

The Reserve Forces Bill [HL]

[Bill 75 of 1995/96]

Research Paper 96/40

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The Reserve Forces Bill revises existing legislation controlling both the regular and volunteer reserves. It replaces the last such measure, the *Reserve Forces Act 1980*, almost in its entirety. This paper will examine the history of the reserve forces, recent developments and the reasons for the new legislation before looking at the provisions of the *Bill*. Some comparisons are also made with foreign practice.

The *Reserve Forces Bill* was presented to the House of Lords on 16 November 1995 and had its second reading on 28 November 1995. It completed its Lords stages on 5 March 1996. Its Commons debate on Second Reading will be held on 20 March 1996.

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I A Brief History of the Reserve Forces 1066-1991

Britain's armed forces have traditionally differed from most of their counterparts in Europe in that their recruitment has, apart from during the two World Wars, been voluntary and not based on conscription.¹ Its armies have thus been small in size. With Britain protected by the Royal Navy, a small, professional army was sufficient for expeditionary and colonial duties. However, conscription has the great advantage of producing a large pool of manpower with military experience. Large forces can quickly be reconstituted by recalling soldiers who have completed their years of military service. Without this facility and given its objections to standing armies, the UK has been forced to rely on militias, volunteers and small numbers of recalled former regulars for territorial defence when the homeland has come under threat. This has occurred three times over the last two hundred years, first, during the French Revolutionary and Napoleonic Wars and, second, during the French invasion scares of the mid-nineteenth century. More persistent fears about Britain's military weakness vis a vis its continental neighbours led to the establishment of a third, more long-standing reservist structure in the years before the First World War.

A. The Land Reserves

Before the formation of a standing army in the seventeenth century, the land of Britain was defended by the militia, beginning with the Anglo-Saxon *Fyrd*. As part of the latter all free men could be called upon to defend their locality. After 1066, the *Fyrd* was replaced with a complex system of feudal levies, answerable to the Crown through the county High Sheriff. Later the Lord Lieutenants assumed this organizing role. Under the *Militia Act 1757* the feudal organization of the force was finally abolished to be replaced by a system of county forces composed of men chosen by ballot. Many sections of the population were exempt and although powers of compulsion existed, the Militia was a largely voluntary organization in peacetime. Vestiges of this period survive in one of the TA's oldest units, the Royal Monmouthshire Royal Engineers (Militia), founded in 1577, and the continuing role of the Lord Lieutenancies in the volunteer reserve force.²

The Militia did not, however, prove sufficient for national defence. It was supplemented by the Volunteer movement. Volunteer units were raised, often spontaneously, outside the Militia system and often equipped at the expense of their patrons or members. Volunteer units could also recruit individuals, such as apprentices, who were exempt from the Militia ballot. The Honourable Artillery Company, the antecedent of which was granted a charter by Henry

¹ Exception must, of course, be made for the activities of the Naval press gang.

² S. S. Baldwin, *Forward Everywhere: Her Majesty's Territorials*, Ch. 2 and B. Peedle, *Encyclopedia of the Modern Territorial Army*, p.17

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VIII in 1537, might be regarded as the first volunteer regiment. However, the first modern versions of Volunteer units were raised in an *ad hoc* fashion in response to the abortive Scottish invasion of 1745. The first Volunteer Act, passed in 1782, placed the concept of volunteering on a more permanent footing. Both the Volunteers and the Militia were greatly expanded after the start of war with France in 1792, a move given impetus by the *Volunteer Act 1802*. By 1804, there were 479,000 Volunteers alone.³ A further force of volunteer cavalry, the Yeomanry, was raised for the first time, mainly on a county basis, in 1794.⁴ The final defeat of Napoleon led to the disbandment of both the Militia and the Volunteers in 1816, although a semblance of the latter continued in the form of private rifle clubs. The Yeomanry survived to play a role in supporting the civil authorities during periods of unrest. A Yeomanry unit was involved in the Peterloo massacre of 1819. Another force, the Fencibles, was raised for home defence during the American War of Independence and the Napoleonic War. Patterned on the regular Army, the Fencibles were outside the traditional Militia system and were never revived.

Renewed fears of French invasion led to the re-establishment of the Militia in 1852, although on a voluntary basis. Militia units supported the Army during the Crimean War and the Indian Mutiny and continued thereafter as a direct supplement to the regulars. A second invasion 'scare' in 1859 led to the largely spontaneous flowering of the rifle volunteer movement. Volunteer regiments were sometimes organized by profession and were again often partly self-financing.

In 1871 the control of all auxiliary forces was taken from the Lord Lieutenants and placed under the Crown. Further changes resulted from the Cardwell Reforms of the period. In 1870, the terms of enlistment for regular soldiers were altered to give them shorter periods of service with the colours to be followed by, for the first time, a reserve commitment. In 1881, the reforms culminated with the formation of county regiments usually of two battalions. Militia units were then usually added to form third and fourth reserve battalions. Volunteer units were attached to form the fifth and subsequent battalions.⁵

Despite the changes made by Cardwell, the Boer War revealed numerous deficiencies in the British Army. Whilst the majority of the regular Army fought in South Africa or was detained by colonial commitments, Britain was virtually undefended, despite the calling out of Militia units. Sub-units and individual members of the reserves did see service in the South African War on a voluntary basis either attached to regular formations or as part of a new collective Imperial Yeomanry. Following a number of commissions of inquiry, Haldane, who became Secretary of State for War in 1905, undertook to address the Army's and Reserves' various inadequacies. One consequence was the *Territorial and Reserve Forces Act*

³ Baldwin, p.26

⁴ Baldwin, Ch. 2, 3 & 4 and Peedle, pp.17-19

⁵ *ibid*

1907 which revolutionized the organization of the reserves and established a new structure which lasted for the next sixty years. First, the Militia was transformed into the Special Reserve, usually constituting the third battalion of each county regiment. Together with the regular reserves, the Special Reserve formed a reservoir of manpower to support the regular Army, both of which could be deployed overseas. Second, the Act combined the Volunteers and the Yeomanry into the Territorial Force (TF). Volunteer infantry units constituted the fourth and subsequent battalions of county regiments. A separate London Regiment was established to cover TF formations in London.⁶ In all, the Territorial Force was organized into 14 divisions and 14 Cavalry Brigades. Territorials could not be compelled to serve outside the UK. This new system provided for the rapid expansion of the Army in both World Wars.⁷

The Territorial Force was 'embodied' or mobilized in 1914 and incorporated into the regular Army. In 1920, the Territorial Force was reconstituted as the Territorial Army and there followed a number of reductions. Some Yeomanry regiments were converted into artillery and other support units. However, in response to a new threat from the continent, the Territorial Army was greatly expanded in the late 1930s. In 1935, the TA was chosen to form the basis of a new Anti-Aircraft Command. A separate compulsory "militia" was briefly formed under the *Military Training Act 1939*. TA units were again embodied in 1939.

After the war, the TA was not reconstituted until 1947. Volunteers were supplemented by National Servicemen. Under the *National Service Act 1947*, Army conscripts were obliged to spend 18 months (later two years) with the colours before serving three and a half years in the TA. In 1952, the TA numbered just under 200,000 of whom two thirds were National Servicemen.⁸ With the Sandys defence review of 1957 and the end of conscription, the size of the TA declined. The abolition of National Service placed severe pressures on the Army which had difficulty in fulfilling its various commitments. In response, the War Office founded a new Territorial Army Emergency Reserve (TAER) in 1962. This was composed of Territorials who volunteered for rapid call out and service anywhere in the world for a period of up to six months and were paid an extra bounty. The so-called Ever Ready reservists were called out to serve in the Aden in 1965.

Further defence reviews led to a substantial reductions in the TA with many units being amalgamated or disbanded. Under the *Reserve Forces Act 1966*, the TA became the Territorial and Army Volunteer Reserve (TAVR).⁹ The Ever Readies were scrapped in 1969. The extent of closures of drill halls and unit amalgamations had a demoralizing effect on the new

⁶ The London Regiment was revived in 1993.

⁷ Baldwin, Ch. 1 & 5 and Peedle, pp.19-20.

⁸ Baldwin, p.163

⁹ *RFA 66* established four categories of reservists: Categories I and II, known as Volunteers with a combined establishment of 50,000; Category III comprising the Territorials (all three later merged into Group A); and Category IV covering University Officer Training Corps, etc (later Group B).

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TAVR. By 1970, TAVR strength had fallen to 47,000, a reduction of over 50 per cent on the mid-1960s establishment.¹⁰

The Heath government reversed some of the changes initiated in the previous decade refounding, for example, four Yeomanry regiments. The TAVR was renamed the TA in 1979. In 1981, against the background of a perception of a renewed Soviet threat, further expansion was announced. The TA establishment was to be increased from 70,000 to 86,000. It would also be given a new role in a largely Territorial infantry division intended to support the British Army on the Rhine. The TA received new investment in the form of extra training, new TA centres and fresh equipment. In 1982 the government announced the formation of the Home Service Forces (HSF). This would have a planned strength of 5,000, would be recruited from older ex-regulars or territorials, and would guard essential sites.

B. The Naval Reserves

The history of the Royal Naval Reserves dates back to the formation of the Sea Fencibles, raised locally in 1798 to defend coastal areas against French invasion. This force was disbanded in 1810. A parallel group of River Fencibles assisted with the defence of the Thames between 1803 and 1813. Between 1802 and 1805 there also existed the Royal Trinity House Volunteer Artillery, raised by Trinity House, which manned spare RN ships during the height of the fear of a Napoleonic landing.

In 1853, the Naval Coastal Volunteers were formed. Chiefly recruited amongst fishermen, this body was intended to supplement regular Naval manpower in home waters in time of war. However, in light of the Volunteers' alleged unreliability, the Admiralty decided to establish in addition the Royal Naval Reserve (RNR) in 1859. Initially confined only to volunteer merchant seamen, this was extended to include merchant naval officers in 1861.¹¹

The Naval Coastal Volunteers were replaced in 1873 by the Royal Naval Artillery Volunteers. Although apparently more effectual than its predecessor, this body was disbanded in 1892. The experienced gained, however, contributed to the real foundation of the naval volunteer tradition with the creation of the Royal Naval Volunteer Reserver (RNVR) in 1903. The RNVR in particular formed a basis for the expansion of the Royal Navy during the Second

¹⁰ *SDE 70*, p.45

¹¹ F. Bowen, *History of the Royal Naval Reserve* and G. Taylor, *London's Navy: A Story of the Royal Naval Volunteer Reserve*

World War.¹² The Royal Fleet Reserve, the pool of recallable ex-regular Naval personnel, was established by the *Naval Reserve Act 1900*.

The RNVR was absorbed into the RNR in 1958. The combined body continued to operate a reserve minesweeping squadron first set up in 1954 as well as performing other naval duties. The Royal Naval Auxiliary Service (RNXS) was founded in 1962, chiefly to help defend ports and anchorages and assist with the control of shipping.

As with the other Services following two decades of retrenchment, the RNR underwent a period of expansion during the 1980s. In 1982 the Government ordered a new batch of minesweepers, the 'River' class, intended to be manned entirely by the RNR. New *Archer* patrol boats were added to the RNR inventory in 1985. In 1984 the MOD announced that RNR would undergo further expansion from a ration strength of 5,400 to 7,800, although, in the event, retention problems prevented this objective from being met. The *Archer* patrol boats were subsequently transferred to University Naval units.¹³

C. The Air Reserves

The first volunteer air reserve, the Auxiliary Air Force, was founded by Order in Council in 1924. It was expanded rapidly during the 1930s and on the out break of war included 24 locally established Auxiliary flying squadrons and 44 balloon squadrons. The Auxiliary Air Force was granted the prefix 'Royal' in 1947 in recognition of its wartime service. In the post-war era, the RAuxAF was reequipped with jet aircraft. In 1957, as part of the Sandys review, it was decided that it was no longer possible to pay for new sophisticated aircraft and equipment for a reserve organization. The RAuxAF was therefore virtually disbanded.¹⁴

The RAF Volunteer Reserve (RAFVR) was originally founded in 1936 as a reserve of skilled individuals, originally only pilots, who could be called out to supplement regular RAF formations. It thus differed from the RAuxAF which was composed of formed units. The wartime expansion of the RAF was based on the RAFVR. Like the RAuxAF, the RAFVR almost completely disappeared following the Sandys Review. In 1979, when a decision was taken to revive the RAF volunteer reserves, only 300 RAFVR and RAuxAF personnel remained.¹⁵ The RAuxAF was given a new role in air field defence, alongside the RAF Regiment, movement control and aeromedical evacuation. One RAuxAF squadron was later

¹² Although legal authority for a Royal Marines Volunteer Reserve was granted in 1903 one was not established until 1947.

¹³ Defence Committee Fourth Report, *Options for Change: Reserve Forces*, HC 163, Sess. 91/92, Para 52

¹⁴ P. Congdon, *Per Ardua ad Astra: A Handbook of the Royal Air Force*, (1st Ed) pp.139-141

¹⁵ HC 163, Para 66 A separate RAFVR training branch continued to assist with the Air Training Corps and University Air Squadrons.

equipped with Oerlikon anti-aircraft guns captured in the Falklands. The RAFVR were also expanded to comprise small groups of photographic interpreters, linguists and information experts, as well as a small number of Air Electronics Operators.¹⁶

II Changes to the Reserve Forces Since the End of the Cold War

Under Options for Change substantial reductions were made in the regular forces and it was inevitable that the future and size of the Reserves should also be examined. *SDE 91* announced that: -

5. We attach great importance to the Volunteer and Regular Reserves of all three Services, who will continue to have a key role to play. We shall be examining more closely our requirements in, this area, including the roles, size and number of Reserve units. Our plans for the future restructuring of the armed forces following Options for Change also require a wide-ranging study of the balance between Regular and Reserve forces. This is now in hand. Its aim is to develop a manpower structure from 1995 onwards best matched to anticipated tasks, reduced readiness requirements and extended warning and preparation time. Among areas the study will examine is the scope for employing personnel other than Regulars in peace and war in the light of changed circumstances.¹⁷

The "wide ranging study of the balance between Regular and Reserve forces" became known as the Regular-Reserve Mix Study, or Wells Study. Although it might have been argued that the planned decline in regular forces would lead to a requirement for additional reservists, strategic and financial arguments dictated otherwise and a first round of cuts was made in 1991. A further round followed in 1993 and 1994. Commentators expressed some surprise that the Wells Study was concluded in January 1992 *after* the first announcements on the future structure of the three components of the Reserve, the TA, the RNR and RAuxAF, had been announced.¹⁸

A. The Territorial Army

The first changes to the TA were announced to the House in December 1991.¹⁹ In essence, although the overall numbers of the TA were to be cut, it was to be more closely integrated

¹⁶ P. Congdon, p.140, 142.

¹⁷ *SDE 91*, p.42

¹⁸ HC 163, Para 4 and M. Hatt-Cook, "The Reserve Forces Act 1995, *RUSI Journal*, October 1993, p.23

¹⁹ HC Deb 10/12/91 c.733-748

into the regular Army. Although the ration strength of the TA was some 91,000, due to perennial recruitment and retention difficulties, the actual level was some 74,000. This would be reduced to a peacetime level of 63,500 (59,000 in units and a recruits pool of 4,500). In time of war, regular reservists would be added to reach a mobilization figure of 71,000. It was announced that no Territorial, with suitable health and other qualifications would be rejected for service, although some might be encouraged to transfer to other units. 'Overbearing', that is manning in excess of establishment, by rank and unit would be allowed. As part of the restructuring, the HSF would be disbanded, although HSF volunteers could transfer to other TA units.

The TA was given an expanded role in national defence as well as a wider role as a national reserve. Within this framework, individual TA units were allotted two different assignments: 57 per cent were assigned to National Defence (ND) roles and the remainder were dedicated to NATO's Allied Command in Europe Rapid Reaction Corps (ARRC) with a contingency for overseas deployment. In general, there was to be a shift away from teeth arms to combat support in the new structure. The infantry, in particular, was faced with large cuts with a reduction of 18 per cent and decrease in numbers from 164 to 109 rifle companies and 41 to 36 battalions. This was expedited by reducing each remaining TA battalion from four to three companies, with one exception. However, eight TA infantry battalions were rewarded with an ARRC role. If mobilized, they would presumably operate in a line-of-communications or prison guard role. In contrast to the cuts in infantry manpower, some other combat support arms and corps saw their complements substantially increased. For example, the TA Army Air Corps was to increase by 50 per cent from existing recruited strength. Similarly, the TA Intelligence Corps was to expand by 40 per cent.²⁰ TA units designated to serve in the ARRC would receive the same equipment as regular units. For example, the two TA artillery regiments assigned to NATO would be armed with FH70 guns, while air defence TA units would be supplied with Starstreak missiles.²¹

After these reductions, the TA was then subject to a further review of its structure and manning. The results of the review were announced to the House in July 1994.²² The TA's recruits pool of 4,500 was removed and the TA's ration strength reduced to 59,000. However, at the same time, the TA would fill more roles once performed only by the regular Army. A regular Army Air Corps squadron would be disbanded and replaced by a TA unit. The statement also outlined plans to convert TA units, particularly in the infantry, to combat support roles; initially, a TA unit would re-role to become the Army's nuclear, biological and chemical defence regiment. Further detail was given in December 1994, announcing the merger of certain TA infantry units, the consequent formation of 26 new combat support units

²⁰ Full details of unit roles, names and numbers were given in *Britain's Reserves for the 90s*, December 1991 (Dep 7632).

²¹ HC Deb 10/12/91 c.733

²² HC Deb 14/7/94 c.1173 TA units in Germany were abolished between the 1991 and 1994 reviews (see *The Daily Telegraph* 24/6/94).

in various corps and the reduction of TA infantry companies from 109 to 87.²³ These changes are set to be completed by April 1997.²⁴

The strength of the Regular Army Reserves on 1 April 1995, inclusive of the Home Service element of the Royal Irish Regiment, was 195,300. The TA had a strength of 59,700 as at 1 April 1995 against an establishment of 59,000.²⁵

B. The Royal Naval Reserves

In July 1991, the MOD announced plans to reduce the RNR from a strength of around 5,900 to 4,700. The RNXS would decline marginally from 2,850 to 2,700.²⁶ These reductions subsequently led to the taking of two of the eleven River class minesweepers out of service and the disbandment of other shore-based RNR units.²⁷

Further changes were announced in June 1993.²⁸ Against the background of the end of the Soviet threat, it was felt no longer necessary to continue with reservist tasks of Naval Control of Shipping (in home waters) and Defence of Ports and Anchorages. Since the majority of the RNXS undertook these tasks, its continuing presence was felt unnecessary and the RNXS was disbanded in 1994. The review also found that it was no longer necessary to maintain a separate RNR minesweeper squadron. This was disbanded and its ships were allocated to other tasks or placed for disposal. The removal of the RNXS and reduction in size of the RNR would allow a rationalization of RNR/former RNXS estate. The 62 RNXS units (half collocated with RNR) and 23 RNR units would be replaced by 13 Reserve Centres. Despite the removal of the RNR minesweepers, a dedicated sea-going branch of some 500 posts would remain who would train, periodically, in all types of RN ships. In all, with the expansion of the RNR Air Branch and the new RNR branches in Submarines Operations Management and Logistic Support and the transfer of 135 RNXS posts, the RNR would have an establishment of some 3,500.²⁹

The 1993 review did not affect the Royal Marines Reserve (RMR) which provides trained reinforcements to bring RM Commandos to full war-time strength and continues to have an establishment of some 1,200.

²³ HL Deb 6/12/94 WA 75-76

²⁴ Defence Committee Twelfth Report, *The Reserves*, Sess. 94/95, HC 65, Para 3

²⁵ *UK Defence Statistics 1995*, Fig. 2.12

²⁶ HC Deb 24/7/91 c.705w

²⁷ HC 163, Paras 50-63

²⁸ HC Deb 17/6/93 c.1011-1013 and *The Future of Britain's Naval Reserve Forces: Consultative Document*

²⁹ Some 2,000 former members of the RNR and RNXS have since joined the Maritime Volunteer Service which aims to perpetuate maritime skills (*The Daily Telegraph* 6/3/95).

As at 1 April 1995, RNR strength was around 2,700 and RMR strength around 1,000.³⁰

C. The Royal Air Force Reserves

The 1991 statement on the TA also included details on the restructuring of the RAF reserves.³¹ In contrast to the reserves of the other two services, the RAF Reserves were to expand in absolute terms, although the expansion was later revealed as only marginal from 1,900 to 2,000 personnel. RAuxAF airfield defence flights were to increase at the rate of one per year between 1993 and 1998.³²

As part of the second round of defence reduction revealed in the *SDE 1993*, further changes were announced in the RAuxAF. The previously proposed increase in airfield defence flights would not now go ahead. 1339 Wing, equipped with Oerlikon AA guns, at RAF Waddington and RAF Coningsby and also 3633 (East Anglian) ground defence Squadron at RAF Honington would be disbanded. However, some of the personnel from these squadrons would be given the opportunity to transfer to posts in two regular RAF Regiment Rapier squadrons, based at RAF Leuchars and RAF Leeming which would be cadred i.e part manned by regulars. The latter units would become operational in 1997. Finally, it was also announced that the RAuxAF and the war-appointed RAFVR (that is not including RAFVR personnel involved with University Air Squadrons and the Air Training Corps) would be amalgamated. As a result of these changes the RAuxAF would see a net reduction of 180 posts.³³ The fresh restructuring of the RAuxAF was confirmed in October 1993.³⁴

As at 1 April 1995, the RAF Volunteer Reserves had a strength of 1,300 as against an establishment of around 2,000³⁵.

III The Rationale for the Reserve Forces Bill

As has been seen, with the end of the Cold War, the MOD began to examine the role of the reserve forces within the more flexible and multi-purpose post-Options force structure. It was quickly realized that this would require new legislation which would also provide an

³⁰ *UK Defence Statistics 1995*, Fig. 2.12

³¹ HC Deb 10/12/91 c.733

³² HC 163, Paras 64-68

³³ HC Deb 17/6/93 c.1014-1015 and *Royal Air Force Volunteer Reserve Forces: Consultative Document*, June 1993

³⁴ HC Deb 18/10/93, c.39

³⁵ HC 65, Para 38 and *UK Defence Statistics 1995*, Fig. 2.12

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opportunity for general revision. The current law, in the words of the Defence Select Committee, is "untidy, complex and inconsistent".³⁶

The principle piece of reserve forces legislation is the *Reserve Forces Act 1980* (*RFA 80*) which is a consolidation of many previous measures going back as far as the *City of London Militia Act 1662*. It does not cover the liabilities of all reservists, particularly of the various categories of regular reservists, nor does it treat the various groups of reservists consistently. However, the main weaknesses of *RFA 80* relate to its so-called 'blunderbuss' clauses which are unsuited to the multiple and low-level conflicts of 1990s in which Britain's armed forces are now involved, and for which the reserves are needed.

RFA 80 was drafted in response to the TA's enhanced role after 1979 of resisting a possible Warsaw Pact assault on NATO. It sanctions the call-out of reservists in the event of "national danger" or "great emergency" (Section 10) or of "warlike operations" (Section 11). It can also be used to require reservists to undertake training. Its shortcomings were demonstrated during the Gulf War.

Of the 45,000 UK Service personnel involved in Operation Granby, only 1,774 were reservists.³⁷ Of this figure 897 were regular reservists and 877 volunteer reservists. 1,075 of the total came from the Army reserves; the majority of these were from the Royal Army Medical Corps with the largest unit being 205 (V) Field Hospital. The remainder came chiefly from the RAF Reserves including RAuxAF 4626 Aeromedical Evacuation Sqn. and 4624 Movements Squadron. The provision of medical services in theatre depended on the reservists. Reservists also assisted with press and meteorological duties. A number of individual members were attached to teeth arms and other reservists, not called out, contributed by adapting their domestic training programmes.³⁸

One reason why so few reservists were mobilized related to the legal difficulties inherent in doing so. Partly because of the rather apocalyptic provisions for call-out of reservists in *RFA 80*, the MOD initially sought volunteers for service in the Gulf. Many were reluctant to volunteer due to professional commitments and fears about job security. The MOD was obliged to return to the *RFA* and use it to call out reservists.³⁹ It was not able to use Section 11, possibly because it did not cover members of the RAuxAF, but turned to the more comprehensive Section 10.⁴⁰ This process entailed delay in making medical facilities available for British forces in the Gulf theatres. Furthermore, although the MOD subsequently

³⁶ HC 65, Para 46

³⁷ Defence Select Committee Tenth Report, *Preliminary Lessons of Operation Granby*, HC 287/I, Sess. 90/91, Para 2 and 31

³⁸ HC 163, Para 10

³⁹ HC 287/I, pp.50-51

⁴⁰ HC Deb 17/12/90 c.7w and HC 163, p.18

stated that, in respect of medical reservists, "the call-out was successful and that the requirement was met in full", 94 Army Reservists failed to respond to call-out notices, over one in four to whom call-out notices were sent.⁴¹

A number of lessons from the Gulf War were therefore clear. A new legal framework for the reserves was required to permit their call-out for a spectrum of functions; from all out war, and expeditionary forces, on the one hand, to peacekeeping and humanitarian operations, and participation in domestic disaster relief on the other. It had long been the practice of Canada and Denmark, for example, to allow reservists to serve on UN peacekeeping operation. The procedures for the call out of individual reservists also needed to be modernized. More significantly, in order to attract reservists, they and their employers would need to be properly reimbursed for any financial losses incurred through their mobilization.⁴²

IV The Preparation for the Reserve Forces Bill

The *Reserve Forces Bill* has been the product of a lengthy gestation. The Wells Study was followed by the publication of an Open Government Document, *The Future of Britain's Reserve Forces*, in March 1992. This made a number of recommendations, chiefly that there should be a new two-tier structure for reservists, the harmonization of existing arrangements for all Reservists, and the passage of new Reserve Forces legislation, "dubbed RFA 95", to allow for these and other changes.

Details of the proposed legislation were given in a consultative document *Britain's Reserve Forces: A Framework for the Future*, MOD October 1993.⁴³ Some 600 replies were received in response to an appeal for comment.⁴⁴ The government hoped to introduce a Reserve Forces Bill in the 1994/95 session.⁴⁵ In the event, the legislation entered a new consultative phase when the MOD published a draft version of the Bill, *Strength in Reserve: Draft Reserve Forces Legislation: Consultative Document*, in March 1995.⁴⁶ 2,000 copies of the document were circulated amongst reserve units and 4,700 to employers, organizations of the self-employed and trade unions.⁴⁷ Fifty per cent of responses were either unequivocally or generally supportive of the proposals; 10 per cent were concerned about specific points; 38

⁴¹ HC Deb 17/1/91 c.545w

⁴² HC 163, Para 5 & HC 65, Para 46

⁴³ Dep 9697

⁴⁴ A summary was placed in the Library in March 1994 as CPR 94/004 (Dep 10488)

⁴⁵ HC Deb 18/10/93 c.37 and HC Deb 31/3/94 c.986w

⁴⁶ Dep. 3/S 1441

⁴⁷ One forum for consultation was the National Employers Liaison Committee (NELC), established in 1986 to improve contact between the volunteer reserves and business. The Committee has 3,500 employer members.

per cent were neutral; and only 2 per cent were generally critical.⁴⁸ A Compliance Cost Assessment was also conducted.⁴⁹ The proposed changes to Reserve Forces legislation have enjoyed general cross party support.

In advance of the Reserve Forces Bill's introduction, the MOD has begun to make greater use of the reserves. In June 1993, the Secretary of State announced that the MOD planned to allow small TA sub-units to volunteer to serve with regular forces. (Previously only individual reservists had spent periods of service with the regulars.) A platoon of 40 TA soldiers of the Royal Irish Rangers (RIR) then served alongside regulars of the 1st RIR in the Falklands for a period of five months during 1994.⁵⁰ A TA company was then attached to the Falklands garrison between March and July 1995.⁵¹ Following the success of these pilot schemes, groups of TA personnel are now serving for short periods with regular units. Separately, from 1992, a small number of TA intelligence and press specialists volunteered to assist with British military operations connected with UN actions in the former Yugoslavia. They were called out under Section 11 of *RFA 80*.⁵²

The introduction of NATO's Implementation Force (IFOR) in December 1995 has led to an expansion of this contingent. A total of around 550 TA and Army Reservists, all volunteers, have been called out for service in IFOR to man a requirement for 460 posts in the UK's land contingent of around 11,500.⁵³ Most will deploy for a six-month period. A platoon drawn largely from 3rd Bn. Prince of Wales Own Regiment of Yorkshire (TA) is engaged in guarding British rear facilities in Split, Croatia. This is the first non-specialist formed TA unit to be deployed in an operational theatre since Aden in 1965.⁵⁴

V The Lords Stages of the Reserve Forces Bill

The *Reserve Forces Bill* was presented to the House of Lords on 16 November 1995.⁵⁵ It had its second reading on 28 November 1995.⁵⁶ The Bill began consideration in a Committee of the Whole House on 23 January 1996.⁵⁷ Prior to consideration in Committee, the Government tabled over 200 mainly technical and drafting amendments the consideration of which

⁴⁸ *Summary of Comments Received on the Draft Reserve Forces Bill Published in March 1995*, November 1995 (Dep. 3/S 2362)

⁴⁹ Published in November 1995, Dep. 3/S 2362

⁵⁰ *The Independent* 11/7/94

⁵¹ HC Deb 19/4/94 c.508w

⁵² *SDE 94*, Para 528 and HC Deb 22/2/94 c.132w

⁵³ HC Deb 6/12/95 c.244w

⁵⁴ *The Soldier* 4/3/96

⁵⁵ HL Bill 4 of Sess. 95/96

⁵⁶ HL Deb 28/11/95 c.520-556

⁵⁷ HL Deb 23/1/96 CWH 1-42

occupied most of the day's proceedings. The next day the Bill was withdrawn and recommitted in what the Lord Privy Seal, Lord Cranborne, admitted was an unusual practice.⁵⁸ The tabling of so many Government amendments to a Bill so long in preparation and indeed one which was theoretically largely complete in March 1995 was the occasion of much criticism. Lord Harris of Greenwich declared: -

My Lords, the noble Viscount the Leader of the House indicated that the Motion he has put before us today is unusual; and that is undoubtedly true. But we deserve a rather fuller explanation from him as to how the situation arose. As he rightly said, there has been all-party support for the Bill. That was true on Second Reading and it remains true today. But to be greeted with an avalanche of government amendments in the way that has been described by the noble Lord, Lord Williams, is not a happy commentary upon the efficiency of the Ministry of Defence.

The Ministry of Defence puts forward a relatively small amount of legislation to Parliament. It seems that the level of competence that it has demonstrated on this occasion has been sadly lacking. We would all be reassured if the Leader of the House were able to indicate that he will make it clear to other departments that we will not accept a repetition of incidents of this sort.⁵⁹

In reply, Lord Cranborne stated that the bulk of the amendments were fairly detailed and technical in nature and that not all of them were from the government.⁶⁰ The recommitted Bill was considered in a Committee of the Whole House on 25 and 30 January.⁶¹ The Report was held on 27 February 1996 and the Third Reading on 5 March 1996.⁶²

VI The Reserve Forces Bill Clause by Clause

Summary

The Reserve Forces Bill aims to allow the Reserves to engage more freely in the operations of the regular forces. **Parts I** and **II** of the Bill largely reproduce existing provisions of earlier reserve forces legislation. **Part III** greatly simplifies the procedures for enabling reservists to undertake periods of full-time and part-time service. New categories of reservists are created by **Part IV**, High Readiness Reservists, and **Part V**, Sponsored Reservists. **Part VI** reenacts the call-out powers of *RFA 80* but adds more flexible and limited criteria for call-out. **Part VII** continues sections of *RFA 80* with respect to the call out of regular reservists

⁵⁸ HL Deb 24/1/96 c.1037-1041

⁵⁹ HL Deb 24/1/96 c.1039

⁶⁰ HL Deb 24/1/96 c.1040

⁶¹ Bill 39 of Sess. 95/96 on HL Deb 25/1/96 CWH 43-97 and HL Deb 30/1/96 CWH 99-138

⁶² HL Deb 27/2/96 c.1369-1408 and HL Deb 5/3/96 c.227-235

but makes important changes to how they are defined. **Part VIII** introduces safeguards of exemption and deferment of call-out and also of compensation for financial losses incurred as a result of call-out. Cases of dispute arising from this process can be adjudicated in appeals tribunals established by **Part IX**. The remaining Parts of the Bill deal with offences (**Part X**) and the continuing position of the Territorial Auxiliary and Volunteer Reserve Associations (**Part XI**). The concluding **Part XII** contains miscellaneous, supplementary and transitional provisions. The Bill includes a progressive rationalization of regular reserve categories into one per Service instead of the complex existing structure.

Part I Clauses 1-8 Definition of the Reserve Forces

The current reserve forces structure is complex, having developed over time to suit the needs of each Service. Categories of reservists are based both on statute and on prerogative powers. One aim of the Bill is to establish a new, uniform structure where each Service will have a single regular force and a single volunteer reserve force with similar training and call-out liabilities. Currently, the Reserve forces are divided into two broad groups: the volunteer reserves; and the regular reserves incorporating (i) regular reservists and equivalent officers and (ii) pensioners, former soldiers and equivalent officers. These groups are described in more detail in the following extract from evidence submitted by the MOD to the Defence Select Committee in 1995 : -

INTRODUCTION: THE RESERVE FORCES

Al(i) The current structure of Britain's Reserves is quite complex, reflecting the evolution of arrangements to suit the separate needs of the Services. This note describes the current position; the proposed Reserve Forces Bill, which is to be published in draft in 1995 will, if enacted, make some significant changes (see paragraphs xii and xiii). There are three main groups:

- Volunteer Reserve Forces;
- Regular Reserve Forces and equivalent officers;
- Pensioners, former soldiers, and equivalent officers.

(ii) **The Volunteer Reserve Forces** are the Royal Navy Reserve (RNR), the Royal Marines Reserve (RMR), the Territorial Army (TA), and the Royal Auxiliary Air Force (RAuxAF). The RAF Volunteer Reserve (RAFVR) is often included in this category, even though it is in law a part of the Air Force Reserve.

(iii) The RNR, RMR, TA and RAuxAF are established under the Reserve Forces Act 1980 (RFA 80). They each contain both officers and non-commissioned personnel,

all of whom have a liability for call-out for permanent service in circumstances defined in RFA 80, although the terms vary significantly among the Forces (RNR officers are also liable for call-out under prerogative powers). Members have a legal liability to undertake specified minimum training. The majority of members enter voluntarily from civilian life; former Regulars are encouraged to join, but relatively few do so.

(iv) **The Regular Reserves** are the statutory Regular Reserve Forces: the Royal Fleet Reserve (RFR), Army Reserve and Air Force Reserve (AFR), all of which are established under RFA 80, and are described in more detail below. Most Regular other ranks and ratings who have served less than 22 years are transferred to the appropriate Force when their Regular service ends, and are obliged to remain in it for six years or the balance of 22 years, whichever is less. For the former RN and RM members of the RFR the period of liability is three years; in addition, regulations specify an upper age limit of 45 for them. All members of these Forces have a liability for call-out. They also have a liability for training, which has not been enforced in recent years (i). Individuals ending their compulsory period of reserve service may be invited to extend it. There is provision for entry direct from civilian life for the Army Reserve and the AFR, but this is currently used only for recruiting to the RAFVR.

(v) Comparable arrangements for naval and army officers involve the Emergency List RN and the Regular Army Reserve of Officers (RARO) respectively, both of which are governed under the Royal Prerogative.⁶³ The RAF Reserve of Officers is, however, part of the AFR, and therefore under statutory authority.

(vi) Other ranks and ratings who serve for 22 years or more are entitled to the immediate payment of a pension under the Armed Forces Pension Scheme. Under RFA 80, they have a liability for recall to their Regular Force in time of emergency. Officers who have served on pensionable commissions are placed on the RN Retired List, in RARO, and on the RAF Retired List, all of which are governed by the Royal Prerogative. The officers' liability to recall is a consequence of their continuing to hold a commission, and does not depend on the payment of pension or retired pay.

(vii) A similar recall liability is placed by RFA 80 on former soldiers under the age of 45 who are neither members of the Army Reserve nor pensioners; they are known as the Long Term Reserve (LTR). The other Services have not had the same potential need for large numbers of personnel in a crisis, and they therefore do not have similar arrangements. Pensioners, retired officers, and the LTR do not have any liability to train in peace.⁶⁴

⁶³ RARO is divided into five classes: Class I - most ex-Regular officers; Class II officers of TA who have transferred to RARO; Class III officers not liable for service in I or II; Class IV officers transferred from TA but with Home Service only liability; and Class V officers transferred voluntarily from former UDR and Home Service element of Royal Irish Regiment (HC 65, p.37).

⁶⁴ HC 65, pp 33-34

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Clauses 1-2 of the *Bill* provide for the maintenance and membership of the reserve forces: the regular reserves, Royal Fleet Reserve, the Army Reserve and the Air Force Reserve; and the volunteer reserve forces, the Royal Naval Reserve, the Royal Marines Reserve, the Territorial Army and the Royal Auxiliary Air Force.

Clause 3 provides for Parliament to control the number of personnel in each of the reserve forces. The maximum numbers of regulars and reservists of each Service are determined by the annual *Defence Vote A*. The practice however does not currently include a ceiling on Naval reservists which will now presumably be added. Special members of any of the reserve forces will not count against the numbers authorized by Parliament.

Clauses 4 enables Her Majesty to make orders and the Defence Council to make regulations concerning any matter relating to the reserve forces. These shall be laid before Parliament after being made.

Clause 5 allows for any of the reserve forces to be organized into divisions, classes, corps, squadrons, etc.

Clause 6 provides for the establishment of permanent staffs for each of the reserve forces.

Clause 7-8 provides, using Clause 4, for regulations for pay, bounty and allowances to be made to members of the reserve forces, and also pensions, lump sums and gratuities to such members in case of death or disability attributable to service. It additionally provides for part of the *Naval Forces (Enforcement of Maintenance Liabilities) Act 1947* to apply to certain members of the naval reserves.⁶⁵

Part II Clauses 9-27 Enlistment and Conditions of Service

Clauses 9-12 provide for the enlistment and subsequent possible re-engagements of reserve forces personnel and defines the term "enlisting officer". **Schedule 1** sets out the detailed procedures for enlistment. Regulations may be made for enlistment of non-British citizens and for persons who are non-resident in Britain under Clause 4. Countries or territories outside the UK where enlistment may not take place may be specified by Order in Council. Persons of all Army and Volunteer reserves may enlist in units, corps or bodies of their choice and cannot be moved without their consent, subject to Order or Regulations made

⁶⁵ see also Part VIII

under Clause 4. There is no equivalent provisions for the naval reserves because they are not divided in the same way as the reserve land and air forces.⁶⁶

Clause 13 allows for a member of one reserve force to transfer to another with the consent of an authorized officer. This includes transfer from a regular reserve to a volunteer reserve.

Clauses 14-15 provide for the Defence Council, via authorized officers, which include commanding officers, powers to discharge any member of the reserve forces at any time. A person so discharged can appeal to the Defence Council.

Clause 16 provides that a man is entitled to discharge when his term of service expires or, unless he has a reserve liability consequent to previous regular service, by giving three month notice in writing. The latter provision may be dispensed with by a Commanding Officer in the light of exigent circumstances.

Clause 17 provides that a member of the reserves who is undertaking full-time service under Clause 24 can only be discharged once this period of service has come to an end. Similarly, when orders under Clause 52 (call out for national danger) or Clause 54 (call out for warlike operations) have been made, the option of discharge is delayed.

Clause 18 entitles a man serving outside the UK to return to the UK for discharge. If he does so, then he is entitled to free travel to either his place of attestation or intended place of residence.

Clause 19 permits terms of service regulations to be made under Clause 4 which could amend anything in Clauses 9-18. The Clause is modelled on Section 2 of the *Armed Forces Act 1966* which provides a similar power with respect to the regular forces. This measure is intended to give the MOD greater flexibility than currently exists under *RFA 80* which stipulates fixed engagement of one to five years for various forces in different circumstances.⁶⁷

Clause 20 provides for any reservists in permanent service to be placed under the command of any officer and attached or transferred to any body or unit.

⁶⁶ HL Deb 25/1/96 CWH 61

⁶⁷ HL Deb 25/1/96 CWH 65

Clause 21 arises from the fact that there is no legally distinct ex-regular Royal Marine reserve force. Former Royal Marines serve out their reserve commitments as members of the Royal Fleet Reserve. This Clause thus provides for them to become Royal Marines when in training or permanent service. Regular Royal Marines differ from members of the Royal Navy in that they are covered by the *Naval Discipline Act 1957* whilst afloat and the *Army Act 1955* whilst ashore.⁶⁸

Part III Clauses 22-27 Training and Other Duties

The first significant changes to reserve forces legislation are made by Part III which greatly simplifies current arrangements, whereby volunteer reservists wishing to undertake a period of full-time service must leave the volunteer reservists, join the regular services and then rejoin the volunteers when their period of duty has finished.

Clause 22 provides for maximum annual training period of 16 days in aggregate as well as additional training periods of no longer than 36 hours. Such training can be carried out in the UK and elsewhere. This clause legitimizes existing practice whereby, in the TA, for example, reservists can formally train for up to a current total 36 Man Training Days (MTDs) per year. This includes one fortnightly camp per annum as well as one weekend per month and one night a week. Territorials completing the camp and 12 other MTDs are paid an annual bounty.⁶⁹

Clause 23 provides that training obligations applicable to individuals and certain groups can be relaxed. This is intended to provide some flexibility in application of Clause 22. It will be used to apply to cadet service officers who do not have a field training obligation. It could also be used to deal with exceptional personal circumstances or other instances which lead to the cancellation of a unit's annual camp.⁷⁰

Clause 24 provides that a member of the reserve forces may enter into a commitment to undertake a period of full-time service and specifies the obligations involved including being subject to Service law. During the Committee stage of the Bill in the Lords, the MOD was not yet clear how full-time service under this Clause would affect eligibility for bounty or what types of full-time service would qualify for full regular pay rates. There was concern that by undertaking full-time service and thereby not fulfilling the obligations under Clause 22, called out reservists might suffer a financial penalty.⁷¹

⁶⁸ HL Deb 25/1/096 CWH 67

⁶⁹ HC 65, Paras 20, 23

⁷⁰ HL Deb 25/1/96 c.CWH 68-69

⁷¹ HL Deb 25/1/96 CWH 69-71

Clause 25 Under this Clause a reservist may enter into a commitment to undertake additional duties for a period or periods specified in the commitment. It specifies the obligations involved including being subject to Service law whilst on duty. Under Clause 25, reservists will be able to undertake operational duties in the same manner as under Clause 24.⁷²

Clause 26 provides for Parliament to authorize the maximum numbers of officers and men of each of the reserve forces who may enter into commitments under Clauses 24 and 25. These persons will not be counted against the number so authorized for regular Service.

Clause 27 This Clause formalizes the existing arrangements under which reservists may undertake more than their statutory obligations set out in the rest of Part III. Reservists carrying out additional training and duties are still subject to Service law. The Clause will also be used to sanction *ad hoc* domestic disaster relief duties.⁷³

Part IV Clauses 28-37 Special Agreement for Call Out - The High Readiness Reserve

A further innovation of the Bill is the establishment of a new category of High Readiness Reservists which will contain 3-5,000 reservists. In some respects, it is a revival of the Ever Ready Reserve of the 1960s.⁷⁴ In the words of the Defence Select Committee it would aim:

to guarantee the availability of certain specialist skills which are in short supply in the Regular and Reserve Forces. Examples include linguists, medical personnel, intelligence staff and public information officers. Volunteers could be members of any Reserve Force - volunteer or ex-Regular - and would have to meet training, fitness and appropriate professional competences. Those who volunteer will sign an agreement, with the consent of their employer, which would an enhanced liability for call-out, over and above the ordinary liability as a reservist. The agreement would define the precise terms of the liability and specialist training obligations, and would be renewable every 12 months.⁷⁵

Clause 28 sets out the obligations of a reservist who volunteers for the High Readiness Reserve (HRR) or "who enters into a special agreement" to be called out at short notice. The maximum period of permanent service will be nine months. The consent of an employer is required for an employee to join the HRR. If an employee works for less than a period of

⁷² HL Deb 25/1/96 CWH 71

⁷³ HL Deb 25/1/96 CWH 71

⁷⁴ See p.7

⁷⁵ HC 65, Para 53

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14 hours per week then this is not required. Nothing in this Clause prevents either employer or employee requesting deferment or exemption from immediate call out as specified in Part VII

Clauses 29-30 set out the procedures whereby a person who has entered into a special agreement should demonstrate that he has obtained the consent of his employer and also how that person should obtain the permission of a new employer should he change his position.

Clause 31 lays down the circumstances under which special agreements terminate, which must be no more than 12 months after being made.

Clause 32 permits the Secretary of State to call out those who have made special agreements and makes provision for call-out notices. During the Lords stages, certain Members were concerned at the implications of Section 1 of this Clause which might lead HRR reservists to spend long periods being processed at mobilization centres, although this point is clarified in Clause 122.⁷⁶

Clause 33 separates the process of acceptance into service from the process authorizing call-out and serving notices stipulated in the previous Clause. This is intended to provide some flexibility in an emergency whereby HRRs who are unable to reach their designated mobilization centres can still be accepted for permanent service.⁷⁷

Clause 34 provides for the release of persons from service under Part IV and allows for provision to be made for a person to be treated as if he had been accepted into service earlier than he actually was.

Clause 35 grants the Secretary of State powers, subject to such limitations and conditions as may be specified, for the Defence Council or authorized officers to exercise functions under Clauses 32 or 33.

Clause 36 provides for Parliament to authorize the maximum numbers of members of each of the reserve forces to be called out under Part IV. These persons will not be counted against the number so authorized for regular Service.

⁷⁶ HL Deb 25/1/96 CWH 80-83

⁷⁷ HL Deb 25/1/96 CWH 85

Clause 37 defines certain terms used in Part IV, provides that employment under 14 hours a week is not be taken into account for the purposes of Part IV although this can be reduced by statutory instrument subject to affirmative resolution.

A number of concerns have been expressed about the HRR concept. At the moment, it is unclear as to exactly how many persons there will be in this category and of which specialisms, and the frequency of call-out. The latter is obviously of concern to employers who may be reluctant to agree to their employees entering into enhanced liability commitments unless they are aware of exactly what this means for the individual concerned. This may be of particular relevance to possible future medical members of the HRR employed by NHS Trusts.⁷⁸ Furthermore, despite the provision of compensation, when it comes to call-out, employers may utilize the appeals system (both under Part VIII) to delay this happening, which would then undermine the rationale of the rapid response reservist. In drawing up an exact number of HRR reservists, the MOD may have to compensate for this fact in advance. From the point of view of the reserves, particularly of the TA, the piecemeal nature of the HRR recall could be seen as divisive and as undermining unit cohesion; a sentiment reflected in the consultation process.⁷⁹

Part V Clauses 38-49 Employee Agreements - The Sponsored Reserve

The creation of a sponsored reserve is the second major innovation of the Bill. The Defence Select Committee stated that it will consist of: -

members of a civilian workforce carrying out military support functions who are willing to accept special call-out liabilities to serve in an operational area if required. The objective is to allow some support tasks, currently undertaken by Regular personnel, to be contracted out and continued, if necessary, in an operational environment. In order to win such a contract, an employer would have to guarantee that a certain proportion of the relevant workforce would become members of a Reserve force, legally liable for call-out. The principle is that MOD would become responsible for the work and output of the called-out element of the workforce. The detailed arrangements for call-outs and liability including training requirements and medical standards would be specified in the contractors's contract with MOD and in a Sponsored Reserve agreement between the individual and MOD.⁸⁰

Clause 38 provides for the existence of employee agreements or Sponsored Reservists. Under this system, an employer will make an arrangement with the MOD whereby certain of his employees will contract to undertake operational tasks which they are performing in peacetime

⁷⁸ See Clause 122

⁷⁹ HC 65, Para 54

⁸⁰ HC 65 Para 55

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and to undertake training for that purpose. The Clause also allows for the making of orders or regulations affecting the sponsored reserve and also for consultation with representative relevant employers, trade unions and organizations of the self-employed before issuing such order and regulations concerning terms and conditions.

Clause 39 sets out the procedures whereby an employee enters into an employee agreement with his employer's consent and demonstrates the fact. Provisions are made for the content and termination of agreements and for becoming a member of the Sponsored Reserve.

Clause 40 describes the liabilities of members of the Sponsored Reserve for call-out and training. Clauses 16 (notice of termination of service) and 22 (fixed training liabilities) do not apply.

Clause 41 A member of the Sponsored Reserve ceases to have a call-out or training liability when he leaves the employ of an employer with an arrangement with the MOD, exceeds the maximum period of liability stipulated in his employee agreement, or by decision of the Secretary of State. The latter is subject to deferment in case of call out under Clauses 52 (national danger) and 54 (warlike operations).

Clause 42 provides that when his liabilities under Clause 40 cease, a special member is either to be discharged or, in certain circumstances, may transfer to another part of the reserve force.

Clause 43 under this Clause, Sponsored Reservists may be called out "in the light of operational requirements" and arrangements made with employers. The Clause also sets out the procedure for call-out. **Clause 44** provides for the acceptance of Sponsored Reservists into permanent service.

Clause 45 states that a Sponsored Reservist must be released from permanent service within nine months of their acceptance unless either that person has consented to an extension with approval of his employer, or an application for release has been made under Clause 78. Provision is also made for an individual to be treated as if he had been accepted into service earlier than he actually was.

Clause 46 grants the Secretary of State powers, subject to such limitations and conditions as may be specified, for the Defence Council or authorized officers to exercise functions under Clauses 44 or 45.

Clause 47 provides for Parliament to authorize the maximum numbers of members of each of the reserve forces to be called out under Part V. These persons will not be counted against numbers so authorized for regular Service.

Clause 48 provides for Crown servants, employees of sub-contractors and self-employed persons to become sponsored reservists.

Clause 49 defines certain terms used in Part V.

Although there are precedents for the Sponsored Reserve concept in that certain MOD civil servants, including employees of the Meteorological Office and NAAFI, have had a liability to continue their task in uniform in time of crisis, for the first time this will extend to the employees of private companies. As the market testing programme continues, an increasing number of previously uniformed support tasks are likely to be contracted out. In any large deployment, it may become impossible to dispatch an expeditionary force without the presence of contractors' employees who undertake essential maintenance and support tasks. The establishment of the new Sponsored Reserve may therefore become essential for market testing to continue, particularly as it relates to aircraft maintenance. However, the MOD has stressed that the Sponsored Reserve will only operate where it is cost-effective and does not jeopardize operational effectiveness.⁸¹

Employers are apparently "keen to pursue the business opportunities the scheme would provide".⁸² However, concerns have been expressed at the extent to which, although membership of the Sponsored Reserve will legally be entirely voluntary, some may enter its obligations in order to gain employment or indeed employers may indirectly coerce their employees to undertake reserve liabilities in order to secure or retain MOD contracts. Concerns have also been expressed at the way in which members of the Sponsored Reserve, who will not necessarily be familiar with Service culture, will dovetail with the existing reserve organisations and when called out will relate to mobilized forces. Furthermore, even though the military training requirements of the Reserve will be light, including personal weapons handling, first aid and NBC training, it could be argued that individuals interested in undertaking such activities would under normal circumstances have joined the volunteer reserves in the first place.⁸³ It thus remains to be seen whether the MOD will be able to find sufficient recruits for its new Sponsored Reserve.⁸⁴

⁸¹ HL Deb 28/11/95 c.521

⁸² *ibid*

⁸³ HC 65, Para 56

⁸⁴ A number of defence contractors assisted British forces in-theatre during the Gulf War.

Part VI Clauses 50-64 Call Out for Permanent Service

This Part of the Bill provides a wider portfolio of terms of call-out than currently exist under *RFA 80*. An important new provision will allow reservists to be called out specifically to undertake humanitarian, disaster relief and peace-keeping operations overseas.

Clause 50 states the general liability of call-out for permanent service of all reservists subject to general exemptions under Clause 62 and applications under Clause 78. It also defines a call-out order and what it may contain.

Clause 51 provides that a person called out is liable to serve anywhere in the world unless his terms of service are restricted to the UK or part of it. A person in the latter category can volunteer for service abroad in certain circumstances.

Clause 52 This clause is similar to Section 10 of *RFA 80* and would enable the Crown to call out any reservists due to a "great emergency" or "national danger". It also incorporates the powers of call out under Sections 16, 18 (1) and 22 of *RFA 80*. In addition it supersedes the prerogative powers of call out governing officers on the retired and emergency lists of the RN and Royal Marines and of officers of the regular army reserve of officers and certain former RAF officers. It also provides for Parliament to be recalled, should it not be sitting, within five days of an order under this Clause being issued. **Clause 53** provides for the determination of when persons subject to Clause 52 are entitled to be released.

Clause 54 This Clause is similar to Section 11 of *RFA 80* and enables the Secretary of State to make an order authorizing the call out of reservists when it appears to him that warlike operations are in preparation or progress. **Clause 55** provides for the determination of when persons subject to Clause 54 are entitled to be released.

Clause 56 enables the Secretary of State to call out reservists to participate in peacekeeping missions or humanitarian operations outside the UK. **Clause 57** provides for the determination of when persons subject to Clause 56 are entitled to be released. The standard period for call-out under Clause 56 will be nine months. Some concern was expressed at the length of this period during the Lords Committee stage. Lord Bramall wondered why when the usual period of deployment for regulars is six months, why reservists should be called out for longer.⁸⁵ Apparently the extra three months is intended to allow for any necessary training. However, the MOD conceded that the nine month period was compromise between

⁸⁵ HL Deb 30/1/96 CWH 107

the armed forces who wanted to be able to call up reservists for a 12-month period and employers who feared the disruption occasioned by a lengthy absence of an employee.⁸⁶

Clause 58 makes provision for call-out notices. **Clause 59** provides for the acceptance into permanent service of person served with such notices.

Clause 60 states that a reservist called out under Part VI shall be released from service when no longer required; when entitled to release under Clauses 53, 55 or 57; when a call out order has been revoked; or following a successful application for release under Clause 78. Provision is also made for an individual to be treated as if he had been accepted into service earlier than he actually was.

Clause 61 allows the Secretary of State to change the authority under which reservists under this Part and Sponsored Reservists under Part IV have been called out for permanent service.

Clause 62 enables Clause 4 to be used to exempt or relax the liability of persons for call-out under all or any of Part VI.

Clause 63 grants the Secretary of State powers, subject to such limitations and conditions as may be specified, for the Defence Council or authorized officers to exercise functions under Clauses 58 or 61.

Clause 64 defines certain terms used in Part VI.

Part VII Clauses 65-77 Recall for Service of Officers and Former Servicemen

The Part re-enacts powers from RFA 80 to recall Service pensioners and former soldiers "without change to the circumstances in which recall is permitted". However, the liability for recall is to be altered from one based purely on pensionability to one of the period of service since the end of regular service. This is, in part, a product of the possible implementation of sections of the Bett Review which propose that Service pensions should be paid from age 55 or 60 and not from as early as 40, as is now the case.⁸⁷

⁸⁶ HL Deb 30/1/96 CWH 108

⁸⁷ HL Deb 28/11/95 c.522

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Clause 65 sets out the liability for call-out of certain ex-regular officers and servicemen defined in Clause 66. Any such person, once recalled, is deemed to have enlisted in the regular forces. The number so-called out will not be counted against the numbers of regulars annually authorized by Parliament.

Clause 66 defines the ex-regulars who can be called out under Clause 65. This includes all holders of commissions and former other ranks under the age of 55 and within 18 years of leaving the regulars in the case of the Army and the Air Force and within 6 years in the case of the Royal Navy and Royal Marines.

Clause 67 provides that a person called out is liable to serve anywhere in the world unless his terms of service are restricted to the UK or part of it. A person in the latter category can volunteer for service abroad in certain circumstances.

Clause 68 provides for Her Majesty to make an order authorizing the recall of persons in the event of national danger, great emergency or attack on the UK. **Clause 69** provides for the determination of when such persons subject to recall are entitled to be released.

Clause 70 makes provision for call-out notices. **Clause 71** provides for the acceptance into permanent service of person served with such notices.

Clause 72 provides for the release of individuals accepted into service when an order under Clause 68 has been revoked, when so entitled under Clause 69 and by virtue of an application for release under Clause 79.

Clause 73 enables Clause 4 to be used to exempt or relax the liability of persons for call-out under all or any of Part VII.

Clause 74 grants the Secretary of State powers, subject to such limitations and conditions as may be specified, for the Defence Council or authorized officers to exercise functions under Clauses 70.

Clause 75 permits the Secretary of State by regulation to require information from regular reservists and to impose fines at Level 3 (£1,000) for failure to do so or at Level 4 (£2,500) or three months imprisonment or both for making false statements.

Clause 76 states the recall under Clause 65 does not affect effect pension payments.

Clause 77 defines terms used in Part VII.

Part VIII Clauses 78-87 Schemes for Exemption and Financial Assistance

This part introduces safeguards of exemption and deferment of call-out, and also of compensation for financial losses incurred as a result of call-out. All are exercisable by both employer and employee.

The issue of compensation is essential to attracting individuals to join the reserves, particularly the HRR, and to persuading employers to let them do so. In a formalized system of a scheme which operated during the Gulf War, reservists will receive compensation if their civilian earnings are less than their military salary. Payments will be made to bring their total earnings up to their level of civilian pay within an overall ceiling. Additional discretionary payments could be made in cases of hardship. The MOD estimate that 50 per cent of employed reservists could be eligible for payments under this scheme, at an average rate of £3,900 per annum.⁸⁸ In addition, the MOD would also pay employer's contributions to reservists' civilian pensions.

Compensation will also be payable to employers for the costs of recruiting, training and paying staff to cover for their called-out employees. The results of a Compliance Cost Assessment conducted by the MOD indicated that the average payment per reservist over a nine month period would be £1,900.⁸⁹

The actual manner in which compensation schemes will operate will be dependent on regulations made under the Bill, which are subject to consultation with employers' organizations, the Trade Unions and the organizations of the self-employed. Given the increasing number of self-employed or contract employed, the determining of reimbursement may prove difficult in many cases. In autumn 1995, the MOD was still unclear whether a reservist's employer would continue to pay his salary and then claw the sum back from the MOD or whether the Department would pay the reservist a military salary, topped up where appropriate. According to the Territorial Auxiliary and Volunteer Reserve Associations

⁸⁸ Bill 75, p.xv

⁸⁹ *MOD Compliance Cost Assessment: New Reserve Forces Legislation: The Additional Costs to Business Associated with the New Powers in the Reserve Forces Bill*, November 1995, p.16

(TAVRAs), the compensation schemes operating during the Gulf War "did not work well".⁹⁰

Whichever scheme is determined upon, its effectiveness will not be proven until the first significant call-out under the new legislation. It is worth pointing out that MOD's financial analysis appears to be based on calling out a cross section of reservists. Since, in any emergency it is in fact the more skilled HRR reservists who are likely to be mobilized, both they and their employers are likely to demand compensation beyond the average. As part of its analysis, the CCA looked at the employer per capita compensation costs for the call-out of a particular TA hospital. They averaged £3,158 per employee.⁹¹

Clauses 78-79 provide for regulations to be made to allow a reservist who is liable for call out, or his employer, to apply for a deferral or an exemption. The regulations may include any time limit for making applications and the remedies which may be granted. Clause 78 applies to High Readiness Reservists, Sponsored Reservists and other volunteer reservists. Clause 79 applies to regular reservists. Exemptions and deferrals may be made on special economic, business or compassionate grounds. **Clause 80** allows regulations to be made under Clauses 78-79 to apply where an individual has already been accepted into service. **Clause 81** gives examples of the scope of regulations under Clauses 78-79, provides that a former employer may apply under the regulations and also provides for appeal to a Reserve Forces Appeals Tribunal. The Secretary of State should consult employers organizations, trade unions, organizations of the self-employed and Territorial Auxiliary and Volunteer Reserve Associations (TAVRAs) before making such regulations by Statutory Instrument using the negative procedure.

Clause 82 creates an offence of failing to provide information required by regulations under Clauses 78-79, for which the maximum penalty is a Level 4 fine (£2,500) or three months imprisonment or both. Providing false information in any application for deferment or exemption is subject to a maximum of a Level 5 fine (£5,000) or six months imprisonment or both.

Clause 83 allows regulations to be made to recompense High Readiness Reservists or Sponsored Reservists for financial loss incurred by call-out or recall, including pension contributions. **Clause 84** allows similar recompense to be made to employers, partners in a business partnership or the self-employed. **Clause 85** gives examples of the scope of regulations under Clauses 83-84 and also provides for appeal to a Reserve Forces Appeals Tribunal. The Secretary of State should consult employers organizations, trade unions, organizations of the self-employed and TAVR Associations before making such regulations by Statutory Instrument using the negative procedure.

⁹⁰ HC 65, Para 51

⁹¹ MOD CCA, p.16

Clause 86 suspends financial payments under Clauses 83-84 when volunteer reservists (Clause 52) have been called out and regular reservists (Clause 68) have been recalled on the occasion of national danger.

Clause 87 creates an offence of failing to provide information required by regulations under Clauses 83-84, for which the maximum penalty is a Level 4 fine (£2,500) or three months imprisonment or both. Providing false information in any application for financial assistance is subject to a maximum of a Level 5 fine (£5,000) or six months imprisonment or both.

Part IX Clause 88-94 Reserve Forces Appeals Tribunals

In the event of a dispute over compensation or exemption from call-out, both employer and employee will be able to appeal to an independent Reserves Forces Appeal Tribunal. Legal representation will not be necessary. The Defence Select Committee warned that the Tribunals would face heavy workloads following a significant call-out and particularly if deficiencies emerged in the drafting of regulations governing call-out and compensation.⁹²

Clause 88 provides for the establishment and manning of Reserve Forces Appeals Tribunals. Under **Clause 89** the tribunals will hear cases for exemption and deferment for recall or call-out under Clauses 78-79 and for financial recompense under Clauses 83-84. The panel of chairmen of the Tribunals will comprise experienced lawyers chosen by the Lord Chancellor and Lord Advocate (**Clause 90**). The latter will also appoint ordinary members of the Tribunals subject to consultation with employers' organizations, trade unions, organizations of the self-employed and TAVR Associations (**Clause 91**). Each Tribunal will consist of one chairman and two ordinary members. The Tribunal can turn to a serving or retired officer or reservist, appointed by the Lord Chancellor, for advice on service matters (**Clause 92**). Rules of practice and procedure of the Tribunals are to be made by the Secretary of State by SI subject to the negative procedure (**Clause 93**). The Secretary of State is bound by Section 8 of the *Tribunals and Inquiries Act 1992* to consult the Council on Tribunals before he can make such rules.⁹³ **Clause 94** creates offences of giving false statements or failing to give information connected with an appeal (under Clause 95); and of failing to attend a tribunal. The maximum penalty is a Level 5 fine (£5,000) or six months imprisonment or both.

⁹² HC 65, Para 52

⁹³ HL Deb 30/1/96 CWH 121

Part X Clauses 95-109 General Offences and Provision with Respect to Jurisdiction and Evidence

This is, in essence, an update of existing Service law as it applies to reservists. Service law is currently undergoing scrutiny as part of the quinquennial renewal of Armed Forces Act. Called out reservists are subject to the Service Discipline Acts and regulations, including, for example, rules on homosexuality and provisions for the death penalty for certain serious offences.⁹⁴

Clause 95 creates a number of offences against order and good disciplines, each of which may be tried by civil court (summarily) or by court-martial, including, for example, insubordination. The most serious offences can carry penalties up to Level 5 (£5,000) or six months imprisonment or both.

A number of clauses deal with desertion and absence without leave from service, duty or training. **Clauses 96 and 97** create offences in connection with failure to attend when called-out or recalled; and when required to do so by a full-time service, additional duties or obligatory training commitment, respectively. Under **Clause 98**, all these offences can be tried either by civil court or court-martial. Reservists charged with desertion or absence without leave under the Service Discipline Acts can be tried either by civil court or by court-martial.⁹⁵ A court-martial may impose the same penalties for offences under Clauses 96 and 97 as under Service law. If tried by civil court the maximum penalty is up to Level 5 (£5,000) or six months imprisonment or both. **Clause 99** makes false representation of desertion or absence without leave an offence, subject to a maximum penalty on summary conviction of up to Level 5 (£5,000) or six months imprisonment or both. **Schedule 2** is introduced by **Clause 100** which sets out the procedures for dealing with the arrest and subsequent treatment of deserters and absentees. **Clause 101** creates offences of inducing, aiding or abetting a reservist to desert, to remain a deserter or to absent, with a maximum Level 5 penalty £5,000 (and an additional penalty of 6 months imprisonment or both in the case of the latter two). **Clause 102** makes provision for the keeping of records of absentees and the convening of Service boards of inquiry to deal with cases of absence. All offences triable by court-martial under this Part are deemed to be offences under the Service Discipline Acts (**Clause 103**). Under **Clause 104**, civil courts in one part of the UK can try a reservist for an offence committed in the UK outside its jurisdiction, although if the offence is committed in any part of the UK, it can only be triable in that part of the UK. The Clause also deals with the payment of fines imposed by courts-martial. **Clause 105** provides that an offence triable by court-martial committed under Service law by a reservist not in permanent service may be tried summarily by a civil court. **Clause 106** states that an offence tried by court-martial cannot be tried civil court and vice-a-versa. Offences committed during service

⁹⁴ see Research Paper 95/125, *The Armed Forces Bill [Bill 5 of 1995-96]*, December 1995

⁹⁵ The Service Discipline Acts are: *The Army Act 1955*, *The Air Force Act 1955* and *The Naval Discipline Act 1957*

in the reserves by a person who has since left the reserves may be tried by either court up to two months of the offence becoming known or the individual being apprehended (**Clause 107**). **Clause 108** introduces **Schedule 3** which concerns provisions about evidence in proceedings under the Bill. **Clause 109** defines civil court for the purpose of Part X.

Part XI Clauses 110-119 Reserve Associations

This Part provides for the continued existence and operation of the Territorial Auxiliary and Volunteer Reserve Associations (TAVRAs) and, in essence, merely re-enacts provisions of the 1980 Act.

The TAVRAs are responsible for much of the basic administration of the volunteer reserve forces of all Services and also act as a means of expressing the views of reservists to the regular forces and MOD. They are responsible for, *inter alia*, the administration of; the supply of buildings to, the funding for recruiting, and the provision of some training facilities for TA units, Royal Naval, Royal Marine and Royal Air Force reserve units; and Cadet Forces. The TAVRAs liaise with Army districts/divisions (and the regional commands of the other Services). The regional Associations are linked together, and to the MOD, via the Council of TAVRAs, based in London.

Territorial Force Associations were originally established by Haldane. There were originally 93 Associations set up on a county basis. This expanded to 104 before being progressively reduced via amalgamation. There are now 14 regional TAVRAs established under the *RFA 1980*. They are: East Anglia; Eastern Wessex, East Midland; Greater London; Highlands; North West of England & Isle of Man; Lowlands; Northern Ireland; North of England; South East; Wales; Western Wessex; West Midland; and Yorkshire and Humberside.⁹⁶

The President of each TAVRA is a Lord Lieutenant of one of the counties in its region. The Vice Presidents are other such Lord Lieutenants. Each Association is run by a Secretary (and, where necessary, assistant Secretaries). Besides the commanders of TA units, the Associations include other co-opted and unpaid local worthies (councillors, leading businessmen, trade unionists, etc). The Secretaries employ staff who are not civil servants but have similar terms and conditions of service. The Council of the TAVRAs includes senior representatives from the regional Associations. In turn, it has its own Secretariat. Senior members of the Council sit on the Advisory Committee of the TA which is chaired by the Under Secretary of State. CBI, TUC, MOD and Army representatives also sit on the Committee. Members of the Council of TAVRAs sit on the National Employers' Liaison

⁹⁶ Baldwin, p.189

Committee (NELC). There are also regional Employers' Liaison Committees coterminous with the TAVRAs and which also include Association representatives.⁹⁷ In 1994, it was estimated that the cost of the TAVRAs for 1994-95, including salaries, heating, lighting, consumables and vehicles, would be £15.3m. By comparison the TA would cost £114.2m, the RNR £9m, the RMR £2.2m and the RAF volunteer reserves £4.4m.⁹⁸

Clause 110 gives the Defence Council a power to establish TAVRAs by order in any area of the UK, for the areas to be determined for that purpose and to alter such areas. Associations are to be established according to requirements of **Schedule 4** which is introduced by **Clause 111**. The Schedule, which may be amended, retains the current structure of membership of Associations. Under **Clause 116**, two or more Associations can form a joint committee for any purpose in which they have a joint interest. Associations can be wound up under **Clause 119** by Statutory Instrument using the negative procedure.

Clauses 112-113 continue the existing responsibilities and powers of the TAVRAs. **Clause 114** provides for the Defence Council to pay Associations such expenses as it deems necessary. Income from sums received for the TA and RAuxAF may only be used to that purpose, unless the Defence Council decides otherwise, but funds received for which purposes are not specified may be used by the Association as it sees fit. **Clause 115** concerns Association accounts.

Under **Clause 117**, the Defence Council may make regulations in connection with the Associations. The Secretary of State may also make regulations governing the payment of compensation to employees of either the Associations or the Council of TAVRAs who, in his opinion, cease to be employed or suffer a reduction in pay following the winding-up of an association or change its activity (**Clause 118**). Regulations under the Clause are to be made by SI negative procedure.

Part XII Clauses 120-132 Miscellaneous and General Provisions: Reordering the Regular Reserves

This Part contains miscellaneous and general provisions arising from the Bill. Some Clauses are, however, significant in that they implement the progressive simplification of the structure and liabilities of the regular reserve forces. As a result of the *Bill*, each Service will have a single regular reserve force containing both officers and other ranks, both male and female. Arrangements for pensioners and the Army's Long Term Reserve will remain largely unchanged but will be placed in a uniform framework. The existing structure of the regular

⁹⁷ Peedle, pp.33-34 and S. Baldwin, pp.188-193

⁹⁸ HC Deb 31/3/94 c.978w

reserves is set out in an extract from evidence submitted by the MOD to the Defence Select Committee in 1995: -

Structure and Liabilities of Regular Reserves

(viii) *Royal Navy and Royal Marines*

- (a) *Royal Fleet Reserve.* Members of the RFR are divided into two classes: the Special Class, comprising all ex-RN male ratings, Petty Officers (POs), Chief Petty Officers (CPOs) and Warrant Officers (WOs) who must serve for one year after leaving the RN; and the Ordinary Class, comprising ex-regular male ratings, POs and WOs, with service being for two years after discharge from the Special Class, unless voluntarily extended. Ex-Regular ranks of the Royal Marines (RM) also form part of the RFR; RM WOs, NCOs and men serve for three years in the RFR Special Class after discharge from the Regular Forces. Members of the RFR are liable for call-out under the following sections of RFA 80: SIO (national danger), SII (warlike operations), and S16 (actual or apprehended attack on the UK); and under S 37 for training for up to 92 days per year.
- (b) *Ex-Regular Officers.* Ex-Regular officers' liabilities are governed by Orders in Council (1962 and 1982), which provide for their call-out in the event of actual or apprehended attack on the United Kingdom, or when warlike operations are in preparation or progress. They have no liability for training. Ex-Regular naval officers who joined the trained strength on a pensionable commission are placed on the Retired List, whilst those who have served on non-pensionable commissions join the Emergency List. The latter retain their commissions and therefore their recall liability for four years after leaving Regular Service.
- (c) *Pensioners* include former RN ratings and RM other ranks who are in receipt of pensions. They are liable for recall to the RN under S30 of RFA 80 in the event of "any emergency".

(ix) *Army Regular Reserves*

- (a) *Army Reserve.* Regular Army other ranks, after completing their Regular Service, are required to spend a period of up to six years (or the balance of 22 years if less) in the Army Reserve. Members of the Army Reserve are liable for call-out under the following sections of RFA 80: SIO (national danger), SII (warlike operations), and S18 (permanent service for home defence service); and under S38 & S 39 for annual training for one period not exceeding 15 days, and for such other periods of up to 36 hours as may be prescribed.
- (b) *Regular Army Reserve of Officers.* Former Regular officers are placed in RARO, and their liabilities are governed by the Pay Warrant 1964 rather than statute. RARO is divided into five classes; in practice most individuals belong to Class 1. Members of RARO Class I are liable to call-out when warlike operations are in preparation or progress, when national danger is imminent or against an actual or apprehended attack on the UK. Those who

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were commissioned after 1 April 1983 have a liability to train for up to 15 days a year for six years or until the age of 45, whichever is the shorter, and all may participate in voluntary training with Regular Army or Territorial Army units.

- (c) *Pensioners.* Army Pensioners include WOs, NCOs and men of the Regular Army in receipt of a pension, but under 60 years of age, including both men and women. The *Long Term Reserve* (LTR) comprises male former regular soldiers under the age of 45 who are not in the Army Reserve, and who are not receiving a pension. Pensioners and LTR may only be recalled to the Regular Army under RFA 80 S31 to S34 when "national danger is imminent or a great emergency arises", or for Home Defence Service. They have no liability for training.

- (x) *RAF Regular Reserves.*

- (a) *Air Force Reserve.* The AFR includes both members of the RAF Reserve of Officers (RAFRO) and the Class E Reserve of Airmen. Following regular service, officers have a four year liability in RAFRO; airmen and airwomen on completing non-pensionable regular service are transferred to the Class E reserve for six years, or the balance of 22 years if less. All members of the AFR are liable for call-out under the following sections of RFA 80: SIO (national danger), S11 (warlike operations), and S20 (permanent service for home defence service); and under S38 & S39 for annual training for one period not exceeding 15 days, and for other periods of up to 36 hours as may be prescribed.
- (b) *Pensioners.* Air Force Pensioners comprise WOs, NCOs and airmen (but not retired officers) who are in receipt of a pension, but under the age of 60. Pensioners may only be recalled to the RAF under S31 to S33 of RFA 80 when "national danger is imminent or a great emergency arises", or for Home Defence service. They have no liability for training. In addition, any retired officer who is not a member of the AFR is liable to recall to the RAF in the event of an emergency.⁹⁹

Clause 120 introduces **Schedule 5** which concerns the treatment of charitable property of reserve units which are to be disbanded or amalgamated with another body.

Clause 121 introduces **Schedule 6** which makes minor amendments to the *RFA 80* dealing with the position of Lord Lieutenancies.

Clause 122 relates to one of the prime concerns of reservists, that is the safety of their jobs whilst they undertake permanent service. This Clause amends the *Reserve Forces (Safeguard of Employment) Act 1985* to ensure that High Readiness Reservists (Part IV), Sponsored Reservists (Part V), regular reservists (Part VII) and all those subject to general call-out (Part

⁹⁹ HC 65, pp.34-35

VI) are subject to the same level of protection as those called out under *RFA 80*. The 1985 Act "places a duty upon employers to reinstate the reservist employees after those employees have been released from a period of permanent service when called out or recalled. It also makes it a criminal offence for an employer to dismiss an employee on the ground that the employee concerned has a liability to call-out".¹⁰⁰ Clause 122 also amends the 1985 Act to protect reservists from dismissal who are called-out or recalled but who are not accepted for permanent service; and also those on leave or absent from permanent service due to sickness or pregnancy before release or discharge from service.

Despite the government's assurances to the contrary, during the Lords proceedings there was some concern that the protection in the *Reserve Forces (Safeguard of Employment) Act 1985* did not extend to preventing employers from hindering their employees joining the reserve forces. Apparently some NHS trusts are writing clauses into medical staff contracts which do not permit such staff to join the reserves. Following the great reduction in the size of the Service medical corps, the armed forces may in the future be far more dependent on reserve medical units for operational medical support and there are fears that certain highly skilled personnel in this and in other specialist categories will be deterred from joining the reserves, and especially the High Readiness Reserves without stronger protection.¹⁰¹

Clause 123 concerns minor changes to the law on billeting. **Clause 124** enables reservists to benefit from the same exemptions from certain tolls and duties as members of the regular forces. **Clause 125** provides for a reservist not on permanent service not to be penalized for absence from duty due to voting in local, national or European elections.

Clause 126 introduces **Schedule 7** which provides for the amendment of provisions in other armed forces legislation to postpone the discharge or transfer to reserve or continuance in service of Service regulars when Clauses 52 (national danger), 54 (warlike preparations) and 56 (humanitarian and peacekeeping operations) are in operation.

Clauses 128 and 129 refer to transitional classes of reservists. In essence, a number of reservists have reserved rights under *RFA 80*. Even though most of the latter is being repealed, certain sections concerning those with reserved rights will not be repealed whilst there are individuals still subject to them. Although reservists with reserved rights will be able to opt to become fully subject to the new *Bill*, if they do not do so, then their existing position will continue, in some cases for 43 years.¹⁰² Clause 128 brings **Schedule 8** into effect. The Schedule contains transitional provisions concerning the organization of the reserves. These include: the continuation of the Royal Fleet Reserve as a separate body and not as a division of the RNR; a power to abolish the Special Reserve of the Royal Fleet Reserve when it no longer has any members and no person remains liable to serve in it; a power to transfer specified members of the RAFVR to the RAuxAF; a power to transfer officers of the retired and emergency list of the RN into the RFR; a power to transfer Regular

¹⁰⁰ HL Deb 30/1/96 CWH 131

¹⁰¹ See in Committee in HL Deb 30/1/96 CWH 129-133 and also on report HL Deb 27/2/95 1392-1395

¹⁰² HL Deb 27/2/96 CWH 1397-1398

Army Reserve Officers (RARO) into the Army Reserve; and provision to enable existing members of the RAuxAF to be required to train anywhere in the world. The Schedule also formally abolishes the Home Service Force. Clause 129 brings **Schedule 9** into effect. The Schedule will have effect in relation to reservists in the transitional class. *RFA 80* will not apply to those who are not in the transitional class. The Schedule also defines the members of the transitional class and lays down which clauses of the *Bill* apply to them.

Clause 130 enables the Secretary of State to make regulations governing transitional, consequential or saving provisions in connection with the coming into force of this Bill, or in the operation of any enactment repealed or amended by the Bill when the repeal or amendment is not wholly in force.

Clause 131 provides for **Schedule 10** (minor and consequential amendments) and **Schedule 11** (repeals) to have effect .

Clause 127 and **Clause 132** are procedural.

VII The Reserves Abroad: Australia and the USA

Other NATO and Commonwealth countries have increasingly turned to reserves to meet their military commitments. Brief examinations of US and Australian reserve forces provide some comparisons with UK practice.

A. Australia

Australia, with military traditions close to that of Britain, provides one example of reserve forces organization. Regular Australian military manpower totalled 56,100 in mid-1995 with 38,500 Reserves. Of this figure, the Australian Army had a strength of 23,700 regulars and 30,000 reserves.¹⁰³ After two reviews, *The Defence Force and the Community* in 1990 and the *Force Structure Review* of 1991, Australia reconfigured its forces to give reserves a greater role in national defence. Central to these forms was the creation of an Army Ready Reserve brigade for rapid response tasks. This is composed of 20 per cent regulars and 80 per cent Ready Reservists. The latter undertake one year's military service before entering the brigade. They are committed to a minimum of fifty days training a year. In addition to the one Ready Reserve brigade, there are also seven General Reserve Brigades. General Reserves have a commitment of a minimum of 14 days continuous and 12 non-continuous training days a year. The Army also contains a relatively small number of standby reserves, ex-regulars who do not have training obligation.

¹⁰³ IISS, *The Military Balance, 1995-96*, p.173

Smaller numbers of reservists exist in similar categories in the Royal Australian Navy and Royal Australian Air Force. Naval Reserves are involved in Naval Control of Shipping Tasks and provide back up in intelligence and mine warfare roles. The Air Force Reserves include Ready Reserve forces which can be deployed for airfield defence and small numbers of air and ground crew involved in the airlift role. Whereas annual turnover in the Navy and Air Reserves is between five and ten per cent, it rises to 20 per cent in the Army reserves.¹⁰⁴

Under the *Defence Act 1903* reservists can only be called out for service in defence of Australia although this includes for both war-like operations and those which fall short of war.¹⁰⁵ However, although reservists have served in UN peacekeeping operations in Western Sahara, Cambodia and Somalia, they cannot be required to do so.¹⁰⁶ Australian reservists do not currently have a safeguard of return to employment. Legislation to remedy this situation was being prepared by the Labor government defeated in the March general elections. The proposals suggested establishing a system of appeals tribunals but did not include measures to pay financial compensation either to employer or employee for lost earnings in the event of call-out.¹⁰⁷

The new Coalition Government has promised to reform Australia's armed forces reserves. Their manifesto outlined steps to improve the readiness of the General Reserves and also included a commitment to legislation protecting civilian employment. However, the Coalition, given evidence that the Ready Reservists per capita costs were at least 60-65 per cent of regular personnel costs, believes that the Ready Reserve Brigade is too expensive and that the Ready Reserve should be abolished.¹⁰⁸

B. USA

In 1972, the US Department of Defence adopted a Total Force concept which envisaged closely integrating their reserve forces with regular formations in the event of a large mobilization or rapid overseas deployment. US reservists are divided into two broad categories: naval, marine, army and air regular reserves, which include fully formed units under the executive control of the Pentagon; and the Army National Guard (ARNG) and Air National Guard (ANG), more comparable to the TA and RAuxAF. The latter are organized on a state basis and, answerable to State governors, and can only be used for internal security and disaster relief without Presidential decree. All types of reservists can be called out for operations both inside and outside the USA for a period of up to ninety days without Congressional authority. Congressional sanction is required thereafter for any extension of this provision. In 1992 reservists had a training commitment of 39 days per annum.¹⁰⁹

¹⁰⁴ *Defending Australia: Defence White Paper 1994*, pp.73-81

¹⁰⁵ Section 50

¹⁰⁶ *Defending Australia: Defence White Paper 1994*, p.75

¹⁰⁷ Parliament of Australia House of Representative PR, 22/2/96

¹⁰⁸ Liberal-National Party Coalition Manifesto, Para 5.18-5.25

¹⁰⁹ L. Richardson & A. Brayton, 'Reserve Force Training after the Gulf War', *Parameters*, Summer 1992, p.80

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The Gulf War provided a major test of the US mobilization system. A total of 230,000 regular and national guard reservists were mobilized, of which a third served in the Gulf, the remainder backfilling for other units. The US reserves have employment protection and compensation schemes. Observers of the US reserve system also point out that there are many reservists at middle and relatively senior rank, compared with just one TA officer at the rank of brigadier in the UK, and there is also a separate reservists department within the Pentagon headed by its own junior minister.¹¹⁰

An interesting aspect of the US deployment in the Gulf was the fact the majority of reservists were deployed in formed units. Indeed, two Army National Guard Artillery Brigades, using MLRS, provided fire support for the 1 (UK) Armoured Division.¹¹¹ Since the 1980s the US Army had also had plans to mobilize three ARNG brigades to form the third combat brigades of two-brigade regular divisions (the round-out concept). However, on their mobilization they were unable to achieve the combat readiness required to deploy.¹¹² Reserve ANG units did however play a more prominent role in operations.

The Pentagon drew a number of lessons from the Operation Desert Storm. Formed units of the USAR are being concentrated in the support field. The round out concept has been effectively abandoned with the creation of a new category of enhanced brigades attached to regular divisions. Recent analysis by the RAND Corporation and the US Army found that these brigades would today still be unable to meet combat readiness within 90 days. Furthermore, the brigades had annual turnover rates of between 15 and 38 per cent.¹¹³ The Naval Reserves are however being given an increasing role in mine countermeasures and an aircraft carrier will shortly be transferred to the Naval Reserve. The role of the ANG and the USAFR remains prominent with their readiness being regarded as equal to most regular USAF forces, although both are based on large regular cadres.¹¹⁴ However, official inquiries, such as the Commission on Roles and Missions of the Armed Forces, have continued to voice concerns about ARNG readiness and have suggested extensive rationalization.¹¹⁵ Since the end of the Cold War, the Pentagon has continuously sought to reduce the size of the National Guard, in line with cuts in regular forces. However, the strong local political significance of National Guard had made a general reform difficult.¹¹⁶

¹¹⁰ *The Washington Post* 20/2/91 and Julian Brazier MP, 'Sharpening the Sword', Bow Group Pamphlet

¹¹¹ G.Adams & D.Crowson, 'The Army National Guard in a Changing Strategic Environment, *Military Review*, p.40

¹¹² Editorial, *Armed Forces Journal International*, September 1995, p.2

¹¹³ J. Roos, 'Lingering Readiness Pains: National Guard's "Enhanced Brigades" Suffer from All-Too-Familiar Maladies', *Armed Forces Journal International*, September 1995

¹¹⁴ Richardson & Brayton, p.84

¹¹⁵ *ibid*

¹¹⁶ *The International Herald Tribune* 27/12/95 & L. Korb, 'Our Overstuffed Armed Forces', *Foreign Affairs*, November/December 1995, p.32.

VIII Conclusion

The Reserves have played and will continue to play an important role in the defence of the United Kingdom and its interests abroad. As the size of the regular forces continue to decline, they will be increasingly dependent on the mobilization of reservists to mount operations. Indeed, one consequence of the regular redundancies programme, in the short term, is an increase in the number of ex-regulars with a reserve liability. In 1980, the ex-regular and volunteer reservists comprised 46 per cent of total regular and reserve armed forces personnel. By 1995, this figure had increased 58 per cent.¹¹⁷

The *Reserve Forces Bill* is the most radical overhaul of Reserve legislation for many years but only experience will show whether it achieves its aims of more closely integrating the reserve forces into the regulars. Much of its success will depend on informal relationships between the MOD, employers and their reservist employees. The reserves must also overcome possible continuing friction between themselves and the regulars. Many reservists feel that they are viewed as second-class by regular commanders and many regulars regard the volunteers as amateurs. A former Director General of the TA has remarked: -

Finally on the subject of relationships, there comes the question of that which exists between the Regular Army and the TA. Although better than it has been on occasions, there is still room for considerable improvement. Ignorance, envy and disdain on both sides all too often show themselves and for those who care to look for them, tensions between the two halves of 'One Army' are all too evident beneath the surface.¹¹⁸

More generally, the operational effectiveness of many reserve units without significant additional post call-out training may be in doubt. Peacetime levels of training may be inadequate. TA units budget for a total of 36 training days a year, a decrease from 40 per annum prior to 1990-91.¹¹⁹ In 1995, due to work and family commitments, only half of Territorials were able to train for two-thirds of even this lower figure.¹²⁰ In 1995, for example, TA officer candidates undertook a two week course at Sandhurst prior to commissioning. This contrasted with ten weeks continuous officer training in Canada, nine in Australia and up to six months in the USA.¹²¹ Turnover rates of between 25 to 30 per cent per annum are chronically high, although they have not altered significantly since the Haldane reforms.¹²²

In the future, then, it is therefore possible that the gap between the two tiers of reservists will become increasingly wide. Using the new legislation, a small group of specialist reservists

¹¹⁷ *UK Defence Statistics 1995*, Fig. 2.7 and 2.12. 1980: Regulars 320,600, Regular Reserves 192,000 and Volunteers 77,000. 1995: Regulars 233,300, Regular Reserves 262,900 and Volunteers 64,700.

¹¹⁸ M. Naylor, 'The Challenge of the 90s for the Territorial Army', *RUSI Journal*, August 1992, p.19-20

¹¹⁹ HC 65, Para 20

¹²⁰ HC 65, Para 23

¹²¹ HC 65, Para 24

¹²² HC 405-1, p.4

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will be in increasing demand in assisting regular forces in relatively small scale operations around the world. The bulk of the reserves will fulfil a more long-term role in providing a limited base for future expansion of the armed forces should Britain come under direct threat.

Glossary

AFR	Air Force Reserve
ANG	Air National Guard (US)
ARNG	Army National Guard (US)
LTR	Long Term Reserve
MTDs	Man Training Days
RAFRO	RAF Reserve Officers
RAFVR	Royal Air Force Volunteer Reserve
RARO	Regular Army Reserve Officers
RAuxAF	Royal Auxiliary Air Force
RFA 80	Reserve Forces Act 1980
RFR	Royal Fleet Reserve
RIR	Royal Irish Rangers
RMR	Royal Marines Reserve
RNR	Royal Naval Reserve
RNVR	Royal Naval Volunteer Reserve
RNXS	Royal Naval Auxiliary Service
TA	Territorial Army
TAVR	Territorial Army and Volunteer Reserve
TAVRA(s)	Territorial Auxiliary and Volunteer Reserve Association(s)
UDR	Ulster Defence Regiment
USAF	United States Air Force
USAFR	United States Air Force Reserve
USAR	United States Army Reserve

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