



In Focus

Armed Forces Deployment (Royal Prerogative) Bill [HL] (HL Bill 10 of 2016–17)

Key Provisions

The [Armed Forces Deployment \(Royal Prerogative\) Bill \[HL\]](#) is a private member's bill introduced by Baroness Falkner of Margravine (Liberal Democrat). The Bill received its first reading in the House of Lords on 24 May 2016 and is scheduled to have its second reading on 8 July 2016. Baroness Falkner introduced similar bills in the two previous parliamentary sessions, but neither progressed beyond first reading. The Bill would require the Prime Minister to seek approval from the House of Commons before taking a 'conflict decision' authorising the use of force by UK forces, if the use of force would take place outside the United Kingdom and would be regulated by the law of armed conflict. The Prime Minister would have to seek such approval by laying a report before the House of Commons setting out the terms of the proposed approval, and any information about objectives, locations and legal matters that he or she thought appropriate. The House of Commons could seek the opinion of the House of Lords, but it would be for the House of Commons to resolve whether or not to approve the proposed conflict decision. The Prime Minister would not be required to seek approval for a conflict decision if:

- There was not sufficient time (the 'emergency condition').
- Public disclosure of information about the conflict decision could prejudice the effectiveness of military activities and/or the security or safety of members of UK forces or other forces or people assisting them (the 'security condition').
- The conflict decision covered only: members of special forces and/or members of UK forces for the purposes of assisting special forces' activities.

It would be for the Prime Minister to determine if the emergency or security condition was met, but he or she should consult the chair of relevant committees if feasible. If the Prime Minister determined that the condition was met, within 30 days of taking the conflict decision, he or she should lay before the House of Commons a report explaining the determination, unless the security conditions continued to apply, or laying a report could prejudice national security or the UK's international relations.

Background

The power to deploy the armed forces is a prerogative power exercised on the Sovereign's behalf by Ministers. The *Cabinet Manual* notes that in 2011, "the Government acknowledged that a convention had developed in Parliament that before troops were committed the House of Commons should have an opportunity to debate the matter and said that it proposed to observe that convention except where there was an emergency and such action would not be appropriate".¹ In March 2011, William Hague (now Lord Hague of Richmond), then Foreign Secretary in the Coalition Government, said that the Government planned to "enshrine in law for the future the necessity of consulting Parliament on military action".² The House of Commons Political and Constitutional Reform Committee (PCRC) identified "an

urgent need for greater clarity on Parliament's role in decisions to commit British forces to armed conflict abroad".³ It recommended the Government should in the first instance bring forward a draft parliamentary resolution for consultation, and for decision by the end of 2011, but this did not happen. In contrast, in July 2013, the House of Lords Constitution Committee concluded that the existing convention was "the best means by which the House of Commons can exercise political control over, and confer legitimacy upon, decisions to use force". The Committee believed Parliament's role should not be formalised in legislation or a parliamentary resolution, as the risks outweighed the benefits.⁴

In August 2013, the House of Commons voted against a Government motion on the principle of taking military action in Syria.⁵ Professor Malcolm Chalmers of the Royal United Services Institute commented that: "It is now hard to see how any UK Government could undertake significant military action without the support of Parliament, or indeed of the wider public".⁶ Baroness Falkner of Margravine, who was a member of the Constitution Committee, said that in the wake of the vote, she believed the process for consulting Parliament on the use of armed force must be formalised.⁷ The PCRC argued that the Syria vote not only "serve[d] to highlight the important role of Parliament in conflict decisions, it also showed how the de facto situation on conflict decisions appears to have outpaced the legal position".⁸ The PCRC later produced its own draft parliamentary resolution setting out a process it believed the Government should follow to seek Commons approval for future conflict decisions.⁹

In April 2016, Michael Fallon, Secretary of State for Defence, announced that the Government had decided not to legislate on this matter.¹⁰ He explained that: "If we were to attempt to clarify more precisely circumstances in which we would consult Parliament before taking military action, we would constrain the operational flexibility of the armed forces and prejudice the capability, effectiveness or security of those forces, or be accused of acting in bad faith if unexpected developments were to require us to act differently". He also expressed the Government's wish to avoid conflict decisions becoming subject to legal action. However, he noted that the Government had "demonstrated its commitment to the convention by the debates it held in 2013, 2014 and 2015 [on Syria; action against ISIS in Iraq; and against ISIS in Syria], and its respect for the will of Parliament on each occasion".

Further Information

- House of Commons Library, [Parliamentary Approval for Military Action](#), 12 May 2015

¹ Cabinet Office, [Cabinet Manual](#), October 2011, para 5.38.

² [HC Hansard, 21 March 2011, col 799](#).

³ House of Commons Political and Constitutional Reform Committee, [Parliament's Role in Conflict Decisions](#), 17 May 2011, HC 923 of session 2010–12, p 6.

⁴ House of Lords Constitution Committee, [Constitutional Arrangements for the Use of Armed Force](#), 24 July 2013, HL Paper 46 of session 2013–14, p 4.

⁵ [HC Hansard, 29 August 2013, cols 1552–5](#).

⁶ Quoted in House of Commons Library, [Parliamentary Approval for Military Action](#), 12 May 2015, p 28.

⁷ [HL Hansard, 28 November 2013, col 1608](#).

⁸ House of Commons Political and Constitutional Reform Committee, [Parliament's Role in Conflict Decisions: An Update](#), 6 September 2013, HC 649 of session 2013–14, p 5.

⁹ House of Commons Political and Constitutional Reform Committee, [Parliament's Role in Conflict Decisions: A Way Forward](#), 27 March 2014, HC 892 of session 2013–14.

¹⁰ [House of Commons, Written Statement: Armed Forces Update, 18 April 2016, HCWS678](#).

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