PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

DEFENCE REFORM BILL

Eighth Sitting

Thursday 10 October 2013

(Afternoon)

CONTENTS

Clauses 8 to 10 agreed to.
Schedule 3 agreed to.
Clauses 11 and 12 agreed to.
Adjourned till Tuesday 15 October at five minutes to Nine o'clock.

PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS
LONDON – THE STATIONERY OFFICE LIMITED

£6·00

PBC (Bill 084) 2013 - 2014

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not later than

Monday 14 October 2013

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY FACILITATE THE PROMPT PUBLICATION OF THE BOUND VOLUMES OF PROCEEDINGS IN GENERAL COMMITTEES

The Committee consisted of the following Members:

Chairs: Mr Graham Brady, Albert Owen†Mr David Amess

† Brazier, Mr Julian *(Canterbury)* (Con)
† Brown, Mr Russell *(Dumfries and Galloway)* (Lab)
† Colvile, Oliver *(Plymouth, Sutton and Devonport)* (Con)
Docherty, Thomas *(Dunfermline and West Fife)* (Lab)
Donaldson, Mr Jeffrey M. *(Lagan Valley)* (DUP)
† Dunne, Mr Philip *(Parliamentary Under-Secretary of State for Defence)*
† Ellwood, Mr Tobias *(Bournemouth East)* (Con)
† Gilbert, Stephen *(St Austell and Newquay)* (LD)
† Hamilton, Mr David *(Midlothian)* (Lab)
Harvey, Sir Nick *(North Devon)* (LD)
† Hinds, Damian *(East Hampshire)* (Con)
† Jones, Mr Kevan *(North Durham)* (Lab)
† Lancaster, Mark *(Lord Commissioner of Her Majesty's Treasury)*
† Mordaunt, Penny *(Portsmouth North)* (Con)
† Pawsey, Mark *(Rugby)* (Con)
Phillipson, Bridget *(Houghton and Sunderland South)* (Lab)
† Seabeck, Alison *(Plymouth, Moor View)* (Lab)
† Wheeler, Heather *(South Derbyshire)* (Con)
† Woodcock, John *(Barrow and Furness)* (Lab/Co-op)

Georgina Holmes-Skelton, *Committee Clerk*

† attended the Committee

Public Bill Committee

Thursday 10 October 2013

(Afternoon)

[Mr David Amess *in the Chair*]

Defence Reform Bill

2 pm

The Chair: I should explain to colleagues that I am making a guest appearance this afternoon, standing in for Graham Brady. I have also been advised by the Minister that a note from the Ministry of Defence, MSU/48/16, has been tabled and is available for Members. We now continue our line by line consideration of the Bill.

Clause 8

Intellectual property rights

Question (this day) again proposed, That the clause stand part of the Bill.

Alison Seabeck (Plymouth, Moor View) (Lab): It is a pleasure to see you in the Chair, Mr Amess, albeit as substitute, but substitutes are always welcome.

I had begun to talk about the Ministry of Defence's interest in selling the Defence Support Group and the consultation that started in August this year, which was designed to ensure that there were no ongoing conflicts with regard to the intellectual property used by DSG in carrying out its business.

In this instance, industry IP is handed over to DSG to allow the company to undertake some highly specialised work, on vehicles in particular, and is clearly moved into incredibly safe hands at DSG. That IP and its transfer have been the subject of industry concern, which is in part relevant to the clause. Industry is concerned about who gets control of a potentially large amount of IP that, previously, no one expected to be released to commercial rivals. That takes us back to the issue of retrospectivity.

An MOD spokesman—commenting when the audit was announced in the contracts bulletin, which aimed to establish who in industry objects to their IP being handed over to the new DSG arrangements, ahead of any negotiations to resolve individual issues—said the Department has

"been engaged on IP work for a long time… and we are still working to resolve the issue and deliver a successful sale in… 2014-15".

I understand that there has also been some discussion specific to DSG about whether certain elements of it—Sealand and Stafford, I think—should be declared out of scope and a completely separate entity set up to deal with the most sensitive IP information that they work with.

Putting aside the issue of whether that is a sensible thing to do with DSG, there clearly are unresolved concerns within the MOD about how to handle it. That being the case, it is questionable why we are being asked to allow the clause through when the MOD does not appear to have got its head around how to handle a smaller amount of IP linked to the possible sale and movement of DSG to the private sector. Here we are talking about a group of people who work on projects as sensitive as Typhoon, and who could well be working on the F-35 when it enters service.

We do need an answer from the Minister on the potential time scale issues raised by the quote from the MOD spokesman, because it seems to suggest that this is likely to be an extremely long process. How quickly will the negotiations on the transfer specific to the GoCo be achieved? Can they be achieved before we get to the next general election?

What about protections for the GoCo itself? Suppose it developed a hypothetical internal system—IT perhaps—that proved to be the best thing since sliced bread, but which applied specifically to MOD working. Who would own that IP if the decapitation outlined by Bernard Gray, Chief of Defence Matériel, took place and the new company was set up? Would it have any rights to that hypothetical amazing IT system, or would the MOD have to buy back the system at a cost if it decided to take it back in-house or to bring in another contractor? Would the MOD own it by dint of contractual arrangements that will be set in place? Or, could there be a legal wrangle, with both parties claiming ownership? I would be grateful if the Minister answered those concerns about how IP will be developed within the system.

We have heard that two contractors could be running at the same time. Would one be expected to share its expertise and IP with the other? I assume, again, that such matters will probably be enforced through contracts, but I see nothing in the Bill that clarifies that. It is also unclear as to whether—say, after the nine years of the new consortium being chosen as the preferred contractor—there will be a right of transfer of protected information and work to the new contractor. Might there be a circumstance in which the old contractor is reluctant to pass on information to the new one? If that happened, would there be potential for acrimonious legal wrangles for the Secretary of State?

Those are all genuine questions that I hope the Minister will answer. I am particularly interested to hear about the time scale and concerns as to what seems to be happening at DSG.

Mr Russell Brown (Dumfries and Galloway) (Lab): I shall be brief. Prior to the break, at clause 7 I mentioned the investment that companies have made over long periods to reach the position they are in. Their product and the associated intellectual property have come at great financial cost. I appreciate that we are discussing clause 8, not clause 7, but some of the arguments are relevant, and it is clear from the Committee's first sitting, when we took evidence, that there are issues here.

I know that the Minister has given some reassurances, but I have taken the opportunity to look at the standard note from Library. The research paper says quite clearly:

"Clauses 7 and 8 take rights away from the disclosing party or copyright owner without any right to objection and without compensation."

It goes on:

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

That is obviously not happening, so the Minister and the Government should give reassurance not only to the Committee and the House as a whole, but to businesses, especially small and medium-sized enterprises, which are the lifeblood of many small rural economies. I know that the Minister has done his best to give the reassurances that we need, but I still have niggling fears in the back of my mind about something going wrong despite those reassurances—after all, we are discussing legislation.

For small companies in particular, something going horribly wrong and rights not being protected could take a business to the wall at the drop of a hat. That business might have been in the family for two or three generations, but if it went to the wall it might take 10 or 15 jobs with it—who could tell?

I want to put that on the record. I am not sure whether the Opposition will vote against the clause, but this is about business and people's livelihoods. We cannot give enough assurances to businesses, especially small businesses, on the absolute certainty that their intellectual property will be protected at all costs.

The Parliamentary Under-Secretary of State for Defence (Mr Philip Dunne): It is a great pleasure to see you, Mr Amess, standing in for one of our appointed Chairs, and we are pleased that you have resisted the temptations of a one-line Whip, which would have made you unavailable. I hope that we make it worth your while. I will address the hon. Lady's specific questions, but before I do so, I would like to explain briefly the purpose of the clause.

The clause is essential because, without it, the use of intellectual property by the contractor could be unlawful. It will put appropriate safeguards in place to prevent the unauthorised use or disclosure of that intellectual property by either the contractor or its employees.

The clause is concerned with copyright works and databases in which a database right subsists. There are, of course, other types of intellectual property right, of which patents and design rights are the most familiar, but there are statutory provisions, such as the Patents Act 1977 and the Copyright Designs and Patents Act 1988, that allow for the use of those by the Crown, or by contractors on behalf of the Crown, without needing permission from the owner of the intellectual property.

However, there are no statutory rights of Crown use for copyright works, which include reports and software such as those procured by DE&S. It is therefore necessary to include the clause so that the MOD can lawfully provide copyright and database works to the contractor where the MOD has secured the rights to use such works itself and where it is necessary and expedient to provide the work to the contractor for defence procurement services. If the clause is not included, provision of copyright and database works to the contractor by the MOD will risk infringement of copyright and database rights in such works.

Many of the provisions are similar to those we discussed under the previous clause and the concerns about protecting confidential information are similar to those referred to by the hon. Lady and the hon. Member for Dumfries and Galloway. I therefore refer the Committee to remarks I made earlier today on how we go about protecting such information.

The hon. Lady asked, by way of an example, whether we will be able to protect against the material being taken out of GoCo's control if individual employees are head-hunted away to work for contractors, taking IP information with them. They will be subject to the same restrictions on the use and theft of confidential information as under the previous clause, which will catch them.

The procedures in DE&S, which we would continue to have in the GoCo, are, we believe, adequate to resisting the theft of information, and have proved to be so. One can never be absolute in such matters—if someone has malign intent, they might find ways around the procedures—but that is the situation in which we find ourselves today. We do not believe that the Bill or the establishment of a GoCo increases that risk.

Before the break, the hon. Lady also asked about how we protect "soft" IP, such as the know-how that a manager in DE&S might develop on the procurement procedures used by a particular company to succeed in winning contracts. Were they to leave DE&S, they might be able to transfer that knowledge or know-how to another employer. What would happen depends on the circumstances in which the transfer took place. If it was through the theft of material, and it could be established that that was what had happened, the person would be caught under the provisions we discussed earlier. If it was merely an understanding from having worked in one environment that was then developed in another, that could not be precluded by statute—that is the commercial world in which we live.

2.15 pm

Alison Seabeck: Can the Minister address a concern I have? We are talking about people moving within the UK, but how would the behaviour of somebody who retains that sort of knowledge be monitored if they were to move from the UK to, say, Brazil, China or anywhere else abroad? They could use their IP knowledge in a way that is detrimental to UK interests.

Mr Dunne: That is an interesting question. Of course, this legislation applies within the UK. The provision will not apply to intellectual property obtained though contracts entered into under foreign law. Treaties and memorandums of understanding with other Governments are outside the legal jurisdiction covered by the Bill.

The hon. Lady's question was, if a former employee of DE&S in the UK were to work in another country, what remedies are available to the Government, the Ministry of Defence or individual contractors who feel they have suffered loss to pursue that individual? It would depend on the nature of the offence that is committed. If it is one that could be pursued under the Official Secrets Act, we have extradition arrangements with other countries that we could enforce. If it is theft of commercial information that damages another country, it would be down to the contractual arrangements, which exist today. There is no distinction between the risk of that happening under a GoCo and it happening under the DE&S today; the risk is already there. As I said when we discussed these problems on Tuesday, we are not familiar with that sort of offence occurring in

[Mr Dunne]

the past. That is not to say that we can preclude it from happening in the future, but we do not anticipate that it will.

The hon. Lady also asked whether the example of establishing the IP protections surrounding the DSG sale is instructive. I am glad she raised that issue, because it highlights the importance of IP in allowing the Ministry of Defence to ensure its equipment is maintained and serviced to support our armed forces. I am sure, Mr Amess, you will allow us to digress down this track, because it is relevant to the issue of intellectual property, which is covered by the clause. The Defence Support Group has responsibility for maintaining and overhauling vehicles—tracked vehicles, primarily—for use by the British Army. Many of those vehicles in support rely on intellectual property from the original equipment manufacturer—the OEM—which in most cases is BAE Systems. DSG operates under licence from BAE systems, so it has access to the source code and data relevant to those vehicles.

I will use an analogy to put this issue in context. A tracked vehicle—say, a tank—is a platform for use by the Army. It is analogous to a surface ship or a submarine, which are platforms in use by the Royal Navy. Surface ships and submarines, as hon. Members know, are subcontracted out to companies that are not exclusively the OEM suppliers of those platforms. Therefore, it is common practice across the services to enter into live support relationships with third-party contractors that are not necessarily the OEMs, which therefore have to enter into agreements with the OEMs to get access to their IP. That happens today across the services. It does not happen at the moment in relation to DSG because the sub-contract licensee is the MOD through DSG. If the licensee were to change to a third party that is not the OEM, a new relationship would have to be established for that party to benefit from a licence from the OEM.

The situation is entirely analogous to what happens in the air and maritime domains. It is taking a bit of time simply because these things do. It took time to get such arrangements sorted out in other domains. We do not anticipate that that will interrupt our programme to prepare DSG for sale. It is simply one of the many things that have to happen in the course of preparing a business for a change of control.

Alison Seabeck: I thank the Minister for allowing me another intervention. A consultation is under way about the potential sale of DSG and the movement of IP within that. What is the time scale for that consultation and will the responses from business be made public?

Mr Dunne: Is the hon. Lady referring specifically to DSG?

Alison Seabeck: Yes; specifically, there is a consultation.

Mr Dunne: The hon. Lady refers to the sale process for the Defence Support Group and the consultation that will take place surrounding that. At this point, the consultation is pending decisions about the sale process; there is an established route for informing employees through their trade union representatives about how that process is developing. If that is the consultation she is referring to, it is an informal rather than a formal one.

Alison Seabeck: Perhaps I can be a little clearer. An audit, which was announced in the contracts bulletin, aims to establish who in the industry objects to their IP being handed over to the new DSG, ahead of separate bilateral negotiations to resolve individual issues. I misnamed it by calling it a consultation. It would be helpful to know whether the industry responses to that audit will be made public.

Mr Dunne: The hon. Lady raises an interesting point. As part of the sale process, we have sought to make it possible for any OEM that believes it has IP in use within the DSG to draw that to our attention. We are aware of the ones that we are aware of, and we are in dialogue with them. We might not necessarily be aware of those OEMs that think they have IP within the DSG—that is an unknown unknown. I will take away her question about what we intend to do. I anticipate that the responses will not be made public, but I will get back to the hon. Lady on that point, in the context of the DSG sale.

If I may, I shall return to the clause; I know you are keen for us to get back to it, Mr Amess. The hon. Lady asked what would happen in the event of two contractors being involved in the GoCo, perhaps managing different domains, and what will happen with IP on transfer of the GoCo contract at its end. She also asked who would own the IP if a decapitation eventuality interrupts a contract. The IP is owned by the OEM—the prime contractor or subcontractor whose IP it is. The Ministry of Defence is licensed to use the IP as part of the contract for purchase of and subsequent support for the piece of equipment to which the IP relates, and that will continue to be the case.

If licences are held within a GoCo environment, they will be held at the operating company level. The hon. Lady will recall that it is the operating company over which the Secretary of State retains the ability, through the use of the special share, either to claw that business back into the MOD or to transfer it on to another party. Were the ownership arrangements of the management company to change, all the IP licences would be held within the operating company and it would therefore be within the power of the Secretary of State to transfer them in any of the circumstances that she mentioned.

I have addressed the specific questions asked by the hon. Lady and the hon. Member for Dumfries and Galloway. Moving on, subsection (1) enables the Secretary of State to provide a "protected work" to a contractor or its service provider without infringing copyright or database rights. Subsection (2) enables contractors or service providers to provide such works to each other and to the Secretary of State without infringement. The subsection also allows for a provision of the works to and from former contractors, to allow for the provision of such works in the event that the Ministry of Defence decides to change the contractor for defence procurement services, which we have just been talking about. Subsection (3) allows for the use of such works by the contractor or its service providers without infringing those rights.

The issues surrounding intellectual property were the subject of considerable interest on Second Reading, and, as the hon. Lady has pointed out, defence industry contractors have raised concerns about them with us. The Government intend that the contractor will receive only the copyright and database work that it needs to

deliver the defence procurement services required by our armed forces, and that the contractor will not use them for any other purposes without the permission of the Ministry of Defence. The contract that the Ministry of Defence places with the GoCo contractor will include specific provisions to that effect.

I can assure the Committee that every possible precaution is being taken to ensure that the transfer of DE&S to a GoCo contractor would not compromise the protection of information or our relationships with either international partners or our commercial suppliers. The contractor will have access only to intellectual property that is required to carry out its obligations under the contract. The contractor will only receive and have access to information and intellectual property in relation to contracts that are in its scope under the contract. Information and intellectual property that is outside the scope of the contract, or that the Ministry of Defence determines the contractor will not need, will be retained by the Ministry of Defence. Further protection will be placed in the contract itself. The contract will place conditions of use on the contractor in relation to the access to and use of third party confidential information and protected works supplied after vesting day.

Mr Tobias Ellwood (Bournemouth East) (Con): Can the Minister confirm whether existing arrangements would be transferred, were the GoCo to move forward? In cases where extremely sensitive information is involved, there are "British eyes only" rules that apply. Will the same process be continued in the contracts relating to GoCos?

Mr Dunne: I am pleased that my hon. Friend has referred to the existing security and vetting arrangements and has sought confirmation that those will be deployed in relation to a GoCo contractor. I can confirm that it is absolutely our intention to do so. I do not know whether the Committee would be interested in a summary of some of the vetting arrangements—*[Interruption.]* I note that some members of the Committee are interested, so I will find my relevant notes. This issue is relevant to the way in which the clause might operate.

As my hon. Friend the Member for Bournemouth East knows—I suspect he has been party to some of this, given his distinguished service for his country—we have four levels of MOD personnel security controls currently available, which depend on the level of assurance required. There is a baseline personnel security standard, which was previously known as the basic check. We have a counter-terrorist check at the next level. Above that, we have a security check, and above that, for the most sensitive material, we have developed vetting.

The baseline standard is not a national security clearance, but it aims to provide an appropriate level of assurance as to the trustworthiness, integrity and probable reliability of prospective employees. That applies to anyone who is coming to work for the MOD.

2.30 pm

Mr Ellwood: I beg your indulgence, Mr Amess, but I hope the Minister will agree that while there are certain circumstances where "British eyes only" is appropriate, the strength of our relationship with the United States has enabled quite a unique set of parameters to develop that allows the sharing of information in this context which is second to none.

Mr Dunne: My hon. Friend is absolutely right. We have very well established procedures, tested through both a "UK eyes only" and "UK/US eyes only" process, which apply to information that can be shared between UK personnel and US personnel. We are probably one of the most advanced nations in the way that we undertake vetting procedures of our personnel, security-mark material and protect security-marked classified material to ensure that it is accessible only to people who have the suitable level of vetting. We anticipate that this would apply within the GoCo just as it applies within DE&S.

Just to reassure hon. Members, at the most basic level of security, we are looking to verify four main elements: first, identity; secondly, employment history going back three years; thirdly, nationality and immigration status; and fourthly, a criminal records check, checking for unspent convictions only. Anyone seeking to work for the Ministry of Defence and any of our agencies is required to give a reasonable account of any significant periods—six months or more in the last three years—spent abroad.

While further inquiries such as into health status may be undertaken, those are not necessarily part of the baseline standard. This is required for all recruits into the civil service, including casual, temporary and work-experience staff and for contractors' employees where those employees need unsupervised access to confidential material of UK origin or unsupervised access to the MOD estate.

The basic vetting seeks to ensure that all new staff are entitled to work in the UK and where appropriate meet nationality rules for Government service, to guard against the employment of anyone posing as a prospective employee for commercial or personal gain and to provide a sound basis for any subsequent national security vetting check. This should be sufficient to allow access to UK assets protectively marked confidential and occasional access to secret assets of UK origin during the normal course of business or during conferences or courses. A number of supplementary checks such as into any spent convictions as part of an individual's criminal record and/or their creditworthiness are also available for specific posts where appropriate.

That is the level of background checking undertaken for the most basic entry level into the MOD and we would envisage that that would apply for GoCo employees as well. I do not propose to go into the higher levels of security vetting in detail here as that might expose them in a way that is not required by this Committee. I can assure members of the Committee that they are significant and taken most seriously.

Alison Seabeck: May I seek some assurance? While the Minister has been thorough in running through the different tiers, if an expert is employed from somewhere outside the UK where it is not possible to carry out some of those basic security checks, how will that be managed? Will they simply not be allowed to have any access at all?

Mr Dunne: The main operating base of DE&S is in the UK. There are DE&S personnel within operating bases around the country and in some operating bases abroad. So there are, for example, personnel at our bases in Germany and Afghanistan. We do not routinely

[Mr Dunne]

have cause for having procurement personnel located in other countries. Having said that, there are some personnel located abroad, primarily in the United States.

We made reference earlier to the joint strike fighter programme, which probably has the largest concentration of personnel from DE&S. Elsewhere, there are others in the deterrent programme. They are all recruited, as far as I am aware, from a UK base and deployed for specific purposes.

Mr Kevan Jones (North Durham) (Lab): Will the costs of vetting and ensuring that these individuals are of suitable clearance still fall on the taxpayer, or will that be the GoCo's responsibility? Whose job will it be to monitor the security status of individuals who have access? Will that be the MOD or does that fall on the GoCo's self-regulation?

Mr Dunne: The hon. Gentleman is tempting me to stray into areas of personnel management that I am perhaps not best equipped to cope with. My understanding is that the MOD pays for the security vetting procedures that it requires for an MOD or DE&S employee. Clearly, if security vetting requirements are imposed on our contractors, it will be for the contractor to pick up the cost of the vetting.

Mr Jones: That was as clear as mud. I understand that the Minister does not know the answer, so I would be happy for him to write to us afterwards.

Mr Dunne: I am very sorry to have disappointed the hon. Gentleman with my lack of detailed knowledge about employment practice within the MOD. I will be happy to put that right by writing to him.

On the hon. Lady's point on the status of individuals who might be working abroad, in the event that we are not able to achieve the security status vetting procedure, for whatever reason, they do not get the clearance and therefore do not get access to the relevant material.

You will be relieved, Mr Amess, to hear that I have almost concluded my remarks on the clause. I will do so by saying that the GoCo contractor, if we go down that route, will be required not to disclose intellectual property rights to third parties and not to use those rights for purposes other than for Ministry of Defence contracts without the express permission of the Ministry of Defence. With that reassurance, I hope that the hon. Lady will support the clause.

Alison Seabeck: The Minister was good enough to offer a detailed explanation of a number of the issues specific to the clause. We did move a little off piste, to be honest. He reiterated the extremely close relationship between the US and the UK on the management of highly sensitive information, which is well understood by every member of the Committee. He said that it is anticipated that that will continue under the GoCo, which brings us back to our continuing concern that, despite the history, there is still a degree of uncertainty on how the GoCo will work with our allies in the United States.

The Minister also talked about how the GoCo will be licensed to use IP. He talked about the complexity of transferring IP and how the move from the MOD to a private entity is being managed, but there is a lot of fuzziness and a number of grey areas. There are concerns about the time scale, all based around the issues specific to DSG and their potential impact on the GoCo. For example, the audit is under way and the Minister straightforwardly said that he would come back to me on how that was being managed specific to DSG. While that type of audit was held in relation to DSG, seeking views specifically from some of the prime contractors, there seems to be no facility or scope for a similar sort of process to be managed in relation to GoCos, where a similar sort of transfer—admittedly, with slightly different information—will go ahead. Therefore, on a matter of principle, we want to vote on the clause.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 9, Noes 5.

Division No. 3]

AYES

Colvile, Oliver	Lancaster, Mark
Dunne, Mr Philip	Mordaunt, Penny
Ellwood, Mr Tobias	Pawsey, Mark
Gilbert, Stephen	Wheeler, Heather
Hinds, Damian	

NOES

Brown, Mr Russell	Seabeck, Alison
Hamilton, Mr David	
Jones, Mr Kevan	Woodcock, John

Question accordingly agreed to.

Clause 8 ordered to stand part of the Bill.

Clause 9

TRANSFER OF EMPLOYEES: APPLICATION OF TUPE REGULATIONS

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss new clause 1—*Transfer of employees (relocation)*—

'Employees transferred to a company by virtue of arrangements mentioned in section 1 may not be required to geographically relocate outside of the UK without full and proper consultation.'.

Mr Dunne: The new clause, proposed by the hon. Member for Plymouth, Moor View, gives us an opportunity to discuss some of the employee transfer arrangements proposed in the Bill. I welcome that opportunity, although she will not be surprised to hear that I am not persuaded of the case for the new clause.

I believe strongly in protecting the interests of transferring employees in the event that the new company should decide to relocate some or all of the services outside the UK. However, I will resist the inclusion of the new clause because I do not think it is necessary. Those employees transferring to the GoCo are sufficiently protected by current UK employment legislation in this context; accordingly, there is no requirement to include this provision in the Bill.

Hon. Members will recall the note on the Transfer of Undertakings (Protection of Employment) Regulations 2006, which I provided by way of reference earlier this month, which explain the protections that those regulations afford to transferring employees.

For those who do not have that with them, or have not got that at the top of their mind, in summary the TUPE regulations protect employees if the business in which they are employed changes hands, or the services that they provide are to be provided by another organisation. Their effect is to transfer employees, and any rights, powers, duties and liabilities associated with them, from the old employer to the new employer. That includes any rights specified in their contract of employment, statutory rights and the right to continuity of employment.

In addition, the new employer cannot change the terms and conditions of employment of transferred employees if the sole or principal reason for the change is the transfer. That is also the case where the sole or principal reason is connected to the transfer unless there is an ETO reason for the change, usually requiring a change in number of the work force. That often makes it difficult, if not impossible, for new employers to amend terms and conditions of employment of staff immediately after a TUPE transfer.

The Bill makes clear and explicit that the TUPE regulations will apply to the employees transferred to the company, which will have the effect of protecting the employees' terms and conditions of employment in place at the point of transfer, as well as representational rights. The terms of employment that will be protected include any obligation with regard to mobility of place of work.

Civil service terms and conditions of employment generally contain a mobility obligation, both within the UK and abroad, for all but the most junior grades. Some of the employees who transfer to the GoCo will have on previous occasions relocated for work-related reasons, both within the UK and abroad, throughout their careers in the civil service.

2.45 pm

Any proposed change of work location would be subject to general employment law constraints, which require that any enforcement of a mobility obligation must be fair and reasonable, dependent upon the personal circumstances of the individual concerned. I would add that it is one of the attractions of working in the Ministry of Defence that there is an opportunity to work outside the UK from time to time for those individuals who have the right skills and aptitude. We find that quite helpful as a recruitment tool.

Hon. Members will be aware that the Government recently published their response to the consultation on the TUPE regulations and that the amendments that will come into force in the spring of 2014 will not have a detrimental impact on the employee. Further to the protections afforded to employees by the TUPE regulations, part 4 of the Information and Consultation of Employees (ICE) Regulations 2004 places a general obligation on employers to provide information to and consult employee representatives.

Consultation is the process whereby management and employees or their representatives jointly examine and discuss issues of mutual concern. It involves seeking acceptable solutions to problems through a genuine exchange of views and information. The consultation does not remove the right of managers to manage—they must still make the final decision—but it does impose an obligation that the views of employees will be sought and considered before decisions are taken.

To comply with their obligations under the ICE regulations, employers must provide relevant information to and consult employee representatives on all matters in relation to three specific points. First, recent and probable development of the undertakings, activities and economic situation; secondly, the situation, structure and probable development of employment within the undertaking and on any anticipatory measures envisaged, in particular, where there is a threat to employment within the undertaking; and, thirdly, decisions likely to lead to substantial changes in work organisation or in contractual relations.

The information must be provided at such time, in such fashion and with sufficient content as are appropriate to enable the representatives to conduct an adequate study and prepare for consultation. Any consultation must be appropriate in timing, method and content, and conducted with a view to reaching agreement on decisions within the scope of the employer's powers. In other words, the employer must ensure that any consultation that is conducted must be meaningful and commensurate to the change being consulted on.

For example, if an employer were planning to move current premises to a new building, say half a mile down the road, with no effect on working practices or work force numbers, it could be deemed that the impact of the change would be minimal and, accordingly, a minimal period of consultation of a few weeks would be appropriate. However, if the proposal were to relocate to new premises far removed in the UK, or even abroad, that would have a significant impact on the work force and a period of months would probably be deemed more appropriate.

In summary, established UK employment legislation provides the required protection to the employees that the proposed new clause seeks to achieve. I, therefore, ask the hon. Lady to withdraw it and to support the existing clause.

Alison Seabeck: Clause 9 relates to the potentially complex process of transferring a significant number of employees from the civil service within the MOD to a GoCo, should it be the preferred option, via the TUPE regulations, which the Minister has gone through at some length.

I will come to the new clause at the end of my notes and speak briefly about it. I would like to set down some of our concerns about clause 9 itself. We have all had the opportunity to read the written evidence supplied to the Committee by the trade unions. They have concerns that, under the TUPE regulations, the transfer of public sector workers to the GoCo, along with newly employed staff taken on by the GoCo using private sector flexibilities, has the potential to create a two-tier work force, where some employees have differing pay, terms and conditions. No doubt that will hinder progress on improving morale among former DE&S staff, which is currently rumoured to be low following the hollowing out of the Department.

The Public and Commercial Services Union and Prospect have both expressed only lukewarm support for the GoCo proposals, and the PCS feels that the risks inherent

[Alison Seabeck]

in transferring its members across to a GoCo are too high. However, it should be said that some of its members, currently feeling demoralised within DE&S, might be feeling that a GoCo could breathe fresh air into the work they undertake with great skill to support our armed forces. I am sure that all the unions could give examples to highlight staff shortages in key areas, the cost of neglecting skill sets, and the impact on what is basically a sound organisation's ability to recruit, develop and reward specialist staff.

Prospect currently has 2,000 members in DE&S, and the PCS has about 12,000 members across the whole MOD. We know that the Secretary of State accepts that there has been a gradual erosion of skills and capability in the organisation. His view, which appeared in the August 2013 issue of *Desider*, the in-house magazine for DE&S, is that that

"cannot be allowed to continue if we are to ensure the MOD's ability to deliver equipment to the front line."

The movement of staff across to the GoCo and the retention of some to work in the teams supporting the services—the requesters and the governor—need to be incredibly well managed to ensure that there is no imbalance and that the appropriate skills capability is preserved in each of the levels in which it is required. That goes back to our long discussion about clause 1.

The risk of a two-tier work force is real because of the ability of the new contractor to bring in new recruits to the operating company with different employment contracts. We have been digging and found that, rather oddly, DE&S is already recruiting people and using, to a limited degree, higher starting pay as a carrot, enabling them to leapfrog existing staff. Yet existing staff who are successful in applying for posts are deemed ineligible to benefit from the enhanced pay. I do not know whether that will be remedied by the transfer of staff to the GoCo—could it be exacerbated? I think that staff will be interested to know how the Minister sees that situation going forward.

We also need to hear whether the Minister foresees a potential situation whereby, if the GoCo was subsequently brought back in-house, any staff who benefited from better terms and conditions under the private sector would be transferred back to DE&S on the same terms and conditions, or transferred back to their current terms and conditions, which might be less favourable. I would be grateful for clarification on how bringing staff back in-house or transferring them on to another contractor might be managed, because the Minister, the Secretary of State and others have repeatedly held up the fact that the whole thing could be brought back in-house if the GoCo did not work. People need to understand how that would work for the staff.

The Bill also fails to clarify the status of military officers in DE&S and their place within a GoCo. Siren voices have rightly or wrongly said that one of drivers for the GoCo option was reducing the number of military officers involved in procurement. There have of course been issues specific to the length of their rotations, which, to be fair to the Government, the CDM has sought to remedy. The question is not strictly within the realms of TUPE rules, but does relate to the use and transfer of military personnel to the GoCo, and it needs clarification because they are part of the bigger picture of the skills mix that must be transferred across. The impact assessment for military personnel in the operating company suggests that they will not be employees of the contracting entity or the operating company. Could the Minister please clarify that? I know that it is slightly outside the remit of the TUPE transfer, but it would be useful.

Finally, pension schemes and the responsibility for their associated costs will be particularly relevant to the MOD if it needs to transfer people back in-house and finds that the cost of the pension scheme has risen in the interim due to the much-vaunted enhancement of terms and conditions that is apparently likely to occur in the GoCo. Liability to the MOD could change and the Minister's view on that could be useful. What is planned at the moment? Will employees take the new deal being designed for the principal civil service pension scheme with them into the GoCo? Does the Minister intend to renew the code of practice for staff transfers, which was signed by the MOD, the Defence Manufacturers Association and the CBI, and apply it to the GoCo?

Will the Minister set out clearly what type of restrictions might be applied to the freedoms and flexibilities that the operating company is likely to receive? The impact assessment makes a big play of the importance of those flexibilities, but will any restrictions be imposed in the contract? Will the contract insist on a training requirement, because it is not set out in the clause? If there is an additional need for training when staff are moved around by the GoCo, will that happen?

Quickly returning to new clause 1, the Minister is right that it was probing and intended to tease out how much flexibility the GoCo would have and whether staff would receive any protection, given the global nature of the GoCo consortium members, the bases and other functions of the DE&S, if they felt that mobility was unreasonable. I fully accept that many people join that element of the civil service in the MOD simply because there is the exciting possibility of mobility, but we need to ensure that that is covered.

Mr Jones: May I begin by saying what a pleasure it is to serve under your chairmanship, Mr Amess? I wish you all the best in the forthcoming election. Having served under your chairmanship before, I know that people will certainly not need hearing aids in the Chamber when you are in the Chair.

Clause 9 covers the transfer of employees and the protections given to them. It is welcome to see a Conservative Minister supporting the TUPE regulations, which stem from a good piece of European legislation. I was a full-time trade union official when they were introduced and brought some of the early cases. I remember the Conservative party of the time vigorously opposing the proposals as though it would be the end of the world for British business. I hope that the Minister can assure us that TUPE regulations will not be in the Prime Minister's much-vaunted renegotiation of European legislation and will not be removed. We will have to wait and see.

TUPE regulations have clearly been important when Government contracts have been moved to the private sector, but I must say that they have limitations. The first limitation is the duration of the protection for employees. It has been quite common in many outsourcing situations for a company to take over a group of employees

and protect them for the necessary 12 months. Then, lo and behold, we see either redundancies or new contracts being issued to employees. I understand Prospect's and PCS's concern that the protection for many of their workers will be only temporary. I can also understand why, as my hon. Friend the Member for Plymouth, Moor View said, morale is low at DE&S, given people's concern about knowing where they are going to be.

3 pm

There is another issue that, again, might be a boring human resources point—a personnel point in the old days, when I used to deal with it. I am thinking of the two-tier work force. It is quite clear what will happen if people transfer over on present civil service conditions. New employees will enter the organisation not on the same terms and conditions. I suspect that the organisation will be looking for ways to save money, which were referred to the other day. The key way of doing that is not taking the Community Secretary's view of saving paper clips, turning lights off or getting rid of pot plants, but getting rid of people, because people are the key driver of costs.

We could therefore end up, quite quickly, with a two-tier work force—or even a three-tier work force, if we have Crown civil servants and military personnel in there as well. They will be on different terms and conditions from the individuals we are discussing, plus the new employees of the GoCo.

Mr Dunne: Will the hon. Gentleman clarify his comments? I am confused as to whether he is advocating that the best way to introduce efficiencies into a GoCo is to sack people.

Mr Jones: No, I am not, but if we are realistic and honest, one of the key cost drivers is people. If the GoCo is to save money, it can do that by only two ways—either getting rid of people, or driving down terms and conditions of employment. Those two mechanisms will, I think, be used by the GoCo to ensure that the efficiencies are achieved.

The Government ought to be honest in acknowledging that point, not only in the public debate, but to existing employees. I have met some of them; I am sure the Minister has as well. Some have served long careers in the procurement system and have done sterling work. Treating them in this way is not correct. Regarding loyalty to the organisation, some people, if they are of a certain age, will leave the organisation. That will lead to the problems that have occurred in some of the other reforms that have taken place in the MOD.

I know personally that the Department is losing good people with good historical knowledge of the Department. That is leading to—how can I put this politely?—difficult implementations of certain policies in the MOD. To use a more vulgar term, it is leading to cock-ups in implementing the Government's programme in the MOD.

Mr Brown: Just to back up my hon. Friend's point, those of us on the Committee today who have a genuine interest in defence have witnessed that over the past couple of years. The way to reduce costs is, deeply regrettably, people. We have seen that not just with civil servants, but with front-line serving military personnel. That is a big price. Perhaps two or three years down the line, people will question whether it was a price worth paying.

Mr Jones: I understand what my hon. Friend is saying. Another point is that there is a common misconception in defence of "military personnel, good; civil servants, bad". That is a simplistic argument that I think we, in all parties, have fallen into for far too long.

The argument does not recognise the fact that when we talk about the civil service, or when the press talks about the pen pushers, we mean people with highly technical skills, without whom we would not be able to deliver the capability that our armed forces need in their operations. It is important to acknowledge not only their career path, but the knowledge that a lot of them have built up over many years, which is invaluable.

It is argued that driving down the number of civil servants is a good thing. Obviously, it is a bad thing, but the Government are doing it anyway, and driving down the number of armed forces personnel. I know from my time at the Ministry of Defence that the cost of employing military personnel is far more than that of employing civil servants. If we lose the knowledge that is in the DE&S, we could have a situation in which it will have to be back-filled by military personnel, which will be more expensive, and that will obviously lead to costs as well.

My hon. Friend the Member for Plymouth, Moor View touched on the issue of pensions and exactly what the situation will be. There are two issues. One relates to civil servants in the Government scheme. Will the pension liabilities transfer—I guess not—and who will pick up the tab for the continuing liability of the people who have accrued pensions over a long period?

I am sure that any new pension scheme that could be offered by the GoCo employer would be on less generous terms than that currently enjoyed by civil servants. Have the Government given any thought to how that will be managed to ensure that there will not be a huge leakage of people? They might think it is time to leave if they are in a situation whereby their new pensions are going to be on a very inferior basis.

The idea that TUPE regulations make it impossible for a new employer to change terms and conditions or get rid of people is a misconception. That is not the case. The Minister challenged me and asked whether I was suggesting that that is how the GoCo will save money. No, I am not, but it will. The only way it will save money is by introducing inferior terms and conditions or reducing the headcount of people in the organisation.

I come back to my favourite subject of Bernard Gray. In his evidence to us, he claimed that the main driver for why we need a GoCo is that we can actually pay people more. I am sure he does not mean that everybody in the new GoCo will be paid more; I think he is possibly talking about attracting a certain number of individuals who will be on a higher scale of remuneration, and on a package such as he enjoys, which is in the public domain. I am not sure whether the Government have legally signed it off yet, but his salary is far higher than the Prime Minister's.

That salary runs counter to what we have heard from the coalition Government over the past few years, which is that we should be driving down the pay of civil servants and those working for public bodies on the basis that they should not earn more than the Prime Minister. Yet the Government are setting up a mechanism to pay a salary higher than the Prime Minister's, which shows how naive and stupid the original policy was in terms of trying to attract individuals.

[Mr Kevan Jones]

It is not clear what Mr Bernard Gray is trying to get at. He gave evidence to the Defence Committee on 4 September this year. The Chair said to him:

"What you are essentially trying to do is to persuade the Treasury to loosen some of the restrictions on the civil service terms of employment for DE&S-plus. Is it possible for them to do that for DE&S without also doing it for all the other Government Departments?"

We can achieve that without going down the GoCo route, as with existing examples such as the Debt Management Office. When the Chair asked him what the answer was, he said, "We don't know yet." He did not know on 4 September this year, but we are now considering a piece of enabling legislation, which will give freedom to the Government to enact the GoCo—to go through the competition that they say they are going through at the moment. Everything comes back to a flaw that goes through the entire piece of legislation, which is the detail.

We are being asked to scrutinise the Bill, as the other place will be, but with much of the detail to be put in place afterwards. We may return to discuss that situation under one of the later clauses, but it is vital that the matter comes back to Parliament before the GoCo takes place. The employees are faced with uncertainty, because of the potential difficulties it could create, even with the TUPE regulations put in here; in future, the present Conservative Government could abolish TUPE negotiations altogether, and then where would that leave the employees?

Finally, to reiterate what my hon. Friend asked about where the TUPE regulations will apply, they will clearly apply if the civil servants and other people move from DE&S to the GoCo, but if, for example, as was described at length the other day, the Government use their golden share to bring the GoCo organisation back in house, will those people be transferred on their new terms and conditions, or will they return to civil servant terms and conditions?

Going back to Mr Bernard Gray's evidence to the Select Committee, those people would then be out of synch with any civil service scheme. We need to understand where TUPE applies, therefore, and the Government need to be clear about what the terms and conditions of people would be if we brought them in house. Will they revert to the old civil service, or remain on their existing contracts?

Mr Brown: I want to add one or two things to the points made by my hon. Friend. As a trade unionist, many of us thought that the Transfer of Undertakings (Protection of Employment) Regulations were going to be a saving grace when they arrived on the scene; TUPE was going to be the white knight on a charger coming over the hill to save everyone. My hon. Friend, however, has made it abundantly clear that TUPE is not an absolute saving grace; it is nothing more than a temporary measure. All those people who are involved and caught up in the whole situation as we move forward—the civil servants and all the staff producing products for our military—deserve as much security and certainty as anyone else. The tragedy is that the Bill gives them nothing.

On 5 September, the trade unions were asked—by me—what the feeling on the ground was. The response came back:

"There is massive concern on the ground. People are very unsure; they still do not understand how the transfer will take place. There has been an announcement this morning about potential changes to the TUPE rules."—[*Official Report, Defence Reform Public Bill Committee,* 5 September 2013; c. 75, Q157.]

TUPE is only as good as how it is written up and constructed today. If we seek massive changes to the TUPE rules in future, what will that mean for any work force anywhere in the country?

Over the past six or seven years, I have witnessed on a number of occasions businesses changing hands, contracts changing and TUPE regulations coming in to what was deemed to be help for the work force. I am struggling to discover whether there was a single occasion when people were given anything more than a little bit of protection. There was no real benefit for people.

3.15 pm

Both my hon. Friends referred to pensions. I remember one large public sector organisation that decided to hand everything over—it took everything out-house, I should say—and went to a contractor. The pensions for a work force of more than 150 went missing for three years. That was a really traumatic time, although thankfully we managed to get the situation resolved at the end of the day. It is not just about hourly rates and terms and conditions that people have to adjust to on a day-to-day and week-to-week basis, but about what lies behind that, and perhaps years of pension contributions.

Only last Friday I met a chap who works for the local council and came to see me about a worrying situation, which relates to this point about people being on all sorts of different terms and conditions when a change is made. There was one section in my local authority that brought in a contractor to do part of the work. This involved completely different terms and conditions and a significantly higher annual salary. Some two years later, the council has decided that the contractor can go, but that the work force belonging to the contractor will now transfer to the council. The people who worked for the contractor will retain their terms and conditions. The ridiculous thing is that some of the council staff initially transferred to the contractor, so there are guys who have probably worked together for around 20 years who had the opportunity to go to the contractor on new terms and conditions, but are now coming back on those protected terms and conditions for a period. That does nothing more than cause animosity within a work force, which was why I had someone knocking at my door.

Oliver Colvile (Plymouth, Sutton and Devonport) (Con): May I say how pleasant it is to serve under your chairmanship, Mr Amess?

The hon. Gentleman makes an interesting case, but I am curious because this situation has been arising not for the past five or 10 years, but for somewhere in the region of 20 years. I remember being slightly involved with some of this stuff when we were talking the reorganisation of local government. Why is the hon. Gentleman making his point only now, rather than trying to deal with the situation when Labour was in power? I am curious to know some of the thinking behind this.

Mr Brown: I thank the hon. Gentleman for his intervention, but the TUPE regulations came in only in 2006. I do not doubt for one minute that there was lots

of activity going on out there for the last 20 or 30 years, but this is seen as some kind of protection, and I have to tell the hon. Gentleman and his colleagues that at least it is something—something is better than nothing. The reality is that there is a strong history of the process being abused at a later stage.

Mr Jones: We also need to remember that the Conservative party, including their MEPs, fought elections opposing the TUPE regulations.

Mr Brown: My hon. Friend is absolutely right. He has a long pedigree—

Mr Jones: And a long memory.

Mr Brown: Undoubtedly a long memory as well.

Mark Pawsey (Rugby) (Con) *rose—*

The Chair: I call James Pawsey.

Mark Pawsey: Mark.

The Chair: I apologise; that was the hon. Gentleman's father.

Mark Pawsey: Is the hon. Gentleman seriously suggesting that we should not make any changes to defence procurement because of his concerns about TUPE and that instead we should have a whole new set of TUPE regulations that are appropriate to the Bill?

Mr Brown: I am sure that you will not make that mistake again, Mr Amess, if you are sitting in the big Chair downstairs at some point in the future.

I say to the hon. Gentleman that I am living in the real world, because I do not expect a new regime to be put in place to protect the work force that will be dealing with vital work for the security of our nation. In our evidence session back on 5 September, it was abundantly clear that the two trade union representatives had serious concerns for the people they represent. We need a quality work force delivering for us, and they need a degree of certainty.

I fear for the loss of experience and talent. In my constituency, I have seen talented people walk away from businesses that have been taken over by other companies when TUPE protection was supposed to be in place. TUPE is not the answer to all the woes that we will witness.

Mr Dunne: I made my contribution to our debate on the clause at the outset, so I shall address some of the points that have been raised by the hon. Member for Plymouth, Moor View and her colleagues.

The hon. Lady asked about the skill base within DE&S. She is quite right to raise that because it is fundamental to the success of DE&S that we are able to recruit and retain suitably qualified people with the right skills. The fact is that there are vacancies in DE&S and we have an ongoing recruitment campaign. That campaign was kicked off this summer, and I am pleased to say it is having success in recruiting more skilled people to the organisation.

When I was giving oral evidence to the Committee, I said that the proposals were not about cutting jobs, as was suggested a few moments ago by the hon. Member for North Durham, but about ensuring that we are in a position to recruit and retain the right people. Does that mean that there will be different rates of pay for those new joiners coming in under a GoCo and those who have been TUPE-ed across from the existing organisation? At the beginning, that might be the case for some people, but it is not the intent. There is no intention to create a two-tier system of employees based on whether they have just been hired or have been in place for some time.

Mr Jones: I am reassured by what the Minister says and I am sure that the work force will be, too. Will he give a commitment today that if DE&S goes over to a GoCo, the number of jobs in the GoCo will be protected?

Mr Dunne: No. As the hon. Gentleman well knows, I am not in a position to protect job numbers in an organisation when we are seeking to outsource the management of that organisation to somebody else. That would not make any sense at all. What we are seeking to ensure is that all employees in the new GoCo environment have the opportunity to benefit from whatever improvements to their existing terms and conditions are put in place by a new manager.

Mr Jones: In light of what the Minister has just said, will he give an assurance to the employees of DE&S that whoever takes over the new GoCo will not get efficiency up by reducing the work force, or can he not say that?

Mr Dunne: As I pointed out to the Committee two days ago when we were discussing where savings and efficiencies will come from, the big target is to make efficiencies in the procurement programme itself, which accounts for 82% of the spend managed by DE&S. There may be savings and efficiencies to come out of the operation and organisation of DE&S itself—I am sure that there will be—but we would anticipate that the bulk of the savings will come out of better procurement.

Alison Seabeck: I appreciate that the Minister is trying to answer the questions we posed. Something has occurred to me about how staff will be selected to be transferred across to the GoCo. At what stage in the process will the MOD have discussions with the GoCo on which individuals sitting within DE&S have the skill sets that the MOD wants to keep, but that the GoCo might equally want? How will those discussions be resolved?

Mr Dunne: That is an interesting question. The hon. Lady rightly points to the fact that we intend, as was clear from the letter I recently wrote to the Committee, to retain some skills within the MOD to enable it and the commands to retain the intelligent customer role. There will be some time between the decision point at which we decide whether to go down a GoCo route—and

[Mr Dunne]

with which winning consortium—and such time as the contract takes effect. We anticipate that that will be a period from next summer until the turn of the year. Therefore, over several months in the second half of next year, discussions will take place between a successful contractor and the MOD about which individuals go in which direction. I gave an indication of our current assessment of the order of magnitude of those transfers in the letter I wrote and that is as far as I can go at the moment.

Alison Seabeck: I will continue on this line. We received the Minister's letter with the specifics on the numbers but, for the benefit of the Committee, will he state at what point in the period between the GoCo being accepted and starting and the staff being transferred will consultation happen with the work force and their representatives?

Mr Dunne: There is continuous consultation with the work force about the whole process that we are going through now. There are regular sessions between management and interested employees, and I addressed a town hall session of employees when we announced the White Paper in May. I assure the hon. Lady that there will be regular discussions. As to the formal consultation process, I cannot stand here now and say when that will start, but I commit to there being one.

We expect that there will be some discussion with the consortia as to their views on the types of roles, rather than individuals, that they would anticipate that they will need, or like to see left at the MOD, so that might form part of the negotiations in the first half of next year. Implementation will then take place in the second half of next year.

Alison Seabeck: I thank the Minister for his patience. Is there any risk that, given the relationship that exists between some of the bidders in the GoCo consortia and DE&S staff, bids could go in for individuals—because they had been appointed with them, or they understand their skill sets—rather than just the post?

Mr Dunne: Given the scale of what we are talking about, it is most unlikely that there will be discussions about individuals until the structure of the separation is clear. At the most senior levels—the board level—within DE&S, there will be exposure involving individuals within DE&S and the bidders, so views may be formed about a small number of individuals, but I would expect that that would be a handful. This is essentially a transaction involving several thousand people and we will not be providing access to those individuals for the bidders until such time as the contract has been signed.

The hon. Lady asked whether terms and conditions would remain in place on a transfer back to the MOD or to a third party. Clearly, if terms and conditions that were transferred across in the first instance were subsequently changed by a GoCo operating company and there was a subsequent transfer, those enhanced terms and conditions would be inherited either by the MOD or another party. At present we have no intention of bringing that business back into the MOD. The much more likely eventuality in the event of a transfer is that another consortium would come in and inherit the terms and conditions prevailing at the time.

3.30 pm

The hon. Lady and the hon. Member for North Durham both mentioned pension arrangements. Staff who transfer will remain members of the current pension scheme, and they will of course have the opportunity in future, should a new scheme be established by the GoCo operator or should access be made available to an existing scheme, to choose whether they wish to move into that new scheme. For the time being, however, they would remain within their existing arrangements.

Mr Jones: That is very interesting. Who will pick up the employer's liability for those individuals? They will no longer be civil servants. The Minister says they will keep the scheme when they transfer to the GoCo. Will the GoCo reimburse the MOD for those contributions?

Mr Dunne: From his work prior to joining this place, I am not sure how familiar the hon. Gentleman is with transfers of businesses, but there is a perfectly well established route under which both pension liabilities and contributions are transferred when an employee moves between one organisation and another. That typically involves the existing pension scheme continuing to receive contributions for those individuals who have chosen to stay with the scheme, and they continue to have the benefits of that scheme. In the event that the individual chooses to move to a new scheme—and it is the choice of that person, rather than the corporation—the contributions would be paid into the new scheme and a portion of the liabilities in the old scheme, as assessed by actuaries, would also be transferred. That is what happens in real life.

Mr Jones: Yes, I am quite well aware of what happens in real life. Ten out of 10 for the Minister.

I will be kind to the Minister because it is Thursday afternoon. If he does not know the answer, he may write to me if he wants.

Mr Dunne: I have given the answer.

Mr Jones: No, that was not an answer. For those who transfer to the GoCo but remain in the civil service scheme, will the employer's contributions be paid into the scheme by the GoCo? The contributions will certainly be a lot more generous than those offered to new employees in a new scheme.

Mr Dunne: I have just explained it to the hon. Gentleman.

Mr Jones: No, you haven't.

Mr Dunne: I specifically said that contributions relating to individuals who are staying in the existing scheme will be paid into that scheme. I did not say that both the employer's contributions and the employee's contributions will be paid into the scheme, but that is how it works—contributions in total.

Mr Jones: I am sorry, but the Minister has not answered the question. The contributions for the new provider will be quite big if it has to meet the more generous contributions to the civil service scheme. It is important, therefore, to know whether those contributions will be picked up by the GoCo, which I assume is what the Minister is saying. Or will the taxpayer still pick up those contributions? Clarity is needed.

Mr Dunne: The hon. Gentleman is assuming that a GoCo operator will set up a new scheme with more generous terms. We simply do not know that. Even if the terms are less generous than those applicable to members of the civil service pension scheme, the individuals will most likely choose to remain with the civil service scheme. In that case, the contributions, both employer and employee, will continue to be made into the civil service scheme by the GoCo employer and the individual who becomes an employee of the GoCo.

Mr Jones: That is fine. We have finally got there. The new GoCo employer will pay the employer's contributions to the civil service scheme. I accept that there will be an option for people to go into the new scheme, and they will clearly set up a new scheme because new employees of the GoCo post-transfer will not have the right to join the civil service scheme. Therefore, there will be two separate schemes running. It is not a matter of whether the GoCo will choose to set up a pension scheme; it will set one up.

Mr Dunne: The hon. Gentleman is right that new employees will need pension arrangements. Whether the GoCo sets up a new scheme or whether the existing scheme of one of the members of the GoCo consortium is made available will be a matter for it to decide.

Mr Jones *rose—*

Mr Dunne: I am going to move on. We have done this one to death. I am sorry, but I am not willing to take another intervention on the same subject. We have covered it about six times.

The hon. Member for Plymouth, Moor View asked about military secondments. Those on the MOD payroll and the military register who are seconded to the GoCo in the future will remain MOD employees, and their remuneration will be reimbursed by the GoCo if that is what is determined in the contract. They will continue to benefit from the terms and conditions of their military service. The hon. Lady asked whether the code of practice will continue to apply to the GoCo. I would like to come back to her on that matter in writing, but I imagine it will. I think I have addressed all the issues she raised.

The hon. Member for Dumfries and Galloway described these arrangements as temporary measures. I am not sure which aspects of the proposed transfer of DE&S into a GoCo he regards as temporary, but I assure him that there is no intention for it to be a temporary measure.

Mr Brown: The point I was making—I apologise to the Committee if I did not put it across correctly—is that no one should see this as a solution to all problems. It may, as has happened in most cases, turn out to be a temporary solution before something much more drastic befalls the work forces.

Mr Dunne: I can seek to reassure the hon. Gentleman if he is sceptical about whether this will be a lasting transformation. It is certainly our intention to find a new and improved arrangement for procurement and defence that will endure beyond the life of this Government and the next Government. We think this is the right way to go for defence procurement for succeeding generations.

Alison Seabeck: My hon. Friend the Member for North Durham, who has a wealth of experience as a Minister, persistently flagged up the issue of the transfer of pensions and his concerns about the leakage of personnel that may result from these changes. He also flagged up the potential for a three-tier work force, and the continuing uncertainty about the ability to move work into the GoCo, out of the GoCo and potentially back again. The Minister reassured us and said he does not think that is likely to happen—it is more likely to be a move from contractor to contractor. However, even in those circumstances there is upheaval and the risk of ever-changing terms and conditions.

My hon. Friend the Member for Dumfries and Galloway spoke with a degree of expertise about TUPE transfers and the mismatch that results when outsourcing happens and people work together in the same workplace, doing the same jobs but on different pay and conditions. TUPE was introduced only in 2006, and it has bedded down, but there are clear signs that in some places it is being abused and is not offering full protection for work forces.

Government Members have been enthusiastically hopping up and down and saying the Opposition have got it all wrong, but they are incorrect in their assumption that we intend to oppose the clause. We do not intend to oppose the clause, because TUPE, on the whole, is the best game in town and therefore we are not willing to go back to the drawing board on the clause.

I thank the Minister for his offer to write to me on one or two issues that have been raised, and I look forward to receiving his answers. We will not oppose the clause and I believe that the new clause will be discussed later.

Question put and agreed to.

Clause 9 accordingly ordered to stand part of the Bill.

Clause 10

Transfer schemes

Question proposed, That the clause stand part of the Bill.

Alison Seabeck: This clause, which you may not have had the benefit of reading, Mr Amess, deals very seriously with the decapitation process and enables the Secretary of State to design a scheme to allow for a hopefully smooth transition between one contractor and another. Of course, clause 10 is linked to schedule 3 and allows—although I will be brief on this—a degree of revisiting of some of the arguments we made during earlier debates.

[Alison Seabeck]

The clause gives the Secretary of State the power to make a scheme to transfer properties, rights and liabilities in two circumstances. The first is where the contractor is in breach of a "services contract", defined in subsection (6) as

"a contract…to provide defence procurement services…by virtue of arrangements mentioned in section 1",

where the breach occurs in circumstances of, or is of, a specified kind. The second is where the contract has come to an end; in other words, the nine years is up and the term has expired.

However, we did not really tease out whether the Minister or the Chief of Defence Matériel realistically expect to run two contractors or more in tandem, which, of course, is also possible where there has been a failure or breach of a services contract in a given or specified way. Does the Minister have a view on exactly what the time scale for this type of transfer might be? For how long could there be a potential overlap between one contractor and the other—never mind the issue of two contractors potentially running in tandem, perhaps running two different pillars of the services separately? It would be helpful to know whether he has a view on this, or whether it is a question of "how long is a piece of string?"

Will firms that have contracts currently being managed by the contractor that is about to have its rights and powers transferred have any say in the matter? Let's face it: this is yet another pair of hands through which their IT might be moved, just to express one concern they might reasonably have. Will there be any consultation with industry about the relative success and failures of the contractor that is about to be divested of its interests? I am talking here about when a contract is coming to the end of the time scale, not when there has been a particular breach of contract. Will the contractor's views be sought?

Subsection (4) allows for certain property, rights and liabilities to be left with the contractor. Who will oversee this process and reach a view that this power does not allow the Secretary of State simply to give away Ministry of Defence assets? Who will assess the value of those assets, and at what stage in the process will that assessment be made?

Paragraph 3 of schedule 3 refers to compensation being offered

"to any person whose interests are adversely affected"

by the scheme. Just how broad is that commitment, and will it extend to individual employees? Again, an example of where and how this power might be used would be useful.

The powers in schedule 3 also allow for contracts of employment to be transferred. Can the Minister please explain the circumstances in which that might happen, so that we can understand whether there are any unexpected implications for personnel or whether it is all very straightforward? This refers back, of course, to the TUPE issue.

Paragraph 4 of the schedule reminds us of the potential for

"foreign property or a foreign right"

to be a concern in that regard. If the Minister could paint a picture of the scenario specific to foreign property and rights being transferred, I would appreciate that too.

3.45 pm

Mr Dunne: Clause 10 and its related schedule 3 provide a number of necessary safeguards, including the power for the Secretary of State to create a transfer scheme that will enable the transfer of the business to another contractor or, in extremis, back to Ministry of Defence. When a contract expires or is terminated for whatever reason it may be necessary for the Ministry of Defence to manage operations of procurement or to transfer the undertaking to a new company.

The hon. Member for Plymouth, Moor View asked some specific questions about how such a transfer might take place, including the length of overlap between one contractor and its successor. It is hard to envisage the timetable that might apply. In part, there will be provisions on termination in the contract that is eventually negotiated between the GoCo contractor and the MOD, which might include some timings of termination arrangements. The best guidance I can give is that if the decision is taken early this summer to proceed with a GoCo, we anticipate that the GoCo contract will become effective around the turn of the year. That suggests that a period of around six months will be required from agreeing a contract to it being implemented. That might be a suitable guide as to the interval required between a decision to make a transfer and the transfer being implemented, but it will depend on the circumstances of the transfer. If it is orderly and on a re-let of a contract, there will be a clear timetable. However, if the powers are being taken over by the Ministry of Defence because of a breach or a failure—the hon. Lady was right to say that those circumstances would be different—the Ministry will have to be in a position to stand in the shoes of the contractor more or less instantly once that decision has been taken.

The hon. Lady asked whether we envisage having two GoCo contractors running in parallel. I hope that when she has the opportunity to read the letter that I provided to the Committee earlier today, she will see that we are considering a phased transfer by domain, with the initial domain—maritime—transferring two years before the competition for the remaining domains becomes effective. It is likely that the successful contractor for the initial domain will also be in the competition for the other domains and in a strong position to win them, but it is important that we maintain competitive tension to ensure that the contractor puts in a competitive and compelling bid for the other domains. Therefore, we do not intend to give exclusivity rights over those domains to the successful contractor for the initial domain, which opens up the prospect of having different contractors in the future. We will have to wait for the outcome of the competition before we know whether that will apply or not.

Alison Seabeck: I have a very small point to make. I assume that there is nothing to stop the contractor operating the first domain bidding for any subsequent domains.

Mr Dunne: As I say, such a contractor would be in a strong position to bid for the other domains because it was most closely embedded in the relationship with the MOD. It certainly would not be precluded from bidding. In fact, it would be encouraged to bid, but we also wish to encourage others to keep them honest.

The hon. Lady also asked whether there would be any consultation with industry or the contractors about a transfer in the event of the MOD contemplating that before it took place. In the event of poor performance by a GoCo contractor, there would be an almost continuous dialogue between the MOD, the commands and the contractor to encourage an improvement in performance. There would be significant consultation with the contractor. On whether we would consult with the industrial base that was supplying services, it would be expected that, if suppliers were expressing frustrations about the conduct of the contractor, they would bring those to our attention. I expect that we would have discussions, but it is unlikely that we would be involved in some formal consultation, because if suppliers were unhappy about the strength of the contractor in negotiations with them, they might have an incentive to be disobliging about it, so as to remove it in favour of somebody who might be softer.

Alison Seabeck: I therefore assume that it is the role of the governor to listen and talk to suppliers in different forums, being sensitive and picking up on particular issues.

Mr Dunne: Yes. The hon. Lady correctly anticipates that the role of the governor will be to manage the relationship with a GoCo contractor and ensure that issues arising through the commands out of the MOD—concerns about its performance—are brought to the attention of the contractor so that it can remedy them.

The hon. Lady also mentioned clause 10(4) and raised the spectre of the Secretary of State having the power to give away assets in the event of a transfer, suggesting that in some way the taxpayer might suffer. There is no intent for the Secretary of State to give away assets. Remember that a GoCo contractor will be the agent of the MOD. The MOD will retain ownership of the assets. Assets that might be given away that I can conceive of are likely to be intangible assets, such as software programmes or analysis that the contractor has developed on a proprietary basis, which it might be able to retain. We will not find ourselves in the position where a substantial asset base is given away. This is not sale of gold bullion at a knock-down price. *[Interruption.]* I am seeking inspiration, getting to the stage of the evening where glasses are needed.

I have had some advice saying that, as drafted, the contract will be for all four domains and that, in respect of competition for the four domains, including the joint domain, after the initial phase is over the subsequent phases will transfer automatically, in the event that the performance of the contractor has been up to speed. Whether that survives negotiation remains to be seen. Maintaining an element of competition before agreeing the transfer of subsequent domains is quite important. We will be negotiating that as we proceed down the track.

I sense that there is no great problem with the principle of having the Secretary of State retaining the power to transfer the business either to another contractor or back into the MOD, and the hon. Lady is indicating that that is the case. That leaves me to say that it is important for the Secretary of State to retain the power to decide exactly what is to be transferred at the point that the transfer scheme is created. The power may be exercised in unforeseen circumstances, so maximum flexibility for the Secretary of State is required under the clause.

The contractor will be conducting work that is critical to national security and it will not be appropriate to rely on contract provisions alone. For example, where the entity becomes potentially insolvent and elements of the business are liable to fall into the control of an administrator, a statutory provision will offer more certainty and control, and therefore less risk. Contractual provisions are more easily amended or subject to dispute.

In addition, third-party rights can usually be transferred only with the consent of the third party or as a transfer scheme, such as under clause 10, that can direct that such rights are transferred. The intention is therefore to use such a scheme only in a limited number of scenarios, such as early termination of a contract. The critical national importance of defence procurement makes it inappropriate to rely on contractual provisions alone. Moving assets via a transfer scheme will avoid the need for third-party consent and ensure the continued delivery of defence procurement services.

Question put and agreed to.

Clause 10 accordingly ordered to stand part of the Bill.

Schedule 3 agreed to.

Clause 11

Financial provisions

Question proposed, That the clause stand part of the Bill.

Alison Seabeck: I shall be brief. We have already debated at some length the risk and the moneys being paid out to cover various liabilities. The clause sets out the ability of the Secretary of State to make payments from money provided by Parliament for certain expenditure that may be incurred when the Secretary of State takes on the contractor's liabilities. Does the Minister expect that that will be paid at the end of the contract, if it runs for the contracted period, or is it simply for use when the contractor fails and the MOD has to undertake a transfer, as set out in clause 10?

Mr Dunne: If I may, I shall set a little context before responding to the hon. Lady's specific question. Given the scale of the change we are proposing—we want to transfer a function of Government to a private company—it is appropriate that the Secretary of State seek parliamentary approval through the Bill. The proposed arrangement is distinctly different from other transfers to the private sector. It is not a full outsourcing of a purely transactional or commercial activity, as the Government will retain a special share to be able to exercise a step-in function. The Government will therefore have a continued interest in the operating company, rather than it being fully moved into the private sector. That also has implications for the classification of the GoCo by the Office for

[Mr Dunne]

National Statistics. Value for money to the taxpayer is of the utmost importance and one of the key drivers of the change in how we procure equipment for our armed forces.

I assure the Committee that no public money will be used to establish the new management company. All costs in establishing the management company will be met by the successful bidder for the contract. Once the contract has been awarded, the Secretary of State will be required to authorise payments from the Department's budget for the enduring costs associated with the new arrangements. That cost is no different from that incurred by the Ministry of Defence today, although how it is reported to Parliament will change. In addition, as it is a possibility that the new arrangements will be vested part way through a financial year, it is felt appropriate to ensure that there is clear statutory authority to make such payments, hence the clause.

The Secretary of State needs the ability potentially to provide working capital out of voted funds, but it is anticipated that that will be required only in limited circumstances. An example of when that power might be exercised is at key dates when substantial numbers of staff transfer to the new company, which might create a temporary cash-flow issue for the company. It might represent better value for money for the Government if they provide temporary working capital cover, rather than getting the company to fund that commercially. If the power is not given, additional costs might be incurred unnecessarily as a financial liability will be placed on the contractor, resulting in interest being applied that will ultimately be invoiced back to the Ministry of Defence under the terms of the contract.

The clause will give the Secretary of State the authority, where appropriate, to take on liabilities incurred by the contractor to ensure the continued integrity of the operating company as an enduring entity if the management contract is terminated, when it is re-competed or, indeed, when it starts up. For example, that may relate to contingent liabilities, non-insurable risks or when the cost of insurance does not represent value for money to the Government. The step-in right means that the Ministry of Defence accounts will recognise liabilities that extend beyond a single year.

Those are all strong reasons why I believe it appropriate to put these provisions to a statutory basis. Financial risk will be appropriately distributed, and the accountabilities, limits of responsibility and associated governance of the contractor will be defined in the contract.

4 pm

Some risks must remain with Government, but those risks, when it is value for money to transfer to the contractor, will be transferred through the contract. The contractor will act as agent for the Ministry of Defence and manage the delivery of defence equipment procurement, support and logistics. That will involve the provision of accurate information to the Ministry of Defence to enable it to construct a robust and affordable equipment plan and a focus on delivery of outputs once agreed.

The contractor will be responsible for providing financial management information to the Ministry of Defence in compliance with "Managing public money" and international financial reporting standards as adopted by the Treasury. As such, the contractor will be responsible for ensuring advance notification to the Ministry of Defence of any new contingent liabilities, provisions or losses arising from the contracts it is managing.

The capability programmers of the Ministry of Defence will remain responsible, as they are now, for deciding the equipment setting—what should be bought and when—and the contractor will be free to make appropriate management decisions about how best to deliver those outputs. The accountabilities, limits of responsibility and associated governance of the contractor will be defined in the contract.

The Government will retain the right to make changes or provide direction on specific projects, although that will be subject to a formal change control process to ensure that boundaries and accountability are clear.

The GoCo companies will be UK registered and domiciled, as we discussed on Tuesday, and pay UK tax. It is expected that British and non-British companies will be involved in the ownership, but that the contractor itself will be British. However, it is anticipated that its shareholders will include international firms, similar to the GoCo that manages the Atomic Weapons Establishment.

For those reasons, the direct answer to the questions asked by the hon. Member for Plymouth, Moor View is that the flexibility will be there to provide finance at any stage during the process, as and when required to cope with eventualities that we cannot foresee here today.

Question put and agreed to.

Clause 11 accordingly ordered to stand part of the Bill.

Clause 12 ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned. *—(Mark Lancaster.)*

4.2 pm

Adjourned till Tuesday 15 October at five minutes to Nine o'clock.