

Title: Defence Reform Bill IA No: MOD 0002 Overview Lead department or agency: Ministry of Defence Other departments or agencies: N/A	Impact Assessment (IA)		
	Date: 03/07/2013		
	Stage: Final		
	Source of intervention: Domestic		
	Type of measure: Primary legislation		
	Contact for enquiries: Defence Bill Team, DES CDM-MatStrat13b, 02072182130 (See individual contacts for each area)		
Summary: Intervention and Options			RPC Opinion: See Individual Assessments

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, Measure qualifies as One-Out?
£m 0	£m 0	£m 0	No
			Zero Net Cost

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

- The procurement of defence equipment and the provision of defence logistic services need to be reformed to ensure that defence capabilities are delivered to the Armed Forces effectively and value for money is obtained for the taxpayer.
- Changes to legislation are needed to modernise and make greater use of the Reserve Forces.
- Further detail is covered under the impact assessment for each of the 3 areas of the Bill.

What are the policy objectives and the intended effects?

- Improved delivery of defence capability to the Armed Forces.
- Financial benefits from improved efficiency in the procurement and support of defence equipment.
- Greater use of the Reserve Forces in delivering UK military capability.
- Further details are provided in the individual impact assessments.

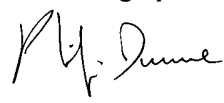
What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

There is no net increase in the regulatory burden on business (or other sectors) as a result of the Bill.

The policy options that have been considered are covered in detail in the individual impact assessments.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: April 2019					
Does implementation go beyond minimum EU requirements?				No	
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro No	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ 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 SELECT SIGNATORY:  Date: 02/07/2013

Title: Defence Reform Bill IA No: MOD 0002 Part 1 Lead department or agency: Ministry of Defence Other departments or agencies: N/A	Impact Assessment (IA)		
	Date: 03/07/2013		
	Stage: Development/Options		
	Source of intervention: Domestic		
	Type of measure: Primary legislation		
Contact for enquiries: Materiel Strategy Team, DES CDM-MatStrat2f-AsstHd, 030 679 34105			

Summary: Intervention and Options	RPC Opinion: N/A
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Cost of Preferred (or more likely) Option

Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCBS on	In scope of One-In, One-Out?	Measure qualifies as
£m	£m	£m	No	Zero Net Cost

What is the problem under consideration? Why is government intervention necessary?
 Reform of the Defence Equipment and Support (DE&S) organisation. DE&S is responsible for the acquisition, support and supply of defence equipment and the provision of logistics to the Armed Forces. DE&S has underperformed consistently over an extended period. Recent analysis has identified three 'root causes'. A number of options for transforming DE&S have been considered. The preferred option is to create a Government-Owned, Contractor-Operated (GOCO) entity, with which the Secretary of State for Defence would contract for the delivery of Defence Procurement services, and into which DE&S staff would transfer. This would require primary legislation.

What are the policy objectives and the intended effects?
 To improve delivery of Defence equipment (performance, time and cost) by transforming the management of Defence acquisition, support and supply in a way which entrenches the transformation and delivers value for money for the taxpayer. The intent is to harden the interfaces between Forces customer and DE&S, and provide the freedoms to recruit, reward, retain and release staff which are necessary for the effective and efficient conduct of business by an agile and responsive organisation. Achieving these outcomes means ensuring the right leadership of the staff in DE&S, providing them will access to commercial expertise, and giving them additional processes, skills and tools from the private sector.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)
 Detailed consideration was given to three models: a Trading Fund, an Executive Non-Departmental Public Body with Strategic Partner, and a GOCO model. In July 2012, the Secretary of State for Defence announced that work undertaken to date suggested that the strategic case for DE&S to become a GOCO was stronger than that for other options. Further Value for Money work confirmed this assessment, and the MOD is now in the process of eliciting commercial propositions from potential GOCO partners. It is currently assessed that a GOCO offers the best chance of embedding the real change required to reform DE&S, and of meeting the transformation requirement in the most effective and durable way. There remain substantial uncertainties over the level of costs and benefits, which could affect the preferred option. The legislative provisions have been kept to a minimum, and alternatives to legislation have been adopted wherever possible, for instance the inclusion of specific clauses in the contract in lieu of legislation.

Will the policy be reviewed? It Will be reviewed. If applicable, set review date: 04/2019

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 No	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ 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.

Summary: Analysis & Evidence

Policy Option 1

Description: A Government Owned Contractor Operated (GOCO) option

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: £1,396M	High: £261M	Best Estimate: £934M

COSTS (£m)	Total Transition (Constant Price) Year	Average Annual (excl. Transition) (Constant	Total Cost (Present Value)
Low	XXXX	XXXX	Optional
High	XXXX	XXXX	Optional
Best Estimate	XXXX	XXXX	XXXX

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

Two types of costs have been identified with the GOCO option, one-off implementation and transition; and recurring costs associated with the two stage GOCO option. One off implementation costs comprise transition before vesting day and during the two stage business transfer of business activity. Recurring costs include, the introduction of new IT/MIS, upskilling and redundancy costs and fees. These costs are linked to the injection of private sector resource, phased over a 5 year timeline.

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

Non monetised costs comprise the use of existing MOD shared services such as Defence Infrastructure (building and hard and soft facilities management) and Defence Business Services (payroll, HR, vetting, contract management and bill payment). The introduction of the GOCO is not seen to impact on Industry as it does not introduce any new requirements or processes on them, what it will do is hold the suppliers to account more effectively.

BENEFITS (£m)	Total Transition (Constant Price) Year	Average Annual (excl. Transition) (Constant	Total Benefit (Present Value)
Low	Optional	XXXX	Optional
High	Optional	XXXX	Optional
Best Estimate	XXXX	XXXX	XXXX

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

Benefits have been classified in accordance with HMT guidance into cashable and non cashable efficiency categories. The major cashable and cost avoidance categories (or combination of both) have been categorised into major categories including; reduced delay in approved projects; realism in pre-Main Gate planning, improved decision making to avoid late stage cancellation costs, transparency of the cost of requirement change and driving better VfM through the Industrial commercial interfaces.

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

There are other contributing factors that have been identified that lead to poor project delivery. These include factors within the DE&S direct control such as technical errors in project risk management, broader MOD or Government control. A GOCO construct would enable greater HR freedom, improved systems and processes which today currently constrain the ability of the organisation (due to the rigidities in Government and Civil Service structures) to work in an agile way.

Key assumptions/sensitivities/risks

Discount rate

3.5%

- The figures show as the Net Present Value (NPV) within the Investment Appraisal have been expressed over a 10 year timeframe. The associated costs and benefits are subject to substantial uncertainty.
- One-off implementation costs comprising of transition, IT upgrade, up-skilling and redundancy which have incurred over Years 1-5 (FY15/16 to FY18/19).
- Recurring costs increases over initial 5-7 year period until steady state is reached.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: XXXX	Benefits: XXXX	Net: XXXX	No	Zero

Note: Monetary costs have been redacted under Section 43(2) of the FOI Act, so as not to prejudice the Department's commercial competition for a GOCO provider

Summary: Analysis & Evidence

Policy Option 2

Description: DE&S+ option

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: £766.3M	High: £623.6M	Best Estimate: £447.4M

COSTS (£m)	Total Transition (Constant Price) Year	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	XXXX	XXXX	Optional
High	XXXX	XXXX	Optional
Best Estimate	XXXX	XXXX	Optional

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

Two categories of costs have been identified for the DE&S+ option, one-off implementation and transformation and recurring costs. Recurring costs are phased over a 5 year timeline.

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

Non monetised costs comprise the use of existing MOD shared services such as Defence Infrastructure (building and hard and soft facilities management) and Defence Business Services (payroll, HR, vetting, contract management and bill payment).
There is not impact to these costs under the DE&S+ Option.

BENEFITS (£m)	Total Transition (Constant Price) Year	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	XXXX	Optional
High	Optional	XXXX	Optional
Best Estimate	XXXX	XXXX	XXXX

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

Benefits have been classified in accordance with HMT guidance into cashable and non cashable efficiency categories. The major cashable and cost avoidance categories (or combination of both) have been categorised into major categories including; reduced delay in approved projects; realism in pre-Main Gate planning, improved decision making to avoid late stage cancellation costs, transparency of the cost of requirement change and driving better VfM through the Industrial commercial interfaces.

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

There are a number of contributing factors that have been identified that lead to poor project delivery against performance, cost and time targets. These include factors within DE&S direct control such as technical errors in project or risk management, broader MOD or Government control or changes due to in external factors. Under the DE&S option there would be no change to current Government and Civil service structures. This option does however provide provision for improved systems and processes.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

- The figures shown as the Net Present Value (NPV) within the Investment Appraisal have been expressed over a 10 year timeframe.
- One off implementation costs comprising of transition, IT upgrade, up-skilling, increases to salary costs and the provision of a Change Partner. These costs are incurred over Years 1-4 (FY15-16 to FY18/19).
- Recurring costs increases over initial 5 year period until steady state is reached.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: XXXX	Benefits: XXXX	Net: XXXX	No	Zero Net Cost

Note: Monetary costs have been redacted under Section 43(2) of the FOI Act not to prejudice the Department's commercial competition for a GOCO provider.

Evidence Base (for summary sheets)

A Summary of the Proposed Policy

The MOD is proposing (subject to VFM, approvals, and affordability) to replace existing DE&S arrangements with a Government-Owned, Contractor-Operated (GOCO) operating model by letting a contract with a private sector contracting entity. Analysis carried out to date has concluded that the establishment of a GOCO potentially offers the best value for money and is therefore the preferred option to achieve the required reform of DE&S. This analysis will be further tested through an Assessment Phase and market engagement, and a Full Business Case will be submitted in due course. In the event that the GOCO operating model is selected, primary legislation would be needed to ensure that the Defence Secretary can make effective arrangements with a private sector contractor to provide Defence procurement services. Given the urgency of the need to reform DE&S it is necessary to seek the required legislation before the final decision has been made on the future operating model.

Transforming the delivery of Defence acquisition, support and supply is a key part of the wider Defence Transformation programme. The Materiel Strategy, the programme to reform DE&S, and its supporting work has identified three “root causes” of underperformance; an over-heated Equipment Programme; an unstable interface between those parts of the MOD which request acquisition and support services and the Defence Equipment & Support organisation (DE&S) which delivers them; and a lack of business capability (processes, tools and skills), including management freedoms.

Defence Transformation initiatives have addressed significant areas of this challenge, including the delivery of a balanced, if taut, MOD budget. However, this work does not address the underlying issues which cause underperformance in defence acquisition. Poor specification by the Armed Forces, a lack of understanding of cost drivers, poor initial cost estimation and insufficient project control by the DE&S have all served to drive up the eventual costs and delivery timescale of projects in the past and, uncorrected, will do so again.

A commercial competition to find a potential GOCO contractor is currently underway, and a robust public sector comparator known as “DE&S+” is being developed in parallel to inform a Full Business Case decision on the option which is affordable and represents best value for money to the taxpayer. A final decision is expected in Summer 2014.

Problem under consideration and rationale for intervention

What is defence acquisition?

DE&S procurement activity ranges from managing multi-billion pound procurement projects, such as the purchase of warships, armoured fighting vehicles and aircraft, to the supply of high-volume commodity items, such as ammunition. These are some of the most complex and demanding engineering/procurement projects in the world. Equipment support covers the maintenance of this equipment to meet readiness, availability, deployability and sustainability requirements specified by the Armed Forces, both for peacetime and global military operations. Logistics involves the procurement of commodities such as food and fuel, and the storage and distribution of items within the UK and around the world. In Financial Year 11/12, the DE&S was responsible for some 48% of the MOD’s entire budget (approx £18.4Bn per year).

The need for Reform

Driven by the challenges of the MOD financial position in 2010, Lord Levene was invited by the Secretary of State for Defence to conduct a fundamental review of the structure and management of MOD¹. In his review, Lord Levene concluded that the Defence Acquisition system was under-performing and that corrective transformation activity must be system-wide and coherent in order to deliver significant and enduring improvements. These conclusions were consistent with the 2009 report by

¹ Defence Reform: An independent report into the structure and management of the Ministry of Defence, Lord Levene, June 2011

Bernard Gray² which critically examined the performance of DE&S for the first time as a single entity under the auspices of a review of the acquisition system.

This is not a new problem. Successive governments have attempted to reform Defence acquisition, support and supply, with little success. Balancing the Defence Budget has eased the situation to a degree, but there remains a high probability that, unless we the root causes of the problems are resolved, programmes will continue to run over time and over budget. Taken together, these problems are estimated to waste some £1.5Bn per annum - the proposed reforms will significantly reduce this waste, generating benefits to the Armed Forces and the taxpayer.

Desired Outcomes

The Materiel Strategy review of Defence acquisition has three desired outcomes:

- A balanced and affordable Equipment and Support programme;
- The delivery of best value for the tax payer in Defence acquisition;
- A DE&S with engaged and motivated staff with the behaviours, accountabilities, skills and processes required to do the job.

Achieving these desired outcomes means ensuring the right leadership of the staff in DE&S, providing them with access to the necessary skills and giving them the processes and tools which will enable them to do their jobs better, so that the front line (and taxpayers) are provided with the right equipment on time and on budget.

The Root Causes of Underperformance

Three issues have been identified at the root of the problems experienced by Defence acquisition. Addressing these root causes offers the best opportunity to deliver sustained improvement in Defence Acquisition. Two exercises, conducted by independent consultancies, have estimated the inefficiencies (sometimes referred to as “frictional waste”) caused by actions to manage an unsustainable programme at between £1.3Bn and £2.2Bn per annum, with a common central estimate of £1.5Bn per annum lost to defence, some 22% of all initial acquisition spend.

Root Cause 1: An overheated Equipment Programme

The annual MOD financial Planning Round has traditionally generated competition between the Single Services for scarce resources. This can be exacerbated by the wish to maximise the level of capability that can be achieved, and a reluctance to make painful choices to balance budgets. All too often the list of planned equipment has significantly exceeded the funding available. This behaviour has been reinforced by a “conspiracy of optimism”, between military specifiers and industry partners, systematically underestimating the costs (and delivery times) of new projects.

Historically, this has resulted in an equipment programme that is overheated: that in turn has led to an annual consideration of what should be delayed or deferred in order to balance the budget in the near term with considerable financial implications for the budget over the longer term. This activity also represents a significant drain on manpower resource.

The work undertaken across the MOD during and since the 2010 Strategic Defence and Security Review has delivered a balanced, if taut, MOD budget. This has addressed some, but not all, of the underlying issues which cause underperformance in Defence Acquisition, and the system will return to imbalance if all of the issues are not robustly addressed.

Root Cause 2: An unstable interface between the Requester and Deliverer

² Review of Acquisition for Secretary of State for Defence: An independent report by Bernard Gray. October 2009

At present, the interface between the DE&S and the rest of the MOD (including the three Service headquarters, known as the Front Line Commands) is porous, and there is a tendency for changes to project requirements be agreed, without a full understanding of the consequences.

This behaviour is in part the result of a situation where staff in DE&S, both military and civilian, can feel unable to express and maintain an independent position, perhaps for reasons of hierarchical pressure, even when they believe that it is supported by robust analysis. It is exacerbated when demands to incorporate changes over short timescales make accurate cost and time estimating difficult.

Over time, this “can do” attitude in fact harms the Armed Forces by driving an unsustainable programme, necessitating deep cuts to make savings when more effective, disciplined control of the programme could have made better use of taxpayers’ money and resulted in increased operational output.

Root Cause 3: Insufficient Skills and Management Freedoms Within DE&S

The skills and expertise which DE&S needs to perform its role effectively are very different to those required and valued by much of the rest of the Civil Service. Rather than classic policy skills for example, DE&S requires a high proportion of Project Management, Commercial and Financial expertise as well as engineering and other technical specialities. It needs this expertise to discharge its responsibility for delivering a project portfolio that is amongst the most complex in the world.

These specialist skills have a much higher market value than can be recognised within the civil service pay framework, and it is becoming increasingly difficult to recruit, develop, and retain those with the particular skills needed at all levels of the business.

Options

To achieve the required benefits, the Materiel Strategy team has identified the following key business needs:

- Greater Human Resources freedoms;
- Enhanced processes;
- Improved systems and tools; and,
- A more robust customer interface.

A number of options have been considered ranging from ‘do nothing’ through to full privatisation. The options were prioritised and progressively down-selected by the DE&S Board and subsequently by the Defence Board.

The three main options considered were:

- A **Trading Fund**; also known as an executive agency, carries out a service or function within Government, and comprises a well defined business unit that has a clear focus on delivering specific outputs. The accounts are not consolidated into the accounts of the department to which the fund is linked and the entity is generally treated as a Public Corporation in the National Accounts.
- An **Executive Non-Departmental Public Body with Strategic Partner (ENDPB/SP)**; ENDPBs are not part of the Crown but work within a strategic framework set by Ministers. They undertake a service or function to be carried out at arm’s length from the Government.
- A **Government Owned Contractor Operated (GOCO)** organisation; a private sector operated entity over which Government retains strategic control, but which has sufficient freedom of movement and which can be incentivised through a contract.

In June 2012, the Defence Board expressed a strong preference for the GOCO option. Work since has demonstrated that there is no value for money argument to pursue an ENDPB/SP model. The final business case will consider three remaining options (as set out below), and compare their ability to meet the business needs detailed above.

In July 2012, the Secretary of State for Defence announced that work undertaken to date suggested that the strategic case for DE&S to become a GOCO was stronger than that for other options. Further Value for Money work confirmed this assessment, and cross-Government approval has recently been granted to move into an Assessment Phase. The MOD is in the process of eliciting commercial propositions from potential GOCO partners, and in parallel work is being carried out to identify whether it is possible to deliver the benefits of the GOCO model within the public sector. This latter model, known as DE&S+ will serve as the public sector comparator and value for money benchmark in the final decision making process.

Option 1 - Government-Owned, Contractor-Operated operating model (GOCO)

Under this option DE&S would move outside the Government boundary to become a ring-fenced private-sector entity that would act as MOD's agent in the delivery of equipment, support and logistics³. The Government would retain strategic control and ownership of assets, but the organisation would be operated on a for-profit basis by a private company accountable to its shareholders. The current DE&S Civil Service workforce would transfer into the GOCO under TUPE (Transfer of Undertakings Protection of Employment) arrangements, becoming private sector employees. The GOCO model is seeking to secure the commercial freedoms and incentivisation available to the private sector but ensure sufficient strategic control exists to protect the resilience of its acquisition, support and supply capabilities and ultimately its national security interests.

Option 2 - DE&S+: the Public Sector Comparator

DE&S+ is a public sector comparator to the GOCO option. It is a viable alternative in its own right, so that it can taken forward should the decision be made not to pursue the GOCO option. The DE&S+ workstream is examining how good DE&S could be, investigating opportunities to introduce the following key differences from the DE&S of today (as-is):

- Talent Management to attract, develop, retain and reward the skills needed to deliver the DE&S portfolio of products and services;
- Enforcement of a customer-supplier (Requestor-Deliverer) relationship to drive behaviours that will deliver the procurement and support of defence materiel cost-effectively;
- Flexible deployment of personnel to match skills and resources to business priorities;
- Realism in project planning to ensure that the organisation can accurately communicate realistic project performance parameters;
- Better management of change to enable the organisation to determine and communicate the impact of changes to products and services;
- Adoption of best practice processes with associated enabling tools; and
- The requirement for a private sector Change Delivery Partner (at a cost of around £25M over 4 years, based on an estimate by KPMG).

It is assumed that DE&S+ would require additional delegations to benefit from freedoms and capabilities similar to those sought from a GOCO. Work is currently underway with partners across Government to understand the extent of the change that could be delivered while keeping DE&S within the MOD boundaries.

Option 3 - Do Nothing or 'As Is'

The 'As Is' option incorporates a number of changes which will affect DE&S as a result of change programmes outside the Materiel Strategy, including the personnel reductions required as part of the

³ Subject to potential changes to elements of the DE&S logistics chain.

2010 Strategic Defence Review (“Interim Structure”) and changes to the MOD arising from Defence Reform. Though the proposed changes would bring some improvement, they would not address the root causes of DE&S’ underperformance or provide the necessary upskilling of DE&S business capabilities. The total accessible benefits lost through poor planning and execution of the programme is estimated to be around £1.5Bn per annum and under this option will either materialise as increased programme costs or programme trade offs and delays, or, more starkly, as a reduction in the equipment capability delivered to the Armed Forces. Applying an ‘as is’ model fails to address the challenges to the quality of the DE&S business capabilities and the absence of investment in capability will continue the erosion of the ability of the organisation to deliver the needs of its customers.

Rationale for Legislation

During the concept phase, consideration was given to the legislative requirements of each option. For example: a Trading Fund would not require legislation, as the entity would remain “on vote”, whereas an ENDPB would have required legislation to set it up. The preferred option, a GOCO, requires less legislation; it will apply where the Secretary of State for Defence makes arrangements with a selected bidder to carry out procurement activities and in order to ensure that those arrangements are effective, for example, allows the sharing of confidential information where necessary and expedient. In addition, it is right that Parliament should have the opportunity to debate these proposed changes out, particularly as a GOCO would represent a significant change in the way Government functions are carried out.

It is crucial that, once a decision has been made on the future of DE&S, the MOD is in a position to move to implement the chosen option quickly – until we do so, the loss of skills and capability in DE&S will continue, reducing the MOD’s ability to deliver equipment to the front line. Consequently, we have chosen to seek legislation prior to a final decision on the option to be implemented.

Monetised Benefits

In accordance with Treasury guidance, the economic appraisal assesses the identified options from a UK perspective, considering the net impact of cost and benefit to the Government as a whole, rather than to DE&S only, and it does not differentiate between cashable and non-cashable efficiency. The types of benefit which were assessed included:

1. The reduced delay in project approvals;
2. Realism of Pre Main Gate planning and an overheated programme cost;
3. Late stage cancellation costs;
4. Transparency of change impacts (post (MG));
5. Driving better Value for Money (VfM) from the Industrial commercial interface;
6. Breadth of boundary;
7. Increased efficiency and flexibility in resourcing;

Each benefit item has been categorised as either cashable or cost-avoidance (or a combination thereof).

Description, sources and assumptions

Three different sets of analysis have been undertaken to quantify the level of cost inefficiency in DE&S: the Gray Report (2009)^[1]; Booz & Co. (2011)^[2]; and Corporate Value Associates (CVA) (2012)^[3]. The GOCO / ENDPB down-selection paper (September 2012) sought to align these analyses to produce a consolidated view of the potential addressable benefits for the Materiel Strategy^[4].

This analysis has subsequently been refined to align contract savings with the business case for the introduction of Single Source Regulatory Office (SSRO)^[5]; and to quantify the benefits of DE&S+.

^[1] Review of Acquisition for Secretary of State for Defence: An independent report by Bernard Gray, October 2009

^[2] Materiel Strategy December 2011 Defence Board Deck pp.38-84, Booz & Co., 16 December 2012

^[3] The Materiel Strategy – VfM Analysis, Booz & Co. and CVA, 22 June 2012

^[4] Materiel Strategy: GOCO / ENDPB Down-selection. L.E.K. submission, 21 September 2012

^[5] SSRO Outline Business Case, DASA endorsed 19 November 2012

Non Monetised Benefits:

Reform will provide the opportunity both to carry out corrective activities to address waste and inefficiencies and to exploit potential improvements identified in the analysis and assessment processes. Among the potential financial benefits identified are:

- a. Reduction in the delay of approved projects (post-Main Gate) this is the main driver of consumption of resources with no valuable output.
- b. Ensuring programme definition and management is realistic and provides the best Value for Money for Defence - improving information and decision-making at all stages of the Acquisition Cycle could address waste and poor Value for Money choices. These would be delivered through three key activities:
 - i) Providing more realism in pre-Main Gate planning, addressing the system-wide optimism that allows projects that have not reached the right level of maturity from entering the Equipment Procurement Programme (EPP);
 - ii) Earlier identification of troubled projects to minimise wasted expenditure on projects that are subsequently cancelled; and,
 - iii) Providing transparency to the requester around the cost or risk implications of change.
- c. Driving industry's commercial interface harder to achieve Value for Money - this would be driven by achieving better contractual terms through evidence-based negotiation, improving risk allocation and management, and more rigorous contractor commercial management, facilitated by the SSRO.
- d. Driving efficiency in spending beyond capital projects - applying specialist skills and incentives to yield gains beyond the reduction in frictional costs associated with delivery of the EPP. These include:
 - i) Helping the Customer drive more efficient and effective spending through innovative approaches to programme and cross-programme spending, for example, common supplier management and modularity;
 - ii) Enabling increased flexibility in use of delivery body resources through adoption of industry best-practice;
 - iii) Driving efficiencies in key functional areas across the business through implementation of best-practice ways of working; and,
 - iv) Accelerating and enhancing the support transformation process, including inventory management, based on investment in appropriate information tools and analytics, as well as application of private sector expertise. While support benefits have not been quantified due to paucity of management data, there is a strong rationale for significant incremental savings as the majority of existing savings relate to the EPP.

The quantification of the benefits of reform has been developed through consideration of the three principal investment objectives relating to Value for Money (frictional costs, including those relating to the overheated programme and late stage cancellations); better deals with suppliers (contract costs); and, better decision-making by the customer and DE&S (efficiency savings). Care has been taken to ensure that the savings in each cost type are distinct and are not double-counted.

There are a number of contributing factors that lead to the cost increases that the investment objectives described above are intended to address. These include:

- a. Factors under direct DE&S control (e.g., technical errors in project costings or project management, underestimation of risk, poor contract negotiation with industry);
- b. Factors under broader MOD or Government control (e.g., changes to equipment budget, changes in policy or strategic priorities);

- c. External factors (e.g., changes in threat).

The extent to which DE&S can address these factors varies. Three of the four business needs (HR freedoms, improved systems, and improved processes) are principally intended to address factors under direct DE&S control. However, an improved Deliverer, alongside the introduction of a more robust customer interface, will also generate a reduction in wastage caused by factors under broader MOD or Governmental control. For example, more accurate and timely costing of change requests will allow the customer (the Front Line Commands) to make more informed decisions regarding trade-offs between capability requirements and cost to deliver.

Monetised Costs

The estimate of one-off and implementation costs associated with the GOCO was developed in conjunction with Booz during the previous phase of Materiel Strategy analysis work which concluded with the Materiel Strategy report in Jan 2012^[6]. This analysis made use of a variety of external benchmarks in order to generate Rough Order of Magnitude costings. Subsequently, the costs have been refined as further analysis has been undertaken and evidence from Phase 2 of Soft Market Testing has been gathered. Both Option 1a (Single-stage GOCO) and Option 1b (Two-stage GOCO) are estimated to incur the same incremental operating costs in steady state, and to incur similar one-off implementation costs.

Incremental costs for DE&S+ have been considered using the same categories identified for GOCO costs. A number of these categories (for example, payments for private sector services) are specific to the GOCO, and will not be incurred in the DE&S+ option. The remaining cost lines have been estimated using a bottom up methodology in the VfMB work programme, with costs of a Trading Fund model (as developed by Booz) used as a reference point and adjusted appropriately for DE&S+.

The costings included in the cost model for the GOCO and DE&S+ options have been subject to independent cost assessment by KPMG. The assessment has reviewed the Business Case requirement and the Master Data Assumption List to identify if the costs and associated three Point Estimates meet Initial Gate standard, and whether there are any gaps.

Non Monetised Costs

Non monetised costs comprise the use of existing MOD shared services such as Defence Infrastructure (building and hard and soft facilities management) and Defence Business Services payroll, HR, vetting, contract management and bill payment) the introduction of the GOCO company to act as agent is not seen to impact on Industry as it does not introduce and new requirements or processes on them, what it will do is hold the suppliers to account more effectively.

Key Risks

A number of programme level ('strategic') risks have been identified, and are being monitored and mitigated as appropriate. The top three strategic risks to the Materiel Strategy programme are:

1. That the programme team fail to produce compelling evidence to key stakeholders in support of the Full Business Case in the time provided.
2. That the key stakeholders choose not to approve the change programme for reasons unrelated to the suitability of the Business Case.
3. That the necessary legislation is not enacted within the required timescale.

If any of these risks materialised, the change programme would be either significantly delayed, or would fail.

Risks specific to the GOCO option have also been identified, in particular:

1. That international partners do not accept the proposed changes at all, or that the limitations put upon the scope of the GOCO through negotiation with our international partners mean that the

^[6] The Materiel Strategy: Way forward on DE&S Organisation Design, supporting report, January 2012

GOCO no longer offers value for money. This would result in the option failing at the Final Business Case stage.

2. That the proposed staged approach to transition reduces confidence in the Deliverer function due to parallel running of GOCO and functions retained by DE&S. This would weaken the MOD's commercial position with large suppliers due to multiple interfaces with industry, and create additional costs within the retained element of DE&S to ensure consistent operations across deliver activities. This would result in worsened performance of the new entity, either reducing benefits or increasing costs.
3. The level of benefits will depend on a number of factors including the scope and design of the contract, and the performance of the private sector contractor. We accept therefore that the assumptions made with respect to GOCO are subject to substantial uncertainty at present.

Non-Moneterised Impacts

DE&S civilian staff

The most effected group is likely to be the staff in DE&S. Approximately 17,200 people currently work in DE&S (reducing to some 14,400 by 2015), a significant proportion based in the headquarters in Bristol – although DE&S staff are based at about 200 locations worldwide. About 75% are Civil Servants employed by the Ministry of Defence and the remainder are military, drawn from across ranks and Services.

Should the GOCO option be chosen, DE&S staff would be transferred to the GOCO Operating Company. Their terms and conditions of service would be protected by the Transfer of Undertakings (Protection of Employment) (TUPE) regulations. Under the Public Service Pensions Act 2013, public sector personnel who are TUPE transferred will be able to remain members of the Civil Service pension scheme; most are in the Principal Civil Service Pension Scheme.

It is envisaged that the GOCO partner (in relation to the Operating Company) would seek to benefit from greater HR freedoms and flexibilities to change culture and behaviours in DE&S, subject to compliance with employment legislation and any restrictions imposed by the GOCO contract. It is envisaged that:

- The Contracting Entity would have the freedom (in relation to the Operating Company) to set its own talent management strategy (recruitment, retention, reward and release of staff) and could introduce changes to the contractual employment terms of transferred civilian staff (through the normal course of business) subject to consulting employees and their representatives in line with employment law; and,
- The Contracting Entity would be free to provide new recruits to the Operating Company with a different employment contract. The Contracting Entity would also have the freedom (within certain constraints) to manage the terms and conditions of its employees in the Operating Company to deliver the required outputs.

Should the net headcount in the Operating Company be required to remain broadly as it is today, it is currently assessed that there will need to be a reduction of some 280 Full Time Equivalent posts in order to allow for the Contracting Entity to inject new skills and talent into the Operating Company. This reduction represents half the annual natural wastage from the current organisation, and therefore we currently assess that this could be achieved without the need for redundancies.

The staff in DE&S are skilled and experienced, but the analysis carried out under the Materiel Strategy has shown that the organisation's public sector status has limited investment in the skills, processes and tools that are need to carry out the specific tasks asked of the organisation. Under a GOCO model, staff would benefit from less bureaucracy, private sector expertise, freedoms on recruitment, retention and rewards, and investment in DE&S staff, skills and IT.

Military staff

Military staff drawn from all three Armed Forces provide military skills, knowledge and experience to support the delivery of Defence acquisition in the current DE&S organisation. We envisage that this would continue under the GOCO operating model. The placement of military personnel in the Operating Company means they would not be employees of the Contracting Entity or the Operating Company.

Defence Industry, including small and medium enterprises (SMEs)

Defence suppliers are an integral part of the acquisition architecture. The MOD has ensured that representatives of the major companies, and trade associations, are kept informed of progress on the Materiel Strategy as it has developed, and has found that suppliers recognise the need for change in DE&S. For some suppliers, changes to DE&S's status will produce new business opportunities.

Industry can expect to benefit from a reformed DE&S, which will provide them with greater clarity on the requirements and budgets for the equipment they are asked to supply. This will enable them to plan their business better, rather than spend significant effort managing shifting priorities and changing requirements as at present.

An increase in skills, particularly in commercial and financial expertise, and a more hard-edged attitude to negotiations within DE&S, will support a much more informed discussion with Industry over contract pricing, therefore delivering greater value for money to the taxpayer.

There will be no additional compliance costs placed on Industry as a result of the GOCO.

The GOCO will be required to adhere to MOD and Governmental equipment and industrial policy, and so increasing the involvement of Small and Medium Enterprises in the defence supply chain support to SMEs will remain a priority. In addition, as at present, MOD and HMT will continue to approve all procurement business cases. As part of this process, MOD will assess and approve the proposed procurement strategy, which will enable the department to take into account issues such as ensuring an appropriate level of protection to SMEs in the Defence supply chain.

International partners

Much of the procurement activity undertaken by DE&S is conducted in partnership with international partners. While the proposed changes to DE&S do not directly impact our international partners, there are likely to be challenges to the way we take forward our international business should the status of DE&S or its employees change (from Government to GOCO).

The Materiel Strategy team is currently engaging closely with our main allies to understand the challenges a GOCO decision would present and to jointly explore how best to take our business forward in the future. MOD will ensure that we are able to maintain the excellent relationships we have enjoyed to date and that any change in the status of DE&S does not result in damage to our relationships with our international acquisition partners.

Environmental impacts

There is not assessed to be any environmental impact of the proposed reforms to DE&S. The GOCO will be required to meet all legal and regulatory standards which currently apply to DE&S and its sites.

Social impacts

Beyond those effects to DE&S staff referred to above there is not believed to be any social impact of the proposed changes.

Regional impacts

It is assessed that there will be no regional impact of the GOCO solution. DE&S staff are principally based in and around Bristol (although there are sites all around the country). There is no reason to believe that this will not continue to be the case.

Implementation Plan

In April 2013, the Secretary of State for Defence announced that the Materiel Strategy had moved into an Assessment Phase. The Assessment Phase will focus on developing the information required to make a rational decision between the options set out above, and will culminate in a Main Gate Business Case, with a final decision on the way ahead for DE&S expected in mid 2014. As part of the Assessment Phase, MOD is currently running a commercial competition to enable us to better understand exactly how a GOCO would work, as well as the costs and benefits associated with that option.

Should the decision be made to move ahead with the GOCO option, it is envisaged that the transfer of in-scope DE&S business would be carried out in stages. Initially, in Phase 1A, only one coherent part of the DE&S programme of work (still to be determined) would be transferred to the Contracting Entity, along with a Common Resource Platform (consisting of commercial, finance, technical specialists and human resources). The remainder of in-scope DE&S business would transfer after two years (Phase 1B), subject to the Contracting Entity meeting pre-determined performance criteria.

Subject to negotiations, affordability approvals and value for money, the MOD therefore intends to award a contract of up to a nine-year term.

It is assessed that this approach would achieve the desired end state with lower risk, and overcome some of the practical issues of implementation. A staged approach would allow the selected bidder to assume control progressively, allowing time for greater focus on transformational activities.

Policy Review

One of the advantages of the GOCO option is that it will reduce the ability of the MOD to interfere in the way that DE&S is operated on a day-to-day basis, making it less vulnerable to changing government policies and priorities.

However, there will be opportunities to review whether the policy is continuing to offer the best value solution for Defence. As set out above, the GOCO would not be given responsibility for the entire equipment programme until after an initial two-year phase managing only one Domain and the Common Resource Platform. Although this initial phase should not be regarded as a “pilot”, as the assumption is be that the rest of the in-scope DE&S business would transfer, it will provide MOD with an opportunity to review that the process is working.

The contract will last for 9 years, with no opportunity for extension. At this point, then, a full review of the new organisation will be carried out in the context of either recompeting the existing GOCO contract. For the duration of the contract, the GOCO's performance will be continuously monitored by the MOD Governor organisation.

Title: Defence Reform Bill IA No: MOD0002 Part 2 Lead department or agency: Ministry of Defence Other departments or agencies: N/A	Impact Assessment (IA)
	Date: 03/07/2013
	Stage: Final
	Source of intervention: Domestic
	Type of measure: Primary legislation
	Contact for enquiries: Single Source Procurement Team, DECS-ComrcI-SSPR-TL, 020 7218 3769
Summary: Intervention and Options	RPC Opinion: Not required, see 4.5

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009)	In scope of One-In, Measure qualifies as One-Out?
£1,712m	Not estimated	Approx £2m	No
			Zero Net Cost

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

Single source procurement has accounted for around 45% of MOD's total procurement over recent years. The nature of the defence market means that some large non-competitive contracts will always be placed with a limited number of suppliers where we need to protect our operational advantage or freedom of action. Under the current arrangements, the UK taxpayer does not always get best value for money and there is little incentive for industry to reduce its cost base. To improve this, Government intervention is necessary as industry are unlikely to comply with recommendations that are not statutory.

What are the policy objectives and the intended effects?

The main objective is have a more transparent, balanced and fair relationship between the MOD and its single source suppliers that provides better "value for money" (VFM) protection for taxpayers than is currently achieved. The intended effect is to allow MOD to become a better informed and intelligent customer, improving its ability to negotiate prices effectively, identify and challenge problems earlier and more robustly, and to close loopholes in the current system that allow additional profits to be earned in ways that do not require cost efficiencies. The changes will also assist in meeting the wider department objective of reducing the cuts and delays to defence programmes and decrease the waste that results.

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

Option 1 - "Do Nothing": The existing Review Board for Government Contracts would continue to set the annual profit rate, publish the allowable cost categories and rule on "Equality of Information" disputes.

Option 2 - "Non Legislated Negotiated Improvements" - the MOD would attempt to gain industry consensus for as many of the new Single Source Procurement Regulations (SSPR) as possible.

Option 3 - "Legislation for SSRO and SSPRs" - The SSPR define new pricing principles, standard reporting and transparency requirements. The Single Source Regulations Office (SSRO) will be set up as an Executive Non Departmental Public Body (ENDPB) to manage, monitor and update the SSPRs.

Option 3 is recommended. It allows all required changes to be implemented quickly and effectively, and will ensure the highest possible levels of supplier adherence and application, and hence potential benefit.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 04/2019					
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 No	< 20 No	Small Yes	Medium Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)				Traded: Nil	Non-traded: N/A

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: Nil	Benefits: not estimated	Net: Nil	No	Zero Net Cost

Summary: Analysis & Evidence Option 2 - "Non Legislated Negotiated Improvements"

Description: FULL ECONOMIC ASSESSMENT

Price Base Year 13/14	PV Base Year 13/14	Time Period Years 20	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Est: £373m

COSTS (£m)	Total Transition (Constant Price) Year		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	N/A	Optional	Optional
High	Optional		Optional	Optional
Best Estimate	£8.5m over 2 yrs		£10m	£134m

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

Additional costs initially incurred by industry in completing reports – then reclaimed from MOD, £3.2m / yr (based upon 50% of option 3)
 Cost of enlarged Review Board staffed by consultants, £6m / yr
 Additional resources within MOD, £0.6 / yr.
 Total transition includes £2.5 for ANDPB, £2.8 for industry (passed back to MOD) and £3.2m for MOD.

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

Staffing an Advisory NDPB with consultants rather than employing permanent staff in an ENDPB would be likely to lead to higher staff turnover and an associated slower growth in the accumulation of SSPR knowledge and expertise. If resourced in this way there might also be greater difficulty in managing and mitigating the confidentiality issues arising from the volume and sensitive nature of supplier data held centrally.

BENEFITS (£m)	Total Transition (Constant Price) Year		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	N/A	Optional	Optional
High	Optional		Optional	Optional
Best Estimate	Nil		Long run annual avg £64m	£507m

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

Negotiation of lower future contract prices as a result of improved understanding of outturn costs on past projects (through development of benchmarks and parametrics, and through the development of a better understanding of the pricing of risk).

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

Nothing material identified.

Key assumptions/sensitivities/risks

Contract volumes and single source expenditure levels
 MOD ability to extract value from the information flowing from the new reports
 MOD ability to negotiate changes into contracts / compliance rate

Discount rate (%)

3.5%

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: Nil	Benefits: not estimated	Net: Nil	No	Zero Net Cost

Summary: Analysis & Evidence

Option 3 - "Legislation for SSRO and SSPRs"

Description: FULL ECONOMIC ASSESSMENT

Price Base Year 13/14	PV Base Year 13/14	Time Period Years 20	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: £1,712m

COSTS (£m)	Total Transition (Constant Price) Year	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	N/A	Optional
Best Estimate	£11.9m over 2 yrs	£9m	£125m

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

Additional costs initially incurred by industry in completing reports – then reclaimed from MOD, £6.4m / yr
 Initial cost of SSRO, £4m / yr, but 50% reclaimed from industry via profits "levy", so net £2m/yr.
 Additional resources within MOD, £0.6 /yr.
 Total transition includes £3.1m for ANDPB, £5.6m for industry (passed back to MOD) and £3.2m for MOD.

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

Nothing material identified.

BENEFITS (£m)	Total Transition (Constant Price) Year	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	N/A	Optional
Best Estimate	Nil	Long run annual avg £213m	£1,837m

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

Negotiation of lower future contract prices as a result of improved understanding of outturn costs on past projects (through development of benchmarks and parametrics, and through the development of a better understanding of the pricing of risk), closure of loopholes in current regulations, and better alignment of supply and demand when planning the required capacity at key industrial facilities.

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

Nothing material identified.

Key assumptions/sensitivities/risks

Contract volumes and single source expenditure levels
 MOD ability to extract value from the information flowing from the new reports

Discount rate (%) 3.5%

BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: £2m	Benefits: not estimated	Net: £2m	No	Zero net cost

EVIDENCE BASE

Problem under consideration

Background - MOD use of single source procurement

1. The MOD's approach to procurement was set out in the National Security Through Technology White Paper (February 2012). Single source procurement of equipment and support occurs where the MOD is unable to source its requirements through open competition. This is most common where only a single supplier has the ability or rights to perform the work, or where, for national security purposes, a single supplier is chosen so as to protect the UK's freedom of action and operational advantage. In these cases we use single source procurement.

Figure 1 – Examples of single source procurement

Single source procurement examples

- A maintenance contract for a fast jet engine, where only the original manufacturer has the design rights and experience.
- A manufacturing contract for an additional nuclear submarine, to add to the existing fleet, where it would be impractical to either have a different type of submarine or to pay for another supplier to replicate the same design.
- A contract to test the operational limits of a tank's armour, where only one UK supplier has the right facilities, and we do not want anyone outside the UK to know what the limits are.

2. Over the last five years the proportion of contracts placed on a single source basis has been around 45%⁴ (by value), and is likely to remain significant in the future. Single source procurement is concentrated in a relatively limited number of high value contracts with a small number of suppliers. There are around 100 existing single source contracts above £50m in value, which account for over 90% of the value, and most of these are with our top ten single source suppliers.
3. In the absence of an alternative supplier, VFM is at risk. Suppliers can price without fear of being undercut by their competitors, so they are not subject to normal market pricing pressures. Furthermore, because we require the military capability they provide, suppliers can be confident of follow-on work even if costs are high or performance is poor. The volume of single source procurement, together with the risk to VFM inherent in this approach, means assuring VFM in single source procurement is of great importance to both the MOD and the taxpayer.

The current single source framework

4. The MOD currently uses a framework to price single source procurement known as the Yellow Book⁵. The aim of the Yellow Book is to give industry a fair and reasonable price, based on an annually published profit rate to be used in price setting. In exchange, and in order to help us to ensure VFM, MOD are granted limited protections such as:
 - a) a commitment to Equality of Information at the point of pricing (and the right to challenge this post contract);
 - b) the ability to recover "unconscionable profits"; and

⁴ The average is based on data from the 2007/8, 2008/9, 2009/10, 2010/11 and 2011/12 Financial Years.

⁵ The Yellow Book's formal title is 'The Government Profit Formula and its Associated Arrangements'.

- c) a definition of the types of overhead cost suppliers can recover.
5. The Yellow Book was established in 1968 following instances where suppliers made high profits by effectively double-charging their overhead costs to the MOD⁶. It is underpinned by a non-legally binding Memorandum of Understanding⁷, and is published by an Advisory Non-Departmental Public Body (ANDPB) called The Review Board for Government Contracts (the “Review Board”).
 6. The Yellow Book framework is typically reviewed every three years and may be updated, but only if agreement can be reached between MOD and industry. This requirement for consensus means it is hard to make any change where one party feels disadvantaged. As such it has remained largely unchanged since 1968, despite many significant changes to the industrial landscape and MOD procurement practices over that time.

Figure 2 – How defence procurement has changed since 1968

1968	2013
Industrial Cost Base	
<ul style="list-style-type: none"> • Government owned factories and dockyards • Industry overheads are minor relative to direct labour and materials 	<ul style="list-style-type: none"> • Facilities owned by industry • Overhead costs similar to direct labour, typically 30% of total cost
Industrial landscape	
<ul style="list-style-type: none"> • Large number of smaller companies • Extensive state ownership of defence suppliers 	<ul style="list-style-type: none"> • Small number of global companies • Predominantly private sector
Government expertise	
<ul style="list-style-type: none"> • Substantial Government resources directly involved in equipment design and support 	<ul style="list-style-type: none"> • Government role is primarily to set capability requirements and manage industry delivery
Technology	
<ul style="list-style-type: none"> • Larger number of simpler assets with shorter development times 	<ul style="list-style-type: none"> • Smaller number of ever more complex assets with development cycles up to twenty five years
Nature of contracts	
<ul style="list-style-type: none"> • Shorter, simpler contracts • Price set by applying a fixed profit rate to costs that a supplier had already incurred (cost plus) • Little sub-contracting 	<ul style="list-style-type: none"> • Contracts for ten or more years • Predominately fixed price, with suppliers accepting and pricing in risk • Significant use of sub-contractors

Rationale for Intervention – the shortcomings of the current arrangements.

7. Following the 2010 Strategic Defence and Security Review, the Minister for Defence Equipment, Support and Technology commissioned Lord Currie of Marylebone to chair an independent review of MOD single source procurement. The objective of the review was to propose a fit-for-purpose framework that could be applied to equipment and support contracts between MOD and its single source suppliers. Lord Currie met with senior executives of UK-based defence suppliers, senior MOD and Government officials, trade bodies and the Review Board. He also sought views from other Ministries of Defence undertaking substantial single source procurement.
8. Lord Currie’s report, published in October 2011, recommended a fundamental recasting of the current Yellow Book. He identified the following serious shortcomings:

⁶ Report of the Committee of Inquiry into Certain Contracts made with Bristol Siddeley Engines Ltd., 21 Feb 1968.

⁷ The Memorandum of Understanding was between Her Majesty’s Treasury and the Confederation of British Industry; although originally set up as a potential cross-Government regime, MOD and the defence industry are now the sole users of the Yellow Book.

- a) **Poor focus.** The Yellow Book focuses on profit and overhead costs but does not adequately cover direct costs, subcontracted work, or risk. This means the bulk of the price is not closely considered.
 - b) **Inadequate incentives for efficiency.** The Yellow Book does little to provide suppliers with ongoing incentives to reduce their costs once on contract, or to support the MOD to replicate the missing competitive pricing pressure.
 - c) **Inadequate protections for MOD.** Equality of Information protections do not work and under current provisions MOD has to wait until the end of a contract, which may be ten years or more, before it can challenge whether the pricing assumptions provided to the Department by a supplier were reasonable or appropriate.
 - d) **Insufficient challenge to overhead costs.** The current framework allows suppliers to charge the MOD for millions of pounds of overhead costs (including rationalisation and redundancy costs even if not on contract) without any need for prior approval or consultation. This is clearly inappropriate when the MOD accounts for the majority of the output of a supplier's business unit. The Yellow Book also puts an onus of proof onto the MOD to prove that overhead costs are "unreasonable, extravagant or wasteful".
 - e) **Weak governance of the regime.** The Review Board, through no fault of its own, is very constrained in its resources and remit⁸. They have no visibility of how or whether the Yellow Book is applied to specific contracts, and little understanding of MOD single source procurement.
 - f) **Lack of transparency.** There are no standard reporting requirements which leads to poor visibility of supplier or contract performance.
 - g) **Gaming opportunities.** There is scope under the current overhead absorption methodology to over recover costs. Also, suppliers are able to charge profit on profit for work subcontracted within same group.
9. In summary, the Yellow Book was designed to deal with the issues that industry and Government faced over forty-five years ago. It has been kept in the past by a process that has made revision very difficult, and change is now long overdue.

⁸ The Review Board has five non-executive directors and is supported by a part-time secretariat under a contract with Deloitte LLP.

Policy – Principles, Objectives, Design & Benefits

Lord Currie's Proposals

10. In order to address the shortcomings mentioned above, Lord Currie made several recommendations:
 - a) **Better focus** - mandatory standard cost reporting and increased transparency (open book) to support the MOD in assuring VFM across all of the elements of the price including direct costs, subcontracted work, and risk. These reports would allow the MOD to understand the true costs related to single source contracts in a much more timely fashion.
 - b) **Stronger supplier efficiency incentives.** Standard pricing and actual cost reports would enable benchmarking across projects and suppliers, which should be used by the MOD to challenge supplier prices more effectively. Greater transparency and audit rights should be used by MOD to ensure suppliers were looking for continuous improvements once on contract. Lord Currie also noted that profit is a supplier's strongest incentive for efficiency. He recommended that the link between a supplier's costs and profit should not be unduly undermined by contractual sharing arrangements, and that projects where a supplier carries higher risk should attract a higher profit rate (and vice versa).
 - c) **Stronger protections for the MOD.** The MOD should be able to investigate whether a supplier's pricing assumptions were reasonable and appropriate at any point during a contract, rather than just at the end. The standard reports should allow the MOD to target these investigations appropriately (e.g. where costs were much higher or lower than anticipated).
 - d) **Improved visibility and challenge of overhead costs.** New mandatory overhead reports from suppliers would support a pre-approval process for significant overhead costs, and would require suppliers to be more transparent with MOD about industrial over- or under-capacity. The supplier would have to demonstrate that overhead costs are reasonable and appropriate, rather than the MOD having to argue that they are "unreasonable, extravagant or wasteful".
 - e) **A stronger Single Source Regulations Office (SSRO) replacing the current Review Board.** The new arms-length-body would keep the new framework under review and would publicly recommend changes to the Secretary of State. It should lead the debate rather than requiring consensus between the MOD and single source suppliers. It would also monitor the application of the regulations, and provide analysis that would aid the MOD to better forecast future costs. It should be supported by full time staff.
11. The MOD have consulted extensively since Lord Currie published his report (see section 3), including a formal public consultation and detailed discussions with our largest single source suppliers. Although there have been areas of difference, defence suppliers have accepted the need for change.

The New Framework - Overview

12. We need to adopt a new framework designed to address the current challenges in single source pricing, supported by a process that ensures it is kept current.
13. Changes to the rules currently need consensus from industry, who are very likely to block many of the changes MOD wants. Legislation of the SSPRs is therefore being recommended. We no longer wish to rely upon a non-legally binding memorandum, supported by custom and practice, and wish to move the regulations onto a firm legal basis.
14. A new governance regime, supported by an enlarged and more empowered regulatory body, will help to ensure widespread application and adherence, and also ensure the regulations are kept up to date. We must not have to wait another forty-five years before these regulations are reviewed.

15. Our new approach to managing defence single source procurement therefore has two principal characteristics:
- a) New statutory regulations – the **Single Source Pricing Regulations (SSPR)**
 - b) A new regulatory body – the **Single Source Regulations Office (SSRO)**

The New Framework - Guiding Design Principles

16. At the heart of the new pricing framework is the principle that industry gets a fair and reasonable price in exchange for providing the MOD with the protections we need to assure VFM. We will retain the current profit formula for defence single source procurement, which provides the defence industry with a profit rate comparable to the rest of UK industry, in exchange for greater transparency.
17. In designing the new framework the key guiding principles have been to:
- a) **Address issues that arise from single source procurement** – for example supporting the MOD's ability to replicate the missing competitive pressure;
 - b) **Focus on areas where standardisation is of value** – the framework proposed benefits from wide application and stability over time;
 - c) **Be proportionate** – higher value contracts carry a greater risk to VFM, so there should be greater protections. We also do not want to discourage the greater involvement of Small and Medium Sized Enterprises (SMEs) in defence by a framework that is too burdensome.
 - d) **Provide VFM** – we have taken a balanced approach between asking for information we would ideally like, and asking for information that is readily available using current industry systems and processes. We have ensured that the framework is practical by engaging with industry on these proposals.

The New Framework – Key features

18. The new framework can be described in terms of four key features:
- a) Transparency rights;
 - b) Pricing principles;
 - c) Standard Reporting; and
 - d) its Compliance Regime.
19. **Transparency** will be increased through:
- a) A wide ranging open book provision which will allow MOD to request access to and explanation of any information pertinent to the price and outturn performance of a contract throughout the duration of the work.
 - b) The current requirement for “Equality of Information” at the point of contract pricing will be extended to the overhead rates agreement process.
 - c) MOD will have the right to conduct a post award review shortly after the start of a contract if it feels there is any doubt around Equality of Information at the point of pricing. The right to conduct a “supplier performance review” will address broader efficiency and performance issues.

20. Improvements to the **pricing principles** include:
- a) Shifting the “onus of proof” – currently MOD must show that there are extravagant, wasteful or unreasonable costs in an overhead claim, but in future the supplier will have to show that all elements of their claim are appropriate and reasonable.
 - b) a simple points based risk assessment will be applied to every contract and the outcome used to determine a risk driven adjustment to the standard baseline profit rate.
 - c) the mechanism currently used to correct for “profit on profit” when subcontracts are let within the prime owning group will be made specific to each contract, improving accuracy, transparency and ease of application.
 - d) the current unconscionable profits & losses mechanism (DefCon 648A) will be modified, in favour of suppliers, in order to improve their incentive to find efficiency savings and retain more of the resulting additional profit.
21. Suppliers will be required to produce with comprehensive set of **standard format reports**:
- a) Contract reports will provide a detailed breakdown of the price and associated deliverables, track the actual cost performance of the contract, explain variances and demonstrate the extent to which allowances for risk events were drawn upon; whilst
 - b) Supplier reports will provide a standard analysis across business units and through time of all overhead costs by type and function, track overheads incurred against those charged to contracts, give earlier insight into the content of future years rates claims and support earlier and better informed senior management dialogue around aligning long term capacity with anticipated demand.
22. **Compliance / Enforcement issues** - To help achieve good levels of **compliance**, the SSPRs will be backed by a comprehensive compliance framework, including, as a last resort, financial civil penalties. The MoD will operate the compliance regime through a combined input from both existing employees and a small number of new recruits. Appeals by suppliers against penalties levied by the MoD can be made to the SSRO. The impact and staffing to support the compliance regime both in the MoD and the SSRO has been addressed in the business case.

Figure 3 – Summary of the new SSPRs

Area	Element	Purpose
Transparency	Open Book	To provide a general 'back-stop' right to help assure VFM in single source procurement and to check the new framework is working
	Audit rights and referral rights to an independent expert	To put a duty on suppliers to use reasonable and appropriate pricing assumptions
Pricing	Standard profit	To provide industry with an independently assessed fair return, equal to the average of UK industry
	Incentivisation of efficiency	To allow additional profit where it is earned by performance
	Variation of profit with risk	To give a profit that is fair to both parties, given the risk profile of the contract
	Protection from excessive profits and losses	To provide the MOD with protection in the event of excessive supplier profit, and suppliers protection against excessive losses
	No profit on profit	To ensure suppliers get a fair profit, and not an unwarranted profit achieved simply by clever deal structuring

Area	Element	Purpose
	Standard list of allowable costs	To ensure both parties negotiate fair prices within a clear and coherent approach and on a level playing field
	Onus of proof	To put a duty on suppliers to demonstrate the overhead costs they claim are reasonable and appropriate for MOD to pay
Standard contract reports	Benchmark reports at start/end/amendments	To improve price negotiation (and capability planning) by building up a database of defence benchmarks from comparable projects
	Quarterly contract reports	To get timely checks on project health that can be used to support a stronger financial and performance management regime; and so that MOD can negotiate follow-on prices with a good understanding of historic costs.
	Annual contract reports	To maintain an audit trail of the cost baseline that is directly comparable to the original price
Standard overhead and supplier-level reports	Annual overhead benchmark reports	To improve overhead negotiation by building up a database of overhead benchmarks
	Overhead comparison report	To check the effectiveness of the range of overhead recovery methods we have available
	Long term overhead report	To optimise the industrial capacity we pay for with our long-term military capability requirements
	SME report	To support SMEs down the supply chain
Compliance regime	Publically naming the supplier	To increase the timeliness and likelihood of adherence to the new regulations
	Financial penalty	

The New Framework - Benefits

23. The following sections make clear how the changes described above will lead to improvements in single source procurement, and are described in terms of:
1. Better price negotiation
 2. Stronger efficiency incentives
 3. Better joint planning of key facilities.
 4. Stronger financial and performance management regime
 5. Encouraging SMEs
 6. Better compliance

Benefit 1 - Better Price negotiation

24. In single source procurement the MOD must take the place of the missing competitive pricing pressure by challenging a supplier's price. The new single source framework will support the MOD's ability to negotiate prices that are fair and reasonable to both suppliers and taxpayers by providing an underpinning reference framework that defines how those prices should be calculated.

25. To do this the MOD needs better quality and more standardised historic outturn data. The regulations will introduce standard reports, at the beginning and end of each single source contract (and substantial contract amendments) that will allow us to build up a database of defence benchmarks. We will use these benchmarks to find pricing assumptions that are at odds with other comparable projects, and to embed tough but achievable efficiency targets into the price.
26. Defence benchmarks can also be used to support capability planning and to improve the accuracy of early budgets. By allowing capability planners to make high-level trade-offs for a given level of cost, for example between a ship's range and its maximum speed, the MOD will be better placed to optimise equipment specifications and make more robust long-term cost forecasts in the early acquisition phases.

Benefit 2 - Stronger Efficiency Incentives

27. In a competitive environment, suppliers must continuously improve or risk being overtaken by their competitors, whereas in single source procurement, a lack of an alternative means that follow-on work is less dependent upon any improvement. The single source framework must help provide a proxy for the missing on-going efficiency incentive.
28. We accept Lord Currie's view that the strongest motive for supplier efficiency is higher profit; however, profit should be the reward for good performance and a continuous drive to improve. To ensure this we need to get the price right in the first place, so high profits cannot simply be incorporated into the price, and we must also ensure that the only way to higher profits is through greater efficiency.
29. As suppliers will always know more about their costs than we will, the new regulations must put an onus on single source suppliers to use reasonable and appropriate pricing assumptions. If supplier costs turn out to be lower than expected, we will have the right to investigate if the price was genuinely based on a supplier's best estimates at the time. We will then be able to refer any such concerns to the SSRO, as an independent expert body, which if it believes reasonable and appropriate pricing assumptions were not used, have the power to require the supplier to compensate us accordingly⁹.
30. Ensuring the only way to higher profits is through greater efficiency means we have to be confident that there are no weaknesses in the system that could be used to achieve higher profits without cost reduction. To achieve this we will address three known weaknesses in the current framework:
 - a) **No profit on profit.** Suppliers often subcontract work to their own subsidiaries, who in turn can subcontract to other business units in the same corporate group. At each stage it is possible to add a layer of profit. The current framework addresses this poorly and we are therefore introducing a clearer system where 'profit on profit' is adjusted for at the contract level, at the time the contract price is agreed.
 - b) **The current overhead recovery methodology can result in over-recovery of overheads.** Overhead allocation and recovery is a complex activity, and our current approaches can result in systematic over-recovery or under-recovery. We will require suppliers to provide a report that compares overhead recovered with overhead spending to ensure we are not paying twice for the same capabilities.
 - c) **Onus of proof.** Under the current arrangements the onus of proof is on the MOD to demonstrate that costs are unnecessary, extravagant or wasteful. Given that we did not incur the costs in the first place, and were not involved in any investment decisions, this is very hard to do. The new framework will place the onus on suppliers to demonstrate that costs they claim are reasonable and appropriate for MOD to pay.

⁹ We also accept that we have a duty to provide supplier with any information we have that is relevant to pricing, and that if this information is not shared or if misleading information is provided, suppliers will also be able to refer the matter to the independent body.

31. No framework can offer complete protection, and we will therefore have a general audit right to investigate how our money is being spent and how the supplier is performing. This will allow us to monitor performance continuously to evaluate the framework, and where appropriate, further encourage ongoing efficiency improvement. We will also put a duty on suppliers to let us know in a timely fashion of any cost, performance, or schedule risks or changes. This over-arching obligation on single source suppliers provides an important back-stop protection that means the MOD can accept a lighter-touch framework as opposed to one that attempts to address all potential issues with explicit measures.
32. Our concern for supplier efficiency is based on a desire for VFM. Greater efficiency will result in lower supplier costs, which in turn will result in lower follow-on prices and better VFM. However this is not always true, as not all contracts lead to follow-on work. We accept Lord Currie's view that there can be a trade off between strong supplier efficiency incentives and VFM. Suppliers must benefit from cost reduction or they will not do it, however if we do not share this benefit then VFM has not been improved. If actual profits are substantially greater than expected, we will include provisions that allow us to share the increased profit, and our share will increase as the profits become ever greater. We accept that it would not be fair to share potential gains without also taking a share of potential losses, so the provisions will also provide for some share of any such losses. It is not in our long-term interests to force suppliers to provide us with capability while they suffer from on-going and potentially crippling losses.

Benefit 3 - Better joint planning of key facilities.

33. Where only one supplier can provide aspects of the capability we require, the sustainment of industrial capability can be a matter of national security. There is also a risk to VFM as this capability sustainment is paid for through the overheads that suppliers charge to us via single source contracts. To help ensure that we optimise industrial capacity with our long-term military requirements (building, sustaining and rationalising as appropriate), we need a single source framework that allows us to be appropriately involved in the long-term planning of facilities where MOD makes a significant financial contribution.
34. The current methodology for overhead recovery does not require suppliers to provide the MOD with any transparency of current and future over-capacity, or any rationalisation and redundancy plans they may have. The new regulations will require suppliers to submit annually a long-term plan for the key facilities where substantial overhead is (or is planned to be) recovered through MOD single source work. This will show current and forecast activity and plans for closure, enhancements, or significant changes. This plan will be used as the basis for joint long-term planning, to ensure we can address potential national security or VFM issues.

Benefit 4 - Stronger financial and performance management regime

35. Given their complexity, size, and long duration, single source projects have historically been at the highest risk of cost growth, programme changes, and delay. The single source framework should allow these risks to be highlighted to MOD in a timely fashion.
36. Cost reporting on our current large contracts is ad-hoc and sporadic. Reporting requirements and adherence to these requirements is highly variable, and what reports we do receive come into multiple points across the Department and in multiple formats. This makes it labour intensive for MOD to collate such information.
37. In recent years most of our single source suppliers have introduced, for their own internal purposes, standardised project reporting, including cost reporting. The additional overhead cost in producing standardised reports is justified by their improved ability to understand their portfolio of projects. Standardisation allows for aggregation at different levels (e.g. project, programme, portfolio), and for systems and process to be easily introduced to convert lower-level information into useful information for our suppliers' senior management. Given that we are paying through our single source work for much of this information to be generated, MOD senior and project management should be entitled to similar information, for similar purposes.

38. The regulations will require standard quarterly reports for all single source contracts above £50m. That will allow MOD senior and project management to be given assurance and confidence concerning project health, and to be better enabled to identify cost, performance, and schedule risks and opportunities. These contract reports will be included in standard MOD processes, helping to support a stronger financial and performance management regime and helping the MOD to become a more intelligent customer.

Benefit 5 - Encouraging SMEs

39. The MOD set out in the *National Security Through Technology* White Paper its approach to providing greater defence opportunities for SMEs, and we have made good progress implementing these reforms. We wish to encourage the use of SMEs in single source contracts, even though we expect that large suppliers will continue to account for the majority of the value of single source procurement. We are therefore introducing simplified single source procurement processes for smaller contracts and suppliers.
40. We would also like to encourage the use of SMEs in our larger suppliers' supply chains and will require our larger single source suppliers to generate an annual SME report describing their sub-contractor procurement processes and outlining how they have encouraged the greater involvement of SMEs in their supply-chains.

Benefit 6 - Better Compliance

41. The lack of commercial leverage in the single buyer/single provider environment makes it more difficult to ensure compliance with contract conditions; the ultimate sanction of contract termination due to non-performance is of little value when there is no alternative supplier.
42. Current reporting requirements are usually not linked to any direct financial consequence. We will move to a stronger compliance regime where failure to provide transparency and reports results in the name of the supplier being made public and a fine under a civil penalty regime. This will ensure a fast and straightforward means of addressing breaches. The SSRO, given that it is arms-length from MOD and industry, will act as the appeal body for the compliance regime.

The Single Source Regulations Office (SSRO)

43. Any set of regulations as involved and far reaching as these needs some form of "owning body" to oversee their application and manage their maintenance and update. A key component of Lord Currie's recommendations was therefore the replacement of the current Review Board with a stronger SSRO.
44. The SSRO will:
 - a) keep the new regulations under review, periodically recommending changes to the Secretary of State for Defence;
 - b) monitor their application;
 - c) provide an expert determination role between MOD and single source suppliers; and
 - d) analyse standard reports to understand better single source procurement issues, extract benchmarks, and highlight where greater efficiency might be achieved.

These roles are described in more detail below.

45. The SSRO will be an arms-length body and is expected to have five non-executive board members (and two from the executive) and a full-time staff of around 30 people. It is anticipated to cost approximately £4m per annum, with the costs to be shared equally between the MOD and single source suppliers.

46. The creation of an independent, arms-length body is central to the effectiveness of the new framework. If MOD were to unilaterally set the pricing framework, including the profit rate, there would be a risk over time that the framework would tend to favour Government and become overly burdensome on suppliers. However, if any change or agreement to the pricing framework was based on gaining consensus between the MOD and industry, it would suffer from the same limitations as the existing framework.
47. The MOD therefore agrees with Lord Currie's recommendation that updating and managing the single source framework is best done at arms-length from both MOD and industry through the SSRO, which will become an independent expert in defence single source procurement. The overriding duty of the SSRO will be to maintain a single source procurement framework that assures value for money for the UK taxpayer and allows a fair and reasonable price for suppliers.
48. To enable the SSRO to be as independent, impartial and cost effective as possible, it should be created as ENDPB, which requires legislation. A key factor in arriving at this conclusion is the ability of an ENDPB to recruit its own staff. Many of the other organisational models considered do not have this right and are staffed by civil servants on secondment (which would very definitely undermine its independence and impartiality), or by consultants, which would cost considerably more.
49. As briefly outlined above the SSRO terms of reference would allow it to:
 - a) *Manage the regulations* – set the rules, and where it deems necessary, following consultation with all affected parties, recommend changes to the Secretary of State without the need to seek a full consensus. If the statutory framework created is owned and managed by MOD it will clearly be seen as biased by industry, who in the extreme might choose to exit the market for single source work.
 - b) *Monitor the use of and compliance with the regulations* - to be best able to recommend improvements to the regulations, the owning body must understand how they are complied with and applied, so it should also perform a monitoring role, covering the use of audit rights and pricing principles, and provision of reports. MOD believe that independent compliance monitoring coupled with a "name-and-shame" approach will significantly reduce the risk of non-compliance.
 - c) *Perform an expert determination role* - the lack of commercial leverage in single source contracting means disagreements over interpretation of rules can lead to long delays and additional cost for both parties. Fulfilling the roles above will quickly make the SSRO an independent expert in the rules such that it is well placed to have an adjudication (or more accurately an 'expert determination') role and resolve disagreements more quickly.
 - d) *Perform and share data analysis* - data from the new reports will allow benchmarks and parametrics to be created for use in negotiations, "should costing" and comparative supplier analysis.

MOD's Approach to Consultation

50. There has been extensive consultation on the new single source framework developed from Lord Currie's recommendations.
51. During his review Lord Currie engaged with the defence industry, with the MOD and OGDs, the Review Board for Government Contracts and with overseas defence departments. Following publication of his report in October 2011 there was a full public consultation, the outcome of which was published in March 2012.
52. From April 2012 the project moved into Phase 2 – Consultation. The MOD has engaged in a rigorous consultation programme with the top ten defence suppliers¹⁰ most significantly impacted by these changes. This was conducted through a sub-group of the Defence Suppliers Forum led by a senior civil servant, and a regular programme of technical working group meetings, which together have comprehensively examined all aspects of the proposed SSPRs and establishment of the new SSRO. There has been an ongoing and close consultation between the MOD and OGDs (e.g. HMT, CO, BIS, MoJ), the Review Board, and with relevant experts in the US defence department.
53. This thorough engagement has allowed MOD to develop the solution iteratively with industry; taking account of their concerns as far as is possible without diluting the intent behind the changes. The consultative approach will continue to ensure that the secondary legislation and guidance beneath the primary legislation will reflect a workable solution that delivers the purpose of the legislation - value for money protections for taxpayers in exchange for fair and reasonable contract prices for suppliers, all overseen by a new, empowered public body independent of both MOD and the defence industry.

¹⁰ BAE Systems, Rolls Royce, Babcock, QinetiQ, Finmeccanica, MBDA, Marshalls Of Cambridge, Thales, Lockheed Martin and Hewlett-Packard

Analysis of options

Rationale for level of analysis used in impact assessment

- 54. Given the far reaching and technical nature of the proposed changes, and that there will be some industry resistance to them, it was deemed necessary to develop a robust financial business case for the changes based upon thorough analysis of the incremental costs and benefits to all affected parties.
- 55. The costs and benefits presented below have been summarised from a detailed financial model built to support the development of the Outline Business Case (OBC) for the SSPRs / SSRO. The OBC was prepared as part of gaining collective policy approval and so was shared with and approved by the Treasury and Cabinet Office. Prior to sharing it outside of the MOD it was independently reviewed and endorsed (as “compelling”) by MOD’s Head of Appraisal and Evaluation in DASA¹¹.
- 56. The analysis included in the financial model also enabled sensitivity testing to demonstrate that the business case was robust to significant over-estimation of benefits, or under-estimation of costs.
- 57. The three options mentioned earlier were considered as part of developing the OBC:
 - a) **Option 1 - "Do Nothing"**
 - b) **Option 2 - "Non Legislated Negotiated Improvements"**
 - c) **Option 3 - "Legislation for SSRO and SSPRs"**

Analysis of Option 1 – “Do Nothing”

	Option 1 – Do Nothing
Description	The Review Board would continue to set the annual Baseline Profit Rate (BPR), set the allowable cost categories and rule on “Equality of Information” disputes.
Advantages	None identified
Disadvantages	Cost reporting would continue to be very ad-hoc, and in some cases non existent. Due to the multiplicity of formats in use there will be little or no consolidation and central analysis of data for the purposes of contract monitoring, benchmarking and development of parametrics. MOD transparency over supplier records once on contract would remain poor, and “loopholes” such as the one allowing double charging of profit where contracts are sublet within the same owning group, would continue.
Monetary / Non Monetary Costs & Benefits	Not applicable – none assessed as this is the baseline option against which the other two were assessed.

¹¹ Defence Analytical Services and Advice

Analysis of Option 2 - "Non Legislated Negotiated Improvements"

Option 2 - "Non Legislated Negotiated Improvements"	
Description	<p>Without legislation the only option would be to attempt to gain industry consensus for as many of the new single source procurement regulations as possible and have them negotiated into contracts.</p> <p>Creating the SSRO as an ENDPB requires legislation so this is not possible under Option 2. In time it might have proved possible to negotiate (with industry) extensions to the scope of the terms of reference of the current Review Board (an ANDPB), to include, for example, a wider role in data analysis or dispute resolution. However, this would only really have been of value if there was sufficient change in and uptake of the regulations.</p>
Advantages	<p>Relative to doing nothing (option 1), undertaking option 2 would probably help MOD to secure some of the required changes, and to make a small proportion of the savings on future contracts expected under option 3.</p>
Disadvantages	<p>Since 1968 when the current yellow book was introduced, the single source procurement arrangements between MOD and its suppliers have, due to the need for consensus, been very slow to change, and there is no reason to believe that this rate of change would quicken now without legislation.</p> <p>A contractually negotiated approach would probably mean MOD had to negotiate terms on a case by case basis with suppliers. This would be likely to limit the application of, and adherence to, the new framework.</p> <p>In time, with sufficient senior pressure and focus, and possibly in return for other concessions, it might have proved possible to negotiate that some of the SSPRs be adopted as standard contractual terms and conditions, but there would remain the risk that these would normally get modified, watered down or omitted altogether on a case by case basis. MOD commercial officers would invariably have little real leverage over suppliers where they were reluctant to comply with the proposed changes, so uptake would most likely be slow, and adoption would only ever reach a small proportion of the total contract base.</p> <p>As an ANDPB the Review Board would not be able to employ its own staff. In order to be seen as independent and impartial it also could not take MOD civil servants on secondment, leaving potentially expensive external consultants as the only viable resourcing option.</p>
Costs associated with regulatory body	<ul style="list-style-type: none"> • The initial setup costs associated with making the necessary changes were estimated to be around £2.5m. • The ongoing annual cost of procuring external consultancy support comparable to the resources assumed in option 3 was estimated to be around £5.2m. • Once other miscellaneous operating costs are included, the annual expenditure would be around £6.3m. • Without legislation, and sceptical that it would be of any value to them, it seems highly unlikely that industry would agree to contribute any of this, so MOD would pick up the whole bill.
Costs to MOD &	<ul style="list-style-type: none"> • As explained more fully below under option 3, the costs are primarily

Option 2 - "Non Legislated Negotiated Improvements"	
Industry arising from regulations	<p>associated with report production. These are initially incurred by industry but all are passed back to MOD. For option 3, which assumes full compliance with the law, initial setup costs have been estimated to be around £5.5m and ongoing annual costs £6.4m. Where compliance is voluntary it seems likely that both costs would be around half of these amounts, £2.8m setup and £3.2m per annum ongoing.</p> <ul style="list-style-type: none"> As explained below under option 3, a small amount of additional MOD resource will be required, but this is not likely to amount to any more than £0.6m of expenditure per annum.
Benefits	<ul style="list-style-type: none"> Benefits profiles developed for option 3 were built from a series of assumptions and calculations around the scope to negotiate slightly lower future contract prices. The assumptions were based on the expected impact of the proposed rules changes, and the anticipated value of the additional information provided and the analysis derived from it. Option 2 profiles have been factored down from Option 3 values. The estimates showed a fairly flat long run level of saving versus "Option 1 - Do Nothing", but it takes time to get to this level due to the volume of legacy contracts (not priced under the SSPRs) which continue to spend significant money long into the future. Also, although new data and reports will start to be accumulated in the early years, some of the benefits calculations require large volumes of data to be collected and analysed before its full value can be leveraged on future contracts. In option 2 benefits are eventually expected to reach around £64m per annum. This reflects low levels of uptake and compliance, and that some of the changes included in option 3 could not be made to happen at all without legislation.
Non monetary considerations	<p>Staffing an ANDPB with consultants rather than employing permanent staff in an ENDPB would be likely to lead to:</p> <ul style="list-style-type: none"> higher staff turnover and an associated slower growth in the accumulation of SSPR knowledge and expertise; and greater difficulty in managing and mitigating the confidentiality issues arising from the volume and sensitive nature of supplier data held centrally.

Analysis of Option 3 - "Legislation for SSRO and SSPRs"

	Option 3 - "Legislation for SSRO and SSPRs"
Description	<p>The legislation has two main parts:</p> <ul style="list-style-type: none"> • The SSPRs define new standard reporting and transparency requirements, as well as defining more precisely how contract prices must be set and then adjusted in response to emerging actual costs. • The SSRO will be created as an ENDPB to own, manage, monitor and update the new regulations. It will also perform analysis on the data submitted in the new mandatory contract and supplier reports, and provide expert determinations on matters referred to it by one or other of the parties to a dispute over a single source contract or related matter.
Advantages	<p>There are three main advantages to legislating the changes:</p> <ul style="list-style-type: none"> • The statutory approach ensures wide, consistent and fair application across defence single source suppliers. Very high levels of compliance would be achieved because the new rules become the law, so there would be no need to negotiate and make concessions. • The changes can be supported by a much more effective compliance regime underpinned by civil penalties. It is difficult to attach any financial remedy to non-provision of information using contractual terms. • Wider application down the supply chain - single source contracts frequently involve subcontracts which are also single source and which MOD pay for in the prime contract price. The same risk to taxpayer VFM exists in these subcontracts, yet the prime contractor currently lacks the commercial leverage to flow down the obligations; if the sub-contractor refuses there is little he can do. A statutory underpinning will allow the new pricing framework to be more effectively applied down the single source supply chain, ensuring widespread adherence to the new regime.
Disadvantages	<ul style="list-style-type: none"> • Nothing material identified. (The process of preparing for and successfully securing legislation is time consuming and costly, but when set against the degree and speed of change that could be negotiated through contracts, this is not a significant concern.)
Costs associated with regulatory body	<ul style="list-style-type: none"> • The initial and setup costs associated with designing, creating and staffing the ENDPB SSRO, as a successor body to the Review Board, have been estimated to be around £3.1m. • The ongoing annual staff cost for the organisation chart currently envisaged is around £2.7m. • Once other miscellaneous operating costs are included, the annual expenditure would be around £4m. • Under the legislated option, industry would be required to pay approximately half of this amount, which would be recovered via a levy applied to the contract profit rate. Hence in steady state the basic annual net operating cost to MOD would be around £2m.
Costs to MOD & Industry arising from	<p>MOD has accepted that industry will incur new costs in producing all of the standard reports required under the SSPRs, and has agreed that subject to audit of their expense claims, suppliers can recover</p>

Option 3 - "Legislation for SSRO and SSPRs"	
regulations	<p>these costs, which fall into 2 main categories, from MOD:</p> <ul style="list-style-type: none"> • Initial setup costs associated with making changes to systems, setting up new tools and processes, and providing training to affected users, has been estimated to cost approximately £5.5m over the first two years of the new regime; and • the ongoing costs of completing reports, getting them approved, and dealing with questions arising from them, has been estimated to cost around £6.4m per year based upon the anticipated volume of contracts. <p>Although it is expected that most of the proposed changes will quickly become part of “business as usual”, realistically a small amount of additional MOD resource will be required in order to accommodate the incremental workload around administrating new processes and performing data analysis. This is expected to cost no more than £0.6m.</p>
Benefits	<p>The benefit forecasts for options 2 and 3 were both built from a series of assumptions and calculations around the scope to negotiate slightly lower future contract prices. The assumptions were based on the expected impact on the proposed rules changes, and the anticipated value of the information provided and analysis derived from it.</p> <p>Both forecasts show a flat long run level of saving versus Option 1. However, it takes time to get to this level due to the volume of legacy contracts (not priced under the SSPRs) which continue to spend significant money long into the future. Also, although new data and reports will start to be accumulated in the early years, some of the benefits calculations require large volumes of data to be collected and analysed before its full value can be leveraged on future contracts.</p> <p>Option 3 benefits are eventually expected to reach just around £213m / yr.</p>
Non monetary considerations	<p>As a permanently staffed independent and impartial body, the SSRO could quickly accumulate knowledge and experience in all matters relating to single source pricing, and establish for itself a reputation as a fair minded expert in this field.</p>

Regulatory Impact of Options 2 & 3

58. In arriving at the above estimates of the cost to industry of complying with the new requirements, MOD consulted its top 10 suppliers about the expected cost of completing the standard report templates. An average of these views was used to construct the business case. However, as stated above, it is important to make clear that these new costs will not ultimately be borne by suppliers as, within reason and subject to audit, they will be permitted to reclaim them from MOD.
59. The Better Regulations Executive at the Department for Business, Innovation and Skills advised that because suppliers would be reimbursed for costs incurred complying with the new requirements, and because single source procurement was “an explicit rejection of the market”, the changes would not be considered to be “regulations” from the point of view of the Regulatory Policy Committee. They would therefore not be subject to the “One In One Out” policy.

Option Selection

60. Option 3, the adoption of legislation to create the SSRO and SSPRs is strongly recommended. It allows all of the required changes to be implemented quickly and effectively, and will ensure the highest possible levels of supplier compliance, and hence potential financial benefit.

ORIGINAL

Assumptions and Risks

Assumptions

61. The advantages and disadvantages in Section 0 are assumed to be from the point of view of the government. The only net cost to industry is its 50% share of the SSRO cost in Option 3, which it will experience through a very small reduction in the profit rate earned on contracts.
62. All of the financial costs and benefits (and supporting assumptions) referred to in section 3 are aligned with the Outline Business Case which was developed and approved in Autumn 2012. Naturally, as plans become clearer and more detailed these figures will be subject to refinement and modification.

Risks

63. Risks and mitigations around the confidentiality of sensitive information provided by suppliers are dealt with in the next section. Other risks to the successful implementation that have been identified include:
 - a) **Quality of regulations** – *probability L, impact M*. It is possible that some of the new requirements turn out not to work as effectively as was hoped, or become overly burdensome relative to the value they offer;
 - b) **SSRO Recruitment** – *probability M, impact H*. There is a risk that the specialist technical resources required to staff the SSRO will not be secured and trained within the challenging implementation timeframe resulting in delays, staggered launch and/or a skills gap;
 - c) **SSRO Duplication** – *probability L, impact M*. The creation of the SSRO could be perceived to cause duplication with CAAS, NAO or Parliamentary Oversight; and
 - d) **SSRO Scope** – *probability L, impact M*. There is a real or perceived risk that the SSRO will grow in scope to undertake procedures outside of its agreed remit.
 - e) **Loss of Confidential Supplier Information** - *probability L, impact H*. Unauthorised release of confidential supplier information would cause substantial damage to the credibility of the new framework and hence affect suppliers' willingness to co-operate.
64. Mitigation of Risks.
 - a) **Quality of regulations** - The SSRO will keep the operation of the new framework under very close scrutiny and will have the right, initially after 3 years and then after every 5, to conduct an extensive review (consulting all stakeholders) and recommend changes to the Secretary of State;
 - b) **SSRO Recruitment**. Early development of a People Strategy including structured roles and responsibilities, targeted recruitment campaign, competitive salary benchmarking and leveraging the advice of external experts will all help mitigate this risk;
 - c) **SSRO Duplication**. Early engagement and close working with CAAS will help to resolve any potential areas of overlap. We will make clear where necessary that no part of MOD does any supplier portfolio analysis or attempts to maintain a library of industry cost parametrics or benchmarks. Also, we will assure all stakeholders that SSRO has no "MOD assurance role" (as Lord Currie envisaged), which should reduce significantly any perception of duplication with OGDs;
 - d) **SSRO Scope**. The Terms of Reference for the SSRO will be tightly documented and ring fenced in statute, and set out in a framework document agreed with the MOD.

- e) **Loss of Confidential Supplier Information** – there will be a new criminal offence for unauthorised disclosure of specific information obtained under the new framework.

ORIGINAL

Wider Impact

Markets, business and competition.

65. These options do not regulate competition or markets in any way. The proposed new regulations only come into effect once a decision has been made to procure and contract on a single source basis rather than to attempt to compete the requirement.

Equality Impact Assessment

66. Recognising the importance of demonstrating that the changes described above do not have any disproportionately positive or negative effects on any protect groups of individuals, we have conducted an Equality Impact Assessment in line with Cabinet Office guidance.
67. The assessment covered all nine protected groups (age, race, gender, disability, religion or belief, sexual orientation, gender reassignment, pregnancy and maternity, marriage and civil partnership) and concluded that there will be no equality or discriminatory impacts on any such groups.
68. In reaching this conclusion, the assessment took into account the following:
- a) All SSRO “People Policies and Practices” (recruitment, employment terms and conditions and the complaints procedures) will be in line with the Code of Practice issued by the Commissioner for Public Appointments;
 - b) The SSRO will comply with the statutory obligations (including the Equality Act 2010) on race, disability and gender equality and promote equal opportunity for other equality groups e.g. sexual orientation, age, religion;
 - c) The Commissioner for Public Appointments will oversee and audit the appointment of the SSRO Chairman and ensure that in discharging this responsibility Ministers and their officials observe three key guiding principles – merit, fairness and openness; and
 - d) Adherence to these same three principles across all other SSRO recruitment and promotion will ensure that there are no discriminatory barriers to involvement/ inclusion in its activities.

Social and Environmental issues

These options do not have any social or environmental implications.

Implementation Plans

69. A number of change workstreams will support the successful rollout and implementation of the SSPRs and these are outlined below.

Transition

70. We recently reviewed the expected profile of future contracts (across all MOD operating centres) and have already identified several that are due to be signed between now and the expected October 2014 "Commencement Date" for the legislation. We intend to write to the relevant suppliers to propose voluntary adoption of the SSPRs on these contracts.
71. Initially, we will not attempt to negotiate all aspects of the SSPRs into these early contracts, preferring a more targeted approach, but the scope of this pilot work will increase to full coverage as October 2014 approaches.
72. Where aspects of the SSPRs can be included during the transition phase, we have created new supplier and contract "regulatory codes" to shadow the legislation and be included as contract clauses where the agreement of suppliers can be secured.
73. These contracts will also act as pilots for MOD and supplier SSPR training as outlined below.

Training

74. A detailed training plan has been developed to map out how all affected stakeholders will be introduced to the new regime. We will commission an external training provider to ensure that when legislation is introduced, all parties are properly informed. Groups requiring training include:
- a) **Commercial teams:** - this will form the bulk of the training requirement;
 - b) **CAAS:** - expected to be largely self-sufficient in terms of providing wider briefing on the new reporting requirements, but this will need to be centrally co-ordinated;
 - c) **Industry:** - our suppliers will need to be thoroughly trained on the new regime, its new requirements and procedures. It is intended that each will nominate an 'SSPR Champion' to receive in-depth training and then act as a focal point for issues and queries arising during further wider training and implementation;
 - d) **SSRO and other MOD stakeholders** (e.g. DASA, project teams, etc). All parties who have an interest in single source procurement throughout the MOD will need to be made aware and receive appropriately tailored training where necessary.

Communications

75. Closely linked to the activities outlined above is the need for a comprehensive communications plan. This will promote awareness of the SSPRs prior to their introduction and will need to be carefully timed to ensure we are synchronised with legislation and other significant changes within the department (e.g. the Materiel Strategy). We will communicate at various different levels across the MOD, other government stakeholders, industry and other interested parties. Examples channels include:
- a) Commercial break, DESIDER, Janes and other related publications;
 - b) Tri-folds and leaflets;
 - c) Intranet announcements;

- d) Atrium displays;
- e) Road shows to industry and business units (already underway);
- f) Other marketing literature. e.g. white papers

Building the Single Source Regulations Office (SSRO)

76. This is already underway and a detailed programme of work has been developed for next 12-18 months which includes the following:
- a) Recruiting the board and around 30 permanent staff;
 - b) Location – identifying and securing suitable premises; and
 - c) Organisation and process design – this will need careful consideration and to be closely aligned with the training activity above.

The MOD “Currie Cell”

77. It is envisaged that the MOD will need to establish a small central team to deal with various new processes and requirements arising from the implementation of the SSPRs and the establishment of the SSRO. The workload of this team will include:
- a) Receipt and consolidation of SSPR reports, plus basic data validation;
 - b) Management of compliance notices (providing some separation for other project team and commercial relationships);
 - c) Co-ordination of referrals to the SSRO;
 - d) Provision of expertise on regulations and guidance (commercial policy);
 - e) Monitoring MOD use of rights and application of the SSPRs; and
 - f) Construction of MOD internal management information from report data.

New Operating Processes

78. Implementation of the SSPRs will also require the design and rollout of a new set of operating processes, in addition to modifications to existing tools, processes and systems. These processes will then form part of the training delivery and provide users with the tools and guidance they require to understand and adopt the new framework successfully.

Post Implementation Review

Periodic Review of Regulations

79. The SSRO must keep the SSPRs under constant review and may recommend changes it considers necessary to the Secretary of State.
80. Within three years of the new regulations coming into force (and then every 5 years thereafter), the Secretary of State must carry out a review of the SSPRs, taking into account the recommendations made by the SSRO. Any required changes to regulations would be put before committee for approval before taking effect.

SSRO Annual Reporting

81. As an Executive NDPB with its own founding legislation, the SSRO will have an obligation to inform Parliament of its activities through an annual report and audited accounts that are either formally laid before Parliament or placed in the Library of the House of Commons.
82. This documentation must be prepared in accordance with directions issued by the Secretary of State with the approval of the Treasury.

DEFENCE REFORM BILL- PART 3 RESERVE FORCES: IA No: MOD0002 Part 3 Lead department or agency: Ministry of Defence Other departments or agencies: N/A	Impact Assessment (IA)		
	Date: 01/07/2013		
	Stage: Final		
	Source of intervention: Domestic		
	Type of measure: Primary legislation		
Contact for enquiries: Reserve Forces and Cadets, Pers Trg-RFC-Legislation-Group			

Summary: Intervention and Options	RPC Opinion: Awaiting Scrutiny
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Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2012 prices)	In scope of One-In, Measure qualifies as One-Out?
£m -28.75	£m 38.39	£m-4.459	Yes
			IN
What is the problem under consideration? Why is government intervention necessary? The Reserve Forces are a vital component of the Armed Forces. However, a number of problems have been identified which require legislative changes. To utilise reserves, the government requires increased mobilisation powers and to increase employment protection to reserves. These can not be done without new legislation. The changes to the Reserve Forces as part of the 'Whole Force' will have cost savings (though these can not be easily calculated for this IA) as the MOD better utilises the range of manpower (regulars, reserves, contractors and civil servants) available to it. The changes will deliver an improvement in the range of skills available to provide military capability where required.			

What are the policy objectives and the intended effects? It is proposed that legislation is changed to: (a) Expand the circumstances in which members of the Reserve Forces can be 'called out'. (b) Provide greater employment protection for reservists. (c) Rename the Territorial Army to the 'Army Reserve' and the existing Army Reserve to the 'Regular Reserve'. (d) Empower the Secretary of State (for Defence) to make incentive payments to employers of Reserves. These measures are intended to strengthen the reserves and allow greater integration as part of the Whole Force required to meet the future security challenges.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base) Each proposal has two options- Option 1 - Do nothing and Option 2 - Amend primary legislation. All the change proposals set out require primary legislation as the proposed changes are alteration to existing primary legislation (which can not be introduced without amendments to existing primary legislation). The RPC opinion received on 10 June 13 was that options a2 and b2 were low cost proposals. Introduction of additional incentive payments to employers (option d2) will mean that the measures set out in this IA will have an overall net benefit to employers.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 05/2015					
Does implementation go beyond minimum EU requirements?			No		
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 CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A		Non-traded: N/A

Summary: Analysis & Evidence

Policy Option a1 Do nothing

Description: (a) Retain the current call-out powers for reserve forces

FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m) 0		
			Low: Optional	High: Optional	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Year	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0	0	0

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

No cost as this option is the "do nothing" option which does not implement any change. The number of reservists that will be used on any given operation will vary as a matter of course and particular employers may still find that their employee is called on under the existing powers.

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

Without a change in call-out powers the MOD will be unable to use the reserve forces as part of a more integrated force. The ability to call out (or mobilise) members of the reserve forces will continue to be limited thereby preventing the full range of military capabilities being available for certain operations. Where specialist skills and capabilities are held mainly or solely in the reserve forces it is particularly important that the MOD is able to use these capabilities when and where it needs them.

BENEFITS (£m)	Total Transition (Constant Price) Year	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0	0	0

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

None.

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

None

Key assumptions

Discount rate (%)

0

The current call-out powers do not allow Reserve Forces to effectively contribute to National Security.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	No	Zero net cost

Summary: Analysis & Evidence

Policy Option a2 Legislative change

Description: (a) Expanding the circumstances in which members of the Reserve Forces can be “called out.”

FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m) -27.48		
			Low: Optional	High: Optional	Best Estimate: £m -27.48

COSTS (£m)	Total Transition (Constant Price) Year	Average Annual (excl. Transition) (Constant	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	£0m MOD	£2.74m	£27.48m

Description and scale of key monetised costs by ‘main affected groups’ Each use of MOD assets is a unique event driven by the specific threat or disruptive hazard. The mix of regular and reservists that will be required at any point will vary dependent on the operation. In addition, each business employing a reservist is itself 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. A series of assumptions on numbers and level of use of reservists has been made to provide broad indicative figures and costs calculated accordingly. Direct Costs will vary based upon the individual mobilised (their comparative civilian and military wages).

Other key non-monetised costs by ‘main affected groups’

Employers of reservists – Disruption caused by mobilisation which will be further offset to some degree by the proposal to pay employer incentives (measure d)

MOD – Potentially greater use of reserves but variable according to operational circumstances

BENEFITS (£m)	Total Transition (Constant Price) Year	Average Annual (excl. Transition) (Constant	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0		0

Description and scale of key monetised benefits by ‘main affected groups’ Mobilisation allows a reservist to put military skills into practice, 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. SABrE (Supporting Britain’s Employers and Reservists research (endorsed by the Chartered Management Institute), found that an employer would potentially have to purchase over £8,000 of commercial civilian training to provide the same amount of development that an average reservist’s military service provides in a year. This research relates only to the skills that are relevant to the civilian workplace.

Other key non-monetised benefits by ‘main affected groups’

Employers - The introduction of an incentive payment for employers will be of particular benefit to Small & Medium Enterprises (SME’s)

MOD – The changes will enable an integrated whole force making of use of both reservist’s specialist skills and their numbers

Reservists – Potentially greater opportunities to undertake military service and gain associated skills and experience.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

The number of mobilisations will be dependant upon operational circumstances and capabilities required at the time of mobilisation.

The numbers of reservists being mobilised will remain bound by Defence expenditure and remain with agreed funding limits.

The RPC have confirmed this measure is low cost

BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: £0.293m	Benefits: £0m	Net: £0.293m	Yes	IN

Summary: Analysis & Evidence

Policy Option b1 Do nothing

Description: Do nothing – make no legislative change to provide greater employment protection for reservists.

FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Year	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	0	0	0

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

As there is no change, there are no direct costs associated with this option.

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

Reservists are not afforded an appropriate level of protection under the existing legislative framework. Members of the reserves would need to continue to accumulate the statutory 2 years continuous employment required to bring a claim for unfair dismissal to an employment tribunal. It can more difficult for a reservist to accrue continuous employment because any periods of mobilisation do not count towards this.

BENEFITS (£m)	Total Transition (Constant Price) Year	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	0	0	0

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

There is no monetary benefit associated with not introducing a proposed measure.

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

Employers would not have to take account of new legislation in this area

Key assumptions/sensitivities/risks

Discount rate (%) 0

In the first instance non-legislative approaches to supporting reservists and employers are generally preferable.

Legislation is only considered where it is necessary and there is evidence of a clear requirement. MOD has a responsibility to ensure members of the reserve forces are not disadvantaged as a result of their role as a reservist.

BUSINESS ASSESSMENT (Option 4)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits:	Net: 0	No	Zero net cost

Summary: Analysis & Evidence

Policy Option b2 Legislative change

Description: Providing greater employment protection for reservists through providing an exemption from the statutory 2-year qualifying period in bringing unfair dismissal claims where the dismissal is by reason of the employee's reserve service.

FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)-0.76m		
			Low: Optional	High: Optional	Best Estimate: £ -0.76m

COSTS (£m)	Total Transition (Constant Price) Year	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	£0.16m	£0.06m	£0.76m

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

Full details laid out in the Evidence Base – calculated on 4 times the number of current cases cost to employers would be c£0.069m.

Additional costs to employers of familiarisation and communication of policy change is estimated at £161,960.

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

No non-monetised costs identified, however it is recognised that employers will likely require additional time in considering the effect of this protection when considering dismissal.

BENEFITS (£m)	Total Transition (Constant Price) Year	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0	0	0

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

No monetised benefits have been identified as there is not a simple measure by which to quantify the benefits set out but the additional security offered to reservist will have value to both the individuals and Defence.

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

Reservist – Individual reservists will receive appropriate and fair protection. This will provide greater security and certainty in relation to their undertaking of reserve service.

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.

Key assumptions/sensitivities/risks

Discount rate (%)

3.5%

Regulatory Policy Committee opinion is that this is a low cost measure (as confirmed on 10 June 13).

The Better Regulation Executive confirmed (e-mail dated 04 June 13) that the Reserves proposals with the compensatory elements for business is more or less zero cost impact in OITO terms. No Outs have been identified.

BUSINESS ASSESSMENT (Option 5)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: £0.088m	Benefits:	Net: £0.088m	Yes	IN

Summary: Analysis & Evidence

Policy Option c1 Do nothing

Description: Retain current Territorial Army and Army Reserve names.

FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: 0
COSTS (£m)	Total Transition (Constant Price) Year		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate	0		0		0
Description and scale of key monetised costs by 'main affected groups' No monetised costs have been calculated for the do nothing option.					
Other key non-monetised costs by 'main affected groups' Defence and reservists – Retaining existing name allows both the negative connotations associated with the Territorial Army name to endure and represents a lost opportunity to publicise the new role of the Reserve Forces.					
BENEFITS (£m)	Total Transition (Constant Price) Year		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate	0		0		0
Description and scale of key monetised benefits by 'main affected groups' No monetised benefits have been calculated.					
Other key non-monetised benefits by 'main affected groups' Defence – Financial saving/opportunity cost of not meeting rebranding costs.					
Key assumptions/sensitivities/risks N/A					Discount rate (%) 0

BUSINESS ASSESSMENT (Option 6)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	No	Zero net cost

Summary: Analysis & Evidence

Policy Option c2 Legislative change

Description: Re-name the Territorial Army to the 'Army Reserve' and the current 'Army Reserve' to the 'Regular Reserve'.

FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m) TBC		
			Low: Optional	High: Optional	Best Estimate: -

COSTS (£m)	Total Transition (Constant Price) Year	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0	0	0

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

Monetised costs are not yet known and will be met from within existing MOD budgets. Cost will represent one-off additional costs for re-branding activities - including signage, website changes and publicity. Future recruitment campaigns etc. represent part of normal budgeted MOD operating costs.

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

Defence and reservists – Some disruption caused by re-naming and re-branding.
Employers – There may be a requirement for some businesses to update references in internal publications. This is expected to be minimal; there is no compulsion on business to undertake such changes, therefore it is anticipated any required changes will be made as part of routine refreshes.

BENEFITS (£m)	Total Transition (Constant Price) Year	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

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

No monetised benefits have been calculated.

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

Defence and reservists – New name updates the public image to provide a more accurate picture of a modern and professional organisation for the future.
Reservists – Change allows greater recognition of the expanding role of the Reserve Forces
Defence - The new name demonstrates the Army Reserve is part of one Army and is part of the whole force concept.

Key assumptions/sensitivities/risks	Discount rate (%)	0
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BUSINESS ASSESSMENT (Option 7)

Direct impact on business (Equivalent Annual) £m:	In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0
	No	Zero net cost

Summary: Analysis & Evidence

Policy Option d1

Description: Do Nothing – do not make provisions Empowering the Secretary of State (for Defence) to make incentive payments to employers of reservists

FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2014	Time Period Years 1	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: 0

COSTS (£m)	Total Transition (Constant Price) Year	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0	0	0

Description and scale of key monetised costs by 'main affected groups'
No costs identified.

Other key non-monetised costs by 'main affected groups'
Employers may continue to feel as if the cost of reservist absence is not fully recognised or contributed towards by Defence. The result could be reluctance to recruit or retain reservists reservists could find that some employers are reluctant to employ or retain them due to their membership in the Reserve Forces. If individuals resign from or do not join the Reserve Forces because of a potential affect on employment then this will affect Defence's operational capabilities.

BENEFITS (£m)	Total Transition (Constant Price) Year	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0	0	0

Description and scale of key monetised benefits by 'main affected groups'
No benefits identified.

Other key non-monetised benefits by 'main affected groups'
Defence will not have to absorb the opportunity cost of making additional payments to employers. However, this opportunity cost is likely to itself offset by the lack of benefit from not introducing this measure.

Key assumptions/sensitivities/risks	Discount rate (%)
Employers will receive no additional benefits.	
Reservists and Defence may continue to experience non-monetised cost associated with employer dissatisfaction.	

BUSINESS ASSESSMENT (Option (d)2)

Direct impact on business (Equivalent Annual) £m:	In scope of OIOO?	Measure qualifies as
Costs: 0	No	Zero net cost
Benefits: 0		
Net: 0		

Summary: Analysis & Evidence

Policy Option d2

Description: Empower the Secretary of State (for Defence) to make incentive payments to employers of reservists

FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m) -0.51		
			Low: Optional	High: Optional	Best Estimate: £-0.51m

COSTS (£m)	Total Transition (Constant Price) Year	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	£0.16m	£4.253m	£42.69m

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

Cost to Defence of providing incentive payments is calculated as £4.9m. Cost to employers of accessing scheme is estimated at £0.2m per annum average.

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

No non monetised costs calculated. The cost of administering the scheme will be met from within existing MOD budgets, utilising existing structures.

BENEFITS (£m)	Total Transition (Constant Price) Year	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0	£4.22m	£42.18m

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

Benefit to employers is anticipated to represent c£4.9m per annum

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

Reservist receive greater support from employers in joining and participating in the Reserve Forces Defence receives greater assurance of operational capability and availability as employers who receive this payment are more likely to release their reservist due to the financial incentive to do so

Key assumptions/sensitivities/risks

Discount rate (%)

3.5%

The scheme has been costed on the assumption that payments will initially be targeted to employers considered Small and Medium Enterprises. The % Unemployed and the % employed by SMEs based on most recent internal reservist surveys is high but has been used as the best available current evidence. Cost of administrating scheme will be nominal as delivered through existing structures. Transfer of benefit to the private sector is delivered effectively by this scheme. Cost and benefit will vary each year depending on number of reservists mobilised and the proportion of eligible employers who claim the payment.

BUSINESS ASSESSMENT (Option 8)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: £0.06m	Benefits: £4.9m	Net: £4.84m	Yes	IN

Evidence Base (for summary sheets)

SUMMARY OF THE PROPOSED POLICY

1. As part of the Defence Reform Bill 2013 it is proposed that the following changes are made to primary legislation:
 - (a) Expand the circumstances in which members of the Reserve Forces can be “called out” (the process of calling members of the reserve into permanent service note: this is also referred to as mobilisation.)
 - (b) Provide greater employment protection for reservists.
 - (c) Rename the Territorial Army to the ‘Army Reserve’ and re-name the current Army Reserve to the ‘Regular Reserve.’
 - (d) Empower the Secretary of State (for Defence) to make incentive payments to employers of Reserves.
2. The United Kingdom’s Reserve Forces are a vital component of our Armed Forces; contributing to the public good we call Defence. Since 2003 over 25,000 reservists have been deployed to (or served on) operations – these have been primarily drawn from the Volunteer Reserve but with a small proportion from both the ex-regular and Sponsored Reserves; the definitions of which are explained in the supporting evidence. At any one time since 2003 Reserve Forces have comprised between 8 and 10 per cent of the total deployed force.
3. In some specialist areas, particularly medical support, reservists have provided up to half of the capability. Reservists have provided high quality service over this period and, alongside their regular counterparts, have contributed directly to delivering operational capability. Generally reservists have been deployed as individuals to fill gaps in regular units, although there have been some occasions when formed reservist bodies have successfully deployed.
4. The proposed changes to expand call-out powers will ensure that the UK Reserve Forces can be used effectively to support the range of operations the military are asked to undertake to ensure a secure and resilient UK and contribute towards shaping a stable world.¹² There is a clear need to ensure that the Government can call on all of its Armed Forces when required and it is the case that a number of key skills are now mainly or exclusively held within the Reserve Forces which must be accessible across the spectrum of tasks the military may be called to undertake.
5. The introduction of further employment protections will ensure that the full range of manpower and appropriate skills are available when needed to undertake military operations. The greater employment protections being proposed are required so that when UK Reserve Forces are ‘called-out’ to undertake military operations; they do not lose their basic statutory employment protections as a result of their service. The incentive payments reward companies for employing reservists.
6. The name Territorial Army, no longer represents the scope or range of the work which the Army Reserves undertake.
7. The options which have been considered for each area of the Reserve Forces are do nothing or introduce legislative change. The proposals each require amendments to existing primary legislation; these changes must be made via primary legislation.

¹² Strategic Defence and Security Review 2011, 1.5

ISSUE UNDER CONSIDERATION

Issue.

8. The Reserve Forces are a vital component of our Armed Forces and make an essential contribution to our security. Reservists contribute to society over and above most other citizens; balancing their military duties with their other work and family commitments. We need the reserves' contribution to national security to expand; by 2020 they will provide a much greater proportion of the overall Defence effort relative to regular Forces and we will use them differently as part of an integrated force. But in recent years our reserves have been in decline, particularly in the Army. To meet the future requirement we will stabilise, grow and revitalise our Reserve Forces by enhancing the experience we offer to reservists and harnessing the volunteer ethos of society to tap into the best talent the country has to offer. To sustain a revitalised reserve we will need a greater commitment from society as a whole.
9. The reserves will complement the regulars within an integrated Whole Force, providing military capability in a different way from the past to deliver the range and scale of military forces and skills required.

Background

General Background

10. The 2010 Strategic Defence and Security Review (SDSR) set out the role of Reserve Forces as a greater part of our future highly capable Armed Forces, working as an integral part of the Whole Force. Reserves provide additional manpower, including offering specialist skills not generally held within the reserves where it would not be practical or cost effective to maintain these skills as part of our regular capability. The 2011 Independent Commission on the Reserve Forces reported that the reserves were in decline, particularly in the Army, and needed to be brought up to date to meet the demands of the new security environment. This led to a Green Paper in November 2012 and a subsequent consultation which prompted over 3000 responses. These activities have informed the FR20 White Paper, due to be published in early July.
11. The 'Reserve 2020 - The Independent Commission to review the United Kingdom's Reserved Forces' published in 2011 recognised the remarkable contribution that our Reserve Forces continue to make to operations and that their potential was invaluable. However, it reached four conclusions:
 - Our Reserve Forces are in decline.
 - We have failed to modernise reservist roles.
 - We are not exploiting the potential of our reserves.
 - We are not using the reserves efficiently.
12. The report identified a number of recommendations which included, enablement - 'The availability of a larger and more usable Reserve has to be guaranteed. Such a guarantee has to be underpinned by legislative changes which permit greater ease of mobilisation, better employee protection and greater recognition of employers.'
13. The Independent commission report led to a Green Paper in November 2012 and a subsequent consultation which prompted over 3000 responses, in this consultation we specifically sought feedback on
 - Use of reserves.
 - Name of the Territorial Army.

- A better deal for employers of reservists.

14. This Government's intent is to ensure that the reserves will complement the regulars within an integrated Whole Force, providing military capability in a different way from the past to deliver the range and scale of military forces and skills required. To that end we are proposing the reforms to Reserve Forces legislation by:

- Expanding the circumstances in which members of the Reserve Forces can be "called out."
- Providing greater employment protection for reservists.
- Renaming the Territorial Army to 'the Army Reserve' and renaming the current Army Reserve to the 'Regular Reserve'.
- Empowering the Secretary of State (for Defence) to make incentive payments to employers of reservists.

15. The above proposals are referred to as options a2, b2, c2 and d2 throughout this document.

Reservists and the UK workforce

16. **Reservists as a proportion of UK employed workforce.** Currently, there are approximately 31,000 volunteer reservists and 45,000 ex-regular reservists, a total of 76,000 reservists out of a UK employed workforce of 29.10 million¹³. The volunteer reserves are the only force regularly drawn on to provide contributions to operations. Even if all reservists were employed, this would represent just 0.29 of the employed UK workforce. Under the targets set out in the Green Paper *Delivering our Nation's Security Together* published on 8 November 12 the total number of Reserves is set to increase as follows;

Volunteer Reserve Numbers since 1980

	Maritime Reserve	Territorial Army	RAuxAF	Total
Total Strength in 1980	5,800	63,300	500	69,100
Total Strength in 1990	7,000	72,500	1,800	81,300
Total Strength in 2000	4,078	40,102	1,797	45,977
Current Total Strength	2,526	25,430	1,335	29,291
Total Strength Target by 2020	4,150	38,000	2,300	44,450
Trained Strength Target by 2020	3,100	30,000	1,800	34,900

17. Volunteer reservists can serve as part of formed units that directly shadow their regular counterparts undertaking similar roles and training to provide additional manpower (e.g. Infantry, Royal Logistic Corps, RAF squadrons.) Additionally, a number of specialist skills are held primarily or exclusively within the Reserve Forces (e.g. Linguists, media and communication experts, certain intelligence officers and some medical specialists inc.

¹³ Source: Labour Market Statistics, October 2011 Office of National Statistics

neurosurgeons). Such specialist skills are normally not held by the regular Armed Forces due to the high cost of gaining and remaining proficient in such skills combined with relative infrequency of use. It is far more economic to provide reservists who have these specialist skills already due to their civilian occupations with the training to use these skills in a military context than it is to retain regulars within these roles.

Current Relevant Legislation

Reservists and Reserve Forces Act 1996 (RFA 96)

18. RFA 96 provides the legal basis for the establishment, organisation and regulation of the Reserve Forces. There are currently over 31,000 members of the Volunteer Reserve Forces and over 42,000 members of the Ex-regular Reserve Forces who fall under the purview of RFA 96.

- **Volunteer reservists.** These individuals volunteer to undertake a training commitment. They have a liability to be called-out for permanent service (also known as mobilised service) and deploy on operations alongside regular colleagues. If called out for permanent service, they are paid at the same full time rate as regulars. In addition, remuneration is also paid by the MoD to those whose civilian salary is higher than their military salary up to a limit of £548.00 per day (or £822.00 per day for certain medical officers). Legislation is in place to protect their civilian employment whilst in permanent service.
- **Ex-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.

19. Within the above Reserve Forces there are two sub categories:

- **High Readiness Reserves (HRR).** A number of individuals from the above forces will, but only with their employers consent undertake an additional agreement for a maximum of 12 months in which they volunteer to be available to be called-out at shorter notice than would otherwise be given.
- **Sponsored Reservists (SR).** These reservists are employees of a civilian company who by contractual agreement between that company and the MoD are considered to be special members of the Reserve Forces. The SofS may call them out (mobilise) when he considers it appropriate in light of operational requirements and arrangement with employers. They are not subject to the general powers discussed here.

Reserve Forces (Safeguard of Employment) Act 1985

20. The Reserve Forces (Safeguard of Employment) Act 1985 (RF(SOE) 85) makes provision regarding the reinstatement in civil employment of members of the reserve forces who have been called into permanent service, and for the protection of the employment of those liable to be called into such service.

21. Section 17 of RF(SOE) 85 states:

Prohibition of dismissal for liability to whole-time service

“(1) If the employer of a person who may be required to enter upon a period of whole-time service—

(a) terminates that person’s employment without his consent at any time when he is not in that service, and

(b) does so solely or mainly by reason of any duties or liabilities which that person may be liable to perform or discharge—

(i) if required to report at any time or place with a view to entering into whole-time service; or

(ii) if he enters upon a period of whole-time service,

the employer is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.”

22. This provision makes it a criminal offence for an employer to dismiss a reservist because he or she is called out or likely to be called out. The offence is punishable by a fine of up to level 3 on the standard scale (£1000). The convicting court may also order the employer to pay compensation not exceeding an amount equal to five weeks’ remuneration at the rate at which his remuneration was last payable to him by the employer.

Employment Rights Act 1996

23. Section 217 of the Employment Rights Act 1996 (ERA 96) provides that:

Reinstatement after military service.

“(1) If a person who is entitled to apply to his former employer under the Reserve Forces (Safeguard of Employment) Act 1985 enters the employment of the employer not later than the end of the six month period mentioned in section 1(4)(b) of that Act, his period of service in the armed forces of the Crown in the circumstances specified in section 1(1) of that Act does not break his continuity of employment.

“(2) In the case of such a person the number of days which, for the purposes of section 211(3), fall within the intervening period is the number of days between the last day of his previous period of employment with the employer (or, if there was more than one such period, the last of them) and the first day of the period of employment beginning in the six month period.”

24. However, s.211(3) provides that:

“If an employee's period of continuous employment includes one or more periods which (by virtue ofsection 217) while not counting in computing the length of the period do not break continuity of employment, the beginning of the period shall be treated as postponed by the number of days falling within that intervening period, or the aggregate number of days falling within those periods, calculated in accordance with the section in question.”

25. Accordingly the period when a reservist is mobilised will not count towards his or her period of continuous employment for the purposes of the ERA. So the period when a reservist is mobilised will not count when computing the 2 year period of continuous employment required for bringing an action for unfair dismissal.

KEY GROUPS AFFECTED

26. Distribution of reservists by enterprise size. MOD data on reservist employer and employment status is incomplete. Currently, employer information is held for less than 20,000 reservists. Where reservists have not declared their employer status, it is reasonable

to assume a 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 shown in the table below.

TABLE 1 - INDICATIVE DISTRIBUTION OF UK RESERVISTS BY ENTERPRISE SIZE

Enterprise Size (employees)	Number of Reservists	Proportion of total declared Reservists working within the Enterprise Size ¹⁴	Proportion of the UK private sector workforce working in the Enterprise Size
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%

27. It is recognised that this measure may have more impact on Micro, Small & Medium Enterprises (SME) and it may be appropriate to consider a waiver for micro business however, this must be done with due caution as it creates a discrimination against reservists employed in these areas.

28. **Reservists. See definitions in Para 18.**

29. **Employers.** Where reservists are mobilised (at present and in the future) extensive processes and awards already exist to support and compensate the employer (and reservist) throughout the period in so much as;

- The reservist’s civilian employer has no obligation to pay their employee’s salary,
- MOD meets the additional costs of hiring a replacement or compensates for overtime and agency fees to cover the work using temporary resources,
- Additionally, MOD provide employers award that also covers the employers pension contributions where requested.

30. **Small and Micro Businesses:** The MOD has existing processes in place that seek to mitigate the impact of reservists being called out on small and micro-businesses - thereby ensuring that impact it is not disproportionate are set out below;

- There is a robust and time-tested policy and legislative process in place to provide support to employers of reservists.
- The exclusion of reservists employed in Small or Micro business from the available manpower will severely limit their utility to defence.
- Excluding reservists on the grounds of their employer’s size would deny them the ability to fully participate in their roles as reservists and precludes supportive and engaged Small and Micro businesses from supporting their reservist employee’s where they wish to do so.

31. The new call-out power is an extension to existing and well understood policy and processes and will be fully supported by existing employer support activities, it is not anticipated that the expanded call-out power will impose a significantly greater burden on business overall or

¹⁴ This is the total number of reservists with valid employer details recorded

on Small and Micro businesses in particular. There is a robust process in for mobilising place starting with the MOD's policy of intelligent mobilisation and supported by the legislation for deferral or exemption from call-out as explained below

32. Schedule 1 of the Reserve Forces (Call-out and Recall) Exemptions Etc.) Regulations 1997¹⁵ sets out the grounds under which reservists or their employer may seek deferral or exemption from call-out.
33. A reservist may seek exemption or deferral under the following grounds:
- That the reservist
- has the primary responsibility for the care of a person with a severe physical or mental disability who requires frequent attention or supervision, and adequate arrangements for care by a person other than the reservist during the expected period of the reservist's relevant service cannot be made;
 - alone has parental responsibility or sole parental responsibilities for a child, and adequate arrangements for the care of that child during the expected period of the reservist's relevant service cannot be made;
 - is engaged in education or training which is intended to prepare or qualify him for a vocation or job and which would be seriously disrupted by his absence on relevant service; .
 - is working in a family-owned business which would suffer serious harm as a result of his absence; .
 - has entered into a contract of employment but has not yet started work under that contract and the other party does not agree to postpone until after the period of relevant service the date on which the reservist is to start work under that contract;
 - any other ground which an adjudication officer ought, for compassionate reasons, to consider.
34. Where it is considered that the absence of a reservist "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"¹⁶, then the employer can seek deferral or exemption of their employee from a call-out order.
35. Such harm may include:
- loss of sales, markets, reputation, goodwill or other financial harm;
 - impairment of ability to produce goods or provide services.
 - harm to research into and development of new products, services or processes,
- which could not be prevented by the granting of financial assistance pursuant to regulations under sections 83 and 84 of the 1996 Act [The Reserve Forces Act 1996].
36. In addition the measures being proposed under Option d2 (Empower the Secretary of State (for Defence) to make incentive payments to employers of Reserves) will further recognise and reward businesses for their role in supporting the Reserve Forces thereby further minimising any lost opportunity costs related to an employees absence to undertake reserve service.

¹⁵ Statutory Instrument 1997:307

¹⁶ Statutory Instrument 1997:307 The Reserve Forces (Call-out and Recall) (Exemptions Etc.) Regulations 1997

RATIONALE FOR INTERVENTION

37. Effective Reserve Forces are essential to meet the nation's security requirements. They will represent a greater proportion of the Whole Force in the future, with some specialist capabilities held only in the reserves.

Intervention

38. To deliver the Future Reserves 2020 (FR20) programme intervention is required to deliver the legal changes to use and support Reserves more effectively by ensuring the availability of Reserves to Defence, to increase the employment protection available for reservists, to ensure the name of Territorial Army to reflect its new wider role and to provide greater support to employers.

Legal Basis for change

39. **(a) Expanding the circumstances in which members of the Reserve Forces can be "called out."** The rationale for the intervention is to ensure that the UK Reserve Forces can be used effectively to support the range of operations the military are asked to undertake to ensure a secure and resilient UK and contribute towards shaping a stable world.¹⁷
40. There is a clear need to ensure that the Government can call on all of its Armed Forces when required and it is the case that a number of key skills are now mainly or exclusively held within the Reserve Forces which must be accessible across the spectrum of tasks the military may be called to undertake.
41. The proposed changes to legislation that expand the circumstances under which members of the reserve may be 'called-out' to undertake military service will ensure that the full range of manpower and appropriate skills are available when needed to undertake military operations.
42. The proposal does not assume that more reservists will be used but it will allow reservists to be called-out to support a broader range of military tasks.
43. Subsequent policy decisions may see more reservists being used alongside regulars on military tasks but numbers will always be dependent on the size and nature of the particular operation; for example in 2011 an average of 600 reservists served in Afghanistan each month (on 12 month tours - including training and leave) but only 20 on average were used during operations in Libya for periods of variable service but far shorter periods than the 12 months used in Afghanistan. As this illustrates, it is possible that a large number of reservists could be involved within a single operation but only a limited number in another, it is completely dependent on the scale, nature and requirement for each commitment. The broadening of the mobilisation power does not in itself imply that greater numbers of reservist will be used, although at the same time it is intended the wider powers of call-out (mobilisation) will mean on average a volunteer reservist will be more likely to be called out. There will be minimal change to the maximum periods for which a reservist can be called out.
44. **(b) Providing greater employment protection for reservists.** The rationale for the intervention is to ensure that those who volunteer to join the UK Reserve Forces and are then 'called-out' to undertake military operations do not lose their basic statutory employment protections as a result of their service.

¹⁷ Strategic Defence and Security Review 2011, 1.5

45. It is considered that the existing provisions do not provide effective protection for reservists.
46. While the forthcoming Reserve Forces White Paper will set out a number of measures to further support employers and seek to build constructive three-way relationships between the reservist, MOD and employers, MOD considers that a change in legislation is required to provide reservists with additional protections that will support their service in the Reserve Forces.
47. MOD intends therefore to provide further protection for reservists in employment by providing access to the Employment Tribunal where they have been dismissed by reason of their reserve service.
48. The proposed legislative change will provide an exemption from the statutory 2-year qualifying period in bringing unfair dismissal claims where the reason or principal reason for dismissal is because the employee is a reservist. This special protection will enable a reservist who has been so dismissed to bring a claim for unfair dismissal before an Employment Tribunal, regardless of his or her period of employment. The protection is limited to these circumstances, and in all other cases the 2-year qualifying period for bringing a claim will continue to apply, so that the exemption will not apply in cases where a reservist has been dismissed for any other reason such as capability or conduct.
49. There are existing statutory protections for reservists in employment. The Reserve Forces (Safeguard of Employment) Act 1985 gives a reservist who is called out for reserve service the right to apply to his or her former employer to be reinstated. The employer is obliged to reinstate the reservist - provided the application is made within the stipulated time and it is reasonable and practicable to do so.
50. In addition, Section 17 of the Act makes it a criminal offence for an employer to dismiss an employee solely or mainly by reason of any duties or liabilities that may arise as a result of being called out. Prosecutions for the offence, which is punishable by a fine not exceeding level 3 on the standard scale, are brought by the Crown Prosecution Service. Section 18 provides that where an employer has been convicted under s.17 the court can order the employer to pay compensation to the employee but this is capped at 5 weeks pay.
51. However, there have been very few prosecutions under Section 17 and the penalties for the offence are extremely low. Consequently, there is no real deterrent for an employer who breaks the law by dismissing a reservist because he or she is called out, a view supported by evidence from the recent public consultation and in the feedback provided directly from reservist to the MOD or via the Supporting Britain's Reservist Employers (SaBRE).¹⁸
52. Under current legislation Section 217 of the Employment Rights Act 1996 provides that, where a reservist who is mobilised is entitled to apply to return to his former employment, continuity of employment is not broken. However, section 211(3) provides that while the period of mobilisation does not break continuity of employment, the period of mobilisation does not count towards the reservist's period of continuous employment.
53. The impact of this is that any service undertaken as a member of the Reserve Forces makes it more difficult to reach the qualifying period of continuous employment for bringing a claim for unfair dismissal under Section 108 of the ERA. The difficulty has been made even more acute by the recent increase of the qualifying period from one to two years. This is unfair, particularly where the reservist is being dismissed solely or mainly because they may be mobilised as a member of the Reserve Forces.
54. **(c) Renaming the Territorial Army to the 'Army Reserve.'** The name Territorial Army (TA) is no longer suitable as it does not reflect the role that the Reserves perform.

¹⁸ www.sabre.mod.uk

55. The proposed legislative change will allow the MOD to change the name from the TA to the 'Army Reserve.' Consequently, the current Army Reserve (the ex-regular Reserve) will be renamed to the 'Regular Reserve'.
56. **(d) Empower the Secretary of State (for Defence) to make incentive payments to employers of reservists** Proposed changes to legislation will provide the SofS with an enabling power to give incentive payments to employers; it is important that the SofS can make payments to incentivise employers to recruit and retain reservists and to acknowledge the role of those employers in supporting reserve service.
57. Sections 83 & 84 of RFA 96 currently give the Secretary of State powers to make regulations providing for the making of payments to reservists and employers (including employers who are self-employed) in respect of any financial loss of a description prescribed by the regulations. For employers, this is limited to financial loss suffered by them and attributable to any of their employees being in permanent service under part 4 or part 5 of RFA96 or under a call-out or recall order.
58. The current mechanism limits all payments to both employers and reservists to demonstrable financial loss. Further provisions are required to incentivise employers to recruit and retain reservists and to acknowledge the role of those employers in supporting reserve service. The regulations may specify certain categories of employers to whom the payment can be made.
59. There is currently no mechanism by which employers of reservists can be paid a financial incentive to recruit and retain reservists. Enabling the Secretary of State to pay financial incentives will enhance the financial support provided by the MOD to employers of reserves. Given the increase in reservist numbers required between now and 2020, any actual or potential barriers to individuals joining, or remaining in, reserve service need to be reduced.
60. The broad scope of the power allows for the award to be subsequently targeted at specific groups who would most benefit from such a payment. Small and Medium Enterprises (SMEs) are most likely to experience disruption or perceive a lost opportunity cost related with one of their staff being absent to undertaken reservist duties. Accordingly, the payment will likely be directed to SMEs in the first instance. Regular review of this policy may reveal that further categories could also benefit from this payment. Note micro businesses are included within this scope.

Policy Basis for change

61. **(a) Expanding the circumstances in which members of the Reserve Forces can be "called out."** Reservists will form a more integrated part of Armed Forces in the future and having capability in the reserve to meet the future needs for Defence is the primary objective. This will require improvement of training, greater flexibility to the roles and conditions under which the Reserve can be deployed and a review of the monetary and non-monetary offers to both reservists and employers. The intent to use members of the Reserve Forces in a wider range of circumstances was tested as part of the recent Green Paper consultation exercise. Both reservists and employers who responded were broadly supportive of the proposed expansions. For reservists the change is an opportunity to undertake more varied and challenging service, from employers the message was that MOD must continue to improve its current processes to provide greater notice, communication and support for employers. Ensuring this support is available is the primary concern for employers who responded they did not express any wide-spread concern as to how the reservist is actually being used when called out.
62. **(b). Providing greater employment protection for reservists.** Reservists will form an integral and integrated part of the Armed Forces in the future. MOD wants to ensure that reservists feel supported and protected when undertaking military service, and remove disadvantages which could make them unwilling to serve within the Reserve Forces. The

current position does not provide adequate protection to reservists. If reservists are not provided with appropriate rights and protections they are unlikely to join or to remain within the Reserve Forces long-term, to the detriment of Armed Forces capability. The MOD has designed various non-legislative approaches to address the concern. For instance it will give employers more notice of mobilisation and will be introducing new employer incentive awards in addition to the existing process by which employers can claim seek recompense for direct costs related to mobilisation. But further legislative protection for reservists is required as they are currently being disadvantaged.

63. A number of options were discussed and discounted during the policy development process including an option to reduce the qualifying period from two years to one year for reservists. This option was not pursued as it was felt that this was a matter of principle, reservists should not be unfairly dismissed at any time for undertaking reserve service. Periods of call-out may fall early in their civilian career or far later on. In either case the employer would be properly notified and supported and the reservist should feel able to hold an open discussion with the employer to manage any absence effectively. Not seeking a right of automatic unfair dismissal still allows employers to take action where reserve service is having a negative impact on the individual's ability to fulfil the terms of their employment contract. The proposed change provides reservists with greater protection and the approach is consistent with that recently adopted in the Enterprise and Regulatory Reform Act 2013 which introduced a similar amendment in Section 13 of that Act to state that the qualifying period of employment as set out in section 108 of the Employment Rights Act 1996 'does not apply if the reason (or, if more than one, the principal reason) for the dismissal is, or relates to, the employee's political opinions or affiliation.'
64. **(c) Renaming the Territorial Army to the 'Army Reserve.'** The Territorial Army will be renamed the 'Army Reserve' to reflect its future purpose and role. The new name updates the public image to provide a more accurate picture of a modern and professional organisation for the future. Consequently, a change will also be required to the name of the Army's ex-regular reserve which is currently called the Army Reserve. This force consists of former regular members of the Army who retain a liability for reserve service. These changes require primary legislation. These changes have no monetised costs to external bodies or private enterprise. Costs incurred by the Department will be met from within existing budget provision.
65. **d) Empowering the Secretary of State (for Defence) to make incentive payments to employers of reservists.** An enabling power will be created in primary legislation to allow the Secretary of State (for Defence) to make payments to employers of reservists to incentivise recruitment and retention. The payment will address the unquantifiable disruption costs incurred by an employer when a reservist they employ is mobilised. The proposed award would be a flat rate monthly payment. It is intended to both compensate for the disruption/ lost opportunity cost caused by the absence of an employee, provide recognition of the employer's role in supporting reservists and encourage greater support from employers to recruit and retain reservists. This payment is in addition to the current arrangements made under The Reserve Forces (Call-out and Recall) (Financial Assistance) Regulations 2005 (Statutory Instrument 2005/859) which provide compensation for direct and receipted claims. The payment is likely to be targeted towards SMEs.

Current Position

66. **(a) Expanding the circumstances in which members of the Reserve Forces can be “called out.”** Under the existing call-out powers, reservists cannot be mobilised to undertake the full range of commitments that regular personnel undertake. This limits the effectiveness of the Reserve Forces.
67. **(b) Providing greater employment protection for reservists.** Currently periods of full-time mobilised service do not count towards the 2 year qualifying period required to take a claim for unfair dismissal to employment tribunal, this makes it difficult for reservists to accrue the necessary qualifying period of continuous employment.
68. **(c) Renaming the Territorial Army to the ‘Army Reserve’.** The name Territorial Army has negative connotations and perceptions and does not accurately reflect its role.
69. **(d) Empowering the Secretary of State (for Defence) to make incentive payments to employers of reservists.** The Secretary of State can make payments to employers and reservists for demonstrable financial loss but can not make regulations to provide for the making of payments by him to employers whose reservist employees are called out or undertake certain training or duties.

POLICY OBJECTIVE

Proposals

To enable wider use of the Reserves we propose to:

70. **(a) Expand the circumstances in which members of the Reserve Forces can be “called out.”** The starting assumption of the Future Reserves 2020 programme is that Reserve Forces will form an integral part of the Whole Force. In practice this means that reservists must be available to contribute to the breadth of military tasks expected both abroad and within the UK, trained to appropriate standards and serving under appropriate terms and conditions of service that recognise and professionalise their role further.
- Introduce broader powers of mobilisation to enable members of the Reserve Forces to be deployed alongside the regular forces for any purpose for which the regular forces may be used.
 - To extend slightly the limits on the duration and frequency of mobilisation under the new power to align with those in place for warlike operations as have been used in relation to recent operations in Afghanistan.
71. **(b) Provide greater employment protection for reservists.** Reservists are not afforded an appropriate level of protection under the existing legislative framework. The criminal offence is not considered a sufficient deterrent to employers, and their ability to bring claims for unfair dismissal is affected by the difficulties in accumulating the qualifying period of continuous employment. To address this concern we propose that a reservist should be able to bring a claim for unfair dismissal if they are dismissed solely or mainly in relation to their reserve service regardless of their length of service. Membership of the reserves is to be encouraged and supported. Packages of support and financial assistance are already available to employer’s to address the effects that the absence of their reservists on mobilisation can have and are to be expanded. But, more needs to be done to ensure the reservist is themselves not treated unfairly.
72. **(c) Rename the Territorial Army to ‘the Army Reserve and rename the current Army Reserve to the ‘Regular Reserve’** The Territorial Army will be re-named the ‘Army Reserve’ to reflect its future purpose and role. The new name updates the public image to provide a more accurate picture of a modern and professional organisation for the future. Consequently, a change will also be required to the name of the Army’s ex-regular reserve which is currently called the Army Reserve, which will be re-named the ‘Regular Reserve’.
73. **(d) Empower the Secretary of State (for Defence) to make incentive payments to employers of reservists.** RFA 96 will be amended to give the Secretary of State a new enabling power to make regulations to provide for the making of payments by him to employers whose reservist employees are called out or undertake certain training or other voluntary duties (henceforth referred to as ‘relevant reserve forces activities’.) With the MOD seeking a substantial increase in the number of reservists, efforts are being made to try to reduce actual or potential barriers to individuals joining, or remaining in, reserve service. Responses to the Green Paper Consultation document of November 2012 on the future of the reserve forces indicated that many employers feel that having reservist employees absent from work on reserve service disadvantages them in ways which the ability to claim for actual financial loss under section 84 of the 1996 Act does not address.
74. The scope and the qualifying criteria related to receipt of these payments will be set out in regulations. Decisions have not been finalised, however we have worked with a series of key assumptions to develop a ‘Best Estimate’ for the purpose of calculating costs and

benefits at this stage. The payment is likely to be targeted towards SMEs. Self-employed reservists will not be able to claim this payment in respect of any relevant reserve forces activities' they may conduct as an individual; however, where they employ an individual who is a reservist they will receive payment in respect of that individual's relevant reserve forces activities'.

Current power and Proposed Powers

75. **(a) Expanding the circumstances in which members of the Reserve Forces can be “called out”.** Part 6 of RFA96 sets out the current powers; Section 52 allows members of the Reserve Forces to be mobilised (a) if it appears to Her Majesty that national danger is imminent or that a great emergency has arisen; or (b) in the event of an actual or apprehended attack on the United Kingdom. Section 54 allows members of the Reserve Forces to be mobilised if it appears to the Secretary of State that warlike operations are in preparation or progress. Section 56 allows members of the Reserve Forces to be mobilised for certain operations¹⁹. The table below summarises the key information for each power;

TABLE 2 - MAXIMUM DURATION OF SERVICE ON CALL-OUT UNDER SECTIONS 52, 54 AND 56 OF RFA96.

	Section 52 (national danger)	Section 54 (warlike operations)	Section 56 (certain operations)
Basic maximum	Not more than a total of 3 years service in any 9 year period	Not more than a total of 1 year's service in any 4 year period	Not more than a total of 9 months service in any 36 month period
Maximum if extension order made by Her Majesty	Not more than a total of 5 years service in any 9 year period	Not more than a total of 2 years service in any 4 year period	N/A (there is no power to make an extension order in respect of a call-out order made under s.56)

76. **Proposed powers** - It is proposed that Sections 52 & 54 remain unchanged. There remains a clear need for reservists to be mobilised in times of national danger, great emergency or attack on the UK and for those circumstances a greater period of service may well be required and accepted than in other situations. Furthermore, there remains a clear need for reservists to be mobilised for warlike operations and the current arrangements have proven to be both suitable to meet the military need and broadly manageable for both the individual and their employer.

77. It is proposed that the section 56 call-out powers are extended to allow a reservist to be mobilised for any purpose (other than those for which reserves may be called out under section 52 national danger or 54 warlike operations) for which regular armed forces may be used. It is not intended to use the new extended power to mobilise reservists for training, as compulsory training is provided for by Section 22 of the Reserve Forces Act 1996. It is proposed that reservists mobilised under Section 56 may be called out for no more than 12 months in any 4 year period. This limit matches that which currently exists for call-out under section 54 (though call-outs under section 54 may be extended by order made by HM Queen).

78. These changes are to provide wider scope for use of reservists in future operations. Aligning the limits that would apply to the period of call-out under the extended power with the limit that currently applies to call-out under Section 54 (though without any equivalent of the power to extend by order

¹⁹ (a) if it appears to the Secretary of State that it is necessary or desirable to use armed forces (i) on operations outside the UK for the protection of life or property; or (ii) 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; or (b) for the purposes of carrying out work which the Defence Council has approved as being urgent work of national importance and has authorised members of the armed forces to be employed in.

the limits on call-out) would simplify the process of managing mobilisation lengths and availability of reservist manpower for the single Services.

79. No power currently exists for compulsory extension of the maximum length of service of those called out under Section 56. No power to extend call-out limits under the extended power is proposed.
80. If the mobilisation powers are extended and the single services have an intention to call-out reservists on a roulement basis this would increase the likelihood that a given individual will be called out though it is intended that the number of reservists to be mobilised at any one time (excluding for a national emergency) will not increase to any great extent beyond the existing average. There will be fluctuations based upon military requirement and indeed after withdrawal from Afghanistan numbers may initially fall, depending upon the military requirement.
81. Even if the total number of reservists available were mobilised at any one time - which would be highly unlikely to happen outside of a national emergency - the impact of their absence on the collective productivity of the UK workforce would be negligible; indeed if such large numbers were required it would likely be indicative that far larger concerns were currently present for employers such as UK involvement in a major conflict.
82. **(b) Providing greater employment protection for reservists.** The Reserve Forces (Safeguard of Employment) Act 1985 (RF(SOE) 85) makes provision regarding the reinstatement in civil employment of members of the reserve forces who have been called into permanent service, and for the protection of the employment of those liable to be called into such service. Section 17 of RF(SOE) 85 states makes it a criminal offence for an employer to dismiss a reservist because he or she is called out or likely to be called out. The offence is punishable by a fine of up to level 3 on the standard scale (£1000). The convicting court may also order the employer to pay compensation not exceeding an amount equal to five weeks' remuneration at the rate at which his remuneration was last payable to him by the employer. Additionally Section 217 of the Employment Rights Act 1996 (ERA96) provides that a reservist's continuity of employment is not broken as long as they return to their employer no later than 6 months after they have finished mobilised service. However, Section 211(3) of ERA96 provides that periods of mobilised service do not count towards his or her period of continuous employment for the purposes of the ERA. Therefore the period when a reservist is mobilised will not count when computing the 2 year period of continuous employment required for bringing an action for unfair dismissal.
83. Reservists are not afforded an appropriate level of protection under the existing legislative framework. The criminal offence is not considered a sufficient deterrent to employers, and their ability to bring claims for unfair dismissal is affected by the difficulties in accumulating the qualifying period of continuous employment. To address this concern we propose that a reservist should be able to bring a claim for unfair dismissal if they are dismissed solely or mainly in relation to their reserve service regardless of their length of service. Membership of the reserves is to be encouraged and supported. Packages of support and financial assistance are already available to employer's to address the effects that the absence of their reservists on mobilisation can have. But more needs to be done to ensure the reservist is themselves not treated unfairly.
84. **(c) Renaming the Territorial Army to the 'Army Reserve' and renaming the current Army Reserve to the 'Regular Reserve'.** The Territorial Army and current Army Reserve will be renamed as set out above. The Green Paper consultation sought views on the name Army Reserve as the new name for the Territorial Army; this received a favourable response with a large proportion of participants in all audience groups, including reservists, agreeing that renaming the TA to Army Reserve would better reflect its future roles and tasks. This was often because they believed the existing TA brand carries with it negative connotations, and is an outdated brand. It was felt that change was overdue and could improve the image of the reserves. The new name for the current Army Reserve was agreed after internal consultation and the name 'Regular Reserve' was chosen.
85. **(d) Empowering the Secretary of State (for Defence) to make incentive payments to employers of reservists.** A new enabling power will be created to allow the Secretary of State to make regulations allowing additional payments to be made to employers as a means of encouraging them

to employ and retain in their employment reservists and adopt a positive stance to employees considering joining the Reserve Forces. The payments may be made in respect of periods when their reservist employees are called out or undertaking certain training or other duties. The scope and the qualifying criteria related to receipt of these payments will be set out in regulations. Whilst final decisions have not been made a series of key assumptions have been made in order to develop a 'Best Estimate' for the purpose of calculating costs and benefits at this stage.

86. The incentive payment will be made at a flat rate (currently expected to be circa £500 per month per reservist per mobilisation, up to a maximum of a 12 months period or capped at £6000 per annum) and it is not made in relation to the direct costs that might be incurred by the employer, this payment represents a net benefit to employers.
87. The current process by which employers claim for direct costs resulting from the mobilisation of their employee who is also a member of the reserve forces (as covered within Reserve Forces (Call-out and Recall) Financial Assistance) Regulations 2005 (SI 2005/859)) will stay in place. This scheme is set out in some detail in Para 142 and will continue to exist.
88. Existing offences as they relate to the claiming of financial awards for direct and quantifiable losses under Sections 83 and 84 of the Reserve Forces Act will be extended to cover the new power being introduced. These offences would apply where an employer either withheld information or provided false information in relation a claim for payment. However, since this would represent non-compliance any cost of attending the crown court to answer such a charge in not calculated here.

DESCRIPTION OF OPTIONS CONSIDERED

89. **(a) Expanding the circumstances in which members of the Reserve Forces can be “called out.”** Two options were considered for the purpose of this impact assessment:
- Option a1 – Do nothing; make no changes to the mobilisation powers for reservists
 - Option a2 – Introduce a change to allow reservists to be mobilised for any purpose (other than those for which Reserves may be called out under section 52 national danger or 54 warlike operations) for which regular armed forces may be used.
90. Option a1 – Do nothing. The first option is to do nothing, which would imply maintaining the *status quo*. This would limit the availability for use of the Reserve Forces on military operations. This removes any additional cost impact on employers but prevents the Armed Forces fully and appropriately resourcing military tasks. The do nothing approach is used in this impact assessment (as is common practice) as the baseline for our analysis:
- Advantages of Option a1. If option a1 is pursued there would be no additional net costs to business and no requirement to amend primary legislation.
 - Disadvantages of Option a1. If option a1 is pursued the MOD will not be able to mobilise reservists to undertake the full range of commitments that regular personnel undertake when their capabilities are increasingly required and MOD will be unable to use the reserves to their full potential.
91. Option a2 - Expand the current mobilisation powers. Introduce broader powers of mobilisation to enable members of the Reserve Forces to be deployed alongside the regular forces for any purpose for which the regular forces may be used and extend slightly the limits on the duration and frequency of mobilisation under the new power to align with those in place for warlike operations as have been used in relation to recent operations in Afghanistan:
- Advantages of Option a2. This is the preferred option because under this proposal the changes will provide wider scope for use of reservists in future operations. Aligning the limits that would apply to the period of call-out under the extended power with the limit that currently applies to call-out under section 54 (though without any equivalent of the power to extend by order the limits on call-out) would simplify the process of managing mobilisation lengths and availability of reservist manpower for the single Services.
 - Disadvantages of Option a2. The expansion of the current mobilisation powers will have an additional cost to business, and will require a change to primary legislation to implement it.

92. **(b) Providing greater employment protection for reservists** Two options were considered for the purpose of this impact assessment:

- Option b1 – Do nothing; make no changes to the statutory employment protections for reservists.
- Option b2 – Amend existing legislation so a reservist is able to bring a claim for unfair dismissal if they are dismissed solely or mainly in relation to their reserve service regardless of their length of service.

93. Option b1 – Do nothing The first option is to do nothing, which would imply maintaining the *status quo*. This would mean members of the reserves would need to continue to accumulate the statutory 2 years continuous employment required to bring a claim for unfair dismissal to an employment tribunal. It can more difficult for a reservist to accrue continuous employment because any periods of mobilisation do not count towards this. The do nothing approach is used in this impact assessment (as is common practice) as the baseline for our analysis:

- Advantages of Option b1 No requirement to amend primary legislation, no additional legislative burden placed on employers.
- Disadvantages of Option b1 If option b1 is pursued reservists will continue to struggle in accruing the 2 years continuous employment required to bring a case for unfair dismissal to an employment tribunal.

94. Option b2 - Amend existing legislation A reservist is able to bring a claim for unfair dismissal if they are dismissed solely or mainly in relation to their reserve service regardless of their length of service:

- Advantages of Option b2. This is the preferred option because this will provide an exemption from the statutory 2-year qualifying period in bringing unfair dismissal claims where the dismissal is by reason of the employee's reservist service. This special protection for reservists in employment will enable a reservist who has been so dismissed to bring a claim for unfair dismissal before an employment tribunal, regardless of their period of employment.
- Disadvantages of Option b2. Employers may view this change in legislation as an additional legislative burden being placed on them. This change will have a cost impact to business in administering the changes in legislation.

95. **(c) Renaming the Territorial Army to the 'Army Reserve' and rename the current Army Reserve to the 'Regular Reserve'.** Two options were considered for the purpose of this impact assessment:

- Option c1 – Do nothing; make no changes.
- Option c2 – Amend existing legislation to rename the Territorial Army and current Army Reserve.

96. Option c1 – Do nothing The first option is to do nothing, which would imply maintaining the *status quo* and not renaming the TA or the current Army Reserve. The do nothing approach is used in this impact assessment (as is common practice) as the baseline for our analysis:

- Advantages of Option c1. No requirement to amend primary legislation and no cost impact to the MOD from re-branding.
- Disadvantages of Option c1. The name Territorial Army has negative connotations attached to it by some areas of the public, the 'Dad's Army' images are neither representative of the current reality or the model we are moving towards. This picture is outdated and may be having a negative effect on recruitment. Changing the name will improve the image of the reserves. If option c1 is pursued the MOD will lose an opportunity to rename the TA to better reflect its future roles and tasks.

97. Option c2 Rename the Territorial Army to the 'Army Reserve' and rename the current Army Reserve to the 'Regular Reserve':

- Advantages of Option c2. This is the preferred option because it allows the Territorial Army to be renamed and rebranded to reflect new name, it also updates the public image to provide a more accurate picture of a modern and professional organisation for the future.
- Disadvantages of Option c2. Renaming and rebranding the Territorial Army and current Army Reserve will have a cost impact to the MOD.

98. **(d) Empowering the Secretary of State (for Defence) to make incentive payments to employers of reservists** Two options were considered for the purpose of this impact assessment:

- Option d1 – Do nothing; make no changes.
- Option d2 – Introduce an enabling power to allow the Secretary of State make incentive payments to employers of reservists.

99. Option d1 – Do nothing The first option is to do nothing, which would imply maintaining the *status quo*. Payments to reservists and would continue to be made for demonstrable financial loss, but incentive payments could not be made. The do nothing approach is used in this impact assessment (as is common practice) as the baseline for our analysis:

- Advantages of Option d1. No MOD expenditure in making incentive payments.
- Disadvantages of Option d1. Not introducing the payments will be a missed opportunity to introduce payments designed to recognise and reward employers who are supportive of Reserve Service and to take into account the ‘opportunity cost’ of supporting reserve service by providing financial incentive but not a direct cost compensation.

100. Option d2 Introduce an Enabling Power. A new enabling power will be created to allow the Secretary of State to make regulations allowing additional payments to be made to employers as a means of encouraging them to employ reservists. The payments may be made in respect of periods when their reservist employees are called out or undertaking certain training or other duties:

- Advantages of Option d2. This is the preferred option because it allows for the introduction of payments designed to recognise and reward employers who are supportive of Reserve Service and to take into account the ‘opportunity cost’ of supporting reserve service by providing financial incentive but not a direct cost compensation.
- Disadvantages of Option d2. There will be a cost to the MOD of making the payments to employers, and there will be a costs to business in the administration required to claim the payment.

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

(a1) Continue under the current framework and do not expand the circumstances in which members of the Reserve Forces can be “called out.”

Monetised Costs for Option a1

101. While there is no increased marginal cost if Option a1 is taken the numbers of reservists that would or could be called-out under the existing powers will remain dependent on the military requirement.

102. Some costs exist as are applicable to all forms of mobilisation. As stressed they will vary significantly in relation to the individual circumstances (e.g. numbers of reservists used, civilian employment status, length of mobilisation.)

Non-monetised costs for Option a1

Non monetised costs to MOD

103. It is considered that the current mobilisation powers for reservists are inadequate. MOD requires the ability to mobilise reservists for all operational environments and roles in which they may be required. These are summarised in the table below;

Non-monetised Costs	Non-monetised Benefits
<p>Defence – Capabilities within the reserves will remain unavailable for use in all circumstances where they might have otherwise been required or made a positive contribution. This will have a growing negative impact on operational capability. Additionally, the lack of full availability of the Reserve Forces will place increased pressure on the regular forces.</p> <p>Reservists – Lack of opportunities to serve as part of an integrated force could make joining or continued membership of the Reserve Forces less attractive.</p>	<p>None</p>

Monetised Benefits for Option a1

104. There are no non-monetised benefits recorded

Non-Monetised Benefits for Option a1

105. There are no benefits in not introducing this change for either MOD or reservists. The argument could be made that there is no increase in requirement on employers to release reserves for call-out however, as the number of reservists that will be used on any given operation will vary as a matter of course particular employers may still find that their employee is called on under the existing powers.

(a2) Expanding the circumstances in which members of the Reserve Forces can be “called out.”

Monetised costs for Option a2

Costs to MoD

106. Each use of MOD assets is a unique event driven by the specific threat or disruptive hazard. Therefore it is impossible to forecast the mix of regular and reservists that will 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. However we have made a series of assumptions on numbers and level of use of reservists and calculated costs accordingly.

107. The costs of calling out (or mobilising) reservists where the reservist is being used to support one of the standing tasks placed upon the MOD (e.g maintaining the integrity of UK Airspace, providing a military presence on the Falkland Islands) will be met from within programmed Defence Budget. The amount programmed each year will vary dependent upon the relevant assumptions of the current operational requirement, the extent to which reservists will contribute and other priorities on manpower to be taken into account (e.g. Providing manpower for other ‘contingency’ operations).

108. Various mechanisms exist to fund operations beyond the Standing Tasks, and the source of funding for those is negotiated case by case. The decision usually depends on the scale and duration of the operation. MOD calculates the net additional costs of operations – in other words, the costs which the Department would not have incurred had the operation not been undertaken. For large contingent operations, such as those in Afghanistan and Libya, we would normally seek National Security Council authorisation to reclaim the net additional costs from the Treasury Reserve.

109. Direct Costs will vary based upon the individual mobilised (their comparative civilian and military wages), the period of time for which they serve and how the employer chooses to cover their workload during the absence. In practice there are extensive statutory provisions in place to provide restitution to employers for a range of direct costs as laid out in Statutory Instrument 2005/859. Details are provided in Para 126
110. In the Financial Year 2009-10, approximately £13.6 million was awarded in financial assistance to employers and reservists following mobilisation. Table 3 in para 127 details the breakdown.
111. In FY09/10, 33% of mobilised reservists claimed the reservist Award (i.e. 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 £11,000.²⁰
112. It is anticipated that awards will be paid out in broadly similar proportions as above adjusting for inflation though there is a possibility that the % of Reservists Awards in line with the increased use of reservists. The proportion of this is not yet known. All costs related to the Reservist Awards will be met from within Defence Budgets

.Monetised Cost to Others

113. Defence Economics has informed the following calculations in relation to BIS categories;
- a. Policy costs. These are direct costs to business, for this policy it is the salary costs of the mobilised member of staff. **This is expected to be zero** as mobilised employees are not paid by their employer whilst on deployment.
 - b. Costs of absence. These are the costs incurred in covering the reservists whilst they are deployed. The presumption is that the money saved by the firm in not paying the deployed member of staff's salary is used to pay for a replacement. In addition, firms will continue to be refunded any additional cost (up to £110 per day) to cover temporary staff salaries which may be higher than the reservist's, for any overtime payments to existing employees and for increases to salaries for existing employees. Furthermore, agency fees or advertising costs can also be claimed, as can costs of retraining the returning reservist at the end of their deployment. Therefore, although this policy increases the risk of retraining being needed (by extending the maximum length of deployment for normal circumstances) the cost of this will continue to be borne by MOD and therefore the cost to businesses is close to zero. Costs incurred by business of administering or training the replacement are not currently reimbursed by MOD and this policy makes no changes in this respect. As this policy has the potential to increase the number of mobilisations, these costs to business may increase – this is costed below.
 - c. The MOD takes account of the potential impact of mobilisation for both the reservist and the employer and we will continue to employ 'intelligent mobilisation' practices - selecting those reservists who are available, capable and willing to undertake mobilisation and supported by their employers in doing so in the first instance. Should either the employer or reservist subsequently raise a concern once a call-out order has been issued requesting a particular reservist to be mobilised there is a formal appeals processes employers may pursue as laid out in secondary legislation (Statutory Instrument 1997:307 The Reserve Forces (Call-Out and Recall) (Exemptions Etc.) Regulations 1997.) Details are laid out in para 33
 - d. It is also noted that there may be some non-monetised cost related to disruption or temporary unavailability of an individual's expertise which is covered below.
 1. Implementation and familiarisation costs. This relates to any changes to HR systems needed to accommodate the legislation, and/or time taken to become familiar with the policy. The impact of this policy on HR systems is likely to be negligible as the main effect is that it is increasing the scenarios for which reservists can be mobilised and in certain cases the maximum length of time the mobilisation can be for. Therefore, existing HR systems in place to cover the current reservist policy should be able to cope with little or no changes required and **the cost will be close to zero.**

²⁰ The median has been used, as opposed to the mean, because of the presence of significant outliers in the value of Reservist Awards

2. Recurring administrative costs. These are the cost to the business of processing and administering the leave and of time spent training and familiarising the replacement (where applicable, as some mobilised reservists are not replaced). These costs are not currently reimbursed to employers by MOD and the new policy makes no change in this respect. Therefore, due to the likelihood of an increased number of mobilisations, there is the potential for increased costs to firms of administering reservists whilst deployed.
 3. The additional cost of administering both the reservist and his or her replacement will therefore be dependent on the amount of time the personnel manager needs to spend to administer each deployment factored according to the extra number of reservists deployed and the time required in familiarising and training the replacement.
- e. The MOD future planning assumptions and budgeting (from within defence funds) for 2014 onwards allow for an additional 500 reservist deployments per year, however, in practice, it may be that an even lower number of reservists are likely to be deployed particularly following the drawdown from Afghanistan. Up to additional 500 deployments per year would provide contributions to a broad range of military tasks including providing part of the Falkland Islands Garrison, contributing to Overseas Training Teams and deployments for multinational exercises. It is assumed that there is a high probability under the new powers the number of reservists mobilised could increase from its current level to 3,000 deployments per year to up to an additional 500 deployments per year.
 - f. The requirement to call-out an additional 1,000 reservists per year is considered very unlikely (low probability) and would be more likely to occur where a significant new requirement had arisen over and above current defence planning assumptions which would most likely fall within existing call-out powers as opposed to the new call-out power. Therefore the RTA calculations reflect the high probability figure of an additional 500 reservist deployments per year (a total of 3,000 deployments per year) which represents normal routine use of reserves.
 - g. The force generation and planning assumption of 2,500 additional reservist deployments per year (a total of 5,000 deployments per year) does not represent normal routine use of reserves and represents a doubling of the current baseline figure of 2,500 deployments per year. A deployment of this size is likely only to be seen during a call-out for a national emergency, or an attack on the UK (where reserves are mobilised under s.52 of the Reserve Forces Act 1996). The probability of such a call-out is judged to be very low. Therefore the 5,000 deployments per year is included as an illustrative example only.

114. The table below shows the complete range of potential additional costs, as highlighted the cost figures in relation to the additional 500 deployments per year represent the most likely additional cost to business.

	2,500 Deployments Per Year (low probability) Status Quo	3,000 Deployments Per Year (high probability) 500 extra	3,500 Deployments Per Year (low probability) 1,000 extra	5,000 Deployments Per Year (very low probability) 2,500 extra
<u>Low Estimate:</u> 2 hours spent familiarising and training and 2 hours administering both reservist and replacement	£556,903	£668,283	£779,664	£1,113,805
additional cost	£0	£111,381	£222,761	£556,903
<u>Central Estimate:</u> 7 hours spent familiarising and training and 4 hours administering both reservist and replacement	£1,465,280	£1,758,336	£2,051,392	£2,930,560
additional cost	£0	£293,056	£586,112	£1,465,280

<u>High Estimate:</u> 14 hours spent familiarising and training and 6 hours administering both reservist and replacement	<i>£2,607,974</i>	<i>£3,129,568</i>	<i>£3,651,163</i>	<i>£5,215,947</i>
additional cost	£0	£521,595	£1,043,189	£2,607,974

Note: Estimates in bold are most likely. Those in italic are least likely.

115. The time taken for familiarisation and training is an estimate, as no relevant data could be found. We therefore present the likely minimum and maximum and use this to estimate the impact. **Our preferred measure is the central estimate as reservists' replacements would likely be comprised of a mix of those undertaking the minimum amount of training and familiarisation through to the maximum. Estimates for the minimum and maximum are presented for illustrative purposes only.** The minimum is estimated as 2 hours spent familiarising and training (2 hours spent by the manager delivering the training and 2 hours spent by the replacement receiving the training), which would be relevant for a member of staff already familiar with a role, already fully trained or being asked to undertake an easily learned job. The maximum is 14 hours (roughly two days), a reasonable estimate for jobs that require more familiarisation or where the replacement has the skills to undertake the role but no company or role specific knowledge. The central estimate is 7 hours (roughly one day). As no data exists on the number of firms that choose not to replace a mobilised reservist it has been assumed that all reservists are replaced. As anecdotal evidence exists of firms not temporarily replacing mobilised reservists, it is likely that the figures presented are therefore higher than they would be in reality.

116. Assuming an additional 500 deployments (as above), the additional cost to employers would be a maximum of **c.£290,000**, based on 4 hours administration (of both the reservist and replacement by an HR manager) and 7 hours familiarising and training. Whilst the top and bottom estimates for the number of deployments per year remain unchanged, the table provides an indication of how likely each scenario is and the cost to business has been calculated on the high probability figures for the number of deployments per year.

117. We will use our Reserve Forces to provide military capability as a matter of routine, mobilising them when appropriate. The wide range of possible activities may include enduring campaigns (such as Afghanistan), resilience operations in the UK, contributions to capacity-building overseas and to support activity at home such as supporting standing tasks (e.g. ensuring the integrity of UK Airspace) or following requests for assistance from Civil Authorities (e.g. severe flooding in 2009). Reserves will contribute both numbers and specialist capabilities some of which will be held only in the Reserve Forces. The table below summarises the likely circumstances in which reserves will be mobilised;

Abroad:	At Home in the UK:
<ul style="list-style-type: none"> • Short term operations such as the evacuation of UK citizens from Lebanon in 2006 and the 2011 Libya operation. • Longer term stabilisation operations such as in the Balkans, UN missions, Iraq and Afghanistan. • Standing commitments abroad such as the Cyprus garrison and the defence of the Falkland Islands. • Deployments overseas aimed at Defence engagement, conflict prevention, security sector reform and capability building in priority countries, such as the British Peace Support mission in East Africa and the EU operation in Mali. 	<ul style="list-style-type: none"> • Playing a general role in homeland security, including activities such as support to the Olympics and Paralympics, or specialist roles such as cyber. • Delivering national resilience such as responding to the foot and mouth crisis, flood relief, and communications support to crisis management. • Standing national commitments, such as defence of the UK's airspace.

118. Therefore, the total expected cost to business of this proposal is no more than £290,000 and the Regulatory Policy Committee opinion is that this is a low cost measure (as confirmed on 07 June 13 reference RPC13-FT-MoD-1743(2)).
119. All costs in the table are the additional costs incurred by business as a result of any increase in the number of deployments caused by this policy. The additional cost of administering the reservists whilst deployed remains the same as in the original submission, however the HR costs are now in line with the unfair dismissal RTA (using the 2012 Annual Survey of Hours and Earnings (ASHE) estimate for HR managers and directors of £26.66 per hour plus the additional 21% non-wage labour costs) and provide a clearer indication of the uncertainty around the estimates and include a central estimate within the range of possible outcomes.
120. The additional 'administration costs' and 'training costs' relating to the replacement are comprised of:
- a. The HR cost of administering the replacement whilst the reservist is deployed. We have assumed this is of the same order as the cost of administering the reservist, and have therefore assumed that the time taken and hence the cost is the same.
 - b. The cost of training is assumed to be the combination of the time invested by the replacement's manager training the replacement and time 'lost' by the replacement whilst undertaking the training or familiarisation.
121. For the training costs the salaries used are: for the manager - the ASHE 2012 average for managers, directors and senior officials (£23.91 per hour) plus 21% for non-wage labour costs and, for the replacement staff member - the 2012 all staff ASHE average (£14.82 per hour) plus 21%. Since most replacements are sourced from within the firm or via recruitment agencies we have not included any costs associated with payroll, as neither approach would attract any additional costs in this respect.
122. No further evidence on the possible administration costs is currently available. The single Service Continuous Attitude Surveys (CAS surveys) are being harmonised into a tri-service survey and we will consider whether greater data can be taken from here to understand the frequency of individual mobilisations and the affects on particular firms.

Non-monetised Cost for Option a2

Non-Monetised Costs to MOD

123. There are no non-monetised costs to MOD recorded. It is not possible to accurately monetise costs relating to the use of reserves (particularly on contingency operations) in advance. The costs of training and equipping the Reserve Forces are part of the programmed MOD budget, though the specific requirements will alter to ensure reservists are adequately equipped for each individual operation.

Non-Monetised costs to Others

124. Some costs exist as are applicable to all forms of mobilisation. As stressed they will vary significantly in relation to the individual circumstances.

Non-monetised Costs	Non-monetised Benefits
<p>Employer – Potential indirect costs have been calculated as set out above. Direct costs are covered by Employer Award in SI 2005/859. Business continuity plans should take account of short-term urgent absences and longer periods of absence due to mobilisation will likely be known well in advance.</p> <p>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.</p>	See Beneath

125. As mentioned in paragraph 109, a process exists to compensate both employers and reservists for direct costs related to mobilisation. These are summarised below.

126. **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.
- 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 their Service pay) 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:

- Additional payments for the care of a dependent child or relative.
- Additional expenses for the care of a pet.
- Additional home insurance premiums.
- 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. These costs are difficult to quantify but there will not be payroll costs because the replacement in most cases will be from within existing staff or filled via recruitment agencies ("a temp") neither of which attract payroll costs.

(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.

127. In the Financial Year 2009-10, approximately £13.6 million was awarded in financial assistance to employers and reservists. Table 3 details the breakdown:

TABLE 3 - FINANCIAL ASSISTANCE PAID TO RESERVISTS AND EMPLOYERS IN FINANCIAL YEAR 2009-10 UNDER SI 2005/859²¹

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

The value of £14.5m in 2012 has been assumed to continue into the future at a ratio of 500/2500

Compensation arrangements

128. The Armed Forces Compensation Scheme (AFCS) provides compensation for any injury, illness or death which is predominantly caused by military service on or after 6 April 2005. All members of the UK Armed Forces, whether regular or reserve who have been made ill as a result of their service are eligible. In the event of death due to service, eligible partners and children receive benefits. There is no distinction between operational and non-operational injuries.

129. Reservists who sustain injuries or illness whilst mobilised may be retained in service by the Armed Forces, prior to being demobilised and returning to civilian employment to ensure that they receive the best possible welfare support and care from Defence Medical Services. Once reservists have been demobilised their local reserve unit continues to ensure that they have access to welfare services where required. Mobilised reservists who are medically discharged as a result of injuries sustained during operational commitments are also entitled to resettlement provision and to the range of services available to regular veterans.

130. Members or former members of the reserve forces or their dependants may qualify for awards under the Armed Forces Compensation Scheme (AFCS), where service is the only or predominant cause of injury, illness or death. AFCS provides a tax-free lump sum payment to all eligible claimants to compensate for the pain and suffering associated with injury or illness. For the more seriously injured, it also provides a tax-free inflation-proof income stream known as a Guaranteed Income Payment. This is an enhancement to the individual's ill-health pension paid in recognition of the fact the injury or illness was due to service. Individuals who receive compensation from the no fault AFCS, are also able to bring common law claims where they feel that negligence may have contributed to the injury, illness or death.

131. The vast majority of reservists return from Operations with no medical problems. Any reservist who is considered to only be fit for limited military duties, those requesting medical review or those identified as having a change in their medical state are assessed by a Medical Officer. If the problem identified is minor and is expected to resolve spontaneously or with minimal intervention (e.g. a prescription for antibiotics) then a letter explaining the situation is provided for the individual to present to their General Practitioner (GP) and no further action taken. Individuals with more complex medical problems may be retained in service as part of a medical holding category until such time as the condition has been satisfactorily treated; on demobilisation the individual is provided with a FMED133 'Medical History on Release from HM Forces' together with any appropriate medical documentation e.g. scan reports etc. that may assist the GP with future medical care.

132. Whilst it is possible that an employer could rely on an injury or illness sustained during whole-time service to establish that it was not reasonable or practicable to reinstate the applicant, the employer would have to establish that there was no employment that it was reasonable and practicable to offer the applicant. The employer is obliged by the Reserve Forces (Safeguard of Employment) Act 1985 to consider alternative employment (to the applicant's former occupation) that is reasonable and practicable. Additionally, the employer would also be under a duty, under the Equality Act 2010, to

²¹ Source: Defence Analytical Services Agency, 'Costs of Mobilising UK Reserve Service Personnel Financial Year 2009-10

consider implementing 'reasonable adjustments' if the applicant's injury or illness constituted a disability under that Act.

133. Therefore the employer has a responsibility to re-employ the reservist unless they can categorically demonstrate that they are unable to do so i.e. that there is no employment the employer can offer which is reasonable and practicable.
134. While the MOD does not offer any direct compensation arrangements to employers of reservists who are injured when mobilised, the individual is nonetheless not returned to civilian employment until all feasible steps have been taken to return them to an appropriate standard of health.
135. Employers insurance policies would not extend to cover reservist employees injured while undertaking reserve service either on mobilisation or during training (therefore should be no affect on the premiums the employer pays if they are injured while undertaking reserve duties.)

Monetised Benefits of Option a2

136. No monetised benefits for this option are recorded as any resultant savings in the rebalancing of MOD manpower have already been made.

Non-Monetised Benefits of Option a2

Non-Monetised Benefits to MOD

137. The proposed change will allow MOD to ensure delivery of the 'whole force' concept, allowing for integration of regulars and reserves in any operation environment as they are required. This will increase operational capability (by allowing greater use of the specialist skills only held within the Reserve Forces – e.g. certain medical specialisms) and make larger manpower numbers available to MOD allowing us to ensure proper rotation of posts, training and rest periods for both reservists and regulars when supporting enduring (medium- longer term) operations such as Afghanistan.

Non-Monetised Benefits to Others

138. This change will provide greater opportunity for individual reservists to undertake a wider range of operations. This is seen as an incentive for reservists to join and remain within the Reserve Forces. Reservists will be able to take on broader challenges, develop new skills and participate more actively alongside regular colleagues in a greater range of operations and environments.

139. Further benefits are summarised in the table beneath;

Non-monetised Costs	Non-monetised Benefits
	<p>Community - Use of reservists as part of the MOD's operations contributes more or less directly, dependent on the operation, to national security and UK interests. In some instances the requirement, e.g. ensuring the security of UK airspace is likely to be in the direct interest of the civilian employer though specific benefit is likely unquantifiable.</p> <p>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.</p>

Option b1 - Continue under current framework and do not provide greater employment protection for reservists; Statutory rights of reservists are not therefore adequately protected.

Monetised Costs to Option 1

140. There are no monetised costs to option b1.

ORIGINAL

Non-Monetised Costs to Option b1

141. While there is no increased cost to employers if Option b1 is taken but it continues to leave reservists in a vulnerable position and one that does not provide them with full protections to recognise the role they undertake.

142. There are non-monetised costs to both the reservist and to MOD; these are summarised in the table beneath;

Non-monetised Costs	Non-monetised Benefits
<p>Employer – None</p> <p>Reservist – Lack of stability in employment. Lack of proper recognition or protection of the value of the role they are undertaking. Following the change of 1 April 13 that extends the period of continuous employment to be undertaken before there is a right to claim unfair dismissal from 12 months to 24 months there is increasing vulnerability for the individual.</p> <p>Defence/ Community – If reservists are not confident that they are adequately provided for there will be less incentive to join the Reserve Forces. This has an affect on the wider capability of Defence and with Defence's engagement with the local communities that reservists represent and contribute to.</p> <p>In some instances the requirement that reservists may be called out to provide is likely to be in the direct interest of the civilian employer and if the numbers of reservists are degraded because of this concern then Defence will have less ability to undertake the range of tasks placed upon it, particularly the discretionary tasks such as supporting local authorities following incident or disaster (e.g. Flooding in 2009) which could have a long term cost on employers.</p>	See below

Monetised Benefits to Option b1

143. There are no monetised benefits to Option b1 recorded.

Non-Monetised Benefits to Option b1

144. These are summarised in the table beneath;

Non-monetised Costs	Non-monetised Benefits
See Above	<p>Reservist – None. The existing position has been negatively affected following the changes of 1 April 13 which require 2 years of continuous employment rather than 1 year before certain employment rights are gained – which can be more difficult for reservists to accumulate.</p> <p>Defence – None. The existing position has been negatively affected following 1 April 13 and the current position is already at a negative ebb in comparison to previously.</p> <p>Community – None. Use of reservists as part of the MOD’s operations contributes more or less directly dependent on the operation to national security and UK interests. In some instances the requirement e.g. ensuring the security of UK airspace is likely to be in the direct interest of the civilian employer though specific benefit is likely unquantifiable. The existing situation creates circumstances in which fewer reservists may be willing to participate in reserve service if they perceive that they are at risk of being unfairly treated as a result.</p> <p>Employers – Potentially reduced. 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. If reservists are less inclined to join the Reserve Forces then this benefit will not be accrued by the employer.</p>

Option b2 Providing greater employment protection for reservists through providing an exemption from the statutory 2-year qualifying period in bringing unfair dismissal claims where the dismissal is by reason of the employee's reserve service.

Monetised Costs for Option b2

Monetised Costs to Others

145. Costs are to be assessed under 2 categories; recurring administrative costs and one-off implementation and familiarisation costs. In summary, the total additional cost to business is expected to be c.£231,000.

- Recurring administrative costs. Some firms may incur additional fines as a result of rulings made at Employment Tribunals; however these would be based on the behaviour of firms. It is BIS practice not to include costs of non-compliance in these calculations. Nevertheless, it is also possible that the introduction of this policy would bring about an increase in the number of employment tribunals that are awarded in favour of the firm, that is, to compliant firms. These costs should be included, as they are genuine additional costs to business: BIS estimate the cost of a firm going to employment tribunal as £3,900.²² Furthermore, there is the possibility that the proposal could lead to compliant firms agreeing early settlements due to a perceived increased risk of being found non-compliant.

Note: The cost of a firm going to employment tribunal in the original Unfair Dismissal RTA was sourced from the Equality Act 2010 (Work on Ships and Hovercraft) Regulations 2011 RTA. During the resubmission process a more up to date estimate was found on the BIS website (see note 3 in the link provided in footnote 11).

- Estimating the possible number of additional employment tribunals resulting from this policy is difficult. However, Reinstatement Committee hearings are a good proxy for possible new employment tribunals. These committees, which can award financial compensation, are used when a reservist returning from deployment is reinstated into a job which they are not happy with, and when a reservist is not reinstated into a job at all. The Ministry of Justice hold statistics on the committee, which show that there are on average 2.25 applications to the committee per year. Of these, 1 case is heard by the committee on average per year, of which 0.75 are found in favour of the reservist and 0.25 in favour of the business.
- Hence, we predict that there will be very few additional employment tribunals brought about by this policy, due to the historically low number of reinstatement committees. However, it is possible that the number of employment tribunals will exceed the historic number of reinstatement committees. Even if the number of employment tribunals were to equal four times the current number of reinstatement committees (as a conservative example), this would translate to less than 10 tribunals per year and a total additional cost to business of £69,400. The following table provides a breakdown of how the estimate for this example is reached;

Cost to business of employment tribunal	£3,900	a
Average award at tribunal	£9,200	b
Total cost to business of an unsuccessful tribunal	£13,100	a+b=c
Quadruple the number of reinstatement committees found in favour of business (0.25*4) (proxy for employment tribunals)	1	d
Cost to business of successful employment tribunals	£3,900	d*a=e
Quadruple the number of applications not heard at committee (1.25*4) (assume as a proxy for cases settled early)	5	f
Cost to business of early award (at a cost no greater than the cost of an unsuccessful tribunal)	£65,500	f*c=g
Total cost to business of policy	£69,400	g+e=h

²² <http://news.bis.gov.uk/Press-Releases/Government-to-simplify-and-improve-Employment-Tribunals-68966.aspx>

146. One-off implementation and familiarisation costs. Dismissing a reservist as a result of their being called out is already a criminal offence, and therefore we expect that the costs of implementing this policy will be negligible. There are also unlikely to be any impact on HR systems. However, some reasonable allowance should be made for firms becoming familiar with the new policy. In similar proposals (for example, for the Parental Leave regulations of 2008) an allowance of 10 minutes per firm was made, to allow for reading and understanding the regulation and any associated guidance. Using the ONS Annual Survey of Hours and Earnings (ASHE) 2012 data, the average hourly salary of HR managers and directors was £26.66. Allowing for an additional 21% to cover non-wage labour costs and assuming 30,124 employers of reservists (MOD estimate), this implies an additional cost to business of £161,960 ($£26.66 \times 1/6 \times 1.21 \times 30124 = £161,960$).

147. The RPC have confirmed this proposal is low cost (07 June 2013 Ref RPC13-FT-MoD-1742(2))

Non-monetised Costs to Option b2.

148. Non-monetised costs to option b2 have not been identified

Monetised Benefits to Option b2

No monetised benefits for option b2 have been identified.

Non-monetised Benefits to Option b2.

149. Non-monetised benefits to option b2 are summarised in the table beneath;

Non-monetised Costs	Non-monetised Benefits
<p>Employer- None recorded</p>	<p>Reservist -If this measure is introduced the individual reservist will receive appropriate and fair protection. This will provide greater security and certainty in relation to their undertaking of reserve service. The subsequent benefit to the reservist in providing a greater sense of job security will have benefits both to them and with regards to how willing they are to enter new employment.</p> <p>Community - The proposed measures are likely to make reservist more confident in undertaking reserve duties including mobilised service. In some instances that service e.g. ensuring the security of UK airspace is likely to be in the direct interest of the civilian employer and the wider community though specific benefit is likely unquantifiable.</p> <p>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.</p>

Option c1 Retain current Territorial Army and Army Reserve names.

150. No monetised costs have been calculated, Non-monetised Costs and Non-monetised Benefits are set out in the table below;

Non-monetised Costs	Non-monetised Benefits
<p>Defence and reservists - Negative connotations associated with the Territorial Army name. Lost Opportunity to publicise the new role of the Reserve Forces.</p>	<p>Defence Financial saving/opportunity cost of not meeting rebranding costs.</p>

Option c2 Renaming the Territorial Army to the ‘Army Reserve’ and rename the current Army Reserve to the ‘Regular Reserve’

Monetised Costs of Option c2

Monetised Cost to MOD

151. Monetised costs are not yet known and will be met from within existing MOD budgets. Cost will represent one-off additional costs for re-branding activities - including signage, website changes and publicity. Future recruitment campaigns etc. represent part of normal budgeted MOD operating costs.

Non-Monetised Costs

152. Non-monetised costs are set out in the table below;

Non-monetised Costs	Non-monetised Benefits
<p>Defence and reservists – Disruption caused by re-naming and re-branding.</p> <p>Employers – There may be a requirement for some businesses to update references in internal publications. This is expected to be minimal; there is no compulsion on business to undertake such changes, therefore it is anticipated any required changes will be made as part of routine refreshes. The costs associated with this would be virtually negligible because a) firms would not be obliged to do it, b) they would probably only ever make this change in conjunction with others thereby drastically reducing the cost and c) it would not be labour intensive.</p>	<p>See Below</p>

Non-monetised Benefits

153. Non-monetised benefits are set out in the table below;

Non-monetised Costs	Non-monetised Benefits
See Above	<p>Defence and reservists – New name updates the public image to provide a more accurate picture of a modern and professional organisation for the future.</p> <p>Defence and reservists – The New name confirms the new and expanded role.</p> <p>Defence and reservists – The New name demonstrates the Army Reserve is part of one Army and is part of the whole force concept.</p>

Option d1 Do Nothing - Not Empowering the Secretary of State (for Defence) to make incentive payments to employers of reservists

Monetised Costs for Option d1

154. There are no additional costs if the scheme is not introduced.

Non-Monetised Costs for Option d1

155. Non-monetised Costs are set out in the table below;

Non-monetised Costs	Non-monetised Benefits
<p>Employers – Some employers may continue to feel that their contribution in supporting the reserve forces is not fully recognised</p> <p>Defence and reservists – If employers do not feel properly recognised or supported there could be subsequent reluctance to release reservists for mobilised service, and to undertake training or other duties which will impact on operational availability</p>	

Monetised Benefits for Option d1

156. There are no monetised benefits.

Non-monetised Benefits for Option d1

157. Non-monetised benefits are set out in the table below;

Non-monetised Costs	Non-monetised Benefits
	None - While Defence will not have to absorb the opportunity cost of making additional payments to employers any marginal gain is likely to itself offset by the lack of benefits from not introducing this measure.

158. Option d2 Empowering the Secretary of State (for Defence) to make incentive payments to employers of reservists.

Monetised Cost for Option d2

Monetised cost to MOD

159. The introduction of employer incentive payments is still to be fully costed though the Best Estimate is based upon a maximum award of £500 per month to the employer for each reservist they employ who is undertaking relevant reserve forces activities'. There will be an overall 'cap' of £6000 as the maximum that may be given to each employer with regards to an individual reservist's relevant reserve forces activities'. Further, the regulations made under this power may set out qualifying criteria in relation to the type of employer who will initially be eligible to receive this payment. This will limit the total cost of the scheme, but consequently will also constrain the total net benefit of this payment to employers.

160. The cost of the scheme (including set up and administration) will be met from within existing Defence budgets. It has been assumed the scheme will be delivered through the existing system and process for claims under The Reserve Forces (Call-out and Recall) (Financial Assistance) Regulations 2005 (Statutory Instrument 859:2005). Costs will depend on the complexity of the scheme and the burden of proof required. The payment is likely to be targeted towards SMEs. Self-employed reservists will not be able to claim this payment in respect of any relevant reserve forces activities' they may conduct as an individual; however, where they employ an individual who is a reservist they will receive payment in respect of that individual's relevant reserve forces activities'.

161. With regards to the cost of making the payment itself, where the relevant reserve forces activities' for which the payment is made is related to mobilisation to support a standing task or requirement placed upon Defence (e.g. garrisoning the Falkland Islands, maintaining UK airspace security) or in relation or any training or voluntary duties the cost of the payments will be met from within existing Defence budgets. Where the payment to employers is made as a result of a reservist being mobilised for a contingent operation some elements of the costs incurred may be reclaimed from the Treasury reserve. Defence and the Treasury are discussing whether this payment would be attributable to the HMT Reserve in the future. The overall amount to be paid to employers is calculated beneath and will be in the broad region of c£4.9m.

Monetised cost to Others

162. The application processes for the incentive payments will not be bureaucratic. However, there may be some small administrative cost associated with applying to claim such an award. While Defence will provide advice to employers in claiming this payment where requested, there will likely be some minor and unavoidable administrative costs associated with making a claim. Assuming 1427 incentive payments per year, and one hour's time of a manager (£23.91 per hour) plus 21% for non-wage labour costs, this would equate to a cost to business of £41,285 per year.

163. There will be some cost associated with familiarisation and training required by employers to publicise and embed understanding of the new scheme MOD has previously worked on the estimate of 30,124 employers of reservists; The % of these employers falling within the category of Small or

Medium Enterprises (SMEs) is liable for changes but as a maximum likely amount it has been assumed that of 30,124 employers of reservists, up to 71% may be SMEs at any one time. Allowing a quarter of an hour spent by a (HR) manager on familiarising with the new payment (£23.91 per hour) plus 21% for non-wage labour costs, this would equate to a one-off cost to business of £154,695. Each subsequent payment claimed by the same employer will have a lower cost associated with accessing the award as the process is better understood.

164. The Total cost to SME's employers for receipt of this award would therefore be up to a maximum of **c £196k**.

Non-Monetised Costs for Option d2

165. There are no non-monetised cost recorded.

Monetised Benefits option d2

166. Because the incentive payment will be made at a flat rate (currently expected to be circa £500 per month per reservist per mobilisation, up to a maximum of a 12 months period or capped at £6000 per annum) and it is not made in relation to the direct costs that might be incurred by the employer, this payment represents a net benefit to employers.

167. The current process by which employers claim for direct costs resulting from the mobilisation of their employee who is also a member of the reserve forces will stay in place. This scheme is set out in some detail in Para 142 and will continue to exist. There is no current facility to recompense employers in relation to direct costs that may be incurred following a reservist's absence on training or other duties. Generally, this activity is for very short periods (up to max. of 14 working days) for reservists in employment and is discussed and agreed with the employer in advance, therefore any direct cost is so negligible as to not require arrangements by which the employer might reclaim direct costs in relation to such activity.

168. However, the new incentive award will be made available where reservists are undertaking particular types of training or other duties (possibly for longer periods of commitments over and above the generally expected training requirement) to provide recognition and incentive to employers in these instances. We expect the scope of payments in this area to be very constrained at present, and indeed the requirement for reservists to undertake such additional training and duties to be itself be very low.

169. As a result the monetised benefits have been costed in relation to the potential mobilisations that could be undertaken. Initial calculations suggest that the direct benefit to employers could still be in the region of £4.7m per annum.

170. Assuming 3000 estimated deployments per year (from Policy Option a2), 67% overall employment amongst reservists (2012 MOD estimate), of which 71% are employed in SMEs. This implies 1,427 employers of reservists could be eligible for the new incentive award per year.

171. According to UK Defence Statistics (UKDS) data, the RAF, Navy and Territorial Army (TA) forces have constituted, as a proportion of total forces mobilised, an average of 6%, 9% and 84% respectively. This implies the numbers of employers' awards per reserve service branch as 92, 133 and 1,202 for RAF, Navy and TA respectively.

172. Estimates of average months deployed are available from the Reserve Forces Continuous Attitudes Survey. These are combined with the monthly new incentive (£500 per month) and the numbers mobilised within each branch. This implies total annual new incentive payments of £4.9m this assumes 100% take-up of the incentive by eligible firms.

	Av. Months Deployed	Compensation Per Month	Av. Compensation	No. Mobilised	Total Exp Compensation
RAF	7.2	£500	£3,608	92	£331,959
Navy	6.6	£500	£3,313	133	£440,563
TA	6.9	£500	£3,450	1202	£4,146,900
Total	6.9	£500	£3,447	1427	£4,919,422

Source: UKDS, Reserve Forces Continuous Attitudes Survey, MOD estimates

Non-Monetised Benefits option d2

Non-monetised Costs	Non-monetised Benefits
N/A	<p>Reservist - receive greater support from employers in joining and participating in the Reserve Forces</p> <p>Defence receives greater assurance of operational capability and availability as employers who receive this payment are more likely to release their reservist due to the financial incentive to do so</p>

ONE IN ONE OUT ASSESSMENT

173. Options a2, b2, c2, and d2 introduced by the legislative changes previously set-out would be in-scope for the OIOO assessment. The Regulatory Policy Committee have confirmed when considering the Regulatory Triage Assessments (RTAs) for proposals (a) and (b) that these represent measures that would be deemed as IN scope. To that end the previous evidence base has been provided setting out the detail of all the measures relating to Reserve Forces which will be put forward in the Defence Reform Bill and we have calculated the equivalent annual net benefit to Business as £4.9m.
174. The opinion of the Better Regulation Executive (part of BIS) was sought on the Defence Reform bill overall and they confirmed (e-mail dated 04 June 13) that the Reserves proposals with the compensatory elements for business is more or less zero cost impact in OITO terms. No Outs have been identified.

MOD'S APPROACH TO CONSULTATION

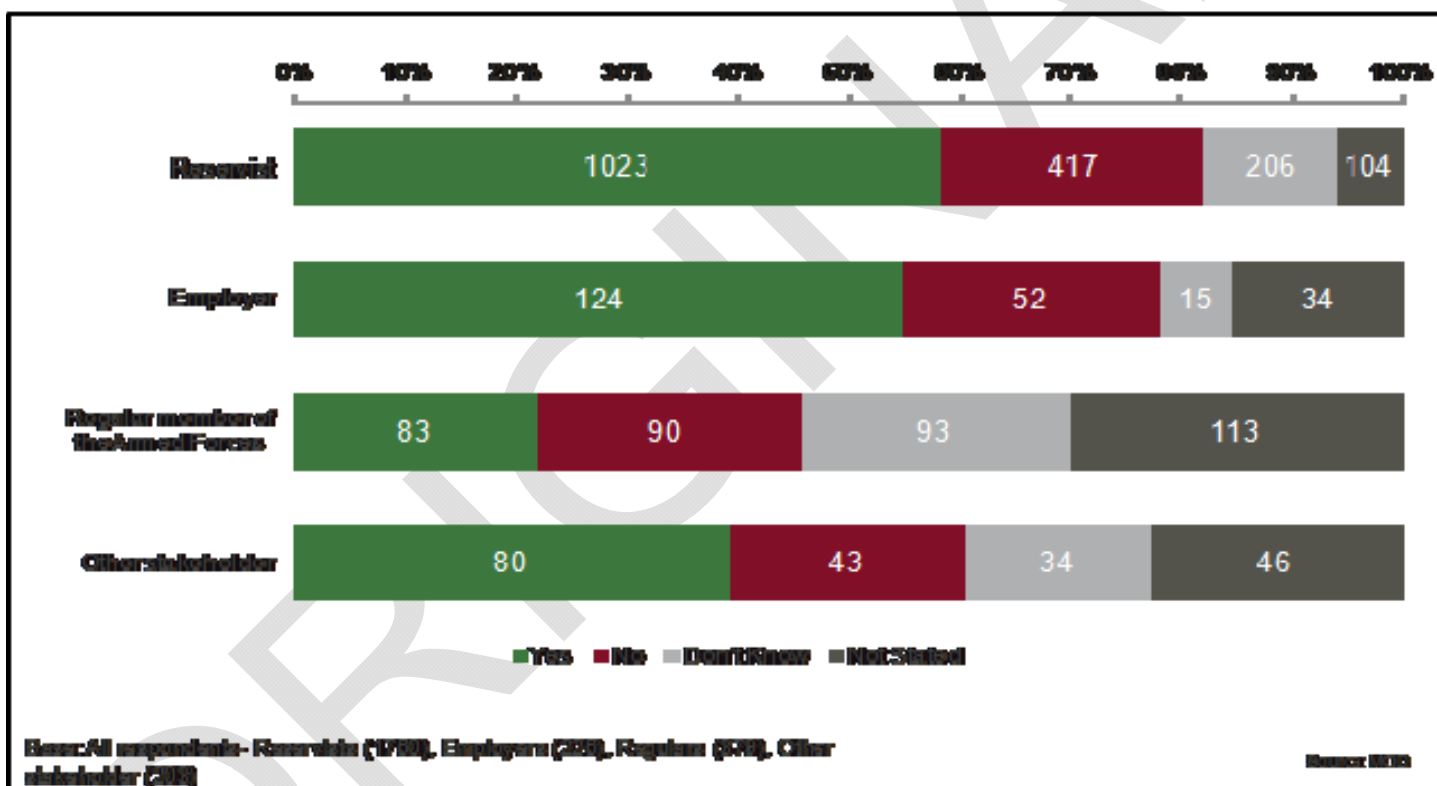
175. The Green Paper Future Reserves 2020: Delivering the Nation's Security Together was published on 08 November 2012 set out the broad outline of proposed policy and possible legislative changes. Feedback received through the subsequent public consultation, which included an online web based survey, national and regional workshops and direct submissions was supported by Ipsos MORI and ended on 18 Jan 13. As part of the Green Paper Consultation exercise two workshops were hosted with National (Very Large) employers including Tesco, Serco, BAES and a range of other large companies. At these workshops as well as expressing broad support for the approach being taken – subject to providing advance notification wherever possible and ensuring that easy communication with the MOD was in place to enable support where required - several comments from Large employers were received to the effect that ‘the cost impact of their attendance at the workshop was greater than the impact of their reservist’s being mobilised.’ For Micro, Small and Medium Enterprises (SMEs) it is likely that greater impact will be felt however, as shown above extensive processes are in place to seek to mitigate this impact.

176. (a) **Expanding the circumstances in which members of the Reserve Forces can be “called out.”** The on-line consultation specifically asked two questions on the proposed expansion of mobilisation powers and results are shown beneath.²³

177. **Q2. “Do reservists and employers support the proposals to extend mobilisation powers to non-warfighting operations”**

Six in ten (58%) reservist participants and just over half (55%) of employer participants supported proposals to extend mobilisation of reservists to non-warfighting operations, while around a quarter of each audience disagreed (24% and 23% respectively). Similar proportions of other stakeholders agreed and disagreed (39% and 21% respectively) although this group was more likely to say that they did not know (17%) or did not answer the question (23%). Those in the regular Army were the most split on the proposals with around one in five (22%) agreeing with the proposed extension to mobilisation powers and around a quarter (24%) disagreeing.

Chart 4.1 – Do reservists and employers support the proposals to extend mobilisation powers to non-warfighting operations?



178. **Q3. “Do you support the mobilisation of reservists on other overseas deployments and activities that fall short of operations? If not, what are the reasons for your views?”**

i. Reservists were positive about the proposal to mobilise Reserve Forces for other extended overseas deployments and activities that fall short of operations, with eight in ten (82%) agreeing and just over one in ten (13%) expressing disagreement (24 percentage points higher than reservists agreeing with mobilisation for non-warfighting operations).

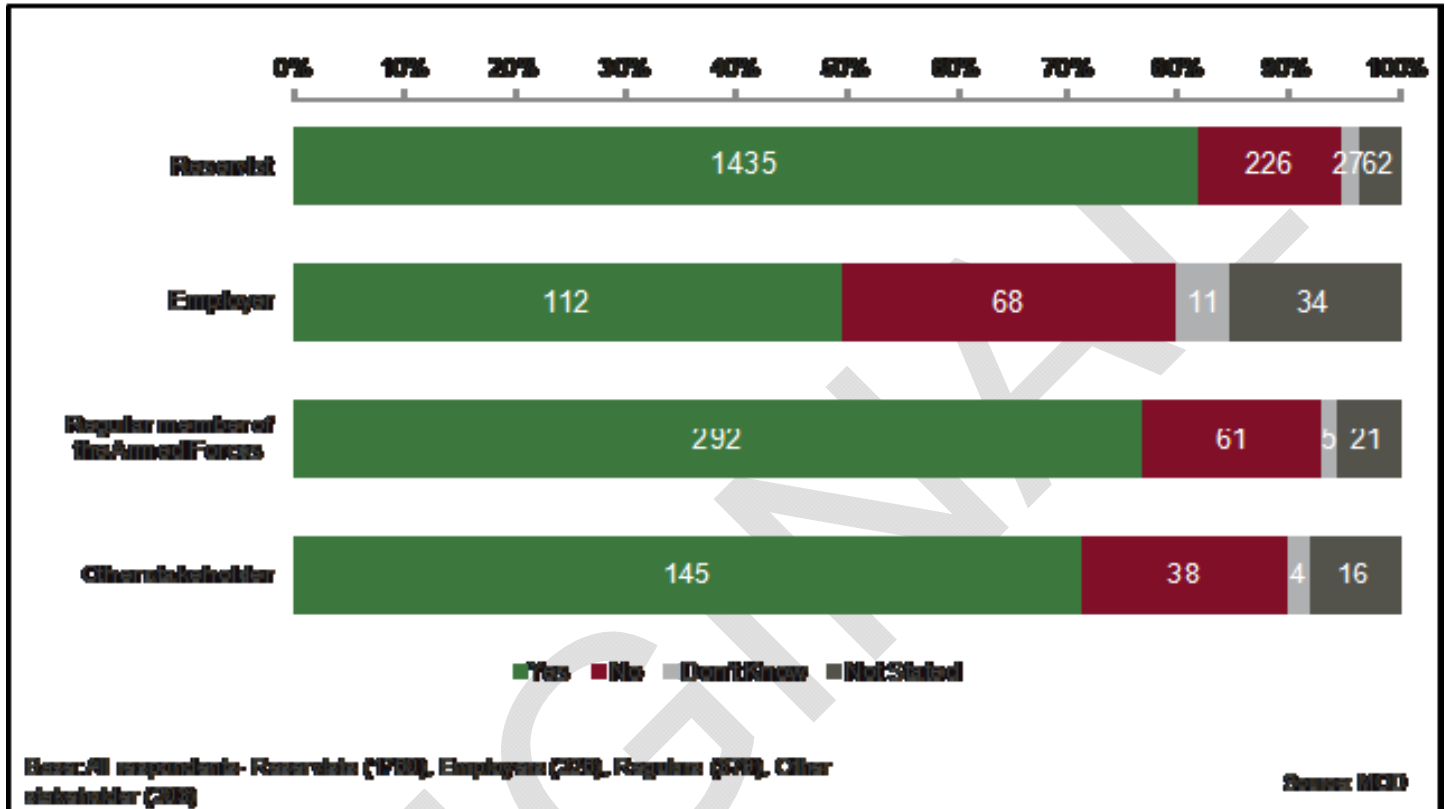
ii. Regulars and other stakeholders were also broadly in agreement with this proposal, with around three quarters (77%) of regulars and seven in ten (71%) other stakeholders. employers are the only stakeholder group who express less support for this proposal than for the mobilisation for Reserves for non-warfighting operations, although there is still more

²³ Source: TIN 3.037 FR20 Green Paper Consultation Report of Findings, DSTL, currently unpublished

agreement than disagreement; half said they agreed (50%) and three in ten disagreed (30%).

iii. Patterns of agreement and disagreement for reservists are largely similar to those seen in response to the proposals to mobilise reservists for non-warfighting operations.

Chart 4.2 – Do you support the mobilisation of reservists on other overseas deployments and activities that fall short of operations? If not, what are the reasons for your views?



179. (b) **Providing greater employment protection for reservists.** The on-line consultation specifically asked a question on the perception of disadvantage relating to reserve service are shown beneath.²⁴

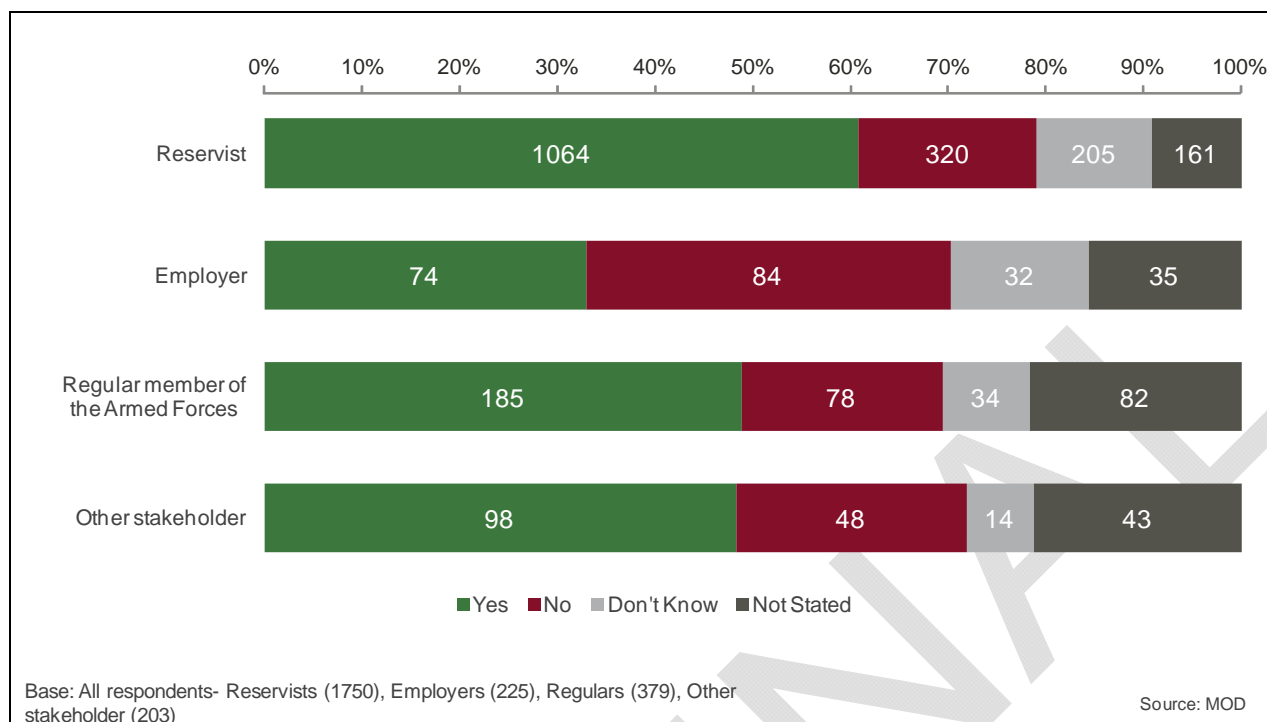
180. **Q16. “Would legislation be an effective measure to mitigate reservists being disadvantaged in a civilian workplace on the basis of their reserve status?”**

i. While reservists who responded were broadly in favour of legislation as an effective measure to mitigate disadvantage in the civilian workplace, employers who responded were much more ambivalent. Six in ten (61%) reservists who responded agreed that legislation would be a good idea, while a third (33%) of employers who responded felt the same way. Around half of regulars who responded and other stakeholders who responded thought legislation would be an appropriate response (49% and 48% respectively).

ii. While around a fifth of reservists and regulars (18% and 21% respectively) who responded and a quarter of other stakeholders who responded (24%) did not think legislation would be an effective tool, almost two fifths (37%) of employers who responded did not think that this is the way to progress.

²⁴ Source: TIN 3.037 FR20 Green Paper Consultation Report of Findings, DSTL, currently unpublished

Chart 4.5 – Would legislation be an effective measure to mitigate reservists being disadvantaged in a civilian workplace on the basis of their reserve status?



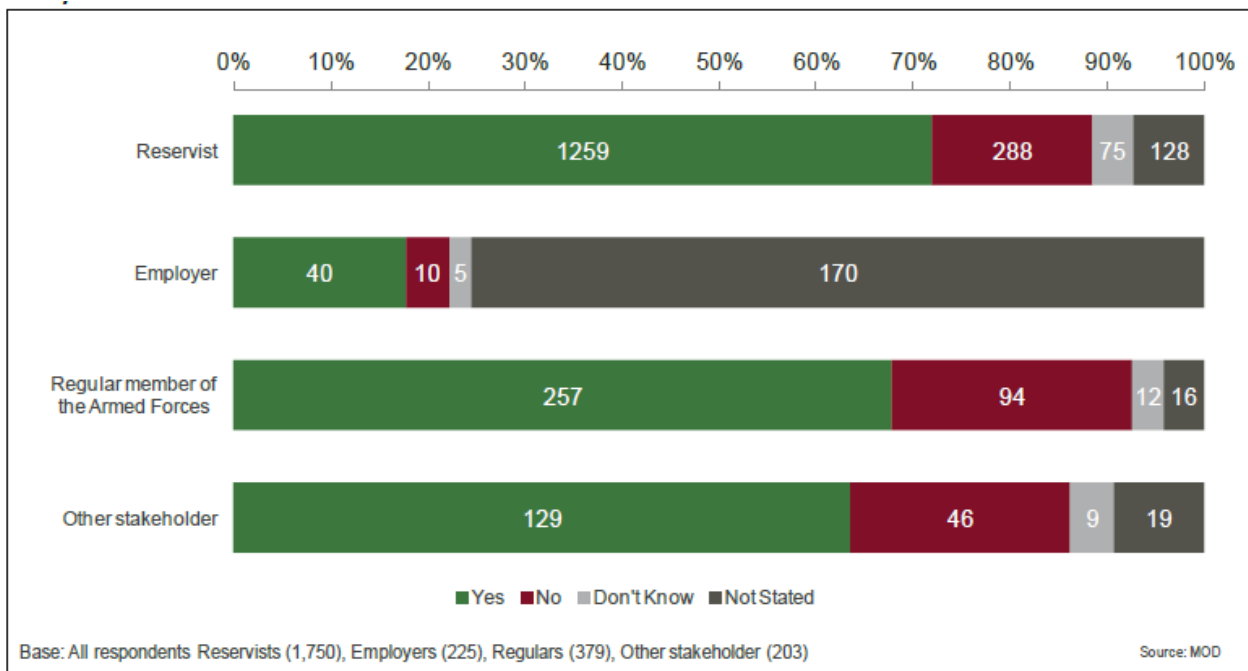
181. The message from employers who responded was repeated in workshop engagements, where comments from large employers (un-attributed) included; “Measures which force companies’ hands, or increase bureaucracy, tend to breed a compliance mindset, rather than one of cooperation.” However, it was noted that the specific measures to ensure returning reservists were not penalised when returning to civilian employment were not considered to be a major change. Since that stage the proposals have now been refined to address unfair dismissal (which was not explicitly discussed either in workshops or in the consultation).²⁵

182. This consultation has informed the Departmental approach to ensure that we are both seen to address the issue but to take a limited legislative approach within a context of also providing wider recognition and financial assistance measures to employers as will be set out in the forthcoming reserve White Paper.

²⁵ Source: TIN 3.037 FR20 Green Paper Consultation Report of Findings, DSTL, currently unpublished

183. (c) Renaming the Territorial Army to the ‘Army Reserve’ and rename the current Army Reserve to the ‘Regular Reserve’

Chart 3.1 – Given the changes we are proposing, do you agree that renaming the Territorial Army (TA) to the ‘Army Reserve’ would better reflect the future roles and tasks of what is now the TA?



184. (d) Empowering the Secretary of State (for Defence) to make incentive payments to employers of reservists

185. (d) Empowering the Secretary of State (for Defence) to make incentive payments to employers of reservists. Employers were asked “What type and level of support is required for employers in order to minimise any impact of the absence of their reservist employees?” Responses reflected calls for a range of tangible and intangible support elements, and suggestions for structural change in the way reservists are mobilised. Tangible support elements were mentioned most frequently with respect to the needs of micro businesses (52%). Among the tangible support mentioned, employers indicated they would like to see further financial awards.

186. A number of the requests for intangible support, (e.g. More recognition for reservist friendly employers; greater notice periods for absence) will be addressed by change in MOD policy. The incentive award to be introduced has a different character than simply uplifting existing support packages but the genus of its development is in recognition of the need to provide greater tangible support particularly financial recognition or compensation to employers.²⁶

²⁶ Source: TIN 3.037 FR20 Green Paper Consultation Report of Findings, DSTL, currently unpublished

Table 8.7 – What type and level of support is required for employers in order to minimise any impact of the absence of their reservist employees? How should this vary for a) large employers? b) medium employers? c) small employers? d) micro businesses? e) self-employed?

		Type of business				
		a) For large employers	b) For medium employers	c) For small employers	d) For micro businesses	e) For self-employed
<i>Base: All employer participants</i>		225	225	225	225	225
TANGIBLE SUPPORT ELEMENTS	n	69	60	77	116	63
	%	31%	27%	34%	52%	28%
Financial / money / compensation / pension / assistance	n	40	21	34	26	15
	%	18%	9%	15%	12%	7%
Help recruiting / replacing lost staff / backfill	n	25	15	16	22	4
	%	11%	7%	7%	10%	2%
Communication / information / briefings / liaison	n	20	13	9	28	7
	%	9%	6%	4%	12%	3%
Relationship managers / career managers / logistical planning	n	20	38	54	58	55
	%	9%	17%	24%	26%	24%
Cost of / help with training / skills	n	8	6	5	1	1
	%	4%	3%	2%	*	*

7. RISKS AND ASSUMPTIONS

Assumptions.

187. (a) **Expanding the circumstances in which members of the Reserve Forces can be “called out.”** During the course of this Impact Assessment we have made the following assumptions:

- That while the number of reservists mobilised at a given point will vary based upon the operational requirement there should be no significant increase in the number of reservists mobilised.
- That the MOD will consider the impact of mobilisation for both the reservist and the employer and continue to employ 'intelligent mobilisation' practices selecting those reservists who are available, supported by their employers in the first instance. Existing processes as laid out in secondary legislation (Statutory Instrument 1997:307 The Reserve Forces (Call-Out and Recall) (Exemptions Etc.) Regulations 1997) by which either the reservist or employer may seek deferral or exemption from mobilisation will remain in force.
- Measures laid out in the associated White Paper on the Reserve Forces [due for publication in summer 2013] will provide greater engagement and support to employers to further reduce any impact the use of reserves might have on employers.

188. **(b) Providing greater employment protection for reservists.** During the course of this Impact Assessment we have made the following assumptions:

- In the first instance non-legislative approaches to supporting reservists and employers are generally preferable. Legislation is only considered where it is necessary and there is evidence of a clear requirement.
- MOD will seek to minimise the legislative burden on employers.
- MOD has a responsibility to ensure members of the reserve forces are not disadvantaged as a result of their role as a reservist.

189. **(c) Renaming the Territorial Army to the 'Army Reserve'.** During the course of this Impact Assessment we have made the following assumptions:

- Names should recognise history of the respective forces whilst reflecting the changes that are being undertaken.

190. **(d) Empowering the Secretary of State (for Defence) to make incentive payments to employers of reservists** During the course of this Impact Assessment we have made the following assumptions:

- This approach will provide tangible benefits to employers.
- The impact of providing incentive payments to employers will be to encourage them to continue to be supportive or to become more supportive of the reserve forces; specifically, those reservists whom they employ.
- The schemes administration should be simple and reduce cost to employers of claiming the incentive payment

Risks.

191. The main risks associated with not introducing the preferred legislative changes are summarised beneath;

- If reservists can not be mobilised to support the range of operations Defence may called upon to undertake this will undermine the value and role of reservists.
- If MOD does not ensure proper support for reservists they will be less likely to join or remain within the Reserve Forces.
- If MOD does not provide proper support and recognition to employers of reservists then they are unlikely to be supportive of the reserve forces or recruiting and retaining individual reservists as employees.

192. For each of the proposals there are specific risks associated with their introduction:

- Expansion of circumstances in which a reservist could be called out could result in some reservists being used more often than at present. This could have a possible impact on both reservist and their civilian employer.
- The number of unfair dismissal cases brought to Employment Tribunal could rise.

- Renaming of the Territorial Army and existing Army Reserve is unnecessarily disruptive.
- The cost of providing incentive awards requires savings to be taken from other areas of Defence that reduce capability overall.

WIDER IMPACT

193. The wider impacts for all the proposals are:

- *Environmental impacts:* There are not assessed to be any environmental impact of the proposed reforms to Reserves. The Reserves will be required to meet all legal and regulatory standards which currently apply.
- *Social impacts:* Regular and reserves both provide a critical link between the Service Community and Society, incorporating the generation and channelling of public support as well as the support that the Armed Forces provides to Society, both formally and informally. The outcome of Civil Engagement is *public support* to and from Society. The reduction in the size and footprint of the regular Forces has made them more remote from British society. Reserves should play a key role in delivering this narrative. With their community base, wide footprint and local influence, Reserves offer a conduit for representing Defence interests. Reserve Forces also have an opportunity to provide an outlet for newly engaged volunteers. Response in support of civil contingencies is an important area where localism, volunteering and the Defence narrative could be substantiated by visible, positive reservist action.
- *Regional impacts:* It is assessed that there will be no regional impact of the Reserve proposal.
- *Equality Impacts:* The Future Reserves 2020 Programme has conducted an Equality Impact Assessment (EIA) in keeping with Cabinet Office guidance and determined there is no impact resulting from these changes.

SUMMARY OF PREFERRED OPTIONS

194. **(a) Expanding the circumstances in which members of the Reserve Forces can be “called out.”** Reserve forces are a vital component of our Armed Forces. They continue to make a major contribution to the defence and security of the UK. However, the current legislative framework does not allow reservists to be mobilised to undertake the full range of tasks/activities defence is being asked to contribute to and currently we are not able to mobilise reserves to make use of their capabilities when needed. The proposal is to proceed with option a2 - Expand mobilisation powers. This will increase the potential use of reserves.
195. Increased use of the Reserve Forces allows the Armed Forces to provide the best available capability, skills and personnel for any military task for which they are required. The additional opportunities for use are motivating and positive for reservists and the processes we have in place already minimise any impact on employers, other than in circumstances where they demonstrate behaviours which are already a criminal offence.
196. **(b) Providing greater employment protection for reservists.** Reserve forces are a vital component of our Armed Forces. They continue to make a major contribution to the defence and security of the UK. However, the current legislative framework does not adequately support reservists when in employment. The proposal is to proceed with Option b2 - Provide an exemption from the statutory 2-year qualifying period in bringing unfair dismissal claims where the dismissal is by reason of the employee’s reserve service. This will strengthen support for the individual reservists and help to assure the collective capability that they can offer.

197. **(c) Renaming the Territorial Army to the 'Army Reserve' and rename the current Army Reserve to the 'Regular Reserve'.** The Green Paper consultation sought views on the name Army Reserve as the new name for the Territorial Army; this received a favourable response with a large proportion of participants in all audience groups, including reservists, agreeing that renaming the TA to Army Reserve would better reflect its future roles and tasks. This was often because they believed the existing TA brand carries with it negative connotations, and is an outdated brand. It was felt that change was overdue and could improve the image of the reserves. The proposal is to proceed with option c2 - Amend existing legislation to rename the Territorial Army and current Army Reserve.
198. **(d) Empowering the Secretary of State (for Defence) to make incentive payments to employers of reservists.** The proposal is to proceed with Option d2 - Introduce a new enabling power to allow the Secretary of State to make regulations allowing additional payments to be made to employers as a means of encouraging them to employ reservists.

IMPLEMENTATION AND POST IMPLEMENTATION REVIEW

199. The results of the Green Paper consultation exercise has informed the development of these proposals, which will sit alongside the forthcoming White Paper. The policy document will set out the proposed implementation plan for the overall programme.
200. Subject to PBL decisions the Defence Reform Bill will be considered within the Third Session of Parliament and look to achieve Royal Assent by end of 2014. The legislative change proposed here will come into effect at that time as will a number of subsequent measures to address transitional arrangements for current reservists.
201. **Defence Reform Bill.** The preferred option would be implemented through the Defence Reform Bill.
202. **Regulations.** No regulations will change as a result of these legislative proposals but new regulations will be introduced to deliver option d2 Empowering the Secretary of State (for Defence) to make incentive payments to employers of reservists.
203. **Policy.** Associated policy changes will be laid out in the forthcoming White Paper regarding Reserve Forces to be published in summer 2013.