

OFFICIAL SENSITIVE

To: PS/Min AF

From: [REDACTED] Army Policy & Secretariat

Cleared by: [REDACTED] Army Policy & Secretariat

29 Jan 21

REMOVAL OF SPECIAL CONSTABLE (SC) STATUS FROM THE NORTHERN IRELAND SECURITY GUARD SERVICE (NISGS)

Issue

1. The removal of SC status from NISGS Civilian Security Officer (CSO) 4s and 5s as part of a wider NISGS Optimisation Project.

Recommendation

2. Min AF is recommended to **agree** that:

a. 38 (Irish) Bde & NI Garrison can consult with the Trades Unions (TUs) on removal of SC status from NISGS CSOs;

And note that:

b. Comd 38 (Irish) Bde & NI Garrison judges that NISGS CSOs do not require SC status to perform their role (and there is no record of them ever having done so); and

c. there is no financial impact on individual CSOs as a result of the removal of SC status.

Timing

3. **Routine.** It would be useful to have Minister's agreement to allow TU consultation to begin early in February.

Background

4. The NISGS was formed in Nov 1997 and comprises approximately 420 non-industrial CSOs who deliver 24/7-armed guarding of major sites in Northern Ireland. These CSOs were afforded the status of Special Constable under powers granted to the Defence Secretary in the Emergency Laws (Miscellaneous Provisions) Act 1947¹.

5. As Civil Servants, and in accordance with CDS's Arming Directive², NISGS CSOs are authorised to be armed without the requirement for SC status. There is no evidence of a CSO having used their SC powers in the performance of their duties.

¹ <https://www.legislation.gov.uk/ukpga/Geo6/11-12/10/schedule/SECOND/paragraph/1/enacted?view=plain>

² [CDS Directive \(CAT 2\) – Arming Directive 2018 for the carriage of firearms by Service Personnel on general security duties in non operational environments, dated 4 Jan 18.](#)

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Why remove?

6. Since its formation, the NISGS has been subject to four major reviews, which, for various reasons, have not resulted in change. To resolve this lack of action, Comd 38 (Irish) Bde & NI Garrison has decided to conduct a formal optimisation programme to deliver the change necessary to make NISGS a modern, efficient, and sustainable organisation.

7. In 2008, the first review of NISGS concluded that the Northern Ireland Office (NIO) and Police Ombudsman for Northern Ireland (PONI) were opposed to the NISGS retaining SC status due to issues concerning accountability, governance, training and political handling. It found that should SC status be retained the NIO would require: external inspection; the establishment of an oversight body; operational independence for policing functions; a formal Memorandum of Understanding with PONI; a policing protocol with the Police Service of Northern Ireland, Ministry of Defence Police and Service Police; as well as clear identification of NISGS as a policing service. As, since 2008, the intention had been to remove SC status, none of these measures have been enacted. Discussions with the NIO (who consulted the Department of Justice in Northern Ireland as the lead Executive Department) confirmed that removal is seen as an operational decision for the MOD and, although NIO ministers would be advised of the change, their agreement was not required. If Minister wishes to retain SC status a separate plan would need to be developed with PSNI, PONI and other stakeholders.

8. Every new armed CSO undergoes a six-week foundation course which, in the last week, includes them being attested as a SC. However, due to Covid-19, the last two courses of CSO5 trainees were not attested and have been carrying out the full range of duties. Comd 38 (Irish) Bde & NI Garrison considered the earlier reviews and the current operational requirement and is satisfied that there is no need for CSOs to hold SC status. The success of the unanticipated 'trial' of the unattested CSO5s supports this decision. The removal of SC status is, therefore, a key workstream within the Organisation Line of Development of the optimisation programme.

Can it be Removed?

9. The Emergency Laws (Miscellaneous Provisions) Act 1947 authorises the Ministry of Defence as the authority to grant or remove SC status. Trade Unions were consulted in depth post the earlier reviews and it is not considered that the removal of SC status constitutes a change in NISGS CSO Terms and Conditions of Service. It is believed that there were concerns over SC status being recruitment and retention positive, but the most recent recruitment campaign did not include reference to SC status and resulted in 199 applications.

10. Given the significant number of staff involved, it was deemed appropriate to seek Minister's agreement to move to the consultation stage. If Minister agrees, Headquarters 38 (Irish) Bde will develop a formal consultation plan and work with NISGS leadership and the TUs. The TUs have been informally consulted on other aspects of the Optimisation project and have welcomed the engagement.

Financial Implications

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10. There are no financial implications to the Department as a result of the removal of special constable status. This paragraph has been approved by Army Resource Plans.

Presentation

11. It is understood that, while it serves no operational or financial purpose, Special Constable status is seen as an important status symbol by some CSOs who may object to its removal through their elected representatives. The consultation plan will explain the logic behind the decision, and it is hoped that will address the majority of their concerns.

12. In addition to the formal consultation plan, Headquarters 38 (Irish) Bde will also engage with wider NI-based stakeholders to inform and consult regarding the proposal. These include the NIO (and with political stakeholders if the NIO deem necessary and appropriate); Department of Justice; and the Police Service of Northern Ireland. Defensive Lines to Take will be lodged with the local Defence Press Office. This paragraph has been cleared by DDC.

Copy list

MA/CGS	MA/GOC RC	POLAD 38X
MA/DCGS	Comd 38X	DDC
MA/D Pers	Hd Army Sec	
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To ArmySec/2021/36
Dated XX XXX 2021

To: Min AF; SofS

From: [REDACTED] Army PolSec
Cleared by: [REDACTED] Army PolSec

5 Jul 21

NORTHERN IRELAND SECURITY GUARD SERVICE (NISGS) SPECIAL CONSTABLE (SC) STATUS UPDATE

Reference

- A. MSU 4-1-5-3 dated 10 Feb 21
- B. MC2021/06415 letter from Rt Hon Sir Jeffrey M Donaldson MP
- C. MC2021/06944 letter from Gavin J Robinson MP

Issue

13. The discovery that NISGS Civilian Security Officer (CSO) 4s and 5s do not hold SC status.

Recommendation

14. Ministers are recommended to **note** that:

- a. further to the advice provided to Ministers in January (reference A), [REDACTED] Ministry of Defence Police Act 1987 (MDP Act 1987) repealed the provisions used to nominate CSOs as SCs;
- b. this means that, even though the majority of NISGS CSOs have been attested by a magistrate, none of them hold SC status, according to the law;

and to **agree**:

- c. that as the risk of an Officer attempting to use SC power is low, the NISGS Officers and their Trade Unions (TUs) can be advised of this discovery as soon after 14 Jul 21 as Ministers consider practical; and
- d. the draft letters at Annex A and B.

Timing

15. **Urgent.** Ministerial agreement on the proposed timeline is requested so that appropriate plans can be made.

Background

16. The NISGS was formed in Nov 1997 and it was believed that its CSO 4s and 5s were afforded the status of Special Constable under powers granted to the Defence Secretary in the Emergency Laws (Miscellaneous Provisions) Act 1947.³ In January this year the Army sought ministerial agreement to begin TU consultation with the aim of removing SC status as part of a wider Optimisation project.

17. Reference A stated that Ministers felt the time was not right to begin the consultation and asked if NISGS could be *“included as part of the independent police oversight regulation currently being implemented across the MOD”*. This led to additional work being required from several policy branches which uncovered the fact that only the service police can come within the oversight of the Service Police Complaints Commissioner, who will be operating within the Service Justice System. Further options were not explored at the time due to OP RESCRIPT and COVID 19 pressures and the work to remove SC status was deprioritised across the Army.

18. As the Courts re-opened, NISGS TUs approached 38 (Irish) Bde asking when the newly trained cohort of CSO 5s would be attested as SCs. This led to the work being re-energised and, as part of this effort, [REDACTED]

What has been discovered?

19. [REDACTED] the Ministry of Defence Police Act 1987 (MDP Act 1987) repealed the provisions used to nominate CSOs as SCs. This means that, even though the majority of NISGS CSOs have been attested by a magistrate, none of them hold SC status, according to the law. This affects approximately 340 individuals, which represents approximately 90% of NISGS CSO4s and CSO5s.

[REDACTED]

21. [REDACTED]

Risk

22. Although there is no record of a CSO having used their SC status, there remains a risk that one may feel the need to do so in the belief that they hold it. Therefore, to minimise the risk of CSOs being accused of illegally detaining an individual, beyond the powers already available to any citizen under s24A of PACE 74 (“citizen’s arrest”), it is considered necessary to inform the workforce of this change in status in a timely manner. With the powers not having been exercised in over two decades, it is felt that an acceptable timeframe would be no later the 16 Jul 21. This would have the added advantage of minimising additional workforce tension over ‘the Twelfth’ holiday period and communications is therefore planned to begin as soon after 14 Jul 21 as is practical.

³ <https://www.legislation.gov.uk/ukpga/Geo6/11-12/10/schedule/SECOND/paragraph/1/enacted?view=plain>

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Northern Ireland Office advice on timing has been sought, but not yet received.

Financial Implications

23. There is no financial impact on any of the individuals who are currently CSOs, as they do not get any SC allowance. This paragraph has been approved by Army Resource Plans.

Presentation

24. It is considered that, given the personal risk that the approximately 340 attested NISGS CSO 4s and 5s may face if they attempt to use SC 'powers' they need to be informed as quickly as possible. The plan is to inform the TUs in advance⁴ of a NISGS wide communications effort via the Chain of Command advising CSO4s and 5s that they do not hold SC status but confirming that it is not required for them to deliver their outputs.

25. It is likely that the TUs will not react positively to this news, however this will depend on how the communication with the CSOs lands.

26. Both Sir Jeffrey Donaldson MP and Gavin Robinson MP have recently written to the Defence Secretary (references B and C) as constituents raised concerns that the Department wanted to remove SC status. It is proposed that responses are written and sent by MinAF at the same time as the wider NISGS is informed. Text for a draft response is included at Annex A. Other MPs may write to Defence Ministers; we currently have NISGS officers in 6 constituencies.⁵

27. As magistrates have routinely attested new CSOs as SCs for over 30 years, it is proposed that Commander 38X also write to the Lord Chief Justice as per the attached draft letter (Annex B).

28. While it serves no operational or financial purpose, SC status is seen as an important status symbol by some CSOs who, as many believe they have held it for many years, may raise concerns with their elected representatives.

29. Defensive Lines to Take will be lodged with the local Defence Press Office. This paragraph has been cleared by DDC.

Copy list

MA/CGS	MA/GOC RC	AH Army PolSec
MA/DCGS	Comd 38X	DDC
MA/D Pers	Hd Army Sec	
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⁴ Probably on 14 Jul 21 via Skype and accompanying document explaining discovery

⁵ Thiepval – Lagan Valley, Aldergrove – South Antrim, Palace – North Down, Enniskillen – Fermanagh & South Tyrone, Coleraine – East Londonderry, Queens OTC – Belfast South

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**Annex A to
Northern Ireland Security Guard
Service (NISGS) Special Constable
(SC) Status Update
Dated 2 Jul 21**

DRAFT RESPONSE FROM MIN AF TO GAVIN ROBINSON MP

Our ref: D/Min(AF)/JH MC2021/06944

Thank you for your email of 30 June 2021 to the Secretary of State for Defence regarding the Northern Ireland Security Guard Service (NISGS). I'm responding as the Minister responsible for this matter and I apologise for being late in doing so.

As you're aware, members of the NISGS at the CSO4 and CSO5 level have been attested as Special Constables and I recognise that this is cause for a great deal of pride amongst those officers. Your correspondence encouraged the Secretary of State to re-think longstanding plans to remove Special Constable status from the NISGS after reviews in 2008/09 had determined that it was not required.

Those were all issues that we could potentially have overcome although I think there is a debate on whether it would have been appropriate or necessary to do so. However I'm afraid that in the course of my challenges to the Department over this issue they've unearthed a rather awkward legislative reality that overtakes those considerations.

Special Constable status was given to NISGS CSO4s and CSO5s under the Emergency Laws (Miscellaneous Provisions) Act 1947. However, the Ministry of Defence Police Act (1987) repealed that power and as such the legal reality is that none of the CSOs who have been attested as Special Constables by Magistrates since 5 March 1987 have actually had any legal basis for their attestation. As such, I'm afraid that they don't hold Special Constable status after all.

Clearly, I was deeply concerned that for many years NISGS CSOs had been operating in the belief that they had powers that they actually don't but I have been assured that there aren't any occasions on which these powers have been used. Nonetheless, I know that this will be a cause for embarrassment and anger within the NISGS community. I share that anger and embarrassment - the Department should have spotted this legal reality at some point over the last 34 years.

NISGS CSOs will be briefed on this situation this week and Commander 38 (Irish) Brigade will be apologising to them on behalf of the Ministry of Defence. I stand ready to meet with you to discuss any further concerns you have on this.

JAMES HEAPPEY MP

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DRAFT RESPONSE FROM MIN AF TO RT HON SIR JEFFREY M DONALDSON MP

Our ref: D/Min(AF)/JH MC2021/06415

Thank you for your email of 15 June 2021 to the Secretary of State for Defence regarding the Northern Ireland Security Guard Service (NISGS). I'm responding as the Minister responsible for this matter and I apologise for being late in doing so.

As you're aware, members of the NISGS at the CSO4 and CSO5 level have been attested as Special Constables and I recognise that this is cause for a great deal of pride amongst those officers. Your correspondence encouraged the Secretary of State to re-think longstanding plans to remove Special Constable status from the NISGS after reviews in 2008/09 had determined that it was not required.

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NISGS CSOs will be briefed on this situation this week and Commander 38 (Irish) Brigade will be apologising to them on behalf of the Ministry of Defence. I stand ready to meet with you to discuss any further concerns you have on this.

JAMES HEAPPEY MP

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**Annex B to
Northern Ireland Security Guard
Service (NISGS) Special Constable
(SC) Status Update
Dated 2 Jul 21**

DRAFT LETTER FROM COMMANDER 38X TO LORD CHIEF JUSTICE (NORTHERN IRELAND) SIR DECLAN MORGAN QC

I am writing to apologise for an error on our part that has consumed the time of Lisburn magistrates for some years. As you may be aware, until we paused due to Covid-19, members of the Northern Ireland Security Guard Service (NISGS) were attested as Special Constables at Lisburn Magistrates' Court. As part of a wider review of NISGS practices and procedures, we have discovered that the legislation involved in making them Special Constables had been repealed some time ago. Unfortunately, this error had remained undiscovered until now and we have effectively consumed the magistrates time unnecessarily. I apologise most unreservedly for both the error and the length of time it took to uncover it. Going forward we will, obviously, no longer require this service, but we would like to record our thanks for the efforts put in by the magistrates over the years, it was much appreciated by both the NISGS and the officers themselves.

Commander 38X