

Title: Call Out of members of the Reserve Forces for Urgent Work of National Importance IA No: MOD 0002 Lead department or agency: Ministry of Defence Other departments or agencies:	Impact Assessment (IA)		
	Date: 16/01/2012		
	Stage: Final		
	Source of intervention: Domestic		
	Type of measure: Primary legislation		
Contact for enquiries: Reserve Forces & Cadets, DRFC-Office@mod.uk			
Summary: Intervention and Options			RPC: GREEN

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out?	Measure qualifies as
£m	£m	£m	Yes	IN

What is the problem under consideration? Why is government intervention necessary?

Under powers contained in the Emergency Powers Act 1964, members of the armed forces may be ordered to undertake 'urgent work of national importance'. However, the Reserve Forces Act 1996 limits the power to call out reservists in the UK to defence of the realm or 'the alleviation of distress or the preservation of life or property in time of disaster or apprehended disaster'. This prevents call out in circumstances which may be sufficiently serious for the civil authorities to request armed forces assistance but which fall short of 'disaster or apprehended disaster'. Intervention is required to align the circumstances in which reservists may be called out in the UK with the circumstances in which regular forces may be used.

What are the policy objectives and the intended effects?

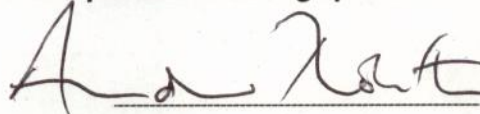
To align the circumstances in which reservists may be called out in the UK with the circumstances in which regular armed forces may be used. This will enable the Ministry of Defence (MOD) to be able to call out members of the reserve forces for permanent service in the UK for the purpose of carrying out such work as may be approved by the Defence Council as being urgent work of national importance. Protections under existing legislation for reservists and employers will apply to call out under the new power. This policy has been implemented by section 28 of the Armed Forces Act 2011, which amends section 56 of the Reserve Forces Act 1996. The Act received Royal Assent on 03 Nov 2011.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

1. Do nothing. This is not an option as the status quo is not sustainable: existing legislation prevents the MOD accessing reservists' skills, experience and expertise for UK resilience in times short of 'disaster or apprehended disaster'.
2. A new time-limited call-out power in the Reserve Forces Act 1996. A 'sunset clause' would not meet the policy objective: the power needs to endure because it cannot be predicted when the need to use it may arise.
3. A new call-out power in the Reserve Forces Act 1996. This gives the MOD the guarantee of a reservist's service and also activates statutory employment and financial assistance safeguards for reservists and their employers.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 06/2015					
Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO2 equivalent change in greenhouse gas emissions? (Million tonnes CO2 equivalent)			Traded: N/A		Non-traded: N/A

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:  Date: 18 Feb 12

Summary: Analysis & Evidence

Policy Option 1

Description: A new call-out power in the Reserve Forces Act 1996

FULL ECONOMIC ASSESSMENT

Price Base Year N/A	PV Base Year N/A	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate:

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low				
High				
Best Estimate	Not Monetised		Not Monetised	Not Monetised

Description and scale of key monetised costs by 'main affected groups'

None monetised.

Other key non-monetised costs by 'main affected groups'

1. Employers - Non-monetised but tangible costs related to the replacement of a mobilised reservist for a period of up to 9 months in excess of the Employer Award made under Statutory Instrument 2005/859.

2. Reservists - Non-monetised but tangible costs related to a period of mobilised service, in excess of the Reservist Award made under Statutory Instrument 2005/859.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low				
High				
Best Estimate	Not Monetised		Not Monetised	Not Monetised

Description and scale of key monetised benefits by 'main affected groups'

None monetised.

Other key non-monetised benefits by 'main affected groups'

Use of reservists as part of the MOD support to civil authorities will improve the response and lower the overall cost and impact of any major natural hazard or malicious threat in the UK.

Mobilisation allows a reservist to put military skills into practice, thus gaining experience and confidence, which can be transferred back to the civilian workplace.

Key assumptions/sensitivities/risks

Discount rate (%)

Risks - Lack of support from employers for the wider use of reservists in support of the civil authorities will lead to a rise in applications for exemption from mobilisation. The MOD will therefore be unable to generate the required reservist manpower.

Assumptions - This power will be exercised infrequently. Mobilisation will normally be for between 5 to 14 days. However, some events of national importance, such as the Olympic Games may necessitate a longer period.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: N/A	Benefits: N/A	Net: N/A	Yes	IN

Evidence Base

1. PROBLEM UNDER CONSIDERATION

1. **Problem.** Under powers contained in the Emergency Powers Act 1964, members of the armed forces may be ordered to undertake 'urgent work of national importance'. However, the Reserve Forces Act 1996 limits the power to call out reservists in the UK to defence of the realm or 'the alleviation of distress or the preservation of life or property in time of disaster or apprehended disaster'. This prevents call out in circumstances which may be sufficiently serious for the civil authorities to request armed forces assistance but which fall short of 'disaster or apprehended disaster'.

2. **Background - Ministry of Defence support to civil authorities**

a. **Legal basis for Ministry of Defence (MOD) support.** There is an existing system based on statute and common law under which the armed forces may under certain circumstances be used in support of the civil authorities. Recent examples include assisting English local authorities in maintaining services to elderly and vulnerable people in December 2010, responding to floods in Gloucestershire in 2007 and supporting Government Departments during the outbreak of animal disease (Foot and Mouth) in 2001.

b. Under Regulations dating back to 1939 (but made permanent by the Emergency Powers Act 1964), the Defence Council may authorise the use of members of the armed forces for 'urgent work of national importance.'¹ While reservists may volunteer to undertake such work, the Reserve Forces Act 1996 limits the Secretary of State's power to call out reservists to defence of the realm or "the alleviation of distress or the preservation of life or property in time of disaster or apprehended disaster". It is therefore not possible to mobilise reservists to undertake the full range of tasks in respect of which the civil authorities may seek armed forces assistance.

c. **Policy basis for MOD support.** As well as the legal basis there is policy to guide when and how the MOD should respond to requests from UK civil authorities. In general, for support to be given, at least one of the following principles should be met:

(1) Military aid should only be provided where the need for someone to act is clear and where other options have been discounted by the civil responder. The use of mutual aid, other agencies, and the private sector must be considered as insufficient or be unsuitable if military aid is to be invoked.

(2) The civil authority making the request lacks the required level of capability to fulfil the task and it is unreasonable or prohibitively expensive to expect it to develop one.

(3) The civil authority has a capability but the need to act is urgent and it lacks readily available resources.

d. Given the requirement for Defence Council authorisation and the need to comply with policy, MOD support to the civil authorities is infrequent. Examples of the MOD support from January 2010 to March 2011 can be seen in Table 1.0 below, which demonstrates the infrequent and short-term nature of these tasks.

¹ The Defence Council is appointed by Her Majesty by Letters Patent and by those Letters is given responsibility for the command of the Armed Forces, for appointments within the Armed Forces and for such aspects of the administration of the Armed Forces as the Secretary of State may direct. The Defence Council also has statutory functions, for example in relation to the redress of complaints, the holding of service inquiries and the deployment of the Armed Forces within the UK in an emergency.

The Letters Patent appoint the members of the Defence Council. They are the Defence Ministers and the most senior officers of the Armed Forces and Defence officials.

While the powers of command of the Armed Forces devolve from Her Majesty to the Defence Council and so down the chain of command, the political decision to deploy the Armed Forces rests with the Government.

TABLE 1.0 EXAMPLES OF MOD SUPPORT TO CIVILIAN AUTHORITIES 2010-11

Date	Location	Number of Personnel	Description of task
Jan 2010	Various locations	50	Support during severe weather (snow) mainly providing drivers and 4x4 vehicles
19 Feb 2010	West Midlands	7	Provided specialist search equipment to look for suspected weapons cache
24 Feb 2010	Hampshire	8	Provided dive team to search for a vehicle crashed into quarry
7-9 Jul 2010	Northumberland	5	Provided imagery collection and analysis to assist police in the hunt for Raoul Moat
06 Aug 2010	Worcestershire	6	Provided specialist search team to assist police in trying to locate missing person
20 Oct 2010	Nottinghamshire	0	Use of TA Centre as police base to search for two small children
30 Oct 2010	Northern Ireland	10	Use of military helicopters and team to recover wreckage of civilian and police helicopters in the Mourne Mountains
1-10 Dec 2010	Various locations	50 4x4 vehicles; 100+ crew	Provision of mobility assistance to the police, health and social services during severe cold weather across the UK
8-10 Dec 2010	Edinburgh	300+	Snow clearance to specific addresses to allow access to vulnerable people
14 Dec 2010	Cambridgeshire	6	Loan of a RAF Fire Tender to assist putting out a fire in Peterborough
20 Dec 2010	Devon	6	Assistance to police in rescuing stranded motorists in heavy snow
From March 2011	Various locations	Classified	Provision of contingency force to provide emergency support in prisons in the event of industrial action by the Prison Officers Association
24 Mar 2011	London	30	Search assistance to police to find elderly man missing from Woolwich hospital

Source: *Table 7.7 Military Aid to the Civil Power, to other Government Departments and to the Civil Community; Defence Statistics 2011*

3. Reservists and Reserve Forces Act 1996 (RFA 96)

a. **Legal basis and organisation of Reserve Forces.** RFA 96 provides the legal basis for the establishment, organisation and regulation of the reserve forces. There are currently over 30,000 members of the Volunteer Reserve Forces and over 45,000 members of the Regular Reserve Forces, who fall under the purview of RFA 96.

(1) **Volunteer Reservists.** These individuals volunteer to give up their spare time to train. They have a liability to be called out for permanent service ('mobilised service') and deploy on operations alongside their regular colleagues. Volunteer reservists typically meet for one night per week and train at the weekend, as well as attend an annual 2 week training event or exercise. The minimum contribution is around 19 – 27 days training per year. Volunteer reservists are paid an annual bounty (tax-free lump sum bonus for meeting the training commitment) and are paid per day or part-day for the training that they complete plus expenses. If called out for permanent service, they are paid at the same full time rate as regulars. In addition, remuneration is also paid to those whose civilian salary is higher than their military salary. Legislation is in place to protect their civilian employment whilst in permanent military service.

(2) **Regular Reservists.** These are former members of the regular armed forces who, upon leaving the forces, retain a liability to be called out for permanent service. This liability depends upon the age of the individual and length of former service. While legislation exists to compel regular reservists to undergo routine training, in practice this is not enforced by MOD. Regular reservists may volunteer to train and make themselves available for mobilisation, but currently this is relatively rare.

b. **Reservists' skills.** Many reservists hold specialist logistic, engineering, medical and communication skills, gained from civilian employment, which are utilised by the armed forces in a military context. Such specialist skills are normally not held by the regular forces due to the high cost of gaining and remaining proficient in such skills combined with the relative infrequency of use. It is far more economic to provide reservists who have these specialist skills with the training to use these skills in a military context. In addition, reservists provide substantial additional non-specialist manpower to the regular force for operations.

c. **Terms and Conditions of Service including call out ('mobilisation').** Reservists train and perform duties under various terms and conditions of service, which are reflected in RFA 96. These include, but are not limited to the following sections within RFA 96:

(1) Section 22 (Obligatory Training).

(2) Section 27 (Voluntary Training and Other Duties).

(3) Sections 52, 54 and 56 (Powers to authorise call out). These powers enable members of the Reserve Forces to be 'called out' (the process by which they can be required to leave their jobs for periods of full-time armed forces service (known as 'mobilisation')). Section 56 is intended to cover call out for peacekeeping, humanitarian and disaster relief operations. Section 56 provides as follows:

The Secretary of State may make an order authorising the calling out of members of a reserve force if it appears to him that it is necessary or desirable to use armed forces—

(a) on operations outside the United Kingdom for the protection of life or property; or

(b) on operations anywhere in the world for the alleviation of distress or the preservation of life or property in time of disaster or apprehended disaster.

d. RFA 96 includes provisions to protect the reservist by limiting the maximum obligatory period of permanent service under each of the call-out powers. The limits take into account any permanent service in a specified period before the current call out. The limits in section 56 are nine months in any twenty seven months, with no provision for extension.

e. **Existing powers of call-out in support of civil authorities.** RFA 96 limits the Secretary of State for Defence's power to call out reservists in the UK to, broadly speaking, defence of the realm or '*the alleviation of distress or the preservation of life or property in time of disaster or apprehended disaster*'. There are many circumstances falling short of 'disaster or apprehended disaster' in which reservists could make a valuable contribution but for which, under the current legislation, they cannot be called out.

f. Reservists were mobilised in November 2009 to provide assistance during the Cumbrian flooding, and helped to build a temporary crossing to reconnect the town of Workington. Here, the tragic loss of a life, damage to local infrastructure and the disruption to the local community was considered a 'disaster' and reservists could be mobilised.

4. **Consequences of Mobilisation.**

a. **Impact of mobilisation.** Mobilisation has an effect upon two main groups - reservists (including families and self-employed reservists) and employers.

(1) Reservist and family – individuals must take into account:

(a) Practical matters

i. Administrative matters (such as making a will, renewing passport, informing family and friends).

ii. Arrangements for care of children or dependent relatives.

- iii. Arrangements for care of property.
 - iv. Preparing any information required to support a claim for Financial Assistance or deferral or exemption from mobilisation (see Safeguards paragraph below).
 - v. Taking time off to make physical preparations for deployment.
- (b) Financial implications.
- i. Civilian pay may be greater than service pay when mobilised.
 - ii. Benefits-in-kind from employment may be lost.
 - iii. If self-employed, making arrangements for the continuation of their business.
 - iv. Additional costs may be incurred in preparing for mobilisation.

(2) Employer – the employer also must deal with the impact of mobilisation:

(a) Practical.

- i. In exceptional cases, a reservist's mobilisation may be very sudden, and may pose difficulties in making arrangements for a replacement.
- ii. The employer may not have known an employee was a reservist or fully understood the implications of a reservist's liability for mobilisation.
- iii. The reservist may not easily be replaced or the mobilisation may occur at an especially inconvenient time for the employer.
- iv. Preparing any information required to support a claim for Financial Assistance or deferral or exemption from mobilisation (see Safeguards paragraph below).
- v. Taking time off to make preparations and prepare any claims.
- vi. Administrative arrangements required to hire a replacement and then reinstate reservist once mobilised service has been completed.
- vii. Deal with the reservist's choice of pension arrangements when mobilised and make arrangements when mobilised service has been completed.
- viii. The employer must comply with existing legislation related to the reinstatement of a reservist once they have completed their mobilised service.

(b) Financial implications.

- i. Replacing the reservist may cost more than their previous pay and benefits-in-kind package.
- ii. The reservist may have a key skill, the loss of which will directly impact business output or productivity.

b. **Mitigation of the impact of mobilisation.** The consequences of mobilisation on reservists, family and employer were recognised when RFA 96 came into force, and

regulations were made to mitigate this impact (see Safeguards paragraph below). In addition to the regulations, MOD policy also exists to mitigate the impact of mobilisation.

c. **MOD policy ('Intelligent Selection')**. Mobilisation is underpinned by the MOD policy of 'Intelligent Selection'. This is designed to identify, in good time, those reservists with the training, skills and availability for mobilisation, in order to minimise the impact of mobilisation upon the individual, their family and employer. The dialogue with a reservist's employer is an important part of intelligent selection and is undertaken by the reservist's local unit, supported by centralised resources. This dialogue ensures that any disruption to reservists, families and employers is proportionate to the needs of the MOD.

d. **Mechanics of mobilisation**. Once a call out Order is in place, a reservist can be issued with a call out Notice requiring them to report for permanent (mobilised) service. A reservist is legally obliged to obey the instructions in a call out Notice. A copy of the call out Notice and information on the Safeguards is also sent to the employer. It is current MOD policy to give at least 30 days notice to report for permanent service. Failure to report is an offence under RFA 96 Part X section 96, which is triable by court-martial or summarily by a civil court. Since RFA 96 came into effect in April 1997, over 35,000 call out Notices have been issued but no action has ever been taken under RFA 96 Part X section 96, illustrating the success of intelligent selection, and the trust reservists and employers have in the safeguards provided by the Regulations.

d. Once a reservist obeys the instructions in a call out Notice and reports to a mobilisation centre, they will undertake a medical, complete administrative steps, including applying for Financial Assistance or exemption from service, and conduct any refresher and/or mission-specific training.

5. **Statutory mitigation (Safeguards for employers and reservists)**. Two statutory instruments made under RFA 96 ensure that reservists and employers are supported and assisted during a period of mobilised service: the Reserve Forces (Call-out and Recall) (Financial Assistance) Regulations 2005 (SI 2005/859)² and the Reserve Forces (Call-out and Recall) (Exemptions Etc) Regulations 1997 (SI 1997/307).³ These instruments enshrine the essential role and involvement of the civilian employer with respect to mobilisation.

a. **Financial Assistance to Employers and Reservists**. The 2005 Regulations create a scheme for providing Financial Assistance to reservists and employers who would otherwise suffer financial loss as a result of mobilisation.

(1) **Reservists**. Reservists are entitled to claim for a 'Reservist Award' and to make an allowable expenses claim.

(a) The Reservist Award consists of:

- i. **Salary top-up**. This is a payment made to reservists whose military salary, when called out for operations, is less than their civilian earnings.
- ii. **Replacement for certain benefits-in-kind**. Reservists can claim for benefits in kind suspended or withdrawn by their employers while the reservist is mobilised. The benefits covered include, but are not limited to:

- Health or medical insurance.
- Life insurance.
- Accommodation.

² <http://www.legislation.gov.uk/uksi/2005/859/contents/made>

³ <http://www.legislation.gov.uk/uksi/1997/307/contents/made>

- Educational fees for dependent children.
- Loss of a company car used by the reservist's dependants.

The resulting payment for all these elements of the Reservist's Award taken together is subject to an upper limit or cap (less service payment) of £548.00 per day (or £822.00 per day for certain medical officers).

When, in connection with his mobilised service, a reservist chooses to remain in his occupational pension scheme and continues to make his employee pensions payments, any contributions withdrawn by his employer will be paid by the MOD.

(b) The allowable expenses claim consists of:

- i. Additional payments for the care of a dependent child or relative.
- ii. Additional expenses for the care of a pet.
- i. Additional home insurance premiums.
- ii. Payments for the essential maintenance of the reservist's main residence and garden (for security purposes to ensure the property looks 'lived in').

The resulting allowable expense claim is without limit, but is subject to providing clear documentation of claims.

(2) Employers. The general presumption is that the reservist's replacement is being paid using money saved by not paying the mobilised employee; therefore the majority of employers bear few additional costs. Employers are entitled to claim certain costs related to the mobilisation of an employee.

(a) The Employer's Award consists of:

- i. Up to £110 per day (i.e. approximately £40,000 per year), the amount by which the following "replacement costs" incurred by the employer exceed the Reservist's earnings. These "replacement costs", are limited to:
 - Pay to a replacement of the Reservist; and, if appropriate.
 - Any overtime payments to existing employees; and, if relevant.
 - An increase in salary for an existing employee.
- ii. Certain, non-recurring or one-off 'agency fees' and 'advertising costs': (VAT exclusive amount only where the employer's business is registered for VAT purposes).
- iii. An employer may claim the cost of retraining a reservist on return to work and where needed for the reservist's re-employment.

(b) There is no provision for additional 'administration costs' and the extra costs of 'training' an external replacement for the reservist or, indeed, one of his colleagues now doing his work.

(3) Self-employed. Depending on his personal circumstances, a self-employed reservist may claim under SI 2005/859 as a reservist, as an employer or both. However such a reservist cannot make a claim for an award to recover the same cost as a part of a Reservist's or Employer's Award.

b. In the Financial Year 2009-10, approximately £13.6 million was awarded in financial assistance to employers and reservists. Table 1.1 details the breakdown:

TABLE 1.1 - FINANCIAL ASSISTANCE PAID TO RESERVISTS AND EMPLOYERS IN FINANCIAL YEAR 2009-10 UNDER SI 2005/859⁴

Reservist Award	Reservist Expenses	Employers Award	MOD Replacement of Employers' Contribution to Pension Payments	Total
£9.84M	£1.36M	£0.80M	£1.6M	£13.6M

In FY09/10, 33% of mobilised reservists claimed the Reservist Award (ie 33% of mobilised reservists earned more from full-time military pay than in their civilian careers). Of these, 25 personnel (predominately medical and dental professionals) received a Reservist Award in excess of £100,000. The median Reservist Award payment was £11,000.⁵

The employer has the option of not replacing the reservist for the period of mobilised service, saving the salary and relying upon productivity gains from other employees to cover any output gap. This is the most commonly taken option, especially with medium or large scale enterprises.

c. **Applications and Appeals for exemption or deferral of mobilisation.** The 1997 Regulations entitle persons who have been called out, or their employers, to apply for deferral of or exemption from that liability, or in the case of persons already serving, release or discharge from service. Again, these Regulations will apply to call out under the new call-out power in section 56 of the Reserve Forces Act 1996 just as they do to call out under the other call-out powers. The grounds on which an employer can make an application are that the absence of the reservist for a period of relevant service would cause serious harm to the business or other undertaking in which the reservist is employed, or to a partner, proprietor or employee of that business or other undertaking. Such harm may include:

- (1) Loss of sales, markets, reputation, goodwill or other financial harm.
- (2) Impairment of ability to produce goods or provide services.
- (3) Harm to research into and development of new products, services or processes, which could not be prevented by the granting of financial assistance under the 2005 Regulations.

d. Applications are made to trained MOD adjudication officers who must also take into account factors including the purpose for which the call out power is exercised, the number of reservists required, the number and availability of reservists with a particular skill or training possessed by the reservist in question and the need to maintain unit cohesion.

e. Since 2008, over 7,000 mobilisations have taken place and a total of 632 applications for deferral or exemption have been made by reservists and employers; a rate of less than 10%. Of these 632 applications, 566 applications were upheld in the reservist or employer's favour – a 90% application success rate. See Table 1.2 for more details

⁴ Source: Defence Analytical Services Agency, 'Costs of Mobilising UK Reserve Service Personnel Financial Year 2009-10

⁵ The median has been used, as opposed to the mean, because of the presence of significant outliers in the value of Reservist Awards

TABLE 1.2 - APPLICATIONS BY EMPLOYERS AND RESERVISTS FOR DEFERRAL, EXEMPTION AND REVOCATION FROM PERMANENT SERVICE UNDER SI 1997/307⁶

Year	Call out Notices issued	Reservist Apps	Employer Apps	Total Apps	Total Successful Apps	% of Apps Successful	% of call outs subject to an App	% of successful Apps to overall call out Notices issued
2008	2370	137	33	170	146	86%	7%	6%
2009	2544	160	41	201	184	92%	8%	7%
2010	2626	218	36	254	236	90%	10%	9%

f. **Reserve Forces Appeals Tribunal (RFAT).** A reservist or an employer may appeal against a decision under the 1997 or 2005 Regulations to the RFAT, an independent body administered by the Ministry of Justice. There have been 15 appeals to the RFAT since 2008, with only 2 cases progressing to a Tribunal in that period – all others were withdrawn or settled.⁷ Clear guidance for appellants is available through the SaBRE⁸ website as well as MOD sponsored publications.

g. **The Reserve Forces (Safeguard of Employment) Act 1985 (SOE 85).** In addition, SOE 85 makes provision regarding the reinstatement in civil employment of members of the reserve forces who have been mobilised and for the protection of the employment of those liable to be mobilised.

6. Reservists and the UK workforce.

a. **Reservists as a proportion of UK employed workforce.** At the end of October 2011, there were 30,000 Volunteer Reservists and 45,000 Regular Reservists, a total of 87,000 reservists out of a UK employed workforce of 29.10 million, including an estimated 22.5 million in private sector employment (source: Labour Market Statistics, October 2011 Office of National Statistics). Therefore, even if all reservists were employed, reservists represents 0.29 (around one third) of one percent of the employed UK workforce.

b. **UK private sector enterprises.** In the UK, there were over 4.5 million private sector businesses at the start of 2010; of which almost two thirds were sole traders. Almost all the UK private sector enterprises (99.2%) were small (0-49 employees) and employed 10.612 million individuals – almost 50% of the private sector workforce. Supporting data produced by BIS is at Annex A.

c. **Distribution of Reservists by enterprise size.** MOD data on reservist employer and employment status is incomplete. Of the 30,000 volunteer reservists, employer information is held for less than 20,000 individuals. Where reservists have not declared their employer status, it is reasonable to assume a significant number will be unemployed. Using the data available, **compared to the overall distribution of the UK workforce by private sector enterprise size, less reservists are sole traders or part of a micro businesses than the wider population (27% of reservists versus 33%).** The detail is in Table 1.3.

⁶ Source: Ministry of Defence, compiled from single Service Adjudication Officers

⁷ Since 1998, there have been over 125 appeals to the RFAT, of which over 110 were settled or withdrawn before a Tribunal has sat. In total, the Tribunal has upheld the decision of the Service Authorities (MOD) 12 times and the applicant 4 times.

⁸ SaBRE – Supporting Britain's Reservists and Employers is a MOD sponsored body (www.sabre.mod.uk)

TABLE 1.3 - INDICATIVE DISTRIBUTION OF UK RESERVISTS BY ENTERPRISE SIZE

Enterprise Size (employees)	Number of Reservists	Proportion of total declared Reservists⁹	Proportion of UK private sector workforce
0	1811	10%	16%
1 - 9	3192	17%	17%
10 -49	3342	18%	15%
50 – 249	4663	25%	12%
250 or more	5355	29%	41%

2. RATIONALE FOR INTERVENTION

7. By legislating to amend section 56 of the Reserve Forces Act 1996, the MOD will be able to mobilise reservists to support the civil authorities in line with the criteria for using regular forces. By including the new call-out power in section 56, reservists and employers will receive the same protections (provided by SI 2005/859 and SI 1997/307) in respect of call out under the new power as they do in respect of call out under the other call-out powers in section 56.

a. Without intervention, the current system is unsustainable, as the burden of providing support to the civil authorities will continue to fall on regular forces, at a time when they are reducing in numbers (from 176,810 in 2011 to 142,500 by 2020 – a 20% reduction in personnel).

b. Relying only on regular personnel causes a difficulty as almost all regulars in the UK, excluding headquarters and training staff, are either already directly supporting overseas operations or are preparing for, or recovering from operations. There is only a limited pool of uncommitted personnel able to respond to any request for assistance from the civil authorities. The MOD must weight the request in terms of impact against existing or future operations. The MOD currently responds on a 'best effort' basis.

c. Being able to mobilise reservists will mean that the MOD will have the ability to respond to requests from the civil authorities with regulars and/or reservists, decreasing the burden upon those regulars supporting existing operations, and improving the response by using reservist skills. Reservists also have local knowledge which could play a part in the response.

3. POLICY OBJECTIVE

8. To enable the MOD to mobilise reservists for 'urgent work of national importance' in order to support civil authorities when requested, while ensuring reservists and employers benefit from safeguards provided by existing time-tested legislation.

9. Utilising reservists more widely alongside regulars, as part of the MOD support to the civil authorities, is a key recommendation of the 'Future Reserves 2020' report by the 'Independent Commission to Review the United Kingdom's Reserve Forces' which reported to Parliament on 18 July 2011. The Commission recommended that:

'The National Security Council should examine the breadth of roles which Reservists undertake. We recommend that Reservists should play a greater part in Homeland Security and UK Resilience.'

10. While the MOD has not yet formally responded to the Commission's Report, work is ongoing to assess the ranges of roles and mechanisms by which reservists can provide greater assistance, if required, to the civil authorities.

⁹ Note this is of total Reservists with valid declared employee details

4. DESCRIPTION OF OPTIONS CONSIDERED

11. Option 1 - Do nothing. No change to the situation with reservists unable to be mobilised in the UK in circumstances short of 'disaster or apprehended disaster'. Any use of reservists would be on an ad-hoc basis using volunteers. Reservists and employers would not receive the financial assistance or employment protections provided by the Regulations.

a. Advantages of Option 1. No additional impact upon businesses or reservists.

b. Disadvantages of Option 1.

(1) Not sustainable for the MOD. Its response has been constrained by the inability to utilise reservists. As the current response to the civil authorities is 'best effort' the burden falls on regulars, which has an impact upon force generation, training and recuperation, or the MOD is unable to respond appropriately.

(2) Unable to access niche skills held in the reserve forces. Many skills such as specialist logistical, communications and engineering are only held in the reserve forces. Under this Option, the MOD is unable to mobilise reservists with these skills.

12. Option 2 - Insert a new time-limited call out power in the Reserve Forces Act 1996 ('a Sunset Clause'). Legislate to add a new power to RFA 96 to broaden the scenarios under which reservists can be mobilised. Reservists and employers would be entitled to the protections and financial assistance in the existing Regulations made under RFA 96. Any mobilised service would count towards the overall limits on mobilised service outlined in paragraph 3 d. This power would be temporary and would expire after a specific length of time, or following a certain event.

a. Advantages of Option 2.

(1) Allows the MOD to mobilise reservists while providing full benefit of regulations to reservists and employers.

(2) Limits costs and administrative burden to a fixed period or certain event, allowing businesses to identify and plan for mobilisation of reservist employees.

b. Disadvantages of Option 2.

(1) It is not possible to predict when the need to use the new call out power may arise. Having such a power in place is thus an ongoing requirement. A Sunset Clause is not appropriate because it cannot be predicted when the civil authorities may look to the MOD for assistance with urgent work of national importance for which the MOD would wish to call out reservists. It is extremely difficult to forecast when reservists would be required as it would depend upon the size of the event, the skill set required, the availability of regulars and the local circumstances.

(2) Increases burden on employers and reservists compared to Option 1. Broadening the circumstances under which reservists can be mobilised could potentially increase the frequency of mobilisation. However, absolute limits on mobilised service (as described in paragraph 3 d) will remain.

13. Option 3 - Insert a new call-out power in the Reserve Forces Act 1996. Legislate to add a new power to RFA 96 to broaden the scenarios under which Reservists can be mobilised. Reservists and employers would be entitled to the protections and financial assistance in the existing Regulations made under RFA96. Any mobilised service would count towards the overall limits on mobilised service outlined in paragraph 3 d.

a. Advantages of Option 3.

(1) Allows the MOD to guarantee the service of reservists and also activates statutory employment safeguards and financial assistance and support for both

reservists and employers (including rights to apply for revocation, deferral or exemption of call out)

(2) Provides maximum flexibility to the MOD to respond to any future requests for support to the civilian authorities.

b. Disadvantages of Option 3. Increases burden on employers and reservists compared to Option 1. Broadening the circumstances under which reservists can be mobilised could potentially increase the frequency of mobilisation. However, absolute limits on mobilised service (as described in paragraph 3 d) will remain.

14. Option 1 is discounted as it does not overcome the current problem. Option 2 has been discounted as the time-limited nature of the power would not give the MOD the required outcome. MOD's support to the civilian authorities is largely contingent in nature and it is impossible to predict when these contingencies would crystallise. **Option 3 is the preferred option.**

6. MONETISED AND NON-MONETISED COSTS AND BENEFITS OF EACH OPTION (INCLUDING ADMINISTRATIVE BURDEN

15. No monetised costs have been calculated for the following reasons:

a. Option 1 - No monetised costs have been calculated on the basis that without change reservists would be unavailable in scenarios short of 'disaster or apprehended disaster.' Therefore employers will not incur any additional costs from this inaction.

b. Options 2 and 3 – No monetised costs have been calculated on the basis that it is not possible to predict when this power would be used. Each use of MOD assets in support of the civil authorities is a unique event driven by the specific malicious threat or disruptive hazard. Therefore it is impossible to forecast the mix of regular and reservists that would be required. In addition, each business employing a reservist is unique and therefore calculating the cost of releasing a reservist for mobilisation would not be in line with the proportionality approach in this impact assessment.

c. If reservists are mobilised in support of the civil authorities, employers are entitled to apply for the direct costs of replacing a reservist, as highlighted in paragraph 5 a (2).

16. No monetised benefits have been calculated for the same reasons as above as it is impossible to predict when and where a new power would be used.

17. Option 1 - Do nothing non-monetised costs or benefits.

Non-monetised Costs	Non-monetised Benefits
If Defence is unable to respond to a request for assistance from the civil authorities due to regular forces being unavailable, then the cost of the disruptive hazard or malicious threat will be borne by the affected businesses, community and economy.	Nil calculated beyond no change to the administrative burden

Options 2 and 3 – Introduce new Powers

Non-monetised Costs	Non-monetised Benefits
Employer - Indirect costs, not covered by Employer Award in SI 2005/859, to employers of administering the replacement of a mobilised reservist for a period of up to 9 months. These indirect costs include any training required by the replacement, the administrative burden of adding a replacement to the payroll and any loss of	Community - Use of reservists as part of the MOD's support to the civil authorities will improve the response and could lower the overall cost and impact of any major natural hazard or malicious threat in the UK. Reservists possess many niche skills not held within the regular forces. The reserves also bring to any deployment rapid

productivity caused by use of an inexperienced replacement. As any use of reservists in support of civil authorities is likely to be limited to 14 days, this situation is not dissimilar to releasing individuals for Jury service or a short-term illness. Business continuity plans should take account of these types of short-term absences.

Cost of applying for an Employer Award in terms of completing paperwork and dealing with the Service Adjudication Officers.

Reservists – Direct cost to reservists of any loss of earnings exceeding the current Financial Assistance levels of £200,000 per annum or £300,000 for certain medical consultants. It is estimated that this would only apply to a very small number of reservists (less than several hundred). As individuals choose to join the volunteer reserve, individuals accept this possibility when they join.

availability and local knowledge, including social and political awareness as well as geographic understanding.

Reservists and Employers - Mobilisation allows a reservist to put military skills into practice, thus gaining experience and confidence, which can be transferred back to the civilian workplace. The value of this experience and confidence can not be directly measured, but can be seen in the support shown by employers of reservists.

18. It is not expected that any new power will lead to a noticeable increase in applications to the Reserve Forces Appeals Tribunal administered by the Ministry of Justice (described in paragraph 5f – only 15 applications leading to 2 Tribunal hearings since 2008) and therefore this is considered a nugatory cost and has not been calculated.

19. **Public sector costs.** Military Aid to the Civil Authorities is, with a few specific exceptions, not funded within the MOD budget and is, therefore, conducted on a repayment basis, with the costs charged to Other Government Departments or civil authorities. This is in line with HM Treasury rules. Three charging regimes apply

a. **Full Costs.** These cover all costs, both direct and indirect, incurred in providing the assistance. This includes pay and allowances for the personnel involved. Under Treasury rules, it is normal for Government Departments to recover full costs as a default.

b. **Marginal Costs.** This is the recovery of costs that would not have otherwise been incurred by the MOD, and would include the personnel costs of reservists, but not regulars. Marginal costs may be applicable when a task undertaken on behalf of the civil authorities is also considered to be of direct benefit to MOD, or can be combined with a task or activity the MOD would undertake on its own behalf.

c. **Waive Costs.** No costs are charged to the civil authority in situations where life is at risk or in exceptional other circumstances. The decision to waive costs would normally be taken centrally, usually by Ministers.

The actual charging regime applied will depend upon the circumstances of the task, and therefore it is impossible to forecast the costs, as each situation is unique.

20. **Option 3 is the preferred option.** Section 28 of the Armed Forces Act 2011 inserted a new call out power into section 56 of the Reserve Forces Act 1996, allowing reservists to be mobilised once the Defence Council authorised a tasks as 'urgent work of national importance'. The 2011 Act received Royal Assent on 3 Nov 11.

21. **One-in, One-out Assessment (OIOO).** The OIOO Methodology places out-of-scope those measures which would be classified as an emergency under the Civil Contingencies Act 2004. However, while the new power is required to support the civil authorities, its use is not restricted to emergencies. Therefore it is in-scope for the OIOO assessment, but no appropriate regulatory OUT measure has been identified. Existing regulations in scope for OIOO include:

a. The Reserve Forces (Call-out and Recall) (Exemptions Etc.) Regulations 1997 (Statutory Instrument No. 307 of 1997 (SI 1997/307)).

b. The Reserve Forces (Call-out and Recall) (Financial Assistance) Regulations 2005 (Statutory Instrument No. 859 of 2005 (SI 2005/859)).

c. The Reserve Forces Appeal Tribunals Rules 1997 (Statutory Instrument No. 798 of 1997 (SI 1997/798)).

As highlighted above, all these regulations are required to provide the legal safeguards to employers and reservists during mobilised service, and therefore not appropriate as OUT measures.

The new power is therefore an IN, but no attempt has been made to monetise costs and benefits as it is not possible to predict when and where the power will be used. In addition, the direct costs to businesses and reservists are met through the scheme for Financial Assistance.

6. MOD'S APPROACH TO CONSULTATION

22. **National Employer Advisory Board.** The National Employers Advisory Board (NEAB) was consulted on Section 28 of the 2011 Act and expressed its support, noting the protection to employers provided by the existing policy and legislation.¹⁰ It advised that communication to employers would be vital, and this advice has been recognised in the implementation plan.

23. **Supporting Britain's Reservists and Employers (SaBRE).** In addition, a wide range of employers who are supportive of the employment and operational use of reservists can be found on the MOD-sponsored SaBRE website.¹¹

24. **Public consultation as part of Future Reserves 2020.** In January – February 2011, in support of the work of the Independent Commission to Review the United Kingdom's Reserve Forces, the MOD conducted a web-based survey to identify perceptions and trends about the role of reservists within the armed forces and the employer community.

a. **Employer Sample.** Of 730 employers who responded 94.9% (n=695) had experience of employing Reservists and 60.1% (n=433) currently employed up to five reservists in their workforce. The employer survey is considered to fairly represent the principal industry sectors, with 59.2% (n=395) operating in the private sector and a smaller 34.3% (n=229) representing public sector employers. Noting the size of the employer respondent's workforce, 43% (n=320) of respondents represented large employers with workforces in excess of 250 employees.

b. **Awareness of Reservist skills and experience.** 65% of employer respondents (n=471) agreed or strongly agreed that a reservist's ability to be a team player is noticeable in their organisation, and 53.4% (n=383) agreed or strongly agreed that reservists are more inclined to lead others in their workforce. 53.6% (n=383) either agreed or strongly agreed that reservists provide business with more advantages than disadvantages and that employers should allow reservists additional time off to fulfil their reservist commitment and routine training. That said, the employers expressed their concerns that this is not always possible, especially in the current economic climate.

c. **Legislation and Regulations.** 38.5% (n=257) felt that current legislation adequately supports an employer when mobilised and 52.9% (n=353) claimed that they did not know. 8.5% (n=57) offered reasons why Legislation does not adequately support the employer. These included:

- (1) Financial assistance should be improved or expanded (n=20).
- (2) Financial assistance needs to be made available for training a replacement (n=7).
- (3) Employers receive no support or recognition for employing Reservists (n=7).

¹⁰ NEAB is a Non-Departmental Public Body, responsible to the Secretary of State for Defence for the provision of informed but independent advice surrounding the employment of Reserves

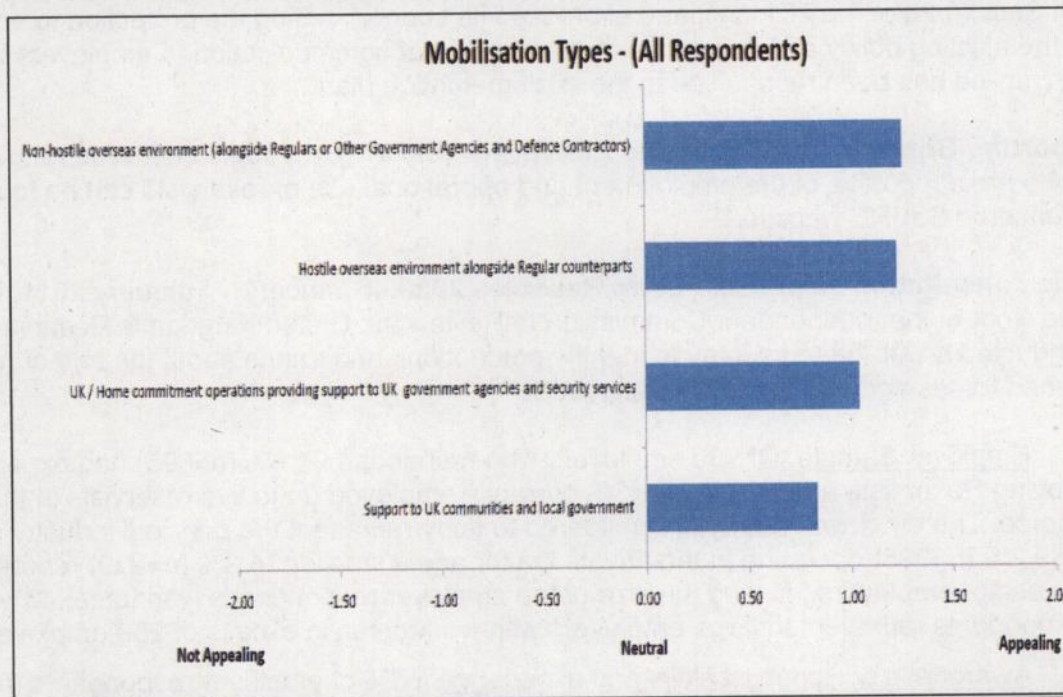
¹¹ <http://www.sabre.mod.uk/Employers/Supportive-Employers/Employers-who-have-publicly-pledged-their-support.aspx>

(4) Current legislation does not reflect the current employment law, in particular with regards to redundancy (n=17).

d. Employers Support for Reservists and volunteering. 90.8% (n=604) of employer respondents said that if an existing employee was contemplating joining the reserves, then they would be supportive. Employer respondents were asked to comment on their attitude toward their employees undertaking volunteering activities (including reservist activities) and 85.1% (n=619) claimed to be either very supportive or supportive of their workforce conducting volunteer activities during working time. 48.4% (n=349) claimed to treat volunteers and reservists equally, however 37.8% (n=268) indicated they provide more support to reservists.

e. Reservists' attitudes towards mobilisation. The web survey confirmed the view that mobilisation and deployment on operations is an attractive part of why individuals join the Volunteer Reserves. However, support to UK communities was revealed to be less appealing than traditional overseas deployments in either hostile or non-hostile environments. See figure 1.0 below.

FIGURE 1.0 RESERVISTS PREFERRED TYPE OF MOBILISATION (n=5866)



7. RATIONALE FOR LEVEL OF ANALYSIS USED IN THE IMPACT ASSESSMENT

25. A Level 2 (Full description of costs and benefits) analysis has been used in the Impact Assessment. This reflects the following factors of the legislative approach adopted through Section 28 of the Armed Forces Act 2011:

a. **Affects a small proportion of the UK work force.** As highlighted in paragraph 6a, reservists represent less than 0.3% of the current UK labour force and a tiny proportion of the total number of UK enterprises.

The requirement will be only arise infrequently. The requirement for the MOD to provide assistance to civilian authorities remains an exception, in line with the principles outlined in paragraph 2b. The requirement for reservists to contribute to MOD's provision of such assistance will be limited as the new call-out power applies only to 'urgent work of national importance'. Excepting certain 'one-off' events of national importance, such as the Olympic Games, which may necessitate a longer call out period, the MOD normally expects call out for such 'urgent work' not to exceed 14 days.

b. **It will build on existing time-tested legislation and Regulations.** The new call-out power is in section 56 of RFA 96. RFA96 is well understood and the Regulations made under

it (described in paragraph 5) provide extensive safeguards. There have been no legal challenges to RFA 96 or the associated Regulations.

c. **It is not possible to monetise costs and benefits.** The infrequency of the requirement for reservists to support the civil authorities and the unique nature of each event means that it is not possible to quantify the costs and benefits to businesses. Hence a qualitative approach has been taken.

8. RISKS AND ASSUMPTIONS

26. Assumptions

- a. Not a wide extension of power. Bringing the power to require reservists to support the civil authorities in line with that of regulars in the armed forces.
- b. Infrequent and limited use of reservists as part of the MOD's support to the civil authorities.
- c. Continued use of MOD policy via Intelligence Selection and employer support activities to mitigate the impact of mobilisation.

27. Risks

- a. Lack of employer support for greater use of reservists in the UK.
- b. Increase in threats and hazards to the UK require the MOD to contribute more resources to supporting the civil authorities resulting in greater use of reservists than anticipated.

28. Mitigation of Risks

- a. Sustained MOD employer support activity.
- b. Continued development of the civil authorities' ability to respond to threats and hazards, combined with efforts to improve local and national resilience.

9. WIDER IMPACT

29. **Markets, business and competition.** These options do not regulate competition or markets in any way.

30. **Micro and start up business exemption.** A waiver from the moratorium exempting micro and start-up businesses from new domestic legislation is requested on the following grounds:

- a. that there is a robust and time-tested policy and legislative process already in place to provide support to employers of reservists;
- b. that the exclusion of those reservists employed in micro or start-up businesses from the available manpower (estimated to be at least 25% of reservists, including sole traders) will severely limit their utility to the armed forces;
- c. that excluding some reservists on grounds of their employer's size would deny these individuals the ability to fully participate in their roles as reservists and precludes supportive and engaged micro and start up businesses from supporting their reservists' where they may wish to do so.

More detail on the micro waiver application is at Annex B.

31. **Environmental issues.** These options do not have any environmental implications.

32. **Enforcement issues.** RFA 96 already provides a mechanism to ensure reservists comply with their obligations. Failure to report is an offence under section 96 of RFA 96, which is triable by court-martial or summarily by a civil court. In addition, knowingly or recklessly providing false or misleading information as part of a claim under SI 2005/859 is an offence under section 87 of RFA 96, which is punishable by a fine and/or imprisonment for up to 6 months. No individual has been tried under section 96 and less than 10 individuals have been found guilty under section 87.

10. SUMMARY AND PREFERRED OPTION

33. **Summary of problem and policy outcome sought.** With the planned 20% reduction in the number of regular personnel by 2020, the MOD must retain the ability to respond to requests for assistance that might be made by civil authorities. In order to be able to generate the manpower for these tasks it is necessary to be able to mobilise reservists for these tasks.

34. The Reserve Forces Act 1996 limits the Secretary of State for Defence's power to call out reservists in the UK to tasks relating to the defence of the realm or 'the alleviation of distress or the preservation of life or property in time of disaster or apprehended disaster'. There are many circumstances falling short of 'disaster or apprehended disaster' in which reservists could make a valuable contribution but for which, under the current legislation, they cannot be called out.

35. By legislating to grant the Secretary of State for Defence additional powers to call out reservists for tasks in those circumstances falling short of 'disaster or apprehended disaster', the MOD will be able to generate the manpower required. In addition, the current MOD policy of Intelligent Selection will be continue to be used, with dialogue with the reservist and employer to ensure that the impact of mobilisation is minimised.

36. **Preferred option - Introduce a new call out power based on existing call out powers in the Reserve Forces Act 1996.** The introduction of a new call out power in the Reserve Forces Act 1996 will provide the MOD with the legal mechanism to mobilise reservists while providing employers and reservists with the full protection of existing Regulations. These Regulations have proven successful in over 35,000 mobilisations since 1997.

11. IMPLEMENTATION AND POST IMPLEMENTATION REVIEW

37. **Armed Forces Act 2011.** The preferred option was implemented through section 28 of the Armed Forces Act 2011 which gained Royal Assent on 3 November 2011. Section 28 provides as follows:

In section 56 of the Reserve Forces Act 1996 (call out for certain operations), after subsection (1) insert—

“(1A) Where—

(a) work is approved in accordance with instructions issued by the Defence Council under the Defence (Armed Forces) Regulations 1939 as being urgent work of national importance, and

(b) the Defence Council have by order under those Regulations authorised members of any forces to be temporarily employed in such work,

the Secretary of State may make an order authorising the calling out of members of a reserve force for the purposes of carrying out such work.”

38. **Regulations.** No changes to the existing Regulations in SI 2005/859 and SI 1997/307 are required.

39. **Policy.** Internal MOD policy on how the new power would be exercised has been developed and promulgated to those individuals charged with responding to requests for Military Aid from Civil Authorities. This will be updated as required based on any feedback from users, employers and reservists if this power is exercised. In addition, ongoing work in response to the Future Reserves

2020 report described in paragraph 9, will be incorporated as required, in the policy guidance on the use of reserves.

40. **Communication and employer support.** As recognised in the risks section, the support of employers will be critical to MOD being able to effectively use this new power. If MOD fails to continue to communicate and demonstrate the advantages of employing and supporting reservists, including the benefits of mobilisations then it is likely that there will be a steep rise in applications under SI 1997/307 for reservists to be exempted from mobilisation. If this occurs, the MOD will not be able to guarantee the manpower to support the civil authorities. Therefore MOD will continue to provide local and centrally directed support to reservist employers, in order to assist the mobilisation process.

41. **Post Implementation Review (PIR).** No formal PIR is planned as it is impossible to predict how and when the power will be used. However, the policy will be reviewed and reported in the following ways:

- a. Reporting to Parliament. RFA 96 requires the making of any call-out Order to be reported to Parliament 'forthwith'. Therefore any use of this power will be made public.
- b. Review of RFA 96 and associated Regulations. In line with the recommendations of the Future Reserves 2020 review, legislation related to the operational use of reserves will be reviewed. No formal date has been set but it has been assumed that June 2015 is a viable timeframe for this review.
- c. Post Operational Reviews (POR). It is standard practice for the MOD to undertake a POR following any operational use of it's assets. Therefore if this power is used, then any lessons identified will be captured in a POR which will be used to inform future policy development.

NUMBER OF ENTERPRISES IN THE PRIVATE SECTOR AND THEIR ASSOCIATED EMPLOYMENT AND TURNOVER, BY SIZE OF ENTERPRISE, UK, START OF 2010

	Enterprises	Employment (millions)	Turnover (£ millions)
All Enterprises	4,484,535	22,514	3,212,315
Small and Medium sized Enterprises (0 - 249 employees)	4,478,595	13,316	1,561,793
All employers	1,193,965	18,982	3,000,522
Number of employees			
Nil*	3,290,570	3,532	211,793
1-9	989,845	3,717	431,378
10-49	170,410	3,363	482,225
50 - 249	27,770	2,703	436,397
250 or more	5,940	9,198	1,650,522

* 'Nil' comprises sole proprietorships and partnerships comprising only the self-employed owner-manager(s), and companies comprising only an employee director

Source: Reproduced from BIS, Business Population Estimates for the UK and Regions 2010, Table 1

REQUEST FOR A WAIVER FROM THE MICRO AND START UP BUSINESS REGULATORY MORATORIUM

Issue

1. Set out in 'The Plan for Growth' is the Coalition policy to introduce "a moratorium exempting micro and start-up businesses from new domestic regulation for three years from 1 April 2011."¹
2. As previously raised in the letter from the Minister for Defence Personnel, Welfare & Veterans, Andrew Robathan MP on 20 July 11 to the Chancellor of the Exchequer and Secretary of State for Business, Innovation and Skills (BIS), the Ministry of Defence (MOD) requests a waiver from that moratorium in respect of section 28 (call out of reserve forces) of the Armed Forces Act 11.
3. This waiver is requested on three grounds:
 - a. that there is a robust and time-tested policy and legislative process already in place to provide support to employers of reservists;
 - b. that the exclusion of those reservists employed by micro or start-up businesses from the available manpower creates a high risk that the MOD will not be able to meet the operational requirements;
 - c. that excluding some reservists on grounds of their employers categorisation would deny these individuals the ability to fully participate in their roles as reservists and precludes supportive and engaged micro and start up businesses from supporting their reservists' where they may wish to do so.

Recommendation

4. That the Chancellor and Secretary of State for Business :

agree the MOD's request for a waiver from the regulatory moratorium for micro-businesses and new businesses on grounds that robust processes underpinned by legislation already exist to protect reservists and their employers. These processes take into account the needs of businesses without preventing individuals from serving in the reserve forces.

Background

5. **Reserve Forces Act 1996 (RFA96)** allows members of the reserve forces to be 'called out' – the process by which they can be required to leave their jobs to carry out full-time work as reservists (this is known as 'mobilisation'). RFA 1996 limits the Secretary of State for Defence's power to call out reservists in the UK to tasks relating to the defence of the realm or '*the alleviation of distress or the preservation of life or property in time of disaster or apprehended disaster*'. There are many circumstances falling short of 'disaster or apprehended disaster' in which reservists could make a valuable contribution but for which, under the current legislation, they cannot be called out.
6. **Armed Forces Act 2011 section 28.** The purpose of section 28 of the Armed Forces Act 2011 is to amend section 56 of RFA 96 to extend the power to call out members of the reserve forces in the UK. The Armed Forces Act 2011 received Royal Assent on 3 November 2011. This change will align the power to call out with the existing power (in the Emergency Powers Act 1964) to use regular members of the armed forces for 'urgent work of national importance'. It will allow call out for work approved by the Defence Council as 'urgent work of national importance'. Section 28 provides:

In section 56 of the Reserve Forces Act 1996 (call out for certain operations), after subsection (1) insert—

¹ The Plan for Growth, HM Treasury & BIS, para 2.46, pg 52, March 2011, http://cdn.hm-treasury.gov.uk/2011budget_growth.pdf

“(1A) Where—

(a) work is approved in accordance with instructions issued by the Defence Council under the Defence (Armed Forces) Regulations 1939 as being urgent work of national importance, and

(b) the Defence Council have by order under those Regulations authorised members of any forces to be temporarily employed in such work,

the Secretary of State may make an order authorising the calling out of members of a reserve force for the purposes of carrying out such work.”

7. **Use of reservists in support of civil authorities.** Reservists were mobilised in November 2009 to provide assistance during the Cumbrian flooding, and helped to build a temporary crossing to reconnect the town of Workington. However, the call out powers existing at the time prevented call out in a range of circumstances which may be sufficiently serious for the civilian authorities to request armed forces assistance, but which fall short of ‘disaster or apprehended disaster’, for example severe weather or a nationwide outbreak of animal disease (two risks included within the 2010 National Risk Register). Additionally, section 28 allows reservists to be mobilised to provide unarmed, low-level support to the security operation for the London 2012 Olympic Games.

8. There are more than 30,000 committed individuals in the volunteer reserves based across the UK. They not only bring to bear important local knowledge in relation to local problems, but can also offer a range of specialist skills that do not exist in the regular force—for example, medical skills, meteorological expertise, and rail and maritime expertise, which can be drawn upon in support of the civilian authorities.

Current Policy

9. **Mobilisation.** This is essential for two reasons. Firstly, it gives the MOD the guarantee of the reservists’ service. Secondly, it activates statutory employment and financial assistance safeguards for reservists and their employers. These measures help to minimise any disruption that mobilisation may cause to reservist and employers alike.

10. Mobilisation is underpinned by the MOD policy of ‘Intelligent Selection’. This is designed to identify, in good time, those reservists with the training, skills and availability for mobilisation, in order to minimise the impact of mobilisation upon the individual, their family and employer. The dialogue with a reservist’s employer is an important part of Intelligent Selection and is undertaken by the reservist’s local unit, supported by centralised resources.

11. **Employer support.** The MOD provides local and centrally directed support to reservist employers, in order to assist the mobilisation process. This includes Regimental Operational Support Officers working with employers at a local level, regional civilian experts and case workers under the SaBRE campaign, and a dedicated national website and helpline to answer any questions that employers may have.²

Legislation in Support of employers and reservists

12. Two statutory instruments made under RFA96, ensure that reservists and employers are supported and assisted during a period of mobilised service: the Reserve Forces (Call-out and Recall) (Financial Assistance) Regulations 2005 (SI 2005/859)³ and the Reserve Forces (Call-out and Recall) (Exemptions Etc) Regulations 1997 (SI 1997/307).⁴ These instruments enshrine the essential role and involvement of the civilian employer with respect to mobilisation.

13. **Financial assistance to employers and reservists.** The 2005 Regulations create a scheme for providing financial assistance to reservists and employers who would otherwise suffer financial loss as a result of the mobilisation of reservists. The tried and tested protections in the 2005 Regulations will apply to call out under the new power in section 56 of the Reserve Forces Act 1996 just as they do to call out under existing powers, ensuring that reservists, including sole traders, are not financially

² SaBRE – Supporting Britain’s Reservists and Employers is a MOD sponsored body (www.sabre.mod.uk)

³ <http://www.legislation.gov.uk/ukSI/2005/859/contents/made>

⁴ <http://www.legislation.gov.uk/ukSI/1997/307/contents/made>

disadvantaged as a result of mobilisation, and that every employer will have the right to apply for financial assistance in order to defray additional costs related to replacing a mobilised employee.⁵ In the Financial Year 2009-10, over £11 million in financial assistance to employers and reservists was awarded.

14. **Applications and Appeals for exemption or deferral of mobilisation.** The 1997 Regulations entitle persons who have been called out, or their employers, to apply for deferral of or exemption from that liability, or in the case of persons already serving, release or discharge from service. Again, these Regulations will apply to call out under the new power in RFA 96 section 56 just as they do to call out under existing powers. The grounds on which an employer can make an application are that the absence of the reservist for a period of relevant service would cause serious harm to the business or other undertaking in which the reservist is employed, or to a partner, proprietor or employee of that business or other undertaking. Such harm may include (a) loss of sales, markets, reputation, goodwill or other financial harm; (b) impairment of ability to produce goods or provide services; or (c) harm to research into and development of new products, services or processes, which could not be prevented by the granting of financial assistance under the 2005 Regulations.

15. Applications are made to trained internal adjudication offices who must also take into account factors including the purpose for which the call out power is exercised, the number of reservists required, the number and availability of reservists with a particular skill or training possessed by the reservist in question and the need to maintain unit cohesion.

16. A reservist or employer may appeal against a decision under the 1997 or 2005 Regulations to the Reserve Forces Appeals Tribunal (RFAT), which is an independent body administered by the Ministry of Justice.

17. Since 2008, over 7000 mobilisations have taken place and a total of 632 applications for deferral or exemption has been made by reservists and employers, with 566 applications being upheld (90% of applications are successful). There have been 15 appeals to the RFAT since 2008, with only 2 cases progressing to a Tribunal in that period – all others were withdrawn or settled.⁶

18. **Length of mobilised service.** While the new call out power in section 56 does widen the scope of operations a reservist may be called upon to support, and potentially increases the likelihood of being mobilised, the existing restrictions on both the length and frequency of mobilised service will apply, respectively a maximum of 9 months mobilised service in any 27 month period.⁷ It is anticipated that mobilisation under the new Section will broadly be for periods of between 5 – 14 days but on occasion may be longer, depending on the nature of the operational task and the role the reservist was undertaking.

Impact upon employers

19. As the new call out power is an extension to existing well understood policy and processes and will be fully supported by existing employer support activities, it is not anticipated that this expanded power of call out will create a greater burden on micro and small businesses. Internal data sources indicate that around 25% of the 30,000 volunteer reservists are either sole traders, or employed by a micro business. It is not possible to predict exactly how often these individuals will be mobilised, but given that the new call out power is limited to 'urgent work of national importance' at the request of the civilian authorities, it is not likely to be frequently used.

20. As demonstrated there is a robust process in place beginning with the policy of Intelligent Selection and well supported by tested legislation. This current process allows flexibility for reservist, employer and the MOD alike, ensuring that the needs of each party are taken into account. This process will apply in full to any mobilisations made under the new power.

⁵ This does not cover the salary related costs of employing a replacement for the mobilised reservist (as the employer ceases to pay the salary during mobilised service), but instead covers recruitment, retraining and other marginal costs.

⁶ Since 1998, there have been over 125 appeals to the RFAT, of which over 110 were settled or withdrawn before a Tribunal has sat. In total, the Tribunal has upheld the decision of the Service Authorities (MOD) 12 times and the applicant 4 times.

⁷ Note: This can involve multiple short-term mobilisations up to the time limit rather than a single mobilisation.

21. **Consultation with external bodies.** The National Employers Advisory Board (NEAB) was consulted on section 28 of the Armed Forces Act 2011 and has expressed its support, noting the protection to employers provided by the existing policy and legislation.⁸ In addition, a wide range of employers who are supportive of the employment and operational use of reservists can be found on the MOD-sponsored SaBRE website.⁹

Presentational Issues

22. The introduction of section 28 was well received in Parliament, with members of both the Commons and the Lords speaking in support and no amendments being received. It is also consistent with the conclusions of the Future Reserves 2020 report, presented to Parliament on 18 July 2011 which recommended that reservists play a greater part in support to the civil authorities.¹⁰

23. As the new power builds on existing powers and legislation, and will be fully supported by time-tested legislation to protect the interests of the reservists and employers, it is not anticipated that this will create any presentational issues.

⁸ NEAB is a Non-Departmental Public Body, responsible to the Secretary of State for Defence for the provision of informed but independent advice surrounding the employment of Reserves

⁹ <http://www.sabre.mod.uk/Employers/Supportive-Employers/Employers-who-have-publicly-pledged-their-support.aspx>

¹⁰ Future Reserves 2020 was produced by the Independent Commission to Review the United Kingdom's Reserves Forces, commissioned by the Prime Minister in October 2010. See page 7, 'We recommend that reservists should play a greater part in Homeland Security (for example maritime coastal protection) and UK Resilience.'