MEMORANDUM

ARMED FORCES BILL

Background

1. Every five years an Armed Forces Bill is brought before the UK Parliament to extend the Acts that provide for discipline in the Armed Forces. The latest Bill, currently before the Westminster Parliament, also includes provisions relating to the jurisdiction of the Ministry of Defence Police, which require the consent of the Scottish Parliament. The Bill had its first reading on 11 December 2000 and its second on 9 January 2001.

Content of Bill

2. The Armed Forces Bill continues the Army and Air Force Acts 1955 and the Naval Discipline Act 1957 for a further 5 years, subject to annual renewal by Order in Council. Other provisions in the Act include measures providing a regime for Armed Forces Service Policemen to exercise powers of search and seizure, updating the systems of Courts-martial, and extending the powers and changing the conduct procedures of the Ministry of Defence Police. The provisions generally relate to matters which fall under the defence of the realm reservation in the Scotland Act 1998. Those relating to Service Policemen only concern policing of people subject to Service law. However, those relating to the Ministry of Defence Police also concern the devolved matter of the prevention and detection of crime in the civilian sphere, and confer jointly on UK and Scottish Ministers a power to commence the provisions in Scotland.

Proposal

3. The Ministry of Defence Police (MDP) is a civilian police force constituted under the Ministry of Defence Police Act 1987. Currently, MDP has jurisdiction in relation to defence land, property and personnel within the United Kingdom. It can also operate in the vicinity of defence land where a constable of a local force has asked for assistance. Constables nominated to MDP in Scotland are required to make the same declaration as constables of the civilian police force under the Police (Scotland) Act 1967. Within their jurisdiction, MDP officers have the same powers and privileges as constables as provided for by section 17 of the 1967 Act, the common law and other statutory provisions which confer powers on constables in Scotland.

4. The proposals in the Bill would extend the jurisdiction of MDP officers to a range of other circumstances in which their assistance might reasonably be required. They are:

i. to provide jurisdiction following a request from the local Chief Constable for policing assistance in the vicinity of defence land;

ii. to allow the Chief Constable of a local force to request assistance from MDP to meet special demands on its resources anywhere in his force area (the Mutual Aid Scheme - this would not extend MDP jurisdiction but allow MDP to provide officers or other resources by way of assistance);

iii. to provide jurisdiction to act in response to a request for assistance with a particular incident or operation from a member of the local force anywhere in the force area;

iv. to allow MDP officers to act as constables outside their normal jurisdiction in emergencies without prior request from a member of the local force where waiting for such a request would frustrate the purpose of the action, an emergency being where an MDP officer has reasonable grounds for suspecting there has been an offence involving the use or threat of violence against a person, or action is necessary to save life or minimise injury;

v. to give MDP officers powers to act as constables when on secondment or loan to local forces; and

vi. to give MDP jurisdiction in cases where defence personnel are victims.

The Bill provides that the provisions for i. to v. above shall commence for Scottish police forces or in Scotland by a joint order made by the Secretary of State and Scottish Ministers. The proposal at vi. is clearly a reserved matter, as are provisions exempting MDP recruits from firearms legislation and amending the conduct regime for MDP officers. The consent of the Scottish Parliament is not required for these.

Need for extension of MDP jurisdiction

5. The Executive believes that the proposals to extend the jurisdiction of MDP should apply in Scotland. Most of the proposals would only be used at the request of Scottish forces or constables, and would allow them to take advantage of useful additional resources when they wished. The Executive expects the power for MDP officers to act in emergencies to be used rarely in Scotland (MDP estimate between 12 - 20 incidents a year over the last five years required immediate police action without time for a prior request from the local force). However, the Executive agrees that MDP should be able to act when the local police cannot attend quickly enough in the narrow circumstances detailed in the Bill. It does not consider that trained MDP officers, possibly in uniform, should only have the powers of normal citizens to react to incidents of violence and personal injury.

Need for Westminster legislation

6. MDP would generally fall within the scope of the reserved matter of defence, as set out in Schedule 5 to the Scotland Act 1998, and so be outwith the legislative competence of the Scottish Parliament. However, the provisions in i. to v. in Paragraph 4 above also relate to the devolved matter of the prevention and detection of crime. Although the Scottish Parliament might be able to legislate to introduce these measures in Scotland, the Executive believes that the measures in the Westminster Bill should be extended to Scotland as part of a coherent UK-wide jurisdiction for MDP. The interest of the Scottish Parliament and Executive in the provisions is recognised in giving Scottish Ministers a joint power with UK Ministers to commence these provisions in Scotland. The agreement of the Scottish Parliament is required to give Scottish Ministers such a power.

SCOTTISH EXECUTIVE
March 2001

ARMED FORCES BILL

PART IV

THE MINISTRY OF DEFENCE POLICE

Extension of jurisdiction

31. - (1) Section 2 of the Ministry of Defence Police Act 1987 (jurisdiction) is amended as follows.

(2) In subsection (2), for paragraph (d) there is substituted-

"(d) land which is in the vicinity of land mentioned in any of paragraphs (a) to (c) above and in respect of which a request-

(i) made by or on behalf of a chief officer of police for assistance in the execution of the duties of the police force for the police area in which the first-mentioned land is situated, or
(ii) made by or on behalf of the Chief Constable of the Police Service of Northern Ireland for assistance in the execution of the duties of that service in Northern Ireland,

has been agreed to by or on behalf of the chief constable of the Ministry of Defence Police;

(dd) land which-

(i) is both in the vicinity of land mentioned in any of paragraphs (a) to (c) above and in an area in which members of the British Transport Police or the United Kingdom Atomic Energy Authority Constabulary have the powers and privileges of constables, and
(ii) in respect of which a request made by or on behalf of the chief constable of the British Transport Police or the chief constable of the United Kingdom Atomic Energy Authority Constabulary for assistance in the execution of the duties of the British Transport Police or the United Kingdom Atomic Energy Authority Constabulary has been agreed to by or on behalf of the chief constable of the Ministry of Defence Police; and".

(3) In subsection (3)-

(a) after paragraph (b) there is inserted-

"(bb) in connection with-

(i) offences against persons falling within paragraph (b)(i), (ii) or (iii) above,
(ii) the incitement of such persons to commit offences, or
(iii) offences committed under the Prevention of Corruption Acts 1889 to 1916 in relation to such persons;",

(b) the word "and" at the end of paragraph (c) is omitted, and

(c) at the end there is inserted

"and

(e) in accordance with any of subsections (3A) to (3C) below."

(4) After subsection (3) there is inserted-

"(3A) Where a constable of-

(a) the police force for any police area, or
(b) the Police Service of Northern Ireland,

has requested the Ministry of Defence Police to assist him in the execution of his duties in relation to a particular incident, investigation or operation, members of the Ministry of Defence Police shall have for the purposes of that incident, investigation or operation the powers and privileges of a constable in any place in that police area or, as the case may be, in any place in Northern Ireland.

(3B) Where a constable of-

(a) the British Transport Police, or
(b) the United Kingdom Atomic Energy Authority Constabulary,

has requested the Ministry of Defence Police to assist him in the execution of his duties in relation to a particular incident, investigation or operation, members of the Ministry of Defence Police shall have for the purposes of that incident, investigation or operation the powers and privileges of a constable, to the extent that those powers and privileges would in the circumstances be exercisable for those purposes by a constable of the British Transport Police or the United Kingdom Atomic Energy Authority Constabulary, as the case requires.

(3C) Any member of the Ministry of Defence Police may exercise the powers of a constable in any case where-

(a) either of the conditions in subsection (3D) below is satisfied,
(b) he believes on reasonable grounds that, if those powers cannot be exercised until he secures the attendance of, or a request under subsection (3A) or (3B) above for assistance from, a constable who has (apart from this subsection) power to exercise them, the purpose for which he proposes to exercise those powers would be frustrated or seriously prejudiced, and
(c) he is in uniform or has with him documentary evidence that he is a member of the Ministry of Defence Police.

(3D) The conditions referred to in subsection (3C)(a) above are-

(a) that the powers are exercised in relation to a person whom the member of the Ministry of Defence Police suspects on reasonable grounds to have committed an offence involving the use or threat of violence against any person, or

(b) that the member of the Ministry of Defence Police believes on reasonable grounds that the exercise of the powers is necessary in order to save life or in order to prevent or minimise personal injury."

(5) In subsection (4), for "to (3)" and "and (3)" there are substituted respectively "to (3D)" and "and (3D)".

(6) After subsection (4) there is inserted-

"(4A) Nothing in subsection (3) above limits the powers conferred by section 2B(2)(b) below."

(7) In subsection (5)-

(a) after the definition of "appropriate Gazette" there is inserted-

""British Transport Police" means the constables appointed, or deemed to have been appointed, under section 53 of the British Transport Commission Act 1949;", and

(b) after the definition of "service authorities" there is inserted-

""United Kingdom Atomic Energy Authority Constabulary" means the special constables appointed under section 3 of the Special Constables Act 1923 on the nomination of the United Kingdom Atomic Energy Authority;".

Further amendments relating to Ministry of Defence Police.

32. Schedule 5 (which contains further amendments relating to the Ministry of Defence Police) shall have effect.

ARMED FORCES BILL

SCHEDULE 5

AMENDMENTS RELATING TO MINISTRY OF DEFENCE POLICE

Functions of Ministry of Defence Police Committee

1. In section 1 of the Ministry of Defence Police Act 1987 (establishment of Ministry of Defence Police), for subsection (5) there is substituted-

"(5) The Secretary of State shall appoint a committee, to be known as the Ministry of Defence Police Committee,-

(a) to advise him with respect to such matters concerning the Ministry of Defence Police as he may from time to time require, and
(b) to exercise such other functions as may be conferred on it by or under this Act,

and may make regulations concerning membership and the procedure of the Committee."

Provision of assistance to other forces

2. After section 2 of that Act there is inserted-

"Provision of assistance to other forces.

2A. - (1) The chief constable of the Ministry of Defence Police may, on the application of the chief officer of any relevant force, provide constables or other assistance for the purpose of enabling that force to meet any special demand on its resources.

(2) Constables are not to be regarded as provided under this section in a case where assistance is provided under any provision of section 2 above.

(3) In this section-

"chief officer" means-
(a) any chief officer of police in Great Britain,
(b) the chief constable of the Police Service of Northern Ireland,
(c) the chief constable of the British Transport Police, and
(d) the chief constable of the United Kingdom Atomic Energy Authority Constabulary;

"relevant force" means-
(a) any police force in Great Britain,
(b) the Police Service of Northern Ireland,
(c) the British Transport Police, or
(d) the United Kingdom Atomic Energy Authority Constabulary.

Constables serving with other forces.

2B. - (1) This section applies where a member of the Ministry of Defence Police-

(a) is provided for the assistance of a relevant force under section 2A above, or
(b) serves with a relevant force under arrangements made between that force and the Ministry of Defence Police.

(2) The member of the Ministry of Defence Police shall-

(a) be under the direction and control of the chief officer of the relevant force, and
(b) have the powers and privileges of a constable, but subject in the case of the British Transport Police or the United Kingdom Atomic Energy Authority Constabulary to any limitation which applies to the exercise of those powers and privileges by a member of that force.

(3) In this section-

"chief officer" means-
(a) any chief officer of police in Great Britain,
(b) the chief constable of the Police Service of Northern Ireland,
(c) the chief constable of the British Transport Police,
(d) the chief constable of the United Kingdom Atomic Energy Authority Constabulary,
(e) the Director General of the National Criminal Intelligence Service, or
(f) the Director General of the National Crime Squad;

"relevant force" means-

(a) any police force in Great Britain,
(b) the Police Service of Northern Ireland,
(c) the British Transport Police,
(d) the United Kingdom Atomic Energy Authority Constabulary,
(e) the National Criminal Intelligence Service, or
(f) the National Crime Squad."

Power to make regulations relating to disciplinary matters

3. After section 3 of that Act there is inserted-

"Regulations relating to disciplinary matters.

3A. - (1) The Secretary of State shall by regulations made by statutory instrument establish, or make provision for the establishment of, procedures for cases in which a member of the Ministry of Defence Police may be dealt with by suspension, dismissal, requirement to resign, reduction in rank, reduction in rate of pay, fine, reprimand or caution.

(2) The regulations may provide-

(a) for decisions which would otherwise fall to be taken by the Secretary of State or the chief constable of the Ministry of Defence Police to be taken instead-

(i) by a person or persons appointed in accordance with the regulations, or

(ii) by the Ministry of Defence Police Committee,

and

(b) for decisions taken by or on behalf of the Secretary of State or the chief constable of the Ministry of Defence Police to be reviewed by a person or persons appointed by or in accordance with the regulations.

(3) In relation to any matter as to which provision may be made by regulations under this section, the regulations may-

(a) authorise or require provision to be made by, or confer discretionary powers on, the Secretary of State, the Ministry of Defence Police Committee, the chief constable of the Ministry of Defence Police or other persons, or

(b) authorise or require the delegation by any person of functions conferred on that person by or under the regulations.

(4) Any statutory instrument containing regulations under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament."

4. After section 4 of that Act there is inserted-

"Appeals against dismissal etc.

4A. - (1) A member of the Ministry of Defence Police who is dismissed, required to resign or reduced in rank by a decision taken in proceedings under regulations made in accordance with section 3A above may appeal to an appeals tribunal except where he has a right to apply to some other person for a review of the decision; and in that case he may appeal to an appeals tribunal from any decision of that other person as a result of which he is dismissed, required to resign or reduced in rank.

(2) The Secretary of State may by regulations made by statutory instrument-

(a) make provision equivalent to that made in relation to police appeals tribunals by any provision of Schedule 6 to the Police Act 1996 or Schedule 3 to the Police (Scotland) Act 1967, subject to such modifications as the Secretary of State thinks fit,

(b) make provision as to procedure on appeals to appeals tribunals under this section, and

(c) make provision enabling an appeals tribunal to require any person to attend a hearing to give evidence or to produce documents.

(3) Regulations made by virtue of subsection (2)(c) above may, in particular, apply subsections (2) and (3) of section 250 of the Local Government Act 1972 or section 210 of the Local Government (Scotland) Act 1973 with such modifications as may be set out in the regulations.

(4) Where an appeals tribunal allows an appeal it may, if it considers that it is appropriate to do so, make an order dealing with the appellant in a way-

(a) which appears to the tribunal to be less severe than the way in which he was dealt with by the decision appealed against, and

(b) in which he could have been dealt with by the person who made the decision.

(5) This section does not have effect in relation to anything done in Northern Ireland by a member of the Ministry of Defence Police.

(6) Any statutory instrument containing regulations under subsection (2) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(7) In this section "an appeals tribunal" means a tribunal constituted in accordance with regulations under subsection (2) above."

Exemptions from firearms legislation

5. After section 16A of the Firearms (Amendment) Act 1988 there is inserted-

"Possession of firearms on Ministry of Defence Police premises.

16B. - (1) A person who is being trained or assessed in the use of firearms under the supervision of a member of the Ministry of Defence Police may, without holding a certificate or obtaining the authority of the Secretary of State under section 5 of the principal Act, have in his possession a firearm and ammunition on relevant premises for the purposes of the training or assessment.

(2) Subsection (1) above does not apply to a person while engaged in providing security protection on relevant premises.

(3) In this section "relevant premises" means premises used for any purpose of the Ministry of Defence Police."

6. After Article 12A of the Firearms (Northern Ireland) Order 1981 there is inserted-

"Possession of firearms on Ministry of Defence Police premises.

12B. - (1) A person who is being trained or assessed in the use of firearms under the supervision of a member of the Ministry of Defence Police may, without holding a firearm certificate or obtaining the authority of the Secretary of State under Article 6, have in his possession a firearm and ammunition on relevant premises for the purposes of the training or assessment.

(2) Paragraph (1) does not apply to a person while engaged in providing security protection on relevant premises.

(3) In this Article "relevant premises" means premises used for any purpose of the Ministry of Defence Police."