recognises the immense value of building in Britain and takes a longer-term view of the orders that the Government will place, giving industry the confidence to invest in the UK and to plan for a steady stream of work”.⁴⁸

In early 2021 the Government published a new defence review: the integrated review of security, defence, development and foreign policy. It was accompanied by a defence specific command paper and a new defence industrial strategy:

- [The Integrated Review of Security, Defence, Development and Foreign Policy: Global Britain in a Competitive Age \(CP 403\)](#)
- [Defence in a Competitive Age \(CP 411\)](#)
- [Defence and Security Industrial Strategy \(CP 410\)](#)

The DSIS is discussed in the following section. Commons Library summaries of the Integrated Review and the Defence command paper can be found on the Commons Library [collection of papers on the Integrated Review](#).

The Government published a [Refresh to the National Shipbuilding Strategy](#) in March 2022. This reflected the new procurement approach for naval shipbuilding, which will be determined on a case-by-case basis, and a 30-year shipbuilding pipeline.

In May 2022 the MOD published a [land industrial strategy](#), which “sets the conditions for long-term collaboration between the MOD and industry, supporting co-investment in capability delivery and innovation.”⁴⁹

Promoting prosperity and exports

The 2015 SDSR introduced ‘[promote our prosperity](#)’ as one of the three national security objectives.

⁴⁸ [HC Deb 11 July 2018 c1033](#)

⁴⁹ MOD, [Land Security Strategy](#), Gov.uk, 18 May 2022

Supporting exports is now a core task of the MOD and this objective is appearing in government defence procurement literature and incorporated into sector specific strategies:

- The Shipbuilding Strategy, for example, devoted an entire section to exports and asserted “ships will be designed with exports in mind from the outset”.⁵⁰
- The Combat Air Strategy laid out a ‘National Value Framework’ which it said will help determine the value for money of different options and inform trade-offs and avoid prioritising sovereign capabilities at the expense of prosperity and exports.⁵¹
- The Land Industrial Strategy devotes a section to increasing exports, and refers to a new Army Industry & Exports Office, which “has been stood up to ensure exports becomes part of the Army’s routine activity.”⁵²
- The refreshed shipbuilding strategy devotes an entire chapter to exports, and says UK defence and security exports is currently managing over 70 maritime prospects spanning more than 20 countries, with an estimated value of £20 billion.⁵³

The DSIS devotes a significant section to exports. It notes that while the UK is the second biggest exporter of defence products globally (after the US), it is extremely reliant on sales of air platforms to the Middle East, and is “all but unrepresented in exports to 17 of the 20 largest defence importers.” It outlines plans for a more collaborative cross-government approach, to maximise support to UK exports.

Chronology of major developments and strategies

- 1 April 2007 – Defence Procurement Agency (DPA) merged with the Defence Logistics Organisation (DLO) to form Defence Equipment and Support (DE&S).⁵⁴
- October 2009 – [Review of Acquisition](#), an independent report by Bernard Gray.

⁵⁰ MOD, [National Shipbuilding Strategy](#), Gov.uk, 6 September 2017. Now withdrawn and replaced with the refresh to the national shipbuilding strategy

⁵¹ MOD, [Combat Air Strategy](#), Gov.uk, 16 July 2018

⁵² MOD, [Land Industrial Strategy](#), Gov.uk, 18 May 2022

⁵³ MOD, [Refresh to the National Shipbuilding Strategy](#), Gov.uk, 10 March 2022

⁵⁴ Previously the MOD Procurement Executive, the DPA was established on 1 April 1999 as one of the recommendations of the 1998 Strategic Defence Review. Forming DE&S was one of the main recommendations of the 2006 report *Enabling Acquisition Change*.

- 15 October 2009 – A [Written Ministerial Statement](#) sets out the MOD's initial responses to the Gray report. At the time the MOD rejected the recommendation that DE&S be restructured into a GOCO.
- February 2010 –Green Paper [The Defence Strategy for Acquisition Reform](#) (Cm 7796).
- October 2010 – [The Strategic Defence and Security Review](#). It acknowledges the earlier Green paper on acquisition reform and announces that defence acquisition will be considered as part of the overarching programme of defence reform.
- December 2010 - Consultation paper 'Equipment, Support and Technology for UK Defence and Security' (Cm 7989).
- December 2010 – Bernard Gray appointed Chief of Defence Materiel.
- 31 May 2011 –[Defence Materiel Strategy](#)
- June 2011 – Lord Levene's report [Defence Reform, An independent report into the structure and management of the Ministry of Defence](#)
- February 2012 –White Paper [National Security Through Technology: Technology, Equipment and Support for UK Defence and Security](#) (Cm 8278)
- 17 July 2012 – Government [statement on the future of DE&S](#)
- January 2013 –[Equipment Plan](#) published for the first time
- 1 April 2014 – DE&S becomes a bespoke government trading entity
- 14 May 2014- [Statement confirming the transformation](#) of DE&S into a trading entity. Copies of the Framework Document and the Corporate Plan are published and laid in the Library of the House
- November 2015 – [National Security Strategy and Strategic Defence and Security Review 2015](#) Cm 9161)
- 29 November 2016 – [Sir John Parker's independent report to inform the National Shipbuilding Strategy](#)
- 6 September 2017 - [National Shipbuilding Strategy](#)
- 20 December 2018 – [Industry for Defence and Prosperous Britain: Refreshing Defence Industrial Policy](#)
- 9 July 2018 – [Growing the contribution of defence to UK Prosperity](#) (Philip Dunne report)

- 16 July 2018 - [Combat Air Strategy](#)
- 16 March 2021 - [The Integrated Review of Security, Defence, Development and Foreign Policy: Global Britain in a Competitive Age \(CP 403\)](#)
- 22 March 2021 - [Defence in a Competitive Age \(CP 411\)](#)
- 23 March 2021 - [Defence and Security Industrial Strategy \(CP 410\)](#)
- 10 March 2022 - [Refresh to the National Shipbuilding Strategy](#)
- 4 April 2022 – [Defence and Security Industrial Strategy: reform of the Single Source Contract Regulations](#)
- 18 May 2022 - [Land Industrial Strategy](#)

4 The DSIS: A new approach to defence procurement

4.1 A new policy

In March 2021 the Government published a new [Defence and Security Industrial Strategy](#) (DSIS), the first new strategy since the 2012 [National Security through Technology](#) (Cm 8278) paper.

The DSIS was part of the Government's trilogy of papers overhauling its foreign and defence policies, the other two being the [Integrated Review of Security, Defence, Development and Foreign Policy: Global Britain in a Competitive Age](#) and the defence Command Paper, [Defence in a Competitive Age](#).

4.2 A change in approach

The DSIS outlines a new approach to procurement.

“We are replacing the former policy of ‘global competition by default’ with a more flexible approach” DSIS

The previous policy, as stated in National Security through Technology, was for open competition (domestic and globally) as the default position, qualified by the principle of Technological Advantage: “We will take action to protect our operational advantages and freedom of action, but only where this is essential for national security.”⁵⁵

This approach was reaffirmed by successive governments; in the 2015 SDR and the 2017 Defence Industrial Policy Refresh.

The DSIS explicitly replaces the former policy of ‘global competition by default’ with “a more flexible and nuanced approach”:

The government's defence and security industrial policy and our approach to acquisition will now be based on a more sophisticated consideration of our national security requirements and the reality of the markets in which we operate, rather than an assumption that global competition is always the best way to meet our needs.⁵⁶

⁵⁵ [National Security through Technology: Technology, Equipment, and support for UK Defence and Security](#), Cm 8278, 1 February 2012, para 4

⁵⁶ [Defence and Security Industrial Strategy](#), March 2021, CP 410 2021-22

This means defence will use competition “where appropriate” but, when global competition is deemed ineffective or incompatible with the UK’s national security interests, it may use a different approach. It explains the shift is driven in part because for some segments there are only a very limited number of companies, which means global competition “is often not possible or inappropriate”.⁵⁷ The MOD expects implementing the DSIS will increase the proportion of non-competitive procurement on equipment and services.⁵⁸

DSIS places greater emphasis on “long-term strategic partnerships” and commits to ensuring international collaborative opportunities are “considered earlier and more systematically”.⁵⁹

Nuclear, crypt key and offensive cyber are all identified as strategic imperatives, meaning their development will be reserved to the UK for national security reasons. Section 7 discusses this concept further.

Social value policy priorities

In 2020 the Government introduced the Social Value model for all central government organisations. The DSIS explains this is to take account of the additional social benefits that can be achieved in the delivery of its contracts.

A minimum of 10% of the tender evaluation weighting must be allocated to Social Value objectives; a higher weighting can be applied if justified.

The DSIS gives the Type 31 frigate (surface warship) as an example of where a social value approach was used as part of the evaluation criteria. Bidders were scored on their proposed approach to support supply chain resilience and productivity, address shortages of technical skills, provide benefits to local communities through improved access to jobs created as part of the programme, and exportability.⁶⁰

Industrial participation policy

The MOD will pilot a revised industrial participation policy. The DSIS says this will “encourage and support defence suppliers, whether headquartered here or overseas, to consider carefully what can be sourced from within the UK.”

The DSIS notes that while this is similar to the policy applied before 2012, the Government intends to adopt this approach for all suppliers, not just overseas firms. This is because many defence suppliers are multinational. The DSIS says the government will not impose mandatory percentages for

⁵⁷ [Defence and Security Industrial Strategy](#), March 2021, CP 410

⁵⁸ [Defence and Security Industrial Strategy: reform of the Single Source Contract Regulations](#), April 2022, CP 647

⁵⁹ [Defence and Security Industrial Strategy](#), March 2021, CP 410

⁶⁰ [Defence and Security Industrial Strategy](#), March 2021, CP 410

UK industry involvement, but the policy is intended to “encourage” prime contractors to assess seriously what the UK supply base can offer.

Ron Matthews, Chair in Defence Economics at Cranfield University, and Jonata Anicetta, explored the use of offsets in an open-access article for RUSI. They explain that the policy, originally introduced in 1990, was abandoned by the UK in 2012 because of the European Procurement Directive (see section on Regulatory framework and reform). Now that the UK has left the EU it is no longer subject to the Directive. Matthews and Anicetta explain this gives the MOD the political freedom to reintroduce a new Industrial Participation policy. They say such a policy could help retain subcontract work in the UK.⁶¹

⁶¹ Ron Matthews & Jonata Anicetti (2021), Offset in a Post-Brexit World, *The RUSI Journal*, 166:5, 50-62, DOI: [10.1080/03071847.2021.2017592](https://doi.org/10.1080/03071847.2021.2017592)

5 Regulatory framework and reform

There are two sets of regulations that oversee defence procurement: The Defence and Security Public Contracts Regulations (DSPCR) and the Single Source Contract Regulations (SSCR).

The Government intends to reform and streamline public procurement in 2022 and replace several different regulatory regimes, including the DSPCR, with a single set of rules. This is set out in the [Procurement Bill](#), announced in the Queen's Speech 2022, and introduced in the House of Lords on 11 May 2022. The Bill allows for a limited number of derogations that meet the specific needs of defence and security procurements, and a national security exemption. It will also enable reforms to the SSCR.

This section explains how the DSPCR and SSCR have evolved. It will be updated once the Procurement Bill has received Royal Assent to reflect the new regulatory system. Forthcoming Library papers will discuss the regulations in detail, including the proposed reforms set out in the Procurement Bill.

5.1 Reforming the DSPCR

What is the DSPCR?

The [Defence and Security Public Contracts Regulations 2011](#) (DSPCR) transposed into UK law the EU Directive on defence and security procurement (Directive 2009/81/EC). The regulations came into force on 21 August 2011.⁶²

The DSPCR regulate the award of contracts for military and sensitive equipment, works and services.

The adoption of the Directive was intended to encourage a more open and competitive defence market, and to harmonise rules on procurement, within the EU.

The regulations do not apply in all circumstances. Regulation 7 sets out several exclusions, which include intelligence activities, military or security

⁶² "[EC Defence Equipment Directives](#)", Commons Library Paper, SN04640, 3 June 2011. A second Directive (2009/43/EC) simplifies national licensing procedures governing the movement of defence products and services within the EU. It was transposed into UK law through The Export Control (Amendment) (No. 2) Order 2012 S.I. 2012/1910.

operations outside the UK or Gibraltar and government to government sales, among others (full details are available in [DSPCR guidance chapter 4: exemptions and exclusions in the DSPCR](#)).

The regulations apply to all contracts within its scope above the [financial threshold](#) (Regulation 9). The threshold is revised every two years and takes effect from 1 January on an even numbered year. From 1 January 2022 the threshold is £426,995 for Goods and Services and £5,336,937 for Works.⁶³

Detailed guidance on the DSPCR is available on Gov.uk: [DSPCR](#).

What is Article 346?

The 2009 Directive was also intended to limit the use by Member States of Article 346 of the Treaty on the Functioning of the EU to exceptional circumstances rather than “quasi automatically for the very large majority of defence equipment contracts awarded by Member States.”⁶⁴

Under Article 296 of the Treaty Establishing the European Community (now Article 346 of the Treaty on the Functioning of the EU, as amended by Lisbon), the procurement of equipment, supplies, works and services intended for military purposes and crucial to national security can be exempted from EU public procurement rules, therefore enabling Member States not to competitively tender contracts in this area. Article 346 states:

1. The provisions of this Treaty shall not preclude the application of the following rules:

(a) no Member State shall be obliged to supply information the disclosure of which it considers contrary to the essential interests of its security;

(b) any Member State may take such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war material; such measures shall not adversely affect the conditions of competition in the common market regarding products which are not intended for specifically military purposes.

2. The Council may, acting unanimously on a proposal from the Commission, make changes to the list, which it drew up on 15 April 1958, of the products to which the provisions of paragraph 1(b) apply⁶⁵

As a European Parliament study explains, while Article 346 “gives Member States discretionary power in terms of the rules to be applied in the field of

⁶³ [Procurement Policy Note – New Thresholds Values and Inclusion of VAT in Contract Estimates Action PPN 10/21](#) (PDF), Cabinet Office, December 2021

⁶⁴ [“The Impact of the ‘defence package’ Directives on European defence”](#) (PDF), Directorate-General for External Policies, European Parliament, 2015; [“EC Defence Equipment Directives”](#), Commons Library Paper, SN04640, 3 June 2011

⁶⁵ Foreign and Commonwealth Office, Consolidated Texts of the EU Treaties as Amended by the Treaty of Lisbon, Cm 7310, Session 2007-08

defence equipment contracts, article 348 acts as a safeguard.” Article 348 says that if the use of Article 346 has the effect of distorting the conditions of competition in the internal market, the European Commission or any Member State may bring the matter directly before the Court of Justice of the European Union. This means, the study says, that “the rule of exceptionality is thus not absolute and must be justified.”⁶⁶

Katharina Weiner, a defence procurement lawyer, observed in 2012 that the decision to invoke Article 346 was rarely challenged in the courts.⁶⁷ In 2018 the European Commission opened infringement procedures against several member states for not applying, or doing so incorrectly, the Defence Procurement Directive.⁶⁸

Use of exemptions

A 2016 European Commission observed that because Member States have no notification or reporting obligations concerning their decisions to rely on Article 346, there is no official statistical data or information on the extent to which these exemptions have been applied across the EU.⁶⁹

The UK Government has published statistics on its use of Article 346 and other exemptions. A review of the DSPCR in 2015 found the use of Article 346 and other exemptions declined from 49% of contracts awarded (for above threshold procurements) in 2011 to 25% in 2015.⁷⁰

The 1958 list and defining military equipment

Article 346(2) states its provisions apply to products contained in a list drawn up by the Commission in 1958 ([decision 255/58](#) of 15th April 1958). This list has never been amended and views differ on whether it is out of date or sufficiently generic to cover new technology.⁷¹ The [DSPCR 2011](#) (part 1, section 3) refers to the list when it defines military equipment as:

equipment specifically designed or adapted for military purposes and intended for use as arms, munitions or war material including equipment:

⁶⁶ “[The Impact of the ‘defence package’ Directives on European defence](#)” (PDF), Directorate-General for External Policies, European Parliament, 2015

⁶⁷ Katharina Weiner, *Towards European Preferences - Implications of Directive 2009/81/ECon Domestic Preferences in Defense Procurement*, *The Procurement Lawyer*, Spring 2012 (vol 47:3), p16

⁶⁸ See for example: “[Defence procurement: Commission opens infringement procedures against 5 Member States](#)”, European Commission, 25 January 2018:

⁶⁹ [Evaluation of Directive 2009/81/EC on public procurement in the fields of defence and security](#), European Commission, November 2016

⁷⁰ “[Defence and Security Public Contracts Regulation \(DSCPCR\) 2011: 5 year statutory review](#)”, Ministry of Defence, 13 December 2016.

⁷¹ Dr Baudouin Heuinckx and Professor Sue Arrowsmith, ‘The Law of Public and Utilities Procurement, Regulation in the EU and UK’, chapter ‘Defence and Security Procurement’, vol 2, third edition

(a) listed in the [Common Military List](#) of the European Union as amended from time to time; or

(b) within the product types included in the list of arms, munitions and war material adopted by the Council in its decision 255/58 of 15th April 1958.

Effect of the UK's exit from the EU

The DSPCR is 'retained EU law' by virtue of section 2 of the European Union (Withdrawal) Act 2018. The DSPCR was amended by two Statutory Instruments to ensure the rules continued to operate effectively after the UK left the EU. These are:

- [Defence and Security Public Contracts \(Amendment\) \(EU Exit\) Regulations 2019](#)
- [The Defence and Security Public Contracts \(Amendment\) \(EU Exit\) Regulations 2020](#)

After 31 December 2020, the DSPCR became national regulations which sit outside the Directive.

Earl Howe, then Minister of State, explained that the amending regulations provide a legal right of market access for suppliers based in the UK and Gibraltar.⁷² Other changes amend provisions that are redundant, for example references to the Official Journal of the European Union. They also transfer certain powers that were exercised by the European Commission to the Secretary of State, for example to "modernise, although not broaden" the 1958 list.⁷³

Replicating the effect of Article 346

The amending regulations maintain the effect of Article 346 by writing its substance into the DSPCR. The exemptions are laid out in [Regulation 6\(3A\)](#) which allow a procurer to:

- withhold information the disclosure of which the UK considers contrary to the essential interests of UK security; and
- take measures necessary for the protection of UK essential security interests which are connected with the production of, or trade in, arms, munitions and war material; provided that these measures do not adversely affect competition in the common market for products which are not specifically intended for military purposes.⁷⁴

⁷² [HL Deb 4 February 2019 \[Defence and Security Public Contracts \(Amendment\) \(EU Exit\) Regulations 2019\]](#)

⁷³ [HL Deb 4 February 2019 \[Defence and Security Public Contracts \(Amendment\) \(EU Exit\) Regulations 2019\]](#)

⁷⁴ [DSPCR Chapter 4: exemptions and exclusions in the DSPCR](#), Gov.uk, 27 August 2021, accessed 6 May 2022

The regulation also makes clear the definition of arms, munitions and war material is those goods which appear on the 1958 List.

CJEU judgements after exit day

The Government says that decisions made by the Court of Justice of the European Union (CJEU) after 31 December 2020 (when the UK left the EU) will not be binding on UK domestic courts and tribunals. However, the Government also says that UK domestic courts and tribunals will, when interpreting and applying retained EU law, be bound to follow judgments of the CJEU and domestic courts that were passed before 31 December 2020, insofar as they apply to unmodified retained EU law. This is known as retained case law.⁷⁵

Why is the Government reforming the DSPCR?

In December 2020 the Government published a Green Paper on [Transforming Public Procurement](#) which set out its intention to replace the “complex framework of regulations” governing public procurement with a “single, uniform set of rules for all contract awards.” The DSPCR 2011 is explicitly included in the list of regulations to be replaced.⁷⁶ However, the paper says the new rules will be supplemented with sector-specific parts, including for defence.⁷⁷

The Defence and Security Industrial Strategy said the UK’s departure from the EU provides an “opportunity to reform” the DSPCR. The DSIS says this will help speed up and simplify procurement process:

We will improve the pace and agility of acquisition, simplify the regulatory framework, tailor it to better enable innovation and support the pull through of new technology into defence and security capability.⁷⁸

The Government published its [response to the Transforming Public Procurement consultation](#) in December 2020.⁷⁹ The Government said there were some concerns around the impact of a simplified regulatory framework on contracts let under the Defence and Security Public Contracts Regulations 2011 (DSPCR). The Government said that it plans to include a “number of exemptions to ensure the security implications for these contracts are considered.” The response further said:

The Government proposes maintaining a full suite of national security exemptions for sensitive defence, security, and civil procurement. The exemptions for international co-operation will reflect the Ministry of Defence’s unique range of international collaboration projects. We will ensure

⁷⁵ [DPSCR Chapter 1: Overview](#), Gov.uk, 27 August 2021 (accessed 6 May 2022)

⁷⁶ The others are the Public Contracts Regulations 2015, Utilities Contracts Regulations 2016 and Concession Contracts Regulations 2016.

⁷⁷ [Transforming Public Procurement Green Paper](#), 15 December 2020

⁷⁸ [Defence and Security Industrial Strategy](#), March 2021, CP 410 2021-22

⁷⁹ [Transforming Public Procurement – Government response to consultation](#), CP 556, 6 December 2021

that the general provisions on procurement procedures together with defence and security specific parts are flexible enough to meet the needs of urgent operational requirements.

The Procurement Bill 2022-23

The Procurement Bill was introduced in the House of Lords on 11 May 2022. It had Second Reading on 25 May 2022.

This paper does not intend to discuss in detail the content of the Bill, as this will be covered by House of Lords and House of Commons Library papers on the Bill as it progresses through Parliament. The full text of the Bill, explanatory notes and Library papers can be found on the Bill's webpage: [Procurement Bill](#).

This paper will be updated once the Bill has completed its stages and received Royal Assent.

5.2 Single source contracts regulations and reform

In 2014 the Government reformed the framework for single source procurement. This is when contracts are not competed. Historically the Ministry of Defence has awarded a significant proportion of contracts without an open competition.

Before 2014 the governance of non-competitive contracts was reliant on a non-legally binding framework dating from 1968, known as the Yellow Book, which was overseen by the Review Board for Government Contracts.

A review by Lord Currie led to the [Better Defence Acquisition](#) White Paper in 2013 and the new framework was brought into effect in part 2 of the Defence Reform Act 2014 and the Single Source Contract Regulations 2014 (the SSCR).

The single source framework has three main components: the regulations, statutory guidance, and a body to manage and monitor the framework, known as the Single Source Regulatory Office (SSRO).

Reforming the regulations

Section 39 of the [Defence Reform Act 2014](#) requires the Secretary of State for Defence to review single source procurement legislation within three years of it coming into force and each subsequent five-year period, and for the SSRO to keep under review the single source contract regulations.

The 2017 review and regulatory changes

For the 2017 review, the SSRO made 14 recommendations to the Defence Secretary.⁸⁰ Three statutory instruments were subsequently enacted which amend the 2014 regulations. The first was laid under the affirmative procedure and clarified which contracts cannot be subject to the legislation (are excluded).⁸¹ The second changed the provisions for repricing contracts that fall under the regime when they are amended, and the time limits for referrals to the SSRO. The third clarified some of the terms in the regulations and amended the reporting requirements.

These changes are discussed in Library paper [The defence single source regulatory framework under review](#) (CBP 8930, June 2020).

The 2022 review and regulatory changes

The DSIS indicated plans to simplify and speed up the single source regime and introduce new ways of “incentivising suppliers to innovate and support government objectives.” The SSRO published its [review of the regulations](#) in June 2021, with a view to its recommendations being considered by the Defence Secretary as part of his review of the regime.⁸²

A detailed Command Paper outlining the MOD’s proposed reforms to the SSCR was published in April 2022: [Defence and Security Industrial Strategy: Reform of the Single Source Contract Regulations](#).

The Procurement Bill, introduced in the House of Lords on 11 May 2022, will amend part 2 of the Defence Reform Act 2014 which regulates single source contracts. The full text of the Bill, explanatory notes and Library papers can be found on the Bill’s webpage: [Procurement Bill](#).

A forthcoming Library paper will examine the proposed changes to the single source contract regulations.

⁸⁰ Single Source Regulations Office, “[Recommendations to the Secretary of State: Review of Part 2 of the Defence Reform Act 2014 and the Single Source Contract Regulations 2014](#)”, June 2017 (published January 2018)

⁸¹ To go through the 'affirmative procedure' refers to statutory instruments which must be approved by both the House of Commons and the House of Lords to become law. Conversely the 'negative procedure' refers to statutory instruments which automatically become law unless there is an objection from either House.

⁸² SSRO, [Review of legislation recommendations June 2021](#), Gov.uk, 14 June 2021

6 The equipment plan

The MoD has published an annual Defence Equipment Plan every year since 2012. The plan forecasts expenditure over a rolling ten-year period. It includes spending on both new equipment and support costs for equipment already in use. In recent years the NAO has assessed [successive plans to be unaffordable](#).

6.1 Scrutiny of the plan

The National Audit Office (NAO) examines the underpinning assumptions of the Equipment Plan in its own report. The NAO says the purpose of its report is [“to assist Parliament in evaluating the Department’s assessment of affordability and its response to the financial challenges it faces.”](#)⁸³ The NAO’s report is published on the same day as the MOD’s plan.

The [Public Accounts Committee](#) has in recent years held an oral evidence session with senior MOD officials on the equipment plan, and subsequently produced a report. The [Defence Committee](#) also often analyses the plan as part of its examination of the MOD’s annual report and accounts.

6.2 What does the plan tell us?

The publication has evolved over the years.

Cat Little, the MOD’s Director General Finance, told MPs before publication of the 2018 plan it is intended to be “a much more readable, transparent comprehensive assessment of both value for money and affordability”.⁸⁴ The NAO agreed the 2018 plan was “more transparent” and its approach to forecasting costs is “more realistic” than previous years. It also welcomed the affordability risks outlined by the MOD for “the first time” in the Plan.⁸⁵

Broadly, the plan provides a projection of the MOD’s planned spend on equipment and support over the following decade. This is provided by sector (Navy, Army, Air etc). It includes a table summarising major project

⁸³ NAO, The Equipment Plan 2019 to 2029, HC 111 2019-20, 27 February 2020

⁸⁴ Defence Committee, “Oral evidence: Ministry of Defence Annual Report and Accounts”, HC 1559, 9 October 2018, q11

⁸⁵ NAO, “The Equipment Plan 2018 to 2028”, 5 November 2018, HC 1621 2017-19

performances and recent iterations have included a summary of major projects. As noted above, since 2018 the plan has also included analysis of the risks to affordability. The 2021-2031 report also provided information on the strategic context.

6.3 Is it affordable?

This is the key question for the NAO.

Philip Hammond, then Defence Secretary, declared he had balanced the defence budget and promised “under-programming rather than over-programming”, when announcing the 2012 plan.⁸⁶ In their accompanying analysis, the NAO observed that the MOD had “substantially revised the way it compiles and manages the Equipment Plan and is now approaching the task on a more prudent basis”.⁸⁷

“For the fourth successive year, the equipment plan remains unaffordable.”

National Audit Office, Equipment Plan 2020-30

However, in 2016 the NAO warned “the affordability of the Equipment Plan is at greater risk than at any time since its inception”, pointing out there is little room for unplanned cost growth and called on the MOD to “actively guard against the risk of a return to previous practice where affordability could only be maintained by delaying or reducing the scope of projects.”⁸⁸

In 2017 the NAO concluded – for the first time since the plan was first published in 2012 – that the equipment plan was not affordable. The NAO said the affordability gap ranges from “a minimum of £4.9bn to £20.8bn if financial risks materialise and ambitious savings are not achieved.”⁸⁹

In 2019 the NAO said the MOD “has still not taken the necessary decisions to establish an affordable long-term investment programme to develop future military capabilities.” The NAO also said the MOD was not using the plan as intended – as a long-term financial management tool – but had become “locked into a cycle of managing its annual budgets to address urgent affordability pressures at the expense of longer-term strategic planning.”⁹⁰

In February 2022, reporting on the equipment plan 2021-31, the NAO said there remain risks of over-optimistic assumptions about future budgets, costs and the likely achievement of savings targets. The NAO warned of the risk that, despite the additional funding set out in the 2020 Spending Review, “the Department’s ambition outstrips the resources available to it.”

However, the NAO also said that the multi-year spending settlement “gives

⁸⁶ [HC Deb 14 May 2012 c263](#)

⁸⁷ NAO, [The Equipment Plan 2012-2022](#), 31 January 2013, HC 886, 2012-13

⁸⁸ National Audit Office, [The Equipment Plan 2016-2026](#), 27 January 2017, HC 914, 2016-17

⁸⁹ NAO, [The Equipment Plan 2017-2027](#), 31 January 2018, HC 717 2017-19

⁹⁰ NAO, [The Equipment Plan 2019-2029](#), 27 February 2020, HC 111 2019-20

the Department a rare opportunity to break old habits and set the Plan on course to be affordable.”⁹¹

The MOD acknowledges previous equipment plans have been unaffordable over the ten-years of the plan.⁹²

All the equipment plans are collated on the Gov.uk website: [Defence Equipment Plan reports](#).

⁹¹ NAO, The Equipment Plan 2021-2031, 21 February 2021, HC1105, 2021-22

⁹² MOD, [Defence Equipment Plan 2021](#), 21 February 2022 p10

7

Strategic capabilities

Historically there have always been certain capabilities that the MOD has sought to retain a domestic industrial base.

This may be for national security reasons or to ensure critical supply chains are not dependent on allies or vulnerable to embargoes. John Louth and Trevor Taylor, in a paper for the defence think tank RUSI, note that a national defence industrial sector means production can be surged when needed, and industry personnel can be deployed to support equipment.⁹³ Andrew Dorman et al say without a “thriving domestic defence industrial base” the UK jeopardises its freedom to act and the armed forces risk losing their technological advantage over their potential opponents.⁹⁴

The terminology used to refer to these capabilities has changed over the years. Under the Labour government the MOD referred to sovereign capabilities. In its 2012 White Paper, the Coalition government used the terms operational advantage and freedom of action when defining sovereignty:

Operational advantage is the ability to find and maintain an edge over potential adversaries, both to increase the chances of our success in hostile situations and to increase the protection of the UK assets involved, especially our people.

[...]

Freedom of action is the ability to determine our internal and external affairs and act in the country’s interests free from intervention by other states or entities, in accordance with our legal obligations. This freedom is the essence of national sovereignty.⁹⁵

These principles were reaffirmed by the Government in the 2015 SDSR and the 2017 Defence Industrial Policy Refresh.

The 2021 Defence and Security Industrial Strategy (DSIS) changed the language, but retained the underlying principle that the UK will “maintain capabilities onshore to produce and support critical elements for our national security.” Instead of the 2012 White Paper’s operational advantage

⁹³ John Louth and Trevor Taylor, ‘A Defence Industrial Strategy for the UK’, RUSI Occasional Paper, April 2018

⁹⁴ Andrew Dorman, Matthew Uttley and Benedict Wilkinson “[A benefit not a burden: the security, economic and strategic value of Britain’s defence industry](#)”, King’s College London, April 2015

⁹⁵ National Security through Technology: Technology, Equipment, and support for UK Defence and Security, Cm 8278, 1 February 2012

and freedom of action, the DSIS introduced the concepts of strategic imperatives and operational independence:

Strategic imperatives: These are areas of industrial capability which are so fundamental to our national security, and/or where international law and treaties limit what we can obtain from overseas, that we must sustain the majority of the industrial capability onshore.

[...]

Operational independence: (...) to ensure we can continue to conduct military operations as we choose without external political interference, and to protect the sensitive technologies that underpin those capabilities.⁹⁶

7.1 Identifying strategic capabilities

The 2005 [Defence Industrial Strategy](#) “for the first time” identified which industrial capabilities the Government considered necessary to be “sustained onshore”. These included capabilities that provide technologies or equipment important to safeguard the state (e.g. the nuclear deterrent), where the MOD required particular assurance of continued and consistent equipment performance, and where the UK can have strategic influence. The strategy identified specific capabilities by sector.⁹⁷

However, in a move that “stunned the defence industry”, the 2012 National Security through Technology paper, which replaced the 2005 industrial strategy, removed this list.⁹⁸ The paper argued it was better to take decisions on a case-by-case basis depending on the nature of the threat and capabilities required. Although it did identify some broad parameters of where it might act, for example high grade cryptography to ensure security communications, or where suppliers would need to have access to highly classified intelligence information or technologies.

The 2015 National Security Strategy and Strategic Defence and Security Review provided a list of exceptions to the principle of open competition:

- Highly classified or sensitive technologies, or those governed by export control or treaty restrictions.
- Capabilities necessary to maintain interoperability with important allies, but which they cannot or will not provide to the standard required by our Armed Forces.

⁹⁶ [Defence and Security Industrial Strategy](#), 26 March 2021, CP 410 2021-22

⁹⁷ ‘[Defence Industrial Strategy](#)’, Cm 6697, December 2005

⁹⁸ “Military weaponry won’t have to be made in Britain”, The Times, 2 February 2012

- Capabilities where there is strategic, military and economic benefit for the UK from long-term collaboration with other nations.⁹⁹

7.2 Current strategic capabilities

The 2021 DSIS identifies the following as strategic capabilities which it says are imperative to maintain onshore (within the UK) to meet its national security requirements:

- Nuclear deterrent capabilities
- Submarines
- Offensive cyber
- Crypt-key, which enables and protects the UK's most sensitive information.

The DSIS identifies the following industrial capabilities as important to remain onshore to secure the UK's operational independence:

- Complex weapons (strategic and tactical weapons reliant upon guidance systems to achieve precision effects)
- Novel weapons (such as directed energy weapons)
- Test and Evaluation
- Chemical, biological, radiological and nuclear capabilities¹⁰⁰

The DSIS discusses at length each sector (maritime, land, air, space) in the annex.

⁹⁹ 2015 SDSR, Cm 9161, para 6.54

¹⁰⁰ [Defence and Security Industrial Strategy](#), 26 March 2021, CP 410 2021-22

8 International collaboration and direct sales

8.1 International collaboration

International collaboration has long been a feature of defence procurement, particularly for equipment that might prove financially prohibitive for the UK to develop on its own. Combat aircraft is the most obvious example (see box).

In the 2021 DSIS, the Government says it will consider international collaboration opportunities earlier and more systematically when developing the equipment capability it needs, and will make better use of the UK's bilateral and multilateral links, including with NATO.

Multinational collaboration is often undertaken by an established body or a dedicated delivery vehicle, such as the Eurofighter consortium.

OCCAR

Established bodies include OCCAR, the Organisation for Joint Armament Co-operation, set up in the 1990s by the UK, France, Germany and Italy (and now includes Belgium and Spain). OCCAR is not a procurement agency but manages programmes for its members. The UK participates in four of the 17 programmes it currently manages:

- [A400M](#) transport aircraft, in service with the RAF as Atlas
- [Boxer](#) mechanised infantry vehicles
- [Maritime Mine Counter Measures](#) (MMCM) unmanned systems
- Surface-to-air anti-missile systems ([FSAF-PAAMS](#)), installed on the Type 45 Destroyer as Sea Viper¹⁰¹

Oversight of OCCAR programmes was queried by the Defence Committee in relation to the Boxer contract. The MOD told the Committee the OCCAR treaty “contains similar arrangements for collaborative programmes for participatory states. These arrangements afford the UK similar rights for

¹⁰¹ A full list of programmes identifying member and non-member state participants can be found in the [OCCAR business plan 2021](#) (accessed 28 April 2022).

transparency, cost assurance audits and progress reporting mechanisms as those required by the Single Source Regulations Office.”¹⁰²

Case study: Combat aircraft

The RAF’s combat aircraft is one of the most obvious examples of where the UK has developed a new capability with international partners.

Tornado was developed in the 1970s as part of a three-nation development between the UK, (then) West Germany and Italy. The aircraft was in service with the RAF until 2019.

Typhoon was the result of a multinational collaborative effort between Germany, Italy, Spain and the UK, dating from the 1980s. BAE Systems, Airbus and Leonardo own the Eurofighter Consortium. Each of the four parent nations host the production line and final assembly for the components of the aircraft it is responsible for. In the UK this is BAE’s Warton plant in Lancashire. Typhoon is expected to remain in service until 2040.¹⁰³

The UK is currently developing the future combat air system, currently known as Tempest, with international partners. At present this involves Italy and Sweden.

The Defence Committee launched [two inquiries into Aviation Procurement](#) in March 2022.

8.2

US Foreign Military Sales

The UK may also buy equipment directly from the United States via its [Foreign Military Sales](#) (FMS) programme. In 2017 the MOD said it had more than 300 Foreign Military Sales agreements relating to equipment and support with a total value of just under \$12 billion.¹⁰⁴ These are exempt from the Defence and Security Public Contract Regulations and the Single Source Contract Regulations.¹⁰⁵

Current acquisitions include the P-8A Poseidon maritime patrol aircraft. The Defence Procurement Minister said it is achieving efficiency savings on the P-

¹⁰² Defence Committee, [‘Letter](#), 2 January 2018, from Harriett Baldwin MP, Minister for Defence Procurement on Mechanised Infantry Vehicle and attached relevant Parliamentary Questions’, 11 January 2018

¹⁰³ It was expected to retire in 2030 but the 2015 Strategic Defence and Security Review extended its life until 2040. The RAF plans to “spiral develop” its capabilities.

¹⁰⁴ [PQ 4693](#), 21 July 2017

¹⁰⁵ [PQ 178854 \[USA: Arms Trade\]](#), 20 April 2021; [PQ 10187 \[Chinook helicopters: Procurement\]](#), 9 June 2021

8A procurement programme by leveraging economies of scale through the FMS arrangement, because it can secure a better unit price cost by placing its order alongside the US Navy and other customers.¹⁰⁶

Other major acquisitions include the Apache AH-64E attack helicopters (the MOD has said any future procurement of the associated Joint Air-to-Ground missile will be through an FMS arrangement¹⁰⁷) and new extended range Chinook helicopters. The US Defense Security Cooperation Agency publicises any State Department determination of a possible FMS to the UK on its website: [DSPA - United Kingdom](#).

Fluctuations in exchange rates can affect programme costs. Much of the £110 million increase in the forecast cost for the P-8A programme was driven by fluctuations in exchange rates.¹⁰⁸

The MOD says it mitigates its exposure to foreign exchange risk (where changes in exchange rates can significantly increase the cost of a programme) through forward purchases of US Dollars.¹⁰⁹

8.3

EU and PESCO

The EU's Permanent Structured Cooperation (PESCO) mechanism was formally launched in 2017. Under PESCO, small groups of eligible, willing Member States would be able to adopt decisions regarding greater military cooperation. At the time of writing the PESCO initiative has [60 projects in total \(PDF\)](#)¹¹⁰ ranging from cyber training to semi-autonomous surface vessels. Any involvement by the UK would be as a third party.

The UK had previously expressed an interest in the Military Mobility project. However, in December 2020 the Secretary of State for Defence stated that the UK had no plans to participate in PESCO "because we have serious concerns about the intellectual property rights and export controls that it would seek to impose". He went on to state that the UK "will always be open to working with European industries... on a case-by-case basis".¹¹¹

¹⁰⁶ [PQ 155599 \[Maritime Patrol Aircraft: Cost Effectiveness\]](#), 27 April 2022

¹⁰⁷ [PQ 98225 \[Apache AH-64 Helicopters: Guided Weapons\]](#), 10 January 2022

¹⁰⁸ [MOD trade, industry and contracts 2021](#), Gov.uk, 3 February 2022

¹⁰⁹ [The defence equipment plan 2021](#), Ministry of Defence, 21 February 2022

¹¹⁰ One project, the [European Union Training Mission Competence Centre](#), from the first batch of PESCO programmes adopted in March 2018, has been closed by its participating Member States.

¹¹¹ [HC Deb 7 December 2020](#), c546

The House of Commons Library is a research and information service based in the UK Parliament. Our impartial analysis, statistical research and resources help MPs and their staff scrutinise legislation, develop policy, and support constituents.

Our published material is available to everyone on commonslibrary.parliament.uk.

Get our latest research delivered straight to your inbox. Subscribe at commonslibrary.parliament.uk/subscribe or scan the code below:



 commonslibrary.parliament.uk

 [@commonslibrary](https://twitter.com/commonslibrary)