Defence Reform Bill: Public Bill Committee Stage

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The intention of the *Defence Reform Bill* is to implement some of the proposals for reform that have been made in two recent White Papers: *Better Defence Acquisition*, Cm 8626 and *Reserves in the Future Force 2020,* Cm 8655.

Specifically, the Bill establishes the arrangements for reforming Defence Equipment and Support (DE&S) and turning it into a Government-Owned, Contractor-Operated (GOCO) organisation. It creates a statutory framework for the governance of MOD single source contracts and makes several amendments to the regulations governing the Reserve Forces.

Second reading of the *Defence Reform Bill* was held on 16 July 2013. Library Research Paper RP13/45 examines the provisions in that Bill, as originally published.

The Public Bill Committee held four general sessions on the principles of Bill at the beginning of September 2013. Line-by-line consideration of the Bill began on 8 October and concluded on 22 October 2013. The Government tabled a number of minor amendments and new clauses, all of which have been adopted. Several opposition amendments were pressed to a vote, although they were subsequently defeated on division.

The Bill, as amended in Committee, is now Bill 118 of the 2013-14 Session. Report Stage is currently scheduled for 20 November 2013. Tabled amendments are available online.

This note looks at the discussion and amendments to the Bill made during the Public Bill Committee stage, and the wider debate on the Bill's proposals, in particular the establishment of a Government-Owned, Contractor-Operated (GOCO) model for Defence Equipment and Support.

On 19 November 2013 the Government announced that one of the consortia bidding for the GOCO contract had withdrawn from the competition. Work is now underway to determine whether it is in the public interest for the MOD to proceed with only one commercial bidder and the public sector comparator (DE&S plus).

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1 General Discussion

The first four sessions of the Committee in September 2013 were given over to oral evidence on the general provisions of the Bill. The majority of those discussions focused on the establishment of a GOCO for defence equipment and support. The MOD issued Invitations to negotiate to two consortia in July 2013: Bechtel with PricewaterhouseCoopers and PA Consulting, and CH2M Hill with Serco and Atkins.

1.1 Establishing a GOCO

Many of the witnesses who gave evidence in all four Committee sessions shared similar concerns over the creation of a GOCO. Namely: the motivation behind the proposals; conflicts of interest among the bidders, foreign ownership and the lack of competition within the GOCO bid process; assurances on intellectual property; and safeguards on performance by the GOCO contractor, including the MOD's ability to act as an intelligent customer.

The Need for a GOCO

Primarily the question was asked why there needs to be a GOCO when the main challenges to defence acquisition (such as an overheated equipment plan) appear to have been largely addressed through the broader defence reform agenda, and that the outstanding issue of skills and competencies could equally be effectively managed within a reformed DE&S. At the heart of that reform would need to be a change in HR practices and the terms and conditions of DE&S employees, compared to other civil service employees.

Garry Graham, Deputy General Secretary of trade union Prospect was of the view that:

> If one looks at some of the drivers in terms of defence procurement and some of the problems that have been experienced historically, there has been overheating in the procurement programme. We are told that the books are balanced. That issue, to some extent, has been resolved. I know people still have questions with regard to that.
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> There has been an issue about fractured relationships. We heard earlier this week about the Levene reforms and efforts being made to reform the types of relationships and decision making within the Department and with stakeholders. The key driving force behind the issue of the GoCo, as we see it, is about skills and competencies within the organisation to meet procurement needs. It has been a frustration on our side, but it cannot be beyond the wit of either man or woman that within the public sector we can have the skills and the competencies. What you need is an HR organisational framework that actually supports those competencies and skills within the organisation, because this function is different from a number of other civil service Departments that I have looked at. There is the issue of supporting specialisms, and the suggestion here is that what is needed is flexibilities—HR and reward flexibilities—to ensure that the appropriate skills and competencies are there. Surely we can achieve that in the public sector?[1]

The Public and Commercial Services Union (PCS) also agreed with this view. In its written submission to the Committee it stated that it "believes that existing DE&S staff already have the vast majority of skills to deliver world-class procurement and that the risks of moving to a GOCO are too high... the work must remain in the civil service and [more must be done] to retain, recruit and incentivise DE&S staff... The perceived problems of recruitment and retention are symptoms of civil service pay restraint, which can be solved by removing the constraints on pay, terms and conditions".[2] In oral evidence, Chris Dando, PCS Ministry of Defence Group President, also suggested that most of the problems in procurement "in our view are not caused within DE&S organisation; most of them are external to it... we believe that the DE&S plus discussions with the Treasury to loosed the Treasury cap on salaries is

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1 Public Bill Committee: Defence Reform Bill, Fourth Sitting, 5 September 2013, Q.153

2 Public Bill Committee: Defence Reform Bill, Written evidence from the Public and Commercial Services Union (DR05)

the right way to do it, rather than to put it out to the private sector where, really, the Government are going to have no control over salaries whatever".[3]

Mr Dando also observed that at present there is a great deal of uncertainty among employees about the future. Of particular concern is whether the TUPE regulations will protect them in a privatised environment, and what assurances are there that jobs will not be moved because a private company can do it cheaper elsewhere.[4] Calls were also made by both union representatives for a coherent set of terms and conditions to be established for all staff, both existing staff and new entrants, in order to avoid the creation of a two–tier work force. Garry Graham observed that "An approach that effectively allows for a two-tier work force within this type of knowledge-based organisation would be deeply damaging, in terms of flexibility and the ability to recruit and retain people".[5]

In its written submission to the Committee, Prospect concluded:

> In short, prospect believes the GOCO solution will not work. Notwithstanding the juicy carrots being dangled in front of them, our members believe that their activities should be conducted by the MOD for Defence, not outside of the MOD for profit.[6]

In contrast, Lord Hamilton, a former defence minister, expressed strong support for the GOCO proposal, staing the belief that "I have always taken the view that private contractors are much better at managing people and motivating them".[7]

In responding to these concerns Minister for Defence Equipment and Support, Philip Dunne, stated:

> How do we do the mechanics of procurement better than we do at the moment? That is why the focus is on three main areas: processes, skills and the tools of the trade, with all of which, it would be fair to say, the present DE&S has handicaps in being able to take advantage of current best business practice that is available in the private sector. That is where we think the private sector contractors can add real value through a GoCo, much of which would be less readily available in a DE&S-plus, although we would like to try to introduce as much as possible into a DE&S-plus.[8]

Bernard Gray also addressed many of these points in his evidence to the Defence Select Committee on 4 September 2013:

> **Q75 Chair:** What you are essentially trying to do is to persuade the Treasury to loosen some of the restrictions on the civil service terms of employment for DE&S-plus. Is it possible for them to do that for DE&S without also doing it for all the other Government Departments?
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> ***Bernard Gray:*** That is the question.
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> **Q76 Chair:** And the answer is?
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> ***Bernard Gray:*** We do not know yet. It comes down to status questions, because there are many different groups of public sector workers. Teachers and doctors, for example, are paid according to different terms and conditions than civil servants and people in

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3 Public Bill Committee: Defence Reform Bill, Fourth Sitting, 5 September 2013, Q.162
4 ibid, Q.157
5 Ibid, Q.156
6 Public Bill Committee: Defence Reform Bill, Written evidence from Prospect (DR03)
7 Public Bill Committee: Defence Reform Bill, Third Sitting, 5 September 2013, Q.93
8 Public Bill Committee: Defence Reform Bill, Fourth Sitting, 5 September 2013, Q.206

local government are paid differently, so there are different classifications of public sector worker. As I think Mr Holloway indicated earlier on, could you have a classification of this engineering stream as a separate thing? It would be possible to do that. I had a conversation with Nick Macpherson at the Treasury, in which he was encouraging about the possibility of doing something. He pointed to the Debt Management Office, which is a relatively small group of people, but they effectively manage the issuance and payment of gilts. They are paid much more according to City-type salaries than they are according to civil service-type salaries. Now, that is a much smaller organisation than ours in population terms, but it would be possible for them to classify us differently if they chose to. On the other hand, there will be a natural anxiety. If DE&S says that it is different, you may get other parts of the public sector turning around and saying that they are different for x reason or y reason, so it is a problem.

Q77 Mrs Moon: If the Treasury does not agree to that liberalisation of employment law, DE&S-plus is dead in the water.

Bernard Gray: It is harder for it to compete. By the way, it is not employment law; it is the way that the Government-

Q78 Mrs Moon: But if the Treasury does not loosen those strings, it is dead in the water.

Bernard Gray: I would not go as far as saying that, but we do not know what we will get out of the other side yet. You are trying to get me to prejudge an experiment that has not yet been run. When I get to the end of the competition and come here to discuss it, we will see what we have in DE&S-plus, what we have in GoCo and which looks like the most viable contribution towards maintaining the acquisition and support of matériel for the armed forces.[9]

It was also observed by several witnesses that, in addition to skills and competencies, more often than not outside interference in the defence acquisition process has been the main cause behind the challenges that DE&S currently face. Professor Trevor Taylor suggested that problems within defence acquisition have not been the responsibility of DE&S but political influence and therefore the proposals for a GOCO will not make any difference in terms of addressing those challenges:

> The GoCo proposal assumes, to my mind, that defence acquisition is a rather technical business where there is a simple concept of value, but in fact that is not the case. Defence acquisition, for all the time that I have been dealing with it, is a highly political business where very difficult choices are made. People are concerned with different aspects of the economy; with foreign relations with Europe and the US; with defence capability, and the difference between up-front capability and whether that capability is really controlled from outside by somebody else who controls the technology; and with how much relative weight you give to purchase price, which you are relatively confident about, and through-life prices, which are much more uncertain. All that stuff is the reality of defence acquisition.
>
> The notion that someone else can go and buy something for you that you will not change your mind about is simplistic. To answer your question, if politicians continue not to want to make difficult decisions about cancelling projects, if the UK continues to

[9] Defence Select Committee, *Uncorrected transcript of oral evidence,* HC 652-i, 4 September 2013

> be ambitious and if the budget does not change accordingly, I do not see how this proposal will make a difference.[10]

Former First Sea Lord, Lord West, also agreed with this point:

> one of the biggest problems we have had in procurement has been changes of political mind about things. That causes one of the biggest problems. Exactly how that will fit into this new GoCo scheme is quite an interesting and exciting prospect [...] It is the political decisions that have made huge differences. [11]

He was also of the view that:

> On any programme there are always a number of military officers involved, who represent the end user. In my opinion, they are liable to interfere in the process, and may possibly prolong it and make it more expensive. Therefore, it is key to know what role the military will play.[12]

Prospect also called for the role of military officers in the GOCO to be clarified.

However, in evidence to the Defence Select Committee Bernard Gray refuted the assertions regarding political interference, arguing instead that:

> Where you do get political interference is in which things [in the equipment programme] you have to slow down [...] My personal experience since being in this job, since we have effectively cut the programme back to a manageable size, is that political interference is not particularly a problem. The competence of both industry and DE&S to be able to manage the programme is a much more significant issue in the delivery of the programme than Ministers attempting to interfere in decisions about how things should be specified.[13]

Conflicts of Interest, Foreign Control and Lack of Competition

Conflicts of interest, the potential for control of the GOCO being placed in foreign hands and the lack of competition within the bidding process were also raised by the committee and the majority of witnesses.

Paul Everitt, Chief Executive of ADS, commented:

> It is very clear, given the economy that exists within the defence sector, that companies that are participants in the sector and suppliers to the MOD and others will also potentially be part of this. At the moment, our assumption is that in contracting for a GoCo—if that is the route that is finally taken—there will be either contractual requirements that prevent companies from bidding for contracts within themselves, or a set of rules put in place to ensure that the relationships are not inappropriate. At the moment, there is an open question as to how the operational aspects of the GoCo will be delivered.[14]

Mr Dando and Mr Graham also expressed their concerns:

> ***Chris Dando:*** I think the biggest concerns are about conflicts of interest, and the extent to which it is possible to protect the knowledge that the DE&S organisation and its various constituent parts will have from spilling out into other activities. We have yet

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10 Public Bill Committee: Defence Reform Bill, First sitting, 3 September 2013, Q.6
11 Public Bill Committee: Defence Reform Bill, Second sitting, 3 September 2013, Q.57
12 Ibid, Q.100
13 Defence Committee*, Uncorrected oral evidence*, HC 652-i, 4 September 2013, Q.5
14 Public Bill Committee: Defence Reform Bill, First Sitting, 3 September 2013, Q.18

to be convinced that the Chinese walls that may need to continue through this organisation will be sufficient to protect that. I can understand that there will be some nervousness from people who already have a contractual relationship with DE&S about the details of their bids and their cost bases being known to a third party. I am not convinced that there is sufficient rigour or protection in the Bill to avoid that, because I am not sure how you would.

Garry Graham: Concerns have been raised about the protection of intellectual property and the Bill's provisions, and about conflicts of interest, particularly if contracts are already let to certain organisations that are bidding to be part of this. My experience of the regulatory environment elsewhere is that it is not just about people's concerns; perceptions have a validity in and of themselves. They may not be able to prove them in a court of law or undertake litigation, but the very fact that there are perceptions or concerns about that is, I think, telling of itself.[15]

Addressing the issue of conflict of interest, Bernard Gray told the Committee:

One of the things that constrains the pool of companies able to do this for us is that we have already ruled out a lot of potential companies for conflict of interest reasons. It has been a very active process, and it has taken about four months to go through it in great detail with all those people. Prime defence contractors—the BAE Systems and Lockheeds of this world—unlike for the lead system integrator role, are barred from doing this. The conflict of interest of the people who are here is pretty small. It is related to a few extant contracts that were let some time ago. They have all accepted that they will not be able to come in and bid for any work that is being managed by the GoCo.[16]

In evidence to the Defence Select Committee Mr Gray went on to provide more detail:

Ms Stuart: Yes. You said that you excluded defence contractors on that basis, but you will never be able to eliminate conflicts of interest completely. Could you say a bit about how you intend to manage those conflict of interest situations and whether there are situations that you could envisage where it would become unacceptable? You gave examples of where you do manage conflict of interest; in nuclear it is fairly well defined [...]

Bernard Gray: Within the governor, we will have a permanent group looking at conflict of interest in the way that we do now. Effectively, if there was something that potentially gave rise to a conflict of interest, we would examine it on a case-by-case basis. We have already been through an exhaustive effort, in pre-qualifying everybody for this, to look through all the potential conflicts of interest. Inevitably you have to take it on a case-by-case basis, but we may well be in a situation where, if there was one, we would say that people have to accept that they are constrained from certain types of work with us. As it happens, neither Hill nor Bechtel do particularly large amounts of work for us at the moment, and that is therefore not a particularly big problem. But they are having to accept that this would be the predominant flavour of what they are doing for the UK Ministry of Defence.

If a particular thing came up, we would look at it from the governor organisation, with the conflict of interest people and commercial people there, to say, "Okay, how do we resolve this?" Broadly speaking, by and large it will have to be resolved in favour of a Caesar's wife judgment about the people running the GoCo.[17]

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15 Public Bill Committee: Defence Reform Bill, Fourth Sitting, 5 September 2013, Q. 169
16 Public Bill Committee: Defence Reform Bill, Fourth Sitting, 5 September 2013, Q.198
17 Defence Committee, *Uncorrected oral evidence*, HC 652-i, 4 September 2013, Q.101

By the very fact that conflicts of interest have ruled out many potential bidders for the GOCO, several Committee members and witnesses went on to question the lack of competition that has subsequently developed within the bid process with only two consortia involved in negotiations. In its written evidence PCS commented:

> With an initial contract length of nine years, the MOD has done no risk analysis on the ability of other contractors to be able to rebid in 2023. Without this risk analysis there is a huge fear the winning contractor will be able to hold the MOD to ransom in years to come.[18]

Garry Graham of Prospect also stated:

> The other concern that we have—I know others have expressed this as well—is that there does not appear to us to be a ready market in terms of a contract. There is not a large number of bidders out there. Certainly, Lord West and others have made the remark that this is not a direction that the US is going in—it is going in a completely different direction, in terms of contractorisation. France and Germany are not going in this direction. A concern about the duration of a contract of that length and size is, ultimately, whether you become a hostage to the contract. Do you have the intelligent customer base to challenge it? If things are not going right, where is the moral hazard for the people who are actually running the contract, in terms of their ability to execute it? So there are a range of complex issues and, if you then add on to that issues of intellectual property and concerns or perceptions about conflict of interest, then it takes you into really difficult territory.[19]

Bernard Gray acknowledged those concerns while reiterating his view that the DE&S-plus option provided a third competitor. He also highlighted the fact that Jacobs Engineering, one of the few companies considered capable of running the GOCO, had been brought in to work with the MOD:

> In the way that I think about the proposition and, as I said at the Defence Committee yesterday, I quite like the formulation, we are running a competition in the private sector, but we are also running a competition with the public sector, so the DE&S-plus model is very real and I invest a lot of time in trying to strengthen that proposition and to force it ahead to be as good as it possibly can be. I like the proposition that I can go to the private sector potential providers and say, "You need to try harder, because the public sector's pushing really hard here." I don't know why I like this, but I quite like being able to go to the Treasury and the Cabinet Office and say,"You've got to be able to do better in terms of what we can do with the public sector work force here in order for the public sector to be competitive against the bid." We have that double tension there, which I think is very helpful.
>
> Would I like more bidders? Yes, we would always like those, but there are constraints in this competition in that we are looking for a highly skilled organisation. You cannot just have anybody walking in. There are potentially four, five or six worldwide companies that are of a scale to do this, and we have hired one of them on our side of the bid.[20]

On the issue of foreign control of the GOCO, Professor Trevor Taylor noted:

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18 Public Bill Committee: Defence Reform Bill, Written evidence from the Public and Commercial Services Union (DR05), para.15

19 Public Bill Committee: Defence Reform Bill, Fourth Sitting, 5 September 2013, Q.154

20 Public Bill Committee: Defence Reform Bill, Fourth Sitting, 5 September 2013, Q.193

> A little account should also be taken of how non-UK businesses, particularly businesses from Europe, might feel about putting commercially and technically sensitive information into an organisation that was run by American companies. It is not just what British companies might feel; there is also a confidence factor to do with what the views are of people from the continent who we might want to bid on our contracts.[21]

Lord West argued however,

> I think that there would be a problem if we were talking about European contractors bidding for this business, but not if they are mainly American. I do not know who is involved at all, but the question of sensitivity over technology is much more of an American problem than it is anybody else's.[22]

In evidence to the Defence Select Committee Mr Gray attempted to clarify the MOD's position on foreign ownership and its implications:

> **Sir Bob Russell:** I deliberately picked my words carefully, so I will try and repeat them carefully. Is it the case that in terms of the UK's plan to outsource procurement of military equipment to the private sector, it is likely that the contract will be won by a non-UK company?
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> ***Bernard Gray:*** The GoCo competition that we are running at the moment is composed of two consortia, both of which contain an American and two British companies, as parent bidders, if you like. The company that runs this will be a UK limited company, but the parent shareholders of that would be, in both cases, partly American. So the short answer to that question is yes, I suppose.
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> **Sir Bob Russell:** So we have one of the major military nations in the world, with its procurement with a significant stake held by foreign companies.
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> ***Bernard Gray:*** Yes, but in the way that I described before, that already happens in some of the most sensitive areas. For example, AWE has two American shareholders and one British shareholder in that structure. Our nuclear weapons manufacturing, maintenance and development facility has a preponderance of US companies running that, for example-if you call it in that way. The reality of the situation is that AWEML is a UK-registered company and operates under similar constraints.
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> **Sir Bob Russell:** But lots of companies are UK-registered; the question is about them being foreign-owned.
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> ***Bernard Gray:*** I understand, and I am saying that we place constraints on-there is a boundary around-what that UK company, which houses all the information, finances and national security issues, can pass beyond its boundary. That operates today, both in the nuclear weapons field and in the GoCo in Aldermaston, and it also applies to other major contractors-as I have said, in the case of, for example, Lockheed Martin UK and Thales UK.[23]

PCS also raised a number of moral and ethical questions over the companies currently competing for the GOCO contract. In its written evidence PCS stated:

> The government should lead the rest of the country by example when they are letting public sector contracts. It is therefore disappointing that two of the bidding consortiums

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21 Public Bill Committee: Defence Reform Bill , First sitting, Q.18
22 Public Bill Committee: Defence Reform Bill , Third sitting, Q.105
23 Defence Committee, Uncorrected oral evidence, HC 652-i, 4 September 2013, Q.88-90

> have chequered histories. In the US, CH2M Hill paid an $18.5 million (£12.2m) fine for fraud on government contracts and Bechtel paid a $458m (£301m) fine for shoddy work - leading to a death - on a public contract.
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> When the CH2M Hill fine was announced the US Department of Justice said: "This sort of systemic fraud is an appalling abuse of the trust we place in our contractors." Does the MoD now really wish to deal with such companies and run even more risk if the department is brought into disrepute.[24]

Outside of Parliament, concerns over conflict of interest continue to be raised within the media and elsewhere. A number of recent articles in *The Independent* and *The Independent on Sunday* have highlighted:

> All of the companies involved in the two bid teams have potential conflicts of interest. For example, the accountants PricewaterhouseCoopers is part of the team led by the US group Bechtel, meaning that it could end up handing out contracts to defence firms that it audits [...]
>
> Serco...is at the centre of the scandal that allegedly saw the taxpayer charged £50m to monitor non-existent electronic tags allocated to the dead and those who were back in custody [...]
>
> These two firms [Serco and Bechtel] are working together on a bid for DIO [the Defence Infrastructure Organisation] and are widely thought to be hot favourites. Should they win and Mr Hammond pursues his preferred plan for DE&S, that would mean one of Serco or Bechtel would be responsible for both agencies and more than half of the MOD's entire budget.
>
> Even if the reality turned out to be that this is not a problem in practice, at the bare minimum the idea that a company [...] has that much control over national defence is distinctly unpalatable. Any decision that the company made would also be open to accusations of laziness through power or bias toward certain defence contractors, whether there any truth in those claims or not [...]
>
> In other words, defence reforms might be a good idea in theory, but in practice they look like a complete mess.[25]

Suggestions have thus been made that Labour will seek to make a number of "tough amendments" to the Bill, focusing on conflicts of interest and concerns over foreign control.[26]

Safeguards on Performance

Leading on from the discussion over conflicts of interest and the lack of competition in the bid process, has been the broader debate over how the MOD can therefore safeguard the performance of the GOCO and provide an intelligent customer function to challenge it.

As Chris Dando acknowledged "there is very clear evidence that those contractual relationships lead to complacency, and after all MOD is not very good at letting, managing and co-ordinating contracts, if that is why the Government are proposing to do what they are doing, it seems odd to us that we are going to have a super-contract to manage this".[27] Along

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[24] Public Bill Committee: Defence Reform Bill, Written evidence from the Public and Commercial Services Union (DR05), para 45-46

[25] "Labour targets privatisation of defence body", *The Independent on Sunday,* 8 September 2013 and "Audacious they may be, but defence reforms look a complete mess", *The Independent,* 15 August 2013

[26] "Labour targets privatisation of defence body", *The Independent on Sunday,* 8 September 2013

[27] Public Bill Committee: Defence Reform Bill, Fourth Sitting, 5 September 2013, Q.159

the same theme, Lord West also expressed concern over the private sector handling of other large contracts such as the NHS computer system, and the cost overruns that have been incurred stating that "private does not necessarily mean cheaper".[28]

In order to provide some reassurances on safeguarding performance, Bernard Gray made the following comments:

> What safeguards do we have on performance? A lot of this is not in the legislation because the legislation is, in structure, enabling but it is contained in the draft contract that we have for delivery of the project [...[all contract performance is being controlled by an organisation that we call the governor organisation at the centre of the Ministry of Defence [...]
>
> On an enduring basis, we need to make sure that we retain an intelligent customer function capable of recognising what good value looks like. That will be done in a variety of ways, which include using part of the cost analysis service that I mentioned earlier; using a large part of Ms Mason's organisation, which sits at the centre of the Ministry of Defence and effectively offers a strategic, independent view of commercial activities; and the retention of some external advisers such as the engineering firm I mentioned earlier. Their job will be to oversee the performance of that contract. My contention is that it is easier in those circumstances to have a credible intelligent customer community that we can recruit, retain and make effective when we are talking about a few hundred people than it is at the level of thousands of people when we are trying to do it inside DE&S.[29]

In the event that the GOCO fails to deliver Mr Gray confirmed "We have set it up in a way that allows us to be effectively able to take it back in-house very cleanly. We have looked at other examples and we have already engaged, as it were, an alternative provider to sit on the Government's side of the fence. If we chose to take it back in-house and run it through the governor and the engineering firm we have hired [Jacobs Engineering] to assist the governor team, we could do that, and we could decide whether we wished to run a subsequent competition to replace the GOCO contractor in the long term or to reintegrate it in the Ministry of Defence".

Intellectual Property

Assuring intellectual property within the GOCO structure was also raised as a concern by many, in particular the trade association ADS. In its written submission to the Committee ADS noted:

> There is inadequate protection for suppliers' IP and commercially sensitive information (Clauses 7 and 8)**.** IP is critical to the success of the UK Defence Industry and the Bill must consider proper safeguards or risk a loss of business confidence [...]
>
> Elements within the consortia bidding for the GOCO contract will at times inevitably compete, both in the UK and abroad, with companies not bidding for the contract. The Bill must provide safeguards to ensure UK industry IP is protected. Sanctions should be put in place to deter IP infringement, deliberate or otherwise.
>
> Clauses 7 and 8 take rights away from the disclosing party or copyright owner without any right to objection and without compensation.

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[28] Public Bill Committee: Defence Reform Bill, Second Sitting, 3 September 2013, Q.30

[29] Public Bill Committee: Defence Reform Bill, Fourth Sitting, 5 September 2013, Q.176 and 188

> 1.5. ADS has serious concerns about the proposed provisions in Clauses 7 and 8. We recommend that, in the case of copyright, the existing Crown user rights under the IPR DEFCONS should be preserved. [1] Clauses 7 & 8 should therefore be removed from the Bill.[30]

It also called for stronger safeguards to be set out in Part 1 of the Bill, akin to the criminal sanctions that will apply to the SSRO (clause 37):

> A lack of sufficient safeguards may undermine MOD's ability to be an intelligent customer. Industry trusts MOD and is willing to give it access to its IP and commercially sensitive information. Without stringent safeguards, that confidence will be lost and companies may become unwilling to share their information with MOD. The consequence would be a more transactional relationship between MOD and industry.
>
> Part 1 should provide stronger safeguards to protect suppliers' IP and private and commercially sensitive information. A new clause should be introduced in Part 1 to provide for a criminal offence of failure to protect, or prevent the unauthorised use of, suppliers' protected information.[31]

This issue of no legal protection for intellectual property in relation to the GOCO, when the Bill establishes such provision in part 2 in relation to single source contracts and the SSRO, was also raised by the Defence Select Committee. Giving evidence to that Committee, Bernard Gray set out the Government's current thinking on this issue:

> There is legal protection. At the moment it happens to be civil law rather than criminal law, so in the contract and the articles of association of GOCO... they have an obligation to protect any intellectual property that they are holding [...] in the articles of association and in the draft contract, it will be set out that in perpetuity they are not able to take that data and use it in some third party environment...
>
> Within the SSRO we are going to require the industry to declare a significantly greater amount of detailed information than they do to us today... therefore there has been pressure from industry to say "we need some increase in sanction against that".[32]

However, acknowledging the concerns that have been raised, he did go on to state that the MOD is currently considering applying criminal sanctions to both Parts of the Bill:

> at the moment, we think that on our side the civil sanctions are pretty onerous and sufficient. But we accept that there is a difference between us in the two things, and it may well be that we turn around and say, "Evaluating all those things together, why don't we have the criminal sanction apply to both sides, on top of the significant civil sanctions that exist?" We are thinking about that.[33]

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30 Public Bill Committee: Defence Reform Bill, Written Evidence from ADS (DR04)
31 Ibid
32 Defence Committee, *Uncorrected oral evidence*, HC 652-i, 4 September 2013, Q.48
33 Ibid

1.2 Single Source Contract Regulations

The Single Source Contract Regulations received significantly less attention within the Committee's general sessions, in part due to the fact that the draft regulations, containing most of the detail, are yet to be publicly published.[34]

However, several issues were raised in relation to the exemption of certain contracts from scrutiny and the impact additional regulation will have on companies.

Paul Everitt of ADS commented:

> We are concerned, again, about what appears quite a powerful right for the Secretary of State to waive this regime for specific contracts, but there is no information on the circumstances where that waiver would be given. For us, I think, it is about having some clarity as to why a waiver would be given, and in what circumstances it would be provided. I guess that the suspicion from industry is that we believe that some of the commercial arrangements, particularly those linked to Government-to-Government deals, would not allow such a type of scrutiny, or that companies providing that support from outside the UK would not sign up to such a type of scrutiny. That seems, potentially, an unfair set of circumstances or not a level playing field. Domestic suppliers would potentially have to meet quite onerous requirements, but those supplying from outside the UK would not have to meet those requirements.
>
> The reverse, if you like, is that when UK businesses compete in foreign markets, we very much have to deliver against the requirements that are operating in that regime. I think we can understand that there are circumstances where a waiver would be required. We just want to ensure that it is explicit as to why it is being taken up.[35]

In its written submission Prospect also questioned whether a move toward greater regulation of single source contracts would cause a behavioural change in employers. Specifically it suggested that "a possible result of the increased scrutiny of the pricing of contracts and company overheads by the SSRO may inadvertently cause job losses, as contractors trim budgets to comply with stricter transparency rules".[36]

Lord West also questioned whether independence of the new regulatory body could be assured.

1.3 The Reserves

As the Minister for Defence equipment and Support, Philip Dunne, noted in his evidence to the Bill Committee:

> The Bill has relatively few clauses that relate to Reserves, largely because we think that most of what needs to be done to the Reserves does not require legislation... we think that we have covered the things that require legislation, which is why we have put them in the Bill. We also recognise that there is an opportunity, in two years' time, for the quinquennial defence Bill to make further changes if we have missed anything out,

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[34] In the Committee session of 15 October 2013 the MOD confirmed that "we will soon share with industry the draft regulations provided to the Committee last week. I anticipate a considerable number of comments and I will ensure that industry's concerns are carefully considered before the regulations are finalised" (Public Bill Committee: Defence Reform Bill, Ninth sitting, c295

[35] Public Bill Committee: Defence Reform Bill, First Sitting, Q.26

[36] Public Bill Committee: Defence Reform Bill, Written evidence from Prospect (DR03)

> or if we think something needs to be adopted. That gives an adequate belt and braces.[37]

With reference to the effect that changes to Reserves will have on SMEs, Mike Cherry of the Federation of Small Businesses expressed support for the concept of expanding the maximum call-out period for reservists to 12 months instead of 6:

> Because if you have a skilled person who is away, you then have to engage somebody else who may not have those skills, so there is more training involved to bring them up to speed for that business. On that aspect, there is benefit in a longer deployment rather than a shorter one, where you may have somebody who is just not able to come up to the full speed that the business needs for a couple of months. That is a very large segment of that six month period.[38]

In its written submission to the Committee the FSB also welcomed the proposals to compensate employers of Reservists. However, it went on to question whether £500 per month will be sufficient. It also suggested that, in addition, to financial compensation, greater assistance should be provided to employers in finding replacement staff. Specifically the FSB has suggested that the Bill should introduce measures to encourage SMEs to employ members of the reserve forces, and Regular personnel once they have completed their service. Their submission notes:

> The FSB suggests that in certain sectors where particular skills are essential, there is a 'central pool' of labour that could fill vacancies for any employer. Secondly, there could be a far better way of 'matching' regulars (and possibly those Reservists) who wanted to find a job, with employers who had vacancies – in essence an MOD-led 'matching service' which could operate online but also at Job Centre Plus branches, Armed Forces recruitment centres and Territorial Army centres.[39]

Although not directly set out in the Bill,[40] concerns were also raised within the Committee on the broader issue of Reservist recruitment and in particular the ability to meet the targets required under Future Force 2020 (i.e. 30,000 Reservists, with a further 8,000 in training by 2020). Lord West questioned whether the Army will actually manage to recruit the number of Reserves that will be necessary and at the readiness level required particularly if the UK "got involved in some sort of enduring operation, it could be a real problem and we could have huge difficulty in getting and keeping the numbers we want to".[41] With respect to SME employers of Reservists he also went on to comment

> It is really difficult for some companies. I am involved with micros and VSMEs, and normally they are really good companies, with bright, British people. They want to be involved, so in a company of six, there might be four in the Reserves. That is a real crippler if they are being used on a regular basis, and I am not sure whether we have resolved that in the Bill. I would like to think that we have, but I am not sure.[42]

Lord Hamilton also picked up on this point:

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37 Public Bill Committee: Defence Reform Bill, Fourth Sitting, 5 September 2013, Q.222

38 Public Bill Committee: Defence Reform Bill, Second sitting, Q.74

39 Public Bill Committee: Defence Reform Bill, Written evidence from the Federation of Small Business, DR02,

40 Part 3 of the Bill introduces a number of measures intended to support the changes for the Reserves that are envisaged under the plans for *Army 2020* and in the July 2013 White Paper *Reserves in the Future Force 2020* , including increasing the number of trained Reservists. The Bill itself does not set out legal provision for changing the size of the Reserve Forces.

41 Public Bill Committee: Defence Reform Bill, Second sitting, Q31 and 41

42 Ibid, Q31

> I am also very concerned about these ambitious programmes to have 30,000 Reservists. As I suggested in my note, the problem with Reservists is that in the old days, if you were a member of the Territorial Army, you went off at weekends—outside company time—and you asked the boss if you could possibly go to a camp on Salisbury plain for a fortnight in August, which is when the demands on his business were minimal anyway, so he was happy to let you go. Nowadays, you are away for a year. If you spend six months in Afghanistan with training and whatever, you are probably out of place for 12 months. That is a serious burden on any business. During the year, you have to be replaced by somebody else, who may turn out to be better; if he is worse, he has to be got rid of when you come back. It is a very different and difficult scenario, and I do not think that employers will be in any way as supportive as they have been of the Territorial Army in the past.[43]

However, Lieutenant-General Andrew Gregory, Chief of Defence Personnel expressed his confidence that the targets could be achieved within the timeframe set out:

> I am the senior responsible officer accountable to the Secretary of State for the delivery of Future Reserves 2020, and I am confident that we can effect the numbers and the capability required as part of the integrated force that the Air Chief Marshal has talked about. There are a number of initiatives to take forward the White Paper, which was published only in July, and to make sure that people—this comes back to your question, ma'am—understand the proposition for the individual and the employer, and the benefits. I am therefore confident that we can deliver plan A.
>
> **Stephen Gilbert:** So there is no Plan B?
>
> ***Lieutenant-General Gregory:*** I am confident that we can deliver plan A.[44]

This issue of cutting the size of the Regular Army and boosting the Reserves has been debated extensively, and both widely supported and criticised, since the announcements on *Army 2020* were made in 2012. In recent weeks a number of Conservative backbenchers are reported to have written to the Secretary of State for Defence calling for the plan to be scrapped, suggesting that it was "clearly born of financial necessity and not strategic design" and would not deliver the expected cost savings. An article in *The Daily Telegraph* on 14 September 2013 went so far as to suggest that backbench opposition to the plan could affect the progress of the Defence Reform Bill, claiming that "a substantial revolt could see the Government risking an embarrassing defeat".[45]

A backbench debate on defence reform and the Reserves was held on 17 October 2013.

2 Committee Amendments

Line by line scrutiny of the Bill took place in Committee from 8-22 October 2013. The following information looks at the Government amendments that were tabled and agreed, and the opposition amendments that were put to a vote. While clause 8 was put to a vote (the clause was subsequently agreed to stand part of the Bill),[46] it was on the principle of the clause and not as a result of any tabled amendments. Therefore that vote is not examined in

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43 Public Bill Committee: Defence Reform Bill, Third sitting, 5 September 2013, Q.117
44 Ibid, Q.129
45 "Tory MPs revolt over Army cuts", *The Daily Telegraph,* 14 September 2013
46 By a vote of 9-5 (Division No.3)

this briefing. The Committee's consideration of this clause is available at: Defence Reform Bill, Eighth Sitting.

All other debate and tabled amendments can be accessed at: Defence Reform Bill 2013-14.

The clause numbers below refer to the numbering set out in the original Bill (Bill 84).

2.1 Government Amendments

At the beginning of October the Government tabled several amendments to the existing clauses of the Bill, and a number of new clauses, for consideration in the Committee. All Government amendments have been adopted.

Role of the SSRO in Referrals

Amendments 18 and 19 made minor adjustments to **clauses 18 and 20** respectively in relation to the ability to refer matters, such as decisions on contract pricing adjustments, to the SSRO for a binding determination. This right was set out in the Bill, as presented, in clauses 18 (3) and 20 (5). Clause 18 specifically allowed either Party to refer a matter to the SSRO at any time, thereby implying that a party could refer a matter to the SSRO many years after a contract had ended.

Following agreement of amendment 18 this unlimited time period has been removed, as has the reference to the contract price first having to be determined in accordance with clause 15, which the Government considered added nothing to the Bill. Amendment 19 makes similar provision with respect to clause 20.

The time limits applicable to possible SSRO referrals will instead be set down in the single source contract regulations (SSCR), as provided for under **new clause 5**.[47] That new clause also makes provision for the SSCR to specify the matters to which the SSRO must have regard in making any determination on contract pricing adjustments. In speaking to these amendments, MOD Minister, Philip Dunne, commented:

> The SSRO referrals were never designed to add risk into single-source procurement. We understand that there might be occasions when a supplier and the MOD are simply uncertain as to whether a cost is allowable. In that case, either party can refer the matter to the SSRO for an opinion. If that is used as the basis for pricing, the parties can be confident that they have followed a reasonable interpretation of the pricing rules.
>
> The purpose of these opinions and determinations is to ensure value for money for the Government and a fair and reasonable price for contractors under qualifying defence contracts. However, the time period in which referrals may be made to the SSRO is not, as currently drafted, clearly specified... it is therefore possible that one party could refer the matter to the SSRO many years – or conceivably, even decades – after the contract has ended. That is clearly unreasonable and was not our intent.
>
> To specify time periods for each referral in the Bill would, however, require many amendments; it would also introduce inflexibility into the framework. We would therefore like to be able to specify time limits in the single source contract regulations, allowing them to be changed if necessary, particularly in response to a recommendation by the SSRO under its duty to review the framework.[48]

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47 Clause 41 in Bill 118

48 Public Bill Committee: Defence Reform Bill, Tenth Sitting, c317

He went on to state:

> The second part of new clause 5 will provide greater certainty to both parties of what the outcome of the binding financial determinations is likely to be... determinations made by the SSRO are final, subject only to judicial review, and as currently drafted neither the Bill nor the regulations specifies the matters the SSRO should consider in arriving at a determination. Although the SSRO, as an independent and expert body, can be trusted to make determinations on a proper basis, we feel it would be helpful to have these matters set out with clarity, on a non-exhaustive basis, in the regulations [...]
>
> Taken together, we believe that the three provisions will provide improved clarity for the SSRO referrals process, a clarity that should be welcomed both by Government and by industry.[49]

Enforcement of Pricing Adjustments

The amendments/new clauses outlined above clarify the SSRO's role in making final determinations in relation to contract prices. While the Government's intent is that any price adjustments should be binding, at present, however, the Bill does not provide any enforcement mechanism.

New clause 4[50] therefore provides for that enforcement mechanism, including the interest to be charged if a price adjustment is not paid by the due date, which will be determined by the SSRO.

Records

As initially drafted, the Bill requires single source suppliers to provide the MOD with access to records, for the purposes of auditing and verifying costs, pricing, performance and sub-contracts (**clause 22**). It also obliges them to provide standard reports relating to contracts to the MOD (**clauses 23 and 24**) and makes it a statutory duty for a contractor to notify the MOD of any issues, events or circumstances which are likely to have a material effect on the costs, price or performance of a contract (**clause 26**). Examples of such events include corporate changes that have a material effect, failure of the supply chain or a problem with system integration.[51] Under **clause 25** the SSCR may disapply a requirement on the prime contractor to provide access to records and produce standard reports. As initially drafted this clause did not, however, apply to clause 26 (duty to report).

The government has acknowledged that many of the records to which the MOD would require access are held electronically and that without amendment, there would be a risk "that we will not have access to the records we require or that such records may be undecipherable, and that unintended costs will be imposed upon industry to convert records".[52] **Amendment 20** therefore sought to clarify that the records referred to in **clause 22** cover both hard copy, and electronic, records.

Amendment 21 makes changes to **clause 23**, thereby allowing the SSCR to make provision for specified reports to be required from contractors on an ad hoc basis, which the Bill in its initial form does not allow for. In speaking to these amendments Philip Dunne suggested that such ad hoc reports would be required "primarily in response to unforeseen events during the

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49 Public Bill Committee: Defence Reform Bill, Tenth Sitting, c318
50 Clause 22 in Bill 118
51 Public Bill Committee: Defence Reform Bill, Eleventh Sitting, c341
52 Public Bill Committee: Defence Reform Bill, Tenth Sitting, c326

course of the contract. Those events could include signing a material contract amendment, or the supplier notifying us that the financial health of a project is rapidly deteriorating" and that "under the current drafting, we could not make regulations requiring suppliers to provide reports in response to individual requirements triggered by such events".

Amendments 22 and 23 both amend **clause 25** to make it applicable to clause 26 and the duty on contractors to report issues relating to a contract. In the Committee session the Minister made clear that both amendments had been tabled at the request of industry. As a result of these amendments clause 25 has now been moved so that it will appear in the Bill after current clause 26.

Delegation of Powers to the GOCO Contractor

In order to ensure coherence with Part 1 of the Bill, under Part 2 the Secretary of State may delegate certain powers/functions to the GOCO contractor, which is referred to in this section as "an authorised person". In the original bill, however, this provision was not included in clause 28 relating to qualifying sub-contracts that will also be subject to the provisions of Part 2 of this Bill.

In speaking to **amendments 24 and 25**, relating to **clause 28**, the Minister stated:

> Because we are not in control of the subcontracting process, there is a risk that a subcontractor might not be aware that their contract falls under part 2 until after they have signed. In our view, that would not be reasonable. Clause 28 requires prime contractors to notify a prospective subcontractor prior to contract let. If they do not, the provisions of part 2 will not apply.
>
> The prime contractor must also notify the secretary of State, so that we are aware of all the contracts under the framework and can make appropriate use of our rights. However, under current drafting, a supplier could not fulfil their duty by notifying the GOCO... monitoring the flow down the supply chain of the single source framework would be a procurement activity delegated to a GOCO.[53]

Role of the SSRO in Recording, Review and Analysis

Under **clause 35** the SSRO will maintain records of single source contracts and their duration, monitor contractors' compliance with their reporting obligations and analyse reports and other information provided by contractors. Subsection 5 of that clause allows the Secretary of State to provide the results of any SSRO analysis to the GOCO, but not to be otherwise disclosed.

The first part of subsection 5 was considered unnecessary by the Government because Schedule 5, on the disclosure of information, already provides for the Secretary of State to provide any protected information to the GOCO. The second part of subsection 5 on wider disclosure was also considered to be problematic as it placed a full statutory bar on the disclosure of such information, instead of letting that information be dealt with under schedule 5, which allows certain permitted disclosures, including a freedom of information request. **Amendment 26** therefore removes this entire subsection from clause 35.

Restrictions on Disclosing Information

Clause 37 gives effect to **Schedule 5** which creates a criminal offence of disclosing protected information obtained in relation to single source contracts.

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[53] Public Bill Committee: Defence Reform Bill, Eleventh Sitting, c344

Similarly to clause 28 (see above), schedule 5 as originally drafted only applies to information provided to either the Secretary of State or the SSRO, and not the GOCO. In practice, therefore, all protected information provided under part 2 would be required to go to the Secretary of State before it could be passed on to the GOCO. **Amendments 27 and 28** would therefore allow any information passed directly to the GOCO to be subject to the criminal offence provisions set down in schedule 5.

As outlined above, all Government amendments and new clauses were adopted in Committee.

2.2 Opposition Amendments

The Opposition tabled a number of bill amendments, many of which were either subsequently withdrawn following debate, or were not called.

Of those which were taken to a vote, two amendments (3 and 10) related to the ownership and control of the GOCO, and conflicts of interest; new clause 2 sought to establish a code of conduct between defence contractors and MOD employees and Service personnel; while new clauses 6 and 7 related to the Reserves.

In his Labour Party Conference speech, the then Shadow Defence Secretary, Jim Murphy, had indicated that his party would be tabling amendments to the bill in order to make any attack on a member of the Armed Forces, a criminal offence.[54] However, no such amendments were tabled during the Public Bill Committee stage.

Criminalising both verbal and physical attacks on Service personnel has been suggested several times over the last few years after numerous reported instances of abuse by civilians against military personnel.[55] In his *Report of Inquiry into National Recognition of our Armed Forces* in 2008 for example, Quentin Davies made one of the first recommendations for this issue to be recognised:

> We call on all those in leadership and responsible positions in the private and voluntary sectors to make clear that those who risk their lives for the country always deserve respect... but sadly we do not consider that this is enough. We believe Parliament should give an unambiguous lead, and that the law of the land should provide specific protection. We therefore recommend that the Government should take a suitable opportunity to introduce legislation making discrimination directed at those wearing military uniform by purveyors of public or commercial services an offence. We further recommend that the Home office, Crown Prosecution Service and Ministry of Justice consider issuing guidance respectively to the Police, Prosecutors and Judiciary to the effect that where victims of violence or threats of violence are persons in military uniform, those offences should be considered aggravated by that fact.[56]

Ownership and Control of the GOCO

Throughout the Committee sessions, the Government made clear that many of the provisions relating to the functioning of the GOCO would be set down in the GOCO contract itself. Therefore many issues, such as the Government's special share and nationality requirements for certain board members, were not considered necessary to be set down on a legislative basis.

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54 http://www.politicshome.com/uk/article/85303/jim_murphy_conference_speech.html

55 See "Abuse forces RAF uniform ban", *The Guardian*, 7 March 2008 and "Airmen told not to wear uniforms in City", *BBC News Online*, 7 March 2008

56 *Report of Inquiry into National Recognition of our Armed Forces*. May 2008

Speaking to amendment 3 on foreign control, the Minister, Philip Dunne, confirmed that any changes in share ownership and directorship of the GOCO would be monitored by the MOD Governor and that appropriate change of control provisions would be present in the GOCO contract, which will give the MOD the right to approve any changes of control in the management of the company. Mr Dunne stated:

> Through the articles of association of the companies, through the contract between the MOD and the contractor, and through our security vetting procedures and all the paraphernalia that apply within military procurement, we think we have a very tight grip on ensuring that we are dealing, as the MOD, with an entity that is appropriately owned and controlled.[57]

He also went on to state:

> If the MOD perceived there to be any potential threat to national security interests through the GOCO, we would be able, through the contract, to take action to prevent the party concerned from continuing to be a shareholder in the management company... the termination arrangements would then require the consortium to either absorb those shares among existing members or to bring another party into the consortium.[58]

Mr Dunne also confirmed that, as part of the draft articles of association for the GOCO, the MOD will retain a special share in the operating company and that, at all times, at least one out of the chief executive and the chairman of the operating company's board must be British. The MOD will be able to veto an appointment that would leave the board with neither of these posts held by a British national.

Amendments 3 and 10 were subsequently defeated on division and clause 1 was ordered to stand as part of the Bill. However, on the general proposals for the GOCO, as set out in clause 1, the Opposition made clear that they remain sceptical about the GOCO proposals and would consider further action at Report stage.[59]

Code of Conduct between Defence Contractors and Crown Servants

Returning to the issue of conflicts of interest, new clause 2 sought to make provision for a new code of conduct governing the contact between defence contractors and MOD employees and Service personnel. The intention was to address concerns over the transfer of people from the MOD and DE&S to defence contractors, and subsequently the potential for information obtained by personnel working for a GOCO, being then transferred to a competitor. Kevan Jones noted that "although the Minister gave assurances about intellectual property and criminal acts if information was divulged or used, without new clause 2 there is not a great deal of assurance that we will protect intellectual property or avoid conflicts of interest".[60]

In response the Minister suggested that the new clause was unnecessary as the code of conduct being proposed already exists within the MOD. He stated:

> It does so, not by name, but through two aspects of our governance rules. First the Business Appointment Rules [...] those rules govern situations whereby Crown servants wish to take up a relevant offer of employment within two years of leaving the

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57 Public Bill Committee: Defence Reform Bill, Fifth Sitting, c138
58 Ibid, c139-140
59 Public Bill Committee: Defence Reform Bill, Fifth Sitting, c121-2.
60 Public Bill Committee: Defence Reform Bill, Fourteenth Sitting, c419

> MOD. The other set of rules governs gifts, reward and hospitality [...] take together those two important rule sets are in place to set out the standards of conduct expected of Crown servants in the Ministry of Defence [...]
>
> To answer the concern about the application of the rules to employees in a GoCo, we are considering what provisions might be required to align employment terms in a GoCo to the business appointment rules. As the BAR formed part of the terms and conditions of service of civilian staff currently in DE&S, and as such provisions would typically transfer to a new employer under the TUPE regulations, we anticipate that the rules will be taken across in the event of employees transferring into a GoCo.[61]

He went on to confirm that:

> In the discussions we are having, in parallel to the passage of the Bill, about the GoCo competition, we have inserted an anti-poaching clause with respect to GoCo employees in the draft contract that has been provided to the consortia. Through the invitation to negotiate, we have also asked bidders to detail the arrangements that will be put in place to achieve the objectives of the BAR for the operating company work force, including for civil servants transferring under TUPE, new joiners and staff seconded, for example, from parent companies [...] I hope that will satisfy him; if not, he will have the opportunity to raise the issue again on Report.[62]

Despite those assurances, the new clause was put to a vote. On division, new clause 2 was defeated by a vote of 6-9.[63]

Reserves

Given the concerns that were raised in the Committee over the ability of the MOD to recruit the required number of Reservists envisaged under the Army 2020 plans, **new clause 6** sought to oblige the Secretary of State to publish quarterly data on the recruitment and strength of the reserves, as a means of holding the Government to account over this issue.

Speaking to this new clause, the Minister refuted the need for legislation in this area, commenting:

> Members of the Committee will no doubt be aware that, recognising the interest in the progress of Reserves recruitment, the Secretary of State made a commitment to the House on 16 July to publish quarterly Reserves recruitment figures. We intend to publish the figure for the quarter to 1 October next month. I am sure that everyone will agree that, with this commitment, there is no specific need to enact legislation as proposed in the new clause. In fact, by the time that the Bill receives Royal Assent, we will have had a further two or three iterations of this data release.
>
> We are currently publishing trained and untrained strength data for each category of Reserves on a quarterly basis. The last figures were available in July 2013, released on 15 August, and this information goes back to 1 April 2012. So from the beginning of 2012 that was the figure for the first quarter. We have committed to publishing quarterly recruitment figures without any need for legislation. I recognise that the issue of targets was raised both in the debate last week and in the hon. Gentleman's proposed new clause, and I can assure the Committee that the Ministry of Defence is considering carefully whether it is appropriate to publish recruitment targets as well as our achieved recruitment figures. We recognise that they may provide a fuller picture, but our fear is that the growth is unlikely to be uniform or smooth and therefore that

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61 Public Bill Committee: Defence Reform Bill, Fourteenth Sitting, c423-4
62 ibid, c424
63 Public Bill Committee: Defence Reform Bill, Division No.4

> individual targets for quarters may be as misleading and unhelpful as some hon. Members regard them as helpful.[64]

In response Kevan Jones argued that "the minister cannot give a commitment for future Defence Secretaries or in the case of a change of Government. Including such a provision in the Bill is the only way that we can be sure that this important change is not only embedded but continues in the future. I have no faith that a future Defence Secretary or future Government will provide this information".[65]

On that basis, the new clause was pressed to a vote. The clause was, however, defeated on division by a vote of 6-10.[66]

New clause 7 sought to provide additional protections for Reservists when applying for jobs, and establish an advisory body on the recruitment and retention of Reservists. Speaking to the new clause, Kevan Jones stated:

> New clause 7 is about protection. If we are to encourage people to join the reserves... we must ensure that they have maximum protection. The new clause tackles discrimination against members of the reserve forces in job interviews [...]
>
> At the moment the [Equality] Act covers age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, and sex and sexual orientation. The new clause would add to that list to prevent discrimination against Reservists at the job interview stage [...]
>
> The Minister and the Defence Secretary have said much about engaging with employers, but we need a forum that monitors these matters closely from the point of view of not only the employee, but the employer. In light of recent stories in the press about the difficulty the Army is having with recruitment, to lay a report before Parliament every year to explore these issues would be helpful for oversight; it would also flag up whether clause 45 is sufficient protection for those who serve.[67]

While echoing many of the Opposition's concerns, Julian Brazier suggested that "the drawback of putting the provision on a statutory basis is that when the Government are doing a great deal to get employers' organisations on side, any such measure would unquestionably be seen as a hostile act". He went on to state that "the problem is the same as with any minority – concern about one more category of people, Reservists, who, because they did not get the job, feel they are being discriminated against. The reservist will not always be the best candidate for the job. There is a difficult balance to strike". In conclusion he urged the Government to maintain an open mind on this issue and to return to it at a later stage if necessary.[68]

In response, the Minister, Philip Dunne, commented:

> We are concerned about the issue, but we do not believe that there is yet a body of evidence to suggest that the problem is as large as the hon. Gentleman seems to think it is... we would like to see a body of evidence before we rush to legislate to widen the categories for discrimination.[69]

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64 Public Bill Committee: Defence Reform Bill, Fourteenth Sitting, c434
65 Ibid, c438
66 Public Bill Committee: Defence Reform Bill, Division No.5
67 Public Bill Committee: Defence Reform Bill, Fourteenth Sitting, c408-9
68 Ibid, c410
69 Ibid, c412

He went on to note that the Service Chiefs were also of the opinion that legislating in this area would not be welcome as it would "single out members of the armed forces for special treatment, which is something that the chiefs do not feel is appropriate".[70]

On the issue of setting up a new advisory body, the Minister commented:

> Turning to subsections (3) and (4) of the proposed new clause, we have already taken steps to develop our engagement with employers and build our relationships with them. We have already introduced a corporate covenant, which we touched on this morning, as the framework for employers to engage with defence on the full range of personnel issues, including Reserve service ones. By April 2014 we will have a national relationship management function to provide a single point of contact for the largest external stakeholders on defence personnel issues. It will establish a mechanism by which relationships can be managed and sustained across our departmental and tri-service boundaries.
>
> Defence will continue to seek informed independent advice from the National Employer Advisory Board about how the MOD can most effectively gain and maintain the support of employers for Britain's Reserve forces. Our employer support helpline and web pages have been updated to include a new employer toolkit. We also have an external scrutiny group for the Future Reserves 2020 programme... to review the change programme and the overall health of the Reserves. I believe that we are effectively and systematically engaging with employers and interested groups on the range of Reserves matters.[71]

He went on to reiterate that the Government would keep issues relating to Reservists' employment, and whether Reservists are being disadvantaged in or when seeking employment as a direct result of their service, under review. As on previous occasions, the Government stated its intention to consider additional employment protection measures in the next *Armed Forces Bill*, which will be introduced in 2015.[72]

Despite these assurances the new clause was pressed to a division and subsequently defeated by a vote of 6-10.[73]

3 Suggested Reading

Defence reform, and in particular the establishment of a GOCO for Defence Equipment and Support and the proposed changes to the Reserves, has continued to receive considerable attention outside of Parliament during the last few months.

On 19 November the Government announced that one of the consortia bidding for the GOCO contract had withdrawn from the competition. Work is now underway to determine whether it is in the public interest for the MOD to proceed with only one commercial bidder and the public sector comparator (DE&S plus).

The following is a suggested list of material which examines some of the broader concerns associated with this Bill:

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70 Public Bill Committee: Defence Reform Bill, Fourteenth Sitting, c414
71 Ibid, c414
72 Ibid, c413
73 Public Bill Committee: Defence Reform Bill, Division No.6

- Written ministerial statement: Defence Materiel Strategy Update, 19 November 2013
- "Labour joins Tory rebels to fight plans to replace soldiers with part-timers", *The Daily Telegraph,* 18 November 2013
- "Verbal or physical attacks on Armed Forces personnel 'to be hate crimes' under new proposal", *The Daily Mail,* 17 November 2013
- "Ministry of Defence beats retreat over privatisation as Serco faces fire", *This is Money,* 16 November 2013
- "MOD staff not properly consulted over semi-privatisation plan", *The Independent,* 20 October 2013
- "Doubts grow over privatisation of defence procurement", *The Financial Times,* 18 October 2013
- "Campaign to stop the defence reform bill: say no to GOCO", Public and Commercial Services Union, 18 October 2013
- Backbench debate on Defence Reforms (with a particular focus on the Reserves), 17 October 2013
- "Reforms have left the Army in chaos", *The Daily Telegraph,* 16 October 2013
- Interview with Mark Leftly of *The Independent,* 11 October 2013. Available on YouTube.
- "What the Government must do in defence procurement", *RUSI Briefing,* September 2013
- "Labour to question defence procurement reforms", *MOD Contracts Bulletin,* 30 September 2013
- "Private sector will hold MOD to ransom", *The Independent,* 22 September 2013

The Public Bill Committee has also received written evidence from numerous parties, including academics, industry bodies and the relevant trade unions. Copies of that evidence are available at: Defence Reform Bill: Written Evidence to the Public Bill Committee. Early Day Motion 585 (Session 2013-14), highlighting a number of concerns associated with the privatisation of defence procurement, was also tabled on 16 October 2013.