HOUSE OF LORDS

Library Note

Defence Reform Bill (HL Bill 60 of 2013–14)

This Note provides background information on the Defence Reform Bill, which is due to have its second reading in the House of Lords on 10 December 2013. It summarises the key provisions, background and proceedings in the House of Commons for each of the Bill's three main parts. Part 1 would enable the Secretary of State to make arrangements for a company to provide defence procurement services under contract, should the Government decide to establish a government-owned contractor-operated entity. Part 2 would create a regulatory framework for single source defence contracts that are not subject to the usual legal obligation to be advertised and tendered competitively. Part 3 would implement proposals set out in the White Paper, *Reserves in the Future Force 2020: Valued and Valuable*.

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1. Introduction

The Defence Reform Bill (HL Bill 60 of 2013–14) was introduced into the House of Commons on 3 July 2013. It had its second reading in the House of Commons on 16 July 2013. It was considered by a Public Bill Committee, which held four sittings on the general principles of the Bill at the beginning of September 2013, and conducted line-by-line scrutiny over ten sittings between 8 and 22 October 2013. The Bill completed its remaining stages in the House of Commons on 20 November 2013, and was introduced into the House of Lords the following day. It is scheduled to have its second reading in the House of Lords on 10 December 2013.

Part 1 of the Bill would enable the Secretary of State to make arrangements for a company to provide defence procurement services. At present, defence procurement is undertaken by the Defence Equipment and Support (DE&S) organisation within the Ministry of Defence (MOD). The Government is currently assessing whether in future, defence procurement should be carried out by a reformed DE&S (known as the 'DE&S+' option), or by a government-owned, contractor-operated entity (GOCO). A final decision is expected in 2014. This legislation is being introduced to enable the Government to establish a GOCO, should they decide to pursue that option. Part 2 of the Bill would create a regulatory framework for single source defence contracts that are not subject to the usual legal obligation to be advertised and tendered competitively. It would establish a new non-departmental public body, the Single Source Regulations Office, to oversee the new framework. Much of the detail of the new framework would be set out in regulations. Parts 1 and 2 would implement proposals set out in the MOD White Paper *Better Defence Acquisition: Improving How We Procure and Support Defence Equipment*, published in June 2013.

Part 3 of the Bill contains provisions relating to the Reserve Forces. It would rename the Territorial Army, expand the Secretary of State's powers to call out the Reserve Forces, introduce new financial incentives for the employers of Reservists and exempt Reservists from the statutory two-year qualifying period required to bring an unfair dismissal case with an Employment Tribunal. Part 3 would implement proposals set out in the MOD White Paper *Reserves in the Future Force 2020: Valued and Valuable*, published in July 2013.

Sections 2 to 4 of this Note cover each of these parts of the Bill, summarising the key provisions, policy background and proceedings in the House of Commons (up to and including report stage).[1] Section 2.5 provides an update on the progress of the competition process to identify a commercial operator, should the Government decide to go ahead with the GOCO option. The final section of this Note summarises the third reading debate on the Bill in the House of Commons.

The Government has published Explanatory Notes and an Impact Assessment alongside the Bill.

2. Part 1: Defence Procurement

2.1 Key Provisions

Part 1 of the Bill relates to the reform of the MOD's Defence Equipment and Support (DE&S) organisation, which currently manages the £14 billion annual budget to buy and support all the

[1] Part 4 of the Bill contains provisions on extent, commencement and short title, and is not covered separately in this Note.

equipment and services needed by the Royal Navy, the British Army and the Royal Air Force.[2] The Government is currently assessing whether this function should remain in the public sector within a reformed DE&S, or whether a government-owned, contractor-operated (GOCO) entity should be established to provide defence procurement services. Part 1 of the Bill provides enabling legislation that would allow the Secretary of State to enter into a contract with a company to provide defence procurement services.

Clause 1 sets out that part 1 would apply if the Secretary of State makes arrangements for a company to provide defence procurement services to the Secretary of State under contract—in other words, if the Secretary of State decides to pursue the GOCO option for future defence procurement services—and if that company, or another company, acquires rights over premises and property currently used by DE&S and becomes the employer of civil servants working in or in connection with DE&S. The Explanatory Notes state that "defence procurement" and "defence procurement services" are those services which are currently provided by DE&S.[3] Subsection 6 of clause 1 provides that the company may be a publicly-owned company.

For the purposes of part 1, a company is defined as a "contractor" if it provides defence procurement services to the Secretary of State under contract, or if it enables defence procurement services to be provided to the Secretary of State by making premises, property and staff available under contract, or if it has entered into the relevant arrangements to do so in the future (subsection 8). Subsection 7 of clause 1 specifies that the arrangements may permit a contractor to exercise the Secretary of State's discretions relating to defence procurement. The Explanatory Notes state that:

> The Secretary of State will remain responsible for defence procurement but, given the scale of the activities that the contractor may be required to undertake under the arrangements, it may be necessary for the contractor to exercise a discretion of the Secretary of State in respect of the Secretary of State's procurement functions.[4]

It is expected that if the Government decides to establish a GOCO, a contractor would be appointed to operate it late in 2014 or at the very beginning of 2015.[5] Clause 12 defines the 'vesting date' as a day to be appointed by the Secretary of State, and according to the Explanatory Notes, it is "anticipated that this will be the day on which the contractor first assumes responsibility for defence procurement services under the clause 1 arrangements and DE&S employees engaged in the provision of those services first transfer to the contractor".[6] Clause 6 would allow the contractor to act under contracts entered into by the Secretary of State prior to the vesting date.

Clause 2 would allow the Secretary of State to give loans, guarantees, indemnities or any other form of financial assistance to a contractor. Clause 3 provides that the MOD would be liable for any financial claims brought against a current or former contractor, although certain types of claims and claims brought by certain persons would be excluded, as set out in subsection 7 of clause 3.

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[2] Ministry of Defence, 'Defence Equipment and Support', accessed 2 December 2013.
[3] Explanatory Notes, para 12.
[4] ibid, para 17.
[5] HC *Hansard*, 16 July 2013, col 960.
[6] Explanatory Notes, para 27.

Clause 4 gives effect to schedule 1, which covers exemptions relating to premises used by a contractor. The MOD (and thus DE&S) is currently exempt from some legislative obligations and enforcement regimes, for example under the Landlord and Tenant Act 1954, the Nuclear Installations Act 1965, the Health and Safety at Work Act 1974, the Radioactive Substances Act 1993 and the Environmental Permitting (England and Wales) Regulations 2010. Schedule 1 would allow such exemptions to be extended to a contractor, but only in respect of sites which it would use for carrying out defence procurement services for the Secretary of State under the clause 1 arrangements.

Clause 5 authorises the MOD Police (MDP), which is responsible for the protection of military establishments and the prevention of crime within the MOD estates, to continue to exercise police powers on premises used by the contractor for the purpose of providing defence procurement services to the Secretary of State. It also authorises MDP officers to investigate any allegations of fraud or other criminal offences relating to the provision of defence procurement services.

Clauses 7 and 8 deal with the arrangements for handling information held by the MOD and DE&S which is confidential or has protected intellectual property rights. Clause 7 gives effect to schedule 2, which relates to restrictions on the disclosure or use of information. Schedule 2 sets out arrangements under which the Secretary of State can provide the contactor with access to confidential information obtained from third parties prior to the vesting date. According to the Explanatory Notes, confidential information could be contained in, "for example, technical/design information, tender documentation, contracts, performance data and quotations".[7] Confidential information could also be disclosed to a service provider that provides ancillary services to the contractor. Paragraph 2(3) of schedule 1 allows such confidential information to be used by a contractor, employees of the contractor or a service provider "if the Secretary of State could have used the information and if the use of the information is necessary or expedient for the purposes of the clause 1 arrangements".[8] If information is disclosed or used other than in accordance with these arrangements, it will be deemed to be unauthorised (paragraphs 4 and 5). Unlike part 2 of the Bill, no provision is made in part 1 for penalties in respect of the unauthorised disclosure or use of confidential information.

DE&S holds a large number of databases, the majority of which have been provided by the organisation's existing contractors.[9] Clause 8 sets out the arrangements under which the Secretary of State can provide the contractor (or a service provider to a contractor) with access to databases and other protected works without infringing copyright or database rights. Such material can be shared with or used by the contractor, or a service provider to the contractor, if it is "necessary or expedient" for the purposes of the arrangements in clause 1.

Should the Government decide to go ahead with the GOCO, DE&S staff would be transferred to the GOCO operating company.[10] Clause 9 would ensure that the Transfer of Undertakings (Protection of Employment) Regulations 2006 would apply to their transfer from the civil service to employment by the contractor.

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[7] ibid, para 29.
[8] ibid, para 31.
[9] ibid, para 34.
[10] Ministry of Defence, *Defence Reform Bill: Impact Assessment*, 3 July 2013, p 12.

Clause 10 and schedule 3 allow the Secretary of State to transfer property, rights and liabilities from the contractor to the Crown, the Secretary of State or to another contractor when the original contract ends, or if the contractor commits certain breaches of contract. Clause 11 allows the Secretary of State to make payments relating to any expenditure incurred from forming a GOCO or in taking on liabilities of the contractor "should the arrangements come to an end".[11]

2.2 Background

According to Philip Hammond, the Secretary of State for Defence, the UK's defence equipment programme has "suffered from waste and cost overruns" for "at least the last twenty years", resulting in equipment being "delivered late and to a specification that has not always met the requirements of our armed forces".[12] The MOD has identified three root causes of the problems that have been experienced by the defence procurement system:

> […] the overheated equipment programme; an unstable interface between those parts of the MOD which request equipment and support services and the Defence Equipment and Support organisation (DE&S) which delivers them; and a lack of business capability (processes, tools and skills), including management freedoms.[13]

'Overheating' was described by Bernard Gray (who has been at the head of DE&S since 2011) as occurring when "too many types of equipment [are] ordered for too large a range of tasks at too high a specification".[14]

In 2009, Mr Gray carried out an independent review of defence acquisition for the then Labour Government, in which he first raised the possibility of a establishing a government-owned, contractor-operated entity (GOCO) as a means of addressing some of the problems in the defence procurement process. GOCO arrangements already exist in the UK for the Atomic Weapons Establishment, the National Physical Laboratories, the Nuclear Decommissioning Authority and the National Nuclear Laboratories.[15] Mr Gray contended in his report that:

> […] the most effective way to achieve the objective of creating a world-class programme management organisation in DE&S would be through a partnership with a private sector programme management organisation, of the type operating in civil engineering and other complex engineering fields.
>
> The suggested route to achieve this is through a government-owned, contractor operated entity. However, creation of such a GOCO is a significant and controversial step, and this report recommends that it should be subject to further work over the next 12 months to ensure it does not cut across other defence objectives.[16]

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[11] Explanatory Notes, para 45.
[12] Philip Hammond, 'Foreword', in Ministry of Defence, *Better Defence Acquisition: Improving How We Procure and Support Defence Equipment*, June 2013, Cm 8626, p 4.
[13] Ministry of Defence, *Better Defence Acquisition: Improving How We Procure and Support Defence Equipment*, June 2013, Cm 8626, p 6.
[14] Bernard Gray, *Review of Acquisition for the Secretary of State for Defence: An Independent Report by Bernard Gray*, October 2009, p 6.
[15] ibid, p 200.
[16] ibid, p 8.

Bob Ainsworth, the then Secretary of State for Defence, responded:

> I do not intend to take up [Bernard Gray's] suggestion to establish DE&S as a government-owned, contractor-operated entity, to put it more at arm's length from the rest of the Ministry of Defence. The Government have thought about this carefully, but we are not convinced that such a change would ultimately lead to better outcomes for the armed forces or defence generally. Having the DE&S as fully part of defence ensures a close working relationship with the military. Equipment acquisition is core business for my Department, and we have to get it right.[17]

In February 2010, Mr Ainsworth published *The Defence Strategy for Acquisition Reform* which, while still rejecting the GOCO model "accept[ed] the force of Mr Gray's arguments for a clearer and more business-like relationship between DE&S and the rest of the MOD".[18] The MOD said that it was "taking a number of steps to bring greater clarity and discipline to our internal arrangements".[19]

Under the current Government, Bernard Gray was appointed as Chief of Defence Materiel (the head of DE&S) in January 2011. Lord Astor of Hever, Parliamentary Under-Secretary of State at the MOD, described the appointment as "a very important step for the Department; it is a sign of our commitment to drive through further change".[20] He said that the MOD was "looking at various operating models to determine the most efficient and effective way of designing our acquisition system". In May 2011, the then Secretary of State for Defence, Liam Fox, announced that Mr Gray was leading a new materiel strategy, which would consider how DE&S could "operate differently to become more effective and efficient".[21] In July 2012, Philip Hammond, Secretary of State for Defence, announced in a written ministerial statement that, following further work by Mr Gray, the Government had decided to go ahead with testing and developing the GOCO idea further:

> Earlier this year, I […] asked my officials to focus their efforts on considering the comparative benefits which could be derived from changing DE&S into either an executive non-departmental public body with a strategic partner from the private sector (ENDPB/SP), or a government-owned, contractor-operated (GOCO) entity. The work done to date suggests that the strategic case for the GOCO option is stronger than the ENDPB option. Further value-for-money work is under way to confirm this assessment. In the meantime, as resources and commercial appetite constrain our ability to pursue these two options simultaneously to the next stage, I have decided that MOD should focus its effort on developing and testing the GOCO option further.
>
> The work to determine value for money between the options will take place over the next few months, and in parallel we will begin development of a commercial strategy, engaging industry to hone our requirement. This work will support decisions later in the year on whether to proceed with the GOCO option and whether to launch a competition for the private sector management company to run the organisation. Provided that the further work demonstrates that the value-for-money case for GOCO over ENDPB/SP is conclusive, this will be followed by an investment appraisal that will

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[17] HC *Hansard*, 15 October 2009, col 36WS.
[18] Ministry of Defence, *The Defence Strategy for Acquisition Reform*, February 2010, Cm 7796, p 13.
[19] ibid.
[20] HL *Hansard*, 25 January 2011, col 844.
[21] Ministry of Defence, 'New Defence Materiel Strategy Announced', 31 May 2011.

> test the GOCO against a public sector comparator, following which a decision on whether or not to proceed will be taken.[22]

Philip Hammond announced the start of a final 12-month assessment phase in April 2013, during which the GOCO would be tested against a public-sector comparator, known as 'DE&S+':

> During this Assessment Phase, we will work with HMT and the Cabinet Office on the 'DE&S+' option to explore the extent of change that could be delivered whilst keeping the organisation fully within the boundaries of the public sector.
>
> In parallel, a commercial competition will be launched that will enable us to determine with potential private partners how a GOCO would work in practice, and what the costs and benefits would be. By the end of the Assessment Phase, we would expect to have proposals in a form capable of being contracted, if we decide to proceed with the GOCO model.
>
> We have made no secret of our expectation that the GOCO option is likely to prove better value for money, but we need to test this assumption with the market, to see what can be delivered and at what cost. No decisions have yet been made. At the end of this 12 month Assessment Phase we will have a comprehensive set of qualitative and quantitative data for both possible operating models which will enable us critically to evaluate the two options and make a final decision about the future of DE&S.[23]

The Ministry of Defence published a White Paper on *Better Defence Acquisition* in June 2013, which explained that "in the event that the GOCO operating model is the selected option for transforming DE&S, primary legislation is needed to ensure that the GOCO can operate effectively".[24] The White Paper also set out further details on the structure and governance arrangements proposed:

> The contracting entity will operate on behalf of the MOD a limited company (the operating company) into which certain services currently being provided by DE&S will be transferred, together with the employees providing those services. The Government would own a special share in the operating company on national security grounds. On expiry or termination of the contract, the operating company would either transfer to a new company or revert back to the MOD.
>
> […] The MOD proposes, subject to negotiations, affordability and value for money, to award a contract of up to a nine year term, subject to performance in transition, transformation and operational delivery.
>
> The MOD intends to contract for the GOCO to act as its agent, allowing the GOCO to negotiate and sign new contracts on behalf of the Secretary of State as the Principal. The defence acquisition programme costs (over 90 percent of the current DE&S) budget would be paid directly from the MOD to the suppliers following verification and validation by the operating company, and therefore would not flow through the GOCO.

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[22] HC *Hansard*, 17 July 2012, cols 123–4WS.
[23] HC *Hansard*, 25 April 2013, col 62WS.
[24] Ministry of Defence, *Better Defence Acquisition: Improving How We Procure and Support Defence Equipment*, June 2013, Cm 8626, p 22.

> The MOD will remain the approval authority for all projects and the Comptroller and Auditor General will have absolute right of audit. Moreover, the GOCO will be required to act in accordance with the Government Financial Reporting Manual (FReM) in respect of all transactions related to MOD approved projects and will also be required to support MOD in the obligation to comply with the Government's policy on disclosure and transparency of voted funds.[25]

Bernard Gray submitted what he described as an "essay" to the House of Commons Defence Committee in November 2013, in which he provided additional information on the boundary, structure and purposes of the GOCO.[26]

The Impact Assessment for part 1 of the Bill sets out scenarios for both the GOCO and DE&S+ options, and notes that "there remain substantial uncertainties over the level of costs and benefits, which could affect the preferred option".[27] Monetary costs have been redacted from the Impact Assessment for part 1 of the Bill under section 43(2) of the Freedom of Information Act 2000, so as not to prejudice the commercial competition for a GOCO provider. Bernard Gray informed the House of Commons Defence Committee that "initial estimates suggest a GOCO could deliver a net benefit of several hundred million pounds over ten years", and that these estimates would be tested in the market process.[28]

Critics of the GOCO model have questioned whether the concept is capable of resolving the problems it is trying to address. An analysis by the Acquisition Focus Group of the Royal United Services Institute concluded that:

> The GOCO proposal suffers from an inherent weakness, since it seemingly rests on an argument that, because the government is not very good at negotiating and managing contracts with the private sector, it is going to negotiate a contract with a private sector entity to undertake this task on its behalf. Persuasive arguments against this logic need to be marshalled.[29]

The House of Commons Defence Committee examined the question of a GOCO versus other models for reforming DE&S in its report on *Defence Acquisition*, published in Feburary 2013.[30] The Committee raised some issues about how a GOCO could work in practice, particularly given the international dimensions of defence and defence procurement:

> We agree that the current arrangements, constrained by public sector employment rules, are unsatisfactory, and we accept that the decision on the future of DE&S, while urgent, is too important to be rushed. It is clear that a GOCO is not universally accepted as the best way forward, and that there are particular concerns about how the MOD's overall responsibility for acquisition could be maintained in a GOCO. In particular, we believe that problems might arise if a non-UK company were given responsibility for UK defence acquisition. We further believe it is vital that consultations

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[25] ibid, pp 6–7.
[26] House of Commons Defence Committee, *Defence Acquisition—Written Evidence from the Ministry of Defence*, 28 November 2013, HC 652 of session 2013–14.
[27] Ministry of Defence, *Defence Reform Bill: Impact Assessment*, 3 July 2013, p 2.
[28] House of Commons Defence Committee, *Defence Acquisition—Written Evidence from the Ministry of Defence*, 28 November 2013, HC 652 of session 2013–14, para 43.
[29] Royal United Services Institute, *The Defence Materiel Strategy and the GOCO Proposal for Abbey Wood*, July 2012, pp 6–7.
[30] House of Commons Defence Committee, *Defence Acquisition*, 5 February 2013, HC 9 of session 2012–13, paras 120–140.

> are satisfactorily concluded with allies, to ensure that there is no adverse impact on cooperation, before any proposals are implemented.[31]

Introducing the Bill at second reading in the House of Commons, Philip Hammond, the Secretary of State for Defence, said that a fundamental change was needed in defence procurement services:

> For decades, our defence equipment programme has suffered from poor time and cost forecasting and poor project and programme management, leading to delays, cost overruns and specification failures. We have to address these issues by challenging the pattern of incentives and behaviours once and for all.[32]

Mr Hammond explained that the Government's preference was to transform DE&S into a GOCO as it believed that "this model is the one most likely to embed and sustain the significant behavioural change required to reform defence acquisition", but this proposition would be tested through a commercial competition and a public sector comparator.[33] Although no final decision had yet been taken, Mr Hammond explained that the Bill would ensure that legislation was already in place to enable a contract to be signed quickly with the successful bidder if the Government eventually decided to choose the GOCO model.[34] Mr Hammond acknowledged that while a GOCO would be "a radical change", it would not be "quite as radical as some have suggested". He explained that:

> The GOCO will always act as the Secretary of State's agent. All contracts entered into will continue to be in the Secretary of State's name, and strategic governance will be provided by a governance function that will remain within the MOD. The GOCO's customers will be the front-line commands and the MOD itself; it will work to their agenda and their priorities. I can therefore assure the House that this is absolutely not about handing over billions of pounds of taxpayers' money to a private company and leaving it to decide what kit to buy for our armed forces.

Jim Murphy, the then Shadow Secretary of State for Defence, said that the Opposition supported reform of defence procurement and was "genuinely open-minded about the management structure that will deliver this change".[35] He therefore accepted the proposed legislation to enable a GOCO model to be established, but he stressed that this was "not the same as supporting its creation". The Opposition wanted to see a "rigorous examination" of all the options for strengthening value for money, maintaining parliamentary accountability and protecting the rights and responsibilities of staff within the procurement process.[36] Mr Murphy said he hoped that a "genuine comparison" would be made between the GOCO and DE&S+.

James Arbuthnot (Conservative MP for North East Hampshire), Chair of the House of Commons Defence Committee, criticised the lack of detail about what the DE&S+ option would entail:

> The White Paper devotes a massive four lines to it and does not define it. In fact, so far as I understand it, DE&S+ is designed to be unclear in order to be the basis for a

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[31] ibid, para 133.
[32] HC *Hansard*, 16 July 2013, col 959.
[33] ibid, cols 959–60.
[34] ibid, col 961.
[35] ibid, col 967.
[36] ibid, col 968.

> negotiation between the MOD and the Treasury as to the freedoms the Treasury can offer.[37]

Mr Arbuthnot said that if the Treasury allowed the DE&S+ to pay staff more than was currently allowed under civil service terms and conditions, and thereby attract "much needed skills", the GOCO option would "become less attractive". If the Treasury could not loosen the rules for the MOD without setting a precedent for other departments, Mr Arbuthnot suggested that in practice this might mean "it is GOCO or nothing, and there is no public sector comparator".[38] Mr Arbuthnot noted that the Defence Committee had unanswered concerns about potential conflicts of interest if a foreign company was the lead partner within a GOCO, about the protection of intellectual property, and about how a GOCO would affect small and medium-sized companies within the defence industry.[39]

2.3 Committee Stage

During the first four sessions of the Public Bill Committee, which focused on the general principles of the Bill, a number of concerns were raised about establishing a GOCO, such as: the motivation behind the proposals; conflicts of interest among the bidders, foreign ownership and the lack of competition within the GOCO process; assurances on intellectual property; and safeguards on performance by the GOCO contractor, including the MOD's ability to act as intelligent customer.[40]

Part 1 of the Bill was not amended at committee stage. An Opposition amendment that would have required non-UK companies to establish special security arrangements for the operation of the GOCO contract and that would have disqualified from the directorship of the GOCO company any individual who was a director of another defence company or any individual who held financial securities in another defence company, was defeated by eleven votes to seven.[41] Another Opposition amendment, which would have prohibited the sale of financial securities in a publicly listed company appointed to provide defence procurement services under the GOCO arrangement if that sale would result in a change of majority ownership, was also defeated by eleven votes to seven.[42] The Opposition's new clause 2, which sought to introduce a code of conduct for the relationship between defence contractors and MOD employees or service personnel, and to prevent conflicts of interest caused by a "revolving door" between the GOCO and other defence companies, was defeated by nine votes to six.[43]

For further information about the Bill's committee stage in the House of Commons, see the House of Commons Library Standard Note, *Defence Reform Bill: Public Bill Committee Stage* (19 November 2013, SN06732).

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[37] ibid, col 975.
[38] ibid.
[39] ibid, cols 975–6.
[40] House of Commons Library, *Defence Reform Bill: Public Bill Committee Stage*, 19 November 2013, SN06732, p 3.
[41] Public Bill Committee, *Defence Reform Bill*, 8 October 2013, afternoon, session 2013–14, 6th sitting, col 176.
[42] ibid, col 177.
[43] Public Bill Committee, *Defence Reform Bill*, 22 October 2013, afternoon, session 2013–14, 14th sitting, cols 419 and 425.

2.4 Report Stage

Currently, the Health and Safety at Work Act 1974 applies to the MOD and its agencies within Great Britain.[44] However, even where the legislation applies, the MOD—as a government department—is covered by Crown privilege, which means that it is not subject to criminal enforcement action in the courts. Instead, there are administrative arrangements in place through which the Health and Safety Executive can censure Crown bodies over health and safety offences which would otherwise had led to a prosecution.[45] The Explanatory Notes state that the MOD's Crown exemptions from the Health and Safety at Work Act 1974 and various other pieces of legislation are "particularly relevant to DE&S because DE&S manages safety and environmental functions and currently occupies a wide range of sites for the purposes of carrying out its functions".[46]

Paragraph 4 of schedule 1 of the Bill allows the Secretary of State to exempt a contractor, in relation to relevant premises, from part 1 of the Health and Safety at Work Act 1974 and from regulations made under part 1 of that Act. As originally drafted, paragraph 4 did not allow the Secretary of State to exempt a contractor from sections 33 to 42 of the 1974 Act which contain provisions relating to offences. A Government amendment was made to paragraph 4 of schedule 1 at report stage to allow the Secretary of State to exempt a contractor, in relation to relevant premises, from any provision of part 1 of the 1974 Act.[47]

Part 1 of the Bill was not otherwise debated at report stage.

2.5 Competition Process: Recent Developments

On 19 November 2013 (the day before the Bill's report stage), Philip Hammond, the Secretary of State for Defence, made a written statement in which he provided an update on the progress of the commercial competition. He explained that:

> When the invitation to negotiate (ITN) was released on 25 July [2013] there were three prospective bidding consortia but this reduced to two shortly thereafter. While we believed that two bidders were sufficient for an effective competition, alongside the DE&S+ option, I asked that a review of the process be undertaken jointly between the Cabinet Office and the Ministry of Defence (MOD). This has recently been completed […][48]

The review was carried out by Janet Baker, Crown Commercial Lead in the Cabinet Office, and Steven Morgan, Commercial Operations Director for DE&S. They observed that:

> The Materiel Strategy Programme is inherently capable of delivery by only a small number of firms/consortia, and therefore any competition is unlikely to generate more than four or five realistic bids. Given its size and uniqueness in the UK, it is not wholly unexpected, although less than desirable, that only two bidders were able to proceed by the issue of ITN.

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[44] Health and Safety Executive, 'Application of Health and Safety Legislation to the MoD', accessed 28 November 2013.
[45] Health and Safety Executive, 'Enforcement Against Crown Bodies', accessed 28 November 2013.
[46] Explanatory Notes, para 21.
[47] HC *Hansard*, 20 November 2013, col 1332.
[48] HC *Hansard*, 19 November 2013, cols 44–5WS.

> The definition of competition under MOD or EU rules is not specific as to the number of competitors sufficient for competition […]
>
> The competitive field for DE&S is not extraordinarily small. Typical US GOCO competitions field only two–three bidders.[49]

The review concluded that a "viable competition currently exists but with significant risks attached" and recommended that "a formal stop/go decision is taken if the market reduces further prior to preferred bidder stage".[50] It also stressed that the MOD's in-house alternative proposal, was "of key importance to both the procurement process as an additional competitive pressure, and to provide a viable alternative if the market fails to deliver in the short or medium term".[51] The review therefore recommended that the leadership and resourcing of the DE&S+ option should "be enhanced to reflect its strategic importance" and that DE&S+ should be given further support by the Cabinet Office and the Treasury to ensure it was "credible, fully developed and deliverable".[52]

Philip Hammond went on to explain in his written statement that following completion of the review, one of the two remaining bidding consortia—the Portfield consortium, comprising CH2M Hill, Serco and Atkins—had decided to withdraw from the competition.[53] Mr Hammond described this as "regrettable" since "the reduction in competitive tension" would make it "more challenging for the Department to conclude an acceptable deal with the remaining bidder, notwithstanding the competition from the DE&S+ bid". Acknowledging the review's recommendation that any further reduction in the number of bidders should prompt a formal reconsideration on whether to proceed further with the GOCO option, Mr Hammond set out the Government's next steps:

> The Department, with the Cabinet Office and HM Treasury, will now study the detailed proposal received from Materiel Acquisition Partners (led by Bechtel with PA and PwC in support), which is substantial at over 1,200 pages. In parallel, the DE&S team will continue to refine and enhance their proposition. This analysis will inform a decision on whether it is in the public interest to proceed with only a single commercial bidder and an internal option, or whether alternative approaches should be considered and a further statement will be made once this process is complete.[54]

The *Financial Times* reported that it had been told by C2HM Hill that it had withdrawn because its bid was "not as commercially viable for the consortium as we would have required under the proposed draft contract".[55] According to the *Financial Times*, C2HM Hill "did not trust the MOD's accounting".[56]

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[49] Cabinet Office and Ministry of Defence, *Report to the Secretary of State: Viability of the Material Strategy Procurement*, November 2013, DEP2013-1845, paras 10–12.
[50] ibid, paras 4 and 5.
[51] ibid, para 6.
[52] ibid, para 7.
[53] HC *Hansard*, 19 November 2013, cols 44–5WS.
[54] ibid.
[55] Carola Hoyos, 'UK Plan to Outsource Arms Buying Hit as Only One Bidder Remains', *Financial Times*, 19 November 2013.
[56] Carola Hoyos and Kiran Stacey, 'Military Outsourcing Hits Bidder Obstacle', *Financial Times*, 20 November 2013.

Vernon Coaker, the Shadow Secretary of State for Defence, said that "the withdrawal of one of only two consortia raises huge questions about the viability of the entire GOCO process under this Government".[57] He called on Mr Hammond to "provide urgent clarification and reassurance to address the uncertainty that now exists".

During oral questions in the House of Lords, Lord Lee of Trafford (Liberal Democrat)—a former Conservative MP who served as Minister for Defence Procurement in the 1980s—suggested that the GOCO competition concept was now "totally dead in the water" as it was "quite impossible to run a competition with just one bidder".[58] He maintained that the idea had "very little support in the MOD and the services" and that DE&S+ was the best solution. Lord Touhig (Labour) expressed concerns that the only external bidder left in the process was the consortium led by Bechtel, "a company with a litany of mismanagement of public service contracts, from Iraq to Romania, to the United States".[59] In response, Lord Astor of Hever, Parliamentary Under-Secretary of State at the MOD, said that the consortium was comprised of "world-class private sector businesses" with "extensive experience of complex programme management".[60] He reiterated the Government's conviction that the defence procurement process "absolutely must change […] to deliver the best value for money for the taxpayer and enable the right equipment and support to be delivered on time for our armed forces".[61] Lord Astor explained that the Government hoped to make a decision on the validity of the competition "very soon" and a final decision on the whole process by the summer recess.[62]

3. Part 2: Single Source Contracts

3.1 Key Provisions

Part 2 of the Bill creates a regulatory framework for single source defence contracts that are not subject to the usual legal obligation to be advertised and tendered competitively. Clause 13 and schedule 4 would establish the Single Source Regulations Office (SSRO). The Explanatory Notes state that the SSRO would be a non-departmental public body which would replace the existing Review Board for Government Contracts.[63] The Government intends to publish a framework document setting out the arrangements between the MOD and the SSRO.[64]

The Explanatory Notes summarise the functions of the SSRO as follows:

- Advising the Secretary of State on the baseline profit rate, the SSRO funding adjustment, and capital servicing rates (clause 19(2));
- Keeping the regulatory framework under review and recommending changes to the Secretary of State (clause 39(1) and (2));
- Keeping records of contracts which are subject to part 2 (clause 36(1));
- Keeping under review contractors' compliance with their reporting obligations (clause 36(2));
- Analysing reports and other information (clause 36(3));

[57] Labour press release, 'The Defence Secretary Needs Urgently to Clarify Plans to Allow a Government-Owned, Contractor-Operated Service to Run Britain's Defence Procurement—Coaker', 19 November 2013.
[58] HL *Hansard*, 21 November 2013, col 1068.
[59] ibid, col 1069.
[60] ibid.
[61] ibid, col 1068.
[62] ibid, col 1070.
[63] Explanatory Notes, para 47.
[64] ibid, para 48.

- Upon a referral, providing determinations […]
- Upon a referral, providing an opinion […][65]

The legal framework of part 2 of the Bill would apply to 'qualifying defence contracts' (QDCs). Clause 14 sets out which contracts would be QDCs. Clause 14 would also permit the Secretary of State to make regulations, to be known as the 'single source contract regulations' (SSRCs) in relation to QDCs. According to the Explanatory Notes, it is intended that the SSCRs would come into force on 1 October 2014, and that they would initially specify that only contracts above a threshold of £5 million would qualify as QDCs.[66] The Explanatory Notes state that a draft of the SSCRs will be placed in the House of Lords Library.[67]

Clauses 15 to 22 deal with pricing aspects relating to QDCs. Clauses 15 and 16 set out the arrangements that would apply to the pricing of QDCs. Clauses 17 and 18 relate to the way in which a contract profit rate (CPR) would be determined for each QDC. Further details would be set out in the SSCRs, but they would have to provide for the contract profit rate to be determined following the sequence of steps set out in clause 17. Clause 19 would oblige the Secretary of State to set the baseline profit rate, the SSRO funding adjustment (industry's share of the costs of the SSRO)[68] and the capital servicing rates for fixed and working capital each year. All of these elements would be standard rates used in determining the CPR for each QDC.[69] Clause 19(2) would oblige the SSRO to provide the Secretary of State with an assessment of the appropriate rate or funding adjustment each year. Clause 20 sets out the process for determining whether costs would be allowable costs under a QDC. Either party would be able to request a determination from the SSRO as to whether a cost was allowable or not (clause 20(5)). Clause 21 would enable the SSCRs to provide for adjustments to be made to the total price payable by the Secretary of State under a QDC. Clause 22 would allow for the recovery of unpaid amounts, if the SSRO had determined that the price payable under a QDC should be adjusted.

Clauses 23 to 27 relate to transparency. Clause 23 would require the SSCRs to specify that contractors would have to keep relevant records. The Explanatory Notes state that these records would include "those that enable the MOD to verify the estimates used in pricing, to ensure that contractors are complying with their part 2 obligations […] and to better understand how costs are being managed and whether performance indicators are being met".[70] Under clause 24, the SSCRs would also have to require primary contractors to provide reports relating to their QDCs. Under clause 25, the SSCRs would have to require the provision of reports on overheads and forward planning by the larger corporate groups to which single source contractors typically belong. Paragraphs 87 to 94 of the Explanatory Notes give further details of the type and frequency of reports the Government intends to require in the first SSCRs. Clause 26 would place a duty on contractors to notify the Secretary of State if they became aware of events, circumstances or information that might have a material effect on the costs, price or performance of the QDC.

Clauses 28 to 30 relate to sub-contracts. The Explanatory Notes point out that due to the size and complexity of defence contracts, it is common for aspects of them to be sub-contracted.[71]

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[65] ibid, para 50.
[66] ibid, paras 55–6.
[67] ibid, para 5.
[68] ibid, para 68.
[69] ibid.
[70] ibid, para 81.
[71] ibid, para 102.

Private sector contracts are not subject to the same EU rules on procurement as public sector contracts, and so private defence contractors would not normally be obliged to advertise their sub-contracts or put them out to competitive tendering. Clauses 28 to 30 are therefore intended to ensure that "if sub-contracts are awarded on a non-competitive basis, they will be subject to the regulatory framework contained in part 2 in the same way as primary contracts".[72]

Clauses 31 to 34 would establish a civil compliance and enforcement regime. Penalties could be imposed for failing to comply with the reporting, record-keeping and notification requirements in clauses 23 to 26, or for failing to follow the provisions in clause 29 on assessing whether a sub-contract is a qualifying sub-contract. Clause 33 contains provisions on the amount of the penalty that could be imposed.

Clause 38 would give effect to schedule 5, which relates to restrictions on disclosing information. Further details on what information would be protected by this schedule would be set out in the SSCRs. Paragraph 2 provides that it would be a criminal offence to disclose information protected by this schedule, although paragraphs 3 to 5 set out certain exemptions to this—for example, if the disclosure was made with consent or in response to a Freedom of Information request.

Clause 40 would give the Secretary of State power to repeal part 2 of the Bill by affirmative order. The Explanatory Notes envisage that this power could be used if any future review under clause 39 (which obliges the SSRO to keep part 2 under review) recommended abolishing this framework.

Part 2 contains references throughout to "an authorised person". According to the Explanatory Notes, this is to allow for the fact that some functions under part 2 may in future be performed by a contractor providing defence procurement services to the Secretary of State, as set out in clause 1 of the Bill.[73]

3.2 Background

The European Union Procurement Directives and the Regulations that implement them in the UK require that purchases by public bodies over a certain monetary threshold must follow a detailed process, usually including openly advertised contracts and a competitive tendering process.[74] Article 346 of the Treaty on the Functioning of the European Union contains an exemption from this process on national security grounds for measures connected with the production of or trade in arms, munitions or war materiel. Contracts which are exempt from the legal obligation to be advertised and tendered competitively are known as 'single source contracts'.

Although the MOD has stated its preference is to procure through open competition in the marketplace, it has also pointed out that "defence equipment often requires advanced and specialist technology, and we are often limited to a single supplier if we want to ensure we get the capability we require, or we need to preserve industrial and technological capabilities in the

[72] ibid, para 103.
[73] ibid, para 46.
[74] Office for Government Commerce, *EU Procurement Guidance—Introduction to the EU Procurement Process*, 2008, p 2; and Explanatory Notes, para 5.

UK for strategic reasons".[75] Over the past five years, single source defence procurement has averaged over £6 billion per annum, and the MOD assesses that "it is likely it will remain a significant proportion of MOD procurement in the future".[76]

At present, single source defence contracts are not covered by a legislative framework. Instead, non-legally binding arrangements are set out in the Government Profit Formula and its Associated Arrangements (GPFAA), also known as the 'Yellow Book'. The Yellow Book dates from 1968 and takes the form of an agreement between the Treasury and the Confederation of British Industry.[77] It is overseen by the Review Board for Government Projects, an advisory non-departmental public body of the MOD.

In January 2011, Peter Luff, the then Minister for Defence Equipment, Support and Technology, announced that he had invited Lord Currie of Marylebone to chair an independent review of the Yellow Book, given the importance of ensuring that "industry is incentivised to reduce costs through the use of modern, fit-for-purpose commercial arrangements".[78] Lord Currie reported in October 2011 that "there have undoubtedly been inefficiencies in single source MOD spending", arising from "inefficiencies on the side of industry and from skilful deployment of Yellow Book regulations to secure returns that, although within the regulations, have not been appropriate" and from "inefficiencies in MOD procurement processes".[79] Lord Currie recommended a "fundamental recasting of the Yellow Book regulations and arrangements to ensure that the necessary data is available to senior MOD decision-makers in a usable form" and a new mechanism replacing the existing Review Board to ensure compliance with the new regime.[80] The key elements of the new Single Source Pricing Regulations proposed by Lord Currie were open book accounting; uniform reporting arrangements across projects and companies; incentivising of efficiency; a new system for overhead reporting and monitoring; and a richer approach to the treatment of risk and return.[81]

In the *Better Defence Acquisition* White Paper published in June 2013, the MOD said that it had developed a new framework "in line with Lord Currie's recommendations", following "extensive consultations" with its major single-source suppliers.[82] The proposed new framework had two principal components:

> New statutory regulations which help to ensure both that industry gets a fair return on single-source work and that the taxpayer is effectively protected.
>
> New governance regime, supported by the SSRO [Single Source Regulations Office], which will help to ensure widespread application and adherence, and which will ensure the regulations are kept up to date.[83]

The MOD explained it had decided to introduce these changes on statutory basis—rather than in individual contracts with suppliers—to "ensure wide, consistent and fair application across

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[75] Ministry of Defence, *Better Defence Acquisition: Improving How We Procure and Support Defence Equipment*, June 2013, Cm 8626, p 7.
[76] ibid.
[77] Lord Currie of Marylebone, *Review of Single Source Pricing Regulations*, October 2011, p 6.
[78] HC *Hansard*, 26 January 2011, cols 10–11WS.
[79] Lord Currie of Marylebone, *Review of Single Source Pricing Regulations*, October 2011, p 9.
[80] ibid.
[81] ibid.
[82] Ministry of Defence, *Better Defence Acquisition: Improving How We Procure and Support Defence Equipment*, June 2013, Cm 8626, p 8.
[83] ibid, p 28.

defence single-source suppliers", to create "a more effective compliance regime underpinned by civil penalties" and to allow "wider application up the supply chain".[84] According to the Bill's Impact Assessment, by introducing a new regime on a statutory basis, average annual financial benefits of £213 million could be achieved over the long run.[85]

Introducing part 2 of the Bill at second reading in the House of Commons, Philip Hammond, the Secretary of State for Defence, explained that "at its core is the principle that industry gets a fair profit in exchange for providing the MOD with transparency on costs and the protection we need to ensure value for money".[86] Alison Seabeck, Shadow Minister for Defence, said that Labour "broadly support[ed]" the proposals to replace the Yellow Book, but would want to "probe a number of issues, including the level of power that the Secretary of State will have over this 'independent' body".[87] James Arbuthnot, Chair of the House of Commons Defence Committee, expressed a concern that if the new rules did not apply to overseas contractors, part 2 might "create an incentive for UK defence contractors to move abroad"; Iain Wright (Labour MP for Hartlepool) and Peter Luff, the former Minister for Defence Equipment, Support and Technology, both shared this concern.[88]

3.3 Committee Stage

A number of Government amendments were made to part 2 at committee stage. Clause 18 was amended to remove the unlimited time limit for referring matters, such as decisions on contract pricing adjustments, to the SSRO for a binding determination.[89] New clause 5 (clause 41 in the Bill as introduced in the House of Lords) was added; this specifies that the time limits for referring matters to the SSRO would be set out in the SSCRs.[90] New clause 4 (clause 22 in the Bill as introduced in the House of Lords) was also added to provide a mechanism for enforcing the SSRO's determinations on contract pricing adjustments, including the charging of interest if money owed by one party to the other was not paid by the due date.

Clause 22 (clause 23 in the Bill as introduced in the House of Lords) was amended to clarify that the records contractors would be obliged to keep could be electronic or hard-copy records.[91] Clause 23 (clause 24 in the Bill as introduced in the House of Lords) was amended to enable the SSCRs to make provision for the Secretary of State (or an authorised person) to request ad hoc reports from contractors.[92] The clause which sets out how confidential information should be handled in relation to the requirements on the contractor to keep records and make reports (clause 27 in the Bill as introduced in the House of Lords) was amended so that it would also apply to clause 26 (the duty on contractors to notify the Secretary of State if they become aware of events, circumstances or information that might have a material effect on the costs, price or performance of the QDC).[93]

Clause 28 (clause 29 in the Bill as introduced in the House of Lords) was amended to include references to an "authorised person", to reflect the fact that the Secretary of State might

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[84] ibid, p 35.
[85] Ministry of Defence, *Defence Reform Bill: Impact Assessment*, 3 July 2013, p 18.
[86] HC *Hansard*, 16 July 2013, col 962.
[87] ibid, col 1013.
[88] ibid, col 977, col 987 and col 991 respectively.
[89] Public Bill Committee, *Defence Reform Bill*, 15 October 2013, afternoon, session 2013–14, 10th sitting, col 319.
[90] ibid, 22 October 2013, afternoon, session 2013–14, 14th sitting, col 426.
[91] ibid, 15 October 2013, afternoon, session 2013–14, 10th sitting, col 329.
[92] ibid, col 332.
[93] ibid, 17 October 2013, morning, session 2013–14, 11th sitting, col 339.

delegate certain powers and functions to a GOCO under clause 1.[94] Following the amendment, the prime contractor would be able to fulfil its duty to notify the Secretary of State that a sub-contract was a QDC by notifying the GOCO where appropriate. Amendments for a similar purpose were made to schedule 5 (restrictions on disclosing information) to enable it to apply to information obtained by an "authorised person", ie a GOCO.[95]

For further information about the Bill's committee stage in the House of Commons, see the House of Commons Library Standard Note, *Defence Reform Bill: Public Bill Committee Stage* (19 November 2013, SN06732).

3.4 Report Stage

Part 2 of the Bill was not debated at report stage.

4. Part 3: Reserve Forces

4.1 Key Provisions

Part 3 of the Bill contains four provisions which relate to the Reserve Forces. These include: renaming the Territorial Army; expanding the powers of the Secretary of State to call out the Reserve Forces; introducing new financial incentives to the employers of Reservists; and exempting Reservists from the statutory two-year qualifying period required to bring an unfair dismissal case with an Employment Tribunal.

The first three measures would amend the Reserve Forces Act 1996 (RFA96), while the final measure would amend the Employment Rights Act 1996.

The Bill would affect the Reserve Forces of all three services.

The Reserve Forces include both the ex-regular reserve forces, who are ex-regular service personnel who retain a call-out liability upon leaving the Service, and the volunteer reserve forces, who are civilians that accept an annual training commitment and a liability to be called out for permanent service. Clause 44 would change the name of the Army's ex-regular reserve force from the Army Reserve to the Regular Reserve, and would change the name of the Army's volunteer reserve force from the Territorial Army to the Reserve Army.[96]

Clause 45 extends the call-out powers of the Secretary of State so that members of the Reserve Forces may be called out for any purpose for which regular forces may be used.[97] Currently, the obligations of members of a reserve force to attend for duty are covered mainly by the RFA96. The Secretary of State may call out individual Reservists by serving a notice on them requiring them to present themselves for service at a specified time and place. Sections 52, 54, 56(1) and 56(1A) of the RFA96 each contain a separate power to make a call out order of the Reserve Forces in particular circumstances: an order may be made under section 52 if national danger is imminent; an order may be made under section 54 if warlike operations are in preparation or progress; section 56(1) allows an order to be made if it is deemed necessary to use armed forces on operations for the protection of life or property; and an order may be

[94] ibid, col 345.
[95] ibid, col 357.
[96] Explanatory Notes, para 146.
[97] ibid, para 148.

made under section 56(1A) where the Defence Council have authorised the use of the members of the armed forces. Clause 45 of the Bill would replace sections 56(1) and (1A) of the RFA96 with section 56(1B), which would allow the Secretary of State to make a call-out order where it appeared to the Secretary of State that it was necessary or desirable to use members of a reserve force for any purpose for which members for the regular forces may be used.[98]

Currently a reservist called out under an order made under sections 56(1) and (1A) may be required to serve for up to nine months, but a reservist called out under an order under section 54 of the RFA96 may be required to serve for up to 12 months. Clause 45 would align the period which a reservist may be required to serve under an order made under the new provisions in section 56 with the period for which a reservist may be required to serve under section 54.

Clause 45 would also give effect to schedule 6, which would amend section 129 and schedule 9 of the RFA96. Under schedule 6, any person currently serving in the Reserve and Regular Forces (who is not part of the original transitional class)[99] would become known as the second transitional class. The new provisions in clause 45 of this Bill would not apply to this class of personnel, and the powers governing their call out would remain as they currently are under RFA96.[100] Any personnel serving in the Regular Forces before this Act came into force would also become a member of the second transitional class on transfer to the Reserves.

Clause 46 would allow the Secretary of State, through secondary legislation, to make additional payments to employers whose reservist employees are called out, undertake certain training or perform certain duties. The Secretary of State would also be able to make payments to the business partners of mobilised reservists. However, payment could only be made if the Secretary of State was satisfied that it would encourage the employer to continue to employ reservists, or if the payment would allow business partnerships to continue.[101] In addition, payments made under this section would not replicate the financial assistance that is already available under RFA96.

Clause 47 amends section 108 of the Employment Rights Act 1996 to exempt reservists from the two-year statutory qualifying period for the purposes of claiming unfair dismissal from a reservist's civilian employment. The exemption would only apply if the principle reason for dismissal was connected to the employee's membership of the Reserve Forces.[102]

4.2 Background

The 2010 *Strategic Defence and Security Review* (SDSR)[103] set out the Government's proposals to reform the Armed Forces, which included a reconfiguration of the Armed Forces into what was termed Future Force 2020, in order to "make them better able to meet the threats of the

[98] ibid, para 150.
[99] Provision was made in section 129 of schedule 9 to the RFA96 so that persons serving in the Reserve Forces immediately before the Act came into force had the option to remain in a class of persons, the transitional class, in relation to whom certain provisions in the RFA96 did not apply and the provisions in the Reserves Forces Act 1980 continued.
[100] Explanatory Notes, para 154.
[101] ibid, para 158.
[102] ibid, para 169.
[103] HM Government, *Securing Britain in an Age of Uncertainty: The Strategic Defence and Security Review*, October 2010, Cm 7948.

future".[104] The report stated that the Armed Forces had been "overstretched, deployed too often without appropriate planning, with the wrong equipment, in the wrong numbers and without a clear strategy", and argued that the Review had "started the process of bringing programmes and resources back into balance".

Following the SDSR, the Prime Minister, David Cameron, set up an independent commission to review the role of the Reserves and their relationship with the Regular Army in order to determine how the UK Reserves should be structured and supported to meet future challenges within the context of Future Force 2020. *Future Reserves 2020* was published in July 2011,[105] and concluded that the Reserve Forces were in decline, in need of modernisation, were underexploited and were not being used efficiently.[106] The Commission recommended that the Reserves element of the Armed Forces should increase and become a greater proportion of the overall manpower, optimising the "most cost-effective balance".[107] The report stated that the availability of a larger and more useable Reserve had to be guaranteed and underpinned by legislative changes.

The British Army also published a report in response to the SDSR,[108] which detailed their concept for transforming the British Army into what they termed Army 2020, to enable it to meet the security challenges of the 2020s and beyond.[109] The report recommended that the Army should be reconfigured into two elements: a High Readiness Force and an Adaptable Force.[110] In addition, the report recommended that there should be a greater integration of the Territorial Army into the Army structure, an expansion in the roles that the Reserves undertake, and an increase in the number of trained reservists from approximately 15,000 to 30,000, with a further 8,000 in training.[111]

In July 2012, Philip Hammond, the Secretary of State for Defence, announced that the Government had accepted the "broad thrust of the Commission's recommendations", and that to "achieve the redesign of the Army required by Army 2020" would require an expansion of the volunteer Army reserve to "30,000 trained strength" and a better integration of "the regular and reserve components of the future Army".[112] He further stated:

> Army 2020 has defined the Army reserves' role and we are establishing more predictable scales of commitment in the event that reserves are committed to enduring operations. In the past, the reserve was essentially designed to supplement the regular Army; in future, the reserve will be a vital part of an integrated Army. The principle of greater integration was established in the commission's report and, based on their findings, our concept for Army reserves sees them ready and able to deploy routinely at sub-unit level and in some cases as formed units. They will be trained, equipped and supported accordingly.

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[104] ibid, p 4.
[105] Ministry of Defence, *Future Reserves 2020: The Independent Commission to Review the United Kingdom's Reserve Forces*, July 2011.
[106] ibid, p 6.
[107] ibid, p 7. The report recommended that by 2015, the trained strength of the Reserves should be: Royal Navy Reserves/Royal Marine Reserves 3,100; Territorial Army 30,000 and Royal Auxiliary Air Force 1,800. The Commission stated that, in the future, the trained strength of the Army—Regular and Reserve—should be about 120,000.
[108] The British Army, 'Army 2020', accessed 3 December 2013.
[109] The British Army, *Modernising to Face an Unpredictable Future: Transforming the Army*, July 2012, p 1.
[110] ibid, pp 4–5.
[111] ibid, pp 8–10; and House of Commons Library, *The Defence Reform Bill*, 11 July 2013, RP 13/45.
[112] HC *Hansard*, 5 July 2012, col 65WS.

In November 2012, the Government published a Green Paper which set out the MOD's proposals to reform the Forces,[113] and in July 2013 they published the White Paper, *Reserves in the Future Force 2020: Valuable and Valued*.[114] The paper set out the Government's proposals for changes to the terms and conditions of service for reservists, including an improvement in the alignment of pay and benefits with the regulars, pensions, entitlement to occupational health, and it made a commitment to invest in better training, including overseas training exercises and pairing and training alongside regular military units.[115] The paper also set out proposals for engaging with employers, including the provision of extra financial support to small and medium sized employers, and the introduction of a new employer recognition scheme.

The paper stated that the Government would introduce legislation to enable "mobilisation for the full range of tasks which [the] Armed Forces may be asked to undertake.[116]

Further background information can be found in the House of Commons Library Research Paper, *The Defence Reform Bill* (11 July 2013, RP 13/45).

4.3 Committee Stage

Part 3 of the Bill was not significantly amended at the committee stage, although some minor drafting amendments were made to schedules 6 and 7. The Opposition's new clause 6, which sought to oblige the Secretary of State to publish quarterly data on the recruitment and strength of the reserves, was defeated by ten votes to six.[117] The Opposition's new clause 7, which was intended to provide additional protections for reservists when applying for jobs, and to establish an advisory body on the recruitment and retention of reservists, was also defeated by ten votes to six.[118] For further information about the Bill's committee stage in the House of Commons, see the House of Commons Library Standard Note, *Defence Reform Bill: Public Bill Committee Stage* (19 November 2013, SN06732).

4.4 Report Stage

Part 3 of the Bill was further debated at report stage on 20 November 2013. Prior to the report stage, concerns were raised about the policy to increase the number and capacity of reservists, while reducing the number of regulars, and on the issue of recruitment targets for the Reserve Forces and whether they were being met.[119]

These concerns were raised at the report stage, where the debate focussed on the issue of whether an independent report should be laid before Parliament annually, which would scrutinise and review the state of the Reserve Forces each year, or whether a report should be laid before Parliament on the viability and cost-effectiveness of the reforms set out in *Future Force 2020: Valuable and Valued*,[120] before such reforms could take place.

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[113] Ministry of Defence, *Future Reserves 2020: Delivering the Nation's Security Together*, November 2012, Cm 8475.
[114] Ministry of Defence, *Reserves in the Future Force 2020: Valuable and Valued*, July 2013, Cm 8655.
[115] ibid, p 9.
[116] ibid.
[117] Public Bill Committee, *Defence Reform Bill*, 22 October 2013, afternoon, session 2013–14, 14th sitting, col 439.
[118] ibid.
[119] Ben Farmer, 'Tory Rebels Risk "Great Damage" to Army Reserves; Philip Hammond, Defence Secretary, Warns Tory Rebels Risk Causing "Great Damage" to the Army Reserves and Leaving Them in Chaos', *Daily Telegraph*, 19 November 2013.
[120] Ministry of Defence, *Future Force 2020: Valuable and Valued*, July 2013, Cm 8655.

The following sections of the Note will focus on the amendments that were debated and were pressed to a division.

Annual Reports on the State of the Reserve Forces

Julian Brazier (Conservative MP for Canterbury) tabled new clause 1, which would have required an external scrutiny group of the Council of Reserve Forces and Cadets Associations (RFCAs) to report annually to the Secretary of State on the state of the Reserves. The report would have to make particular reference to: the provisions for recruitment and retention; the upkeep of estates owned or controlled by RFCAs; support arrangements; training facilities; and other factors which would affect the effectiveness of the Reserves. The Secretary of State would be required to lay the report before Parliament. The clause also contained provisions on the membership of the scrutiny group.

Opening the debate, Mr Brazier explained that the intention of the clause was to establish on a permanent basis the power for the Council of the RFCAs to report annually to the Secretary of State and to Parliament, and as a result, "restore to the Reserves a powerful independent voice".[121] He stated that:

> The crucial thing from the point of view of the ordinary reservist is that this body, which is elected by former reservists and respected by them as a body that effectively looked after their interests for nearly a century, is back with a really crucial position, able to make this report. When it visits the Army Recruiting Group, it will be heard with considerably more authority when it is known that it will be put on a permanent statutory basis.[122]

He expressed support for the Government's policy to reform the Reserves, and argued that he was in "favour of a rebalancing".[123] However, he stated that when the Regular Army took over recruiting in 2006, the "numbers collapsed",[124] and suggested that "reservist recruitment would never work if it were simply run by the Regular Army".[125] He argued therefore that a "strong independent body" was needed and that new clause 1 would "put the body that used to do this job very effectively into a powerful position as inspectors".

Support for new clause 1 was expressed by several members across the House, and there was a consensus among a number of the members that it would provide an independent element to the scrutiny of the Reserve Forces. Andrew Selous (Conservative MP for South West Bedfordshire) stated that it was "absolutely right that the new clause should put into law independent scrutiny and independent control over what is happening to our Reserve Forces",[126] and Dai Havard (Labour MP for Merthyr Tydfil and Rhymney) argued that the clause would "ceme[nt] consent from the public and involvement of the public in building the consensus that we require to develop the quality of reserve recruitment into the Army, RAF and Navy".[127]

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[121] HC *Hansard*, 20 November 2013, col 1262.
[122] ibid, col 1264.
[123] ibid.
[124] ibid.
[125] ibid, col 1265.
[126] ibid, col 1311.
[127] ibid, col 1271.

Liam Fox (Conservative MP for North Somerset), former Secretary of State for Defence, also expressed support for the new clause. He stated that the principle behind the change in proportion of the Reserves to Regulars was "exactly right", but suggested that Parliament had "very little information to go on".[128] He argued that that new clause 1 would "provide the transparency that [would] enable the House to make that assessment".

Philip Hammond, the Secretary of State for Defence, towards the beginning of the debate said that the Government were "minded to accept the principle" of the new clause.[129] He made a further commitment at the conclusion of the report stage to introduce an amendment in the House of Lords to reflect new clause 1.[130]

New clause 1 was withdrawn.[131]

Report of Future Reserves 2020

John Baron (Conservative MP for Basildon and Billericay) spoke to new clause 3 which would have required the Secretary of State to lay before Parliament a report on the viability and cost effectiveness of the plans set out in *Future Force 2020: Valuable and Valued*,[132] together with the Secretary of State's recommendations on its further implementation, within one month of the passage of the Act. Mr Baron's notes to the amendments explained that both Houses would have to approve the report, and the Secretary of State's subsequent recommendations, in order for the implementation of the reforms to the Reserve Forces to continue.[133] Mr Baron also spoke to his amendments 3 and 4 which would have delayed the application of part 3 of the Bill until the report and the Secretary of State's recommendations had been approved.

Mr Baron suggested that the plan to replace 20,000 regulars with 30,000 reservists "hing[ed] on [the] ability to recruit those reservists".[134] He stated that his greatest concern was the "ever-widening capability gaps that could result from the proposals",[135] and argued that:

> [...] the plan is clearly in trouble, and if we do not stop now, if only briefly, to re-examine the logic and ensure it stands up and properly scrutinise the viability and cost-effectiveness of the plan and the widening capability gap, we risk heading towards false economies and unacceptable capability gaps, which people will not thank us for.[136]

He explained that new clause 3, and amendments 3 and 4, would postpone the implementation of the Government's reservists plans until their viability and cost-effectiveness had been scrutinised and accepted by Parliament.[137] He insisted that they were not "wrecking amendments", and argued that if the amendments were passed, the delay to the "army reserve plans could be kept to an absolute minimum if the Government allowed prompt scrutiny of the report".

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[128] ibid, col 1268.
[129] ibid, col 1263.
[130] ibid, col 1318.
[131] ibid, col 1322.
[132] Ministry of Defence, *Future Force 2020: Valuable and Valued*, July 2013, Cm 8655.
[133] House of Commons, *Consideration of Defence Reform Bill: Amendment Paper*, 20 November 2013, p 1281.
[134] HC *Hansard*, 20 November 2013, col 1274.
[135] ibid, col 1279.
[136] ibid, col 1274.
[137] ibid, col 1271.

Responding for the Government, Philip Hammond stated that by requiring the Government to "get through that vote before we could progress", new clause 3 would send a "negative signal to the reserves community".[138] He explained that new clause 1, tabled by Julian Brazier, would provide the level of scrutiny required:

> By indicating that I will accept the intention of our hon Friends' new clause 1 and legislate to require an annual independent report—not for a limited period, but as a permanent arrangement—we are in effect creating a mechanism whereby annually the House will receive a progress report on the state of the reserves, and I would expect the House to debate that progress report. That will provide the level of scrutiny that he seeks.[139]

He stated that the Government could not "accept the halt that is proposed in new clause 3",[140] and urged the House to reject it and "embrace the concession we have made on new clause 1, so that we have an annual debate on the progress of the project".[141]

Martin Horwood (Liberal Democrat MP for Cheltenham) also expressed concern on the signal that it would send to reservists if further implementation of the plans were halted.[142] He highlighted that a consequence would be the "interruption of access to better pension provision" and that it would "explicitly interrupt access to paid leave for training".[143] Caroline Dinenage (Conservative MP for Gosport) further argued that clause 3 would "delay or prevent payments being made to small enterprises when their employees are mobilised", and would potentially "provoke confusion".[144]

The Chair of the House of Commons Defence Committee, James Arbuthnot, also stated that while new clause 3 "highlights the problem", it did not "provide the answer":

> I think that what my hon Friend the Member for Basildon and Billericay really wants to achieve is not the halting of changes to the Reserves, but the halting of changes to the Regulars, which his proposal does not mention.[145]

However, speaking for the Opposition, Vernon Coaker, Shadow Secretary of State for Defence, argued that new clause 3 did not "call for a reversal of the cuts to the Regular Forces".[146] He stated that the Opposition supported the clause "precisely because we want the Government to prove their plans are cost effective and viable". He explained that:

> We support new clause 3 because we want the Defence Secretary to take more responsibility for these reforms. We consider it better to pause until the MOD has managed to get recruitment back on track as a plan accepted by Parliament than to be forced to ditch the entire reform a few years down the line when it is clear that it is not working. A pause before progressing the reforms would give him time to fix the

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[138] ibid.
[139] ibid, col 1272.
[140] ibid, col 1320.
[141] ibid, col 1322.
[142] ibid, col 1273.
[143] ibid, col 1280.
[144] ibid, col 1303.
[145] ibid, col 1282.
[146] ibid, col 1287.

> problems, to provide us with the figures, to prove his plan is cost-effective and to show that he can meet the time frame he has set.[147]

Bob Ainsworth (Labour MP for Coventry North East), former Minister of State for the Armed Forces, also stated that he had not heard "anything to suggest that the new clause does all the terrible things it is said to bring about",[148] and argued that:

> The effect can and should be that this House is enormously interested in the development of the Reserves and wants to see their capability properly developed and scrutinised—and no more than that. That should be the message, and I do not think there is anybody in the House who is responsible for another message that I know of, other than the defence being offered by Government Front Benchers in the overreaction, as I see it, to new clause 3.[149]

Bob Stewart (Conservative MP for Beckenham) suggested that the report could be compiled while the Bill was being debated in the House of Lords:

> [...] could we have a report similar to the annual report, so that when the Bill comes back to this House for final approval we would have an idea of the real situation? We could thereby avoid this problem completely.[150]

New clause 3 was pressed to a division and was defeated by 306 votes to 252.[151]

Leave Entitlement for Reserve Forces

Thomas Docherty (Labour MP for Dunfermline and West Fife) moved new clause 6, which sought to ensure that "reservists would receive an additional two weeks unpaid leave from their employer, provided that their firms had more than 50 employees".[152] He recognised that there was a need to be "careful about the impact on small and medium-sized enterprises", and argued that the proposal was "sensible and measured".[153] He also highlighted that in the "rare cases of resistance from an employer, we propose that complaints are referred to an employment tribunal for arbitration".

Sir Nick Harvey (Liberal Democrat MP for North Devon) confirmed his "party's support for the two weeks' military training".[154] However, he argued that the "difficulty with legislating" in the manner suggested was that:

> [...] there is a serious cost implication: he is proposing that military pay will be provided for that period of time. I dearly hope that this Government or a future Government will at some point be able to find the resources, but a gargantuan effort has been made to balance the Ministry of Defence's books and the resources are not there. I know the

147 ibid, col 1288.
148 ibid, col 1279.
149 ibid, col 1280.
150 ibid, col 1295.
151 ibid, col 1323.
152 ibid, cols 1297–8.
153 ibid col 1298.
154 ibid.

> Labour party has a bit of form on making unfunded commitments, but it would be irresponsible to legislate on this when we do not have the funds to pay for it.[155]

Speaking for the Government, Mr Hammond stated that the intention of the new clause was "absolutely honourable and good" to want to impose an obligation on employers and to grant unpaid leave for training.[156] However, he maintained that the Government was seeking to establish this by "working with employers, not against them". He explained that:

> That has meant a couple of tough decisions on unpaid leave availability and discrimination rules. For now, we have decided to try to work with the grain, with employers, but if that does not work and we find there is a problem in the future, we will have an opportunity to return to this issue in the Armed Forces Act in 2016.[157]

Thomas Docherty pressed new clause 6 to a division, which was defeated by 315 votes to 235.[158]

5. Third Reading

Opening the third reading debate, Philip Dunne, Parliamentary Under-Secretary of State for Defence, set the Bill in the context of the Government's plans for reform of the Armed Forces:

> Defence of the UK and the protection of our national interests can only be achieved if we provide our armed forces with the capabilities they need to operate effectively. We have a duty to them to ensure they have the tools they need in terms of manpower, training, equipment and logistical support. The Bill will allow significant improvements to the way in which defence operates in the two crucial areas of procurement of equipment and support, and of rebuilding our Reserve forces.[159]

Mr Dunne welcomed the "widespread agreement that the procurement and support of defence equipment can and must be improved", and he suggested that it was "clear from [the] debate in Committee that there is a consensus on the need for reform.[160]

With regard to the provisions in part 1 of the Bill, which would enable the Secretary of State to arrange for a company to provide procurement services under contract, Mr Dunne reiterated that it was not a "forgone conclusion" that a GOCO would be chosen instead of a public sector comparator".[161] He stated that "as was made clear" in the written statement made by Philip Hammond, the Secretary of State for Defence, on 19 November 2013,[162] the Government had recently completed a review into the viability of the materiel strategy commercial competition, which concluded that a "viable commercial competition for a GOCO provider exists, albeit with risks", but that "any further reduction in the number of bidders should stimulate a formal reconsideration and decision on whether to proceed further with the

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[155] ibid.
[156] ibid, col 1322.
[157] ibid.
[158] ibid, col 1328.
[159] ibid, col 1332.
[160] ibid, col 1333.
[161] ibid.
[162] HC *Hansard*, 19 November 2013, col 44WS. The statement announced that the Cabinet Office and Ministry of Defence review had been completed, and that one of the consortia bidding for the GOCO contract had withdrawn from the competition.

GOCO option".[163] He explained that the Government intended to subject the bid to run a GOCO to a "rigorous comparison with the public sector comparator, DE&S-plus":

> What I can say is that we are focusing on ensuring an optimum balance between the need for an organisation that has the freedom to run its affairs in a way that best meets Ministry of Defence needs, and retaining and building on the values of the public sector. Should the GOCO option be the chosen way forward, the legislation that we have set out in part 1 of the Bill is essential to ensure that it can operate effectively without delay [...]
>
> This analysis will inform a decision on whether it is in the public interest to proceed with only a single commercial bidder and a public sector comparator, and a further statement will be made once this process is complete.[164]

Mr Dunne also stated that part 2 of the Bill had addressed the need to reform the existing "framework for single-source procurement that has remained largely unchanged for the past 45 years".[165] He explained that the Bill had set out a "new framework on transparency, with more and better information on costs, stronger supplier efficiency incentives and stronger governance arrangements".

A number of the issues raised in committee were repeated by members at third reading. Kevan Jones (Labour MP for North Durham) highlighted that not only would the reforms be a "major change to how defence equipment would be procured", but it would also "have an impact on our relationships with international allies".[166] In addition, he argued that there were "still concerns [...] on intellectual property and single-source procurement, about which we had numerous discussions in Committee":[167]

> I think that industry still has concerns on those points. Part of the process is about not only reassuring the work force but ensuring confidence about working with the defence sector, because it is a major employer in this country. It is also important to ensure that we are at the leading edge of not only defence technology but security technology. Full involvement of the sector throughout the process will be very important. I think that the Bill will have an interesting passage through the other place.[168]

Chair of the House of Commons Defence Committee, James Arbuthnot, maintained that the Defence Committee would have to "take evidence on this fundamental shift in [...] our country's defence procurement", and insisted that the Committee would need "a clear time scale to know when we should take evidence [...] Ministers need to realise scrutiny of what they do will be determined by the Select Committee and not by them".[169]

Concerns were also expressed that one of the consortia bidding for the GOCO contract had recently withdrawn from the competition, and that there was now only one commercial bidder. John McDonnell (Labour MP for Hayes and Harlington) suggested that the "concept of

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[163] ibid, col 1333.
[164] HC *Hansard*, 20 November 2013, cols 1333–4.
[165] ibid, col 1334.
[166] ibid, col 1336.
[167] ibid, col 1337.
[168] ibid.
[169] ibid, col 1340.

competition is stretched to absurdity when there is only one bidder",[170] and Mr Jones stated that it would be "interesting to see how this process goes ahead with just one bidder and we need to ensure that that is scrutinised".[171]

Mr Jones also addressed the provisions in part 3 of the Bill, and suggested that "on the overall position of the reservists [...] the jury was still out".[172] However, Mr Dunne argued that the legislation needed to be updated to support "the revitalised Reserve Forces and their contribution to defence", and stated that part 3 would "remed[y] that situation".[173]

Concluding the debate at third reading, Martin Horwood (Liberal Democrat MP for Cheltenham) argued that the "background to the Bill was both the challenge of deficit reduction and the greater challenge of a new military and security landscape".[174] He explained that the Bill formed an "imaginative and strategic" Government response:

> Those challenges also bring opportunities, such as the opportunity for more efficient and cost-effective defence procurement. We on these Benches and our noble Friends in the House of Lords have raised some questions about the GOCO model, but I think that whichever model is eventually chosen will offer the opportunity to improve on the past history of defence procurement. The other opportunities are obviously those offered for reservists by the Bill, including a new name and status, new employment protections, the new possibility of paid leave.[175]

The Bill was given its third reading and was passed without a vote.[176]

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[170] ibid, col 1336.
[171] ibid, col 1337.
[172] ibid, col 1338.
[173] ibid, col 1335.
[174] ibid, col 1340.
[175] ibid.
[176] ibid, col 1340.