



Foreign &
Commonwealth
Office

**PRIVATE MILITARY AND SECURITY
COMPANIES (PMSCs): SUMMARY OF PUBLIC
CONSULTATION WORKING GROUP**

Foreign & Commonwealth Office, April 2010

I. Introduction

Background

1. Private Military and Security Companies (PMSCs) provide security abroad for private sector industries, governments and other bodies, including aid agencies and NGOs. They carry out a variety of duties, from close protection of personnel and static protection of premises such as ministries and embassies, to risk and security consultancy. They provide a vital and necessary role in hostile environments, and enable the Government to fulfil its policy objectives in Iraq and Afghanistan by providing essential security services, as well as ensuring operational NGOs are able to carry out important humanitarian work.
2. Many of the services offered by security companies are not contentious. Others, such as armed security, weapons training and even unarmed military and police training, could have direct lethal consequence. There is a risk that, however unintentionally, PMSC activity might give rise to human rights or international humanitarian law concerns, assist internal repression, or provoke or prolong internal or regional tension. The UK-based industry has a largely favourable reputation, but the Government also needs to mitigate the risk that a company registered in the UK or elsewhere might behave in a way that brings the reputation of the whole industry into question.
3. Our preferred policy approach to address these risks includes raising standards of the UK industry through a Code of Conduct, agreed with and monitored by the Government, using our leverage as a key buyer to raise standards, together with an international agreement on standards covering all aspects of PMSC operation and organisation worldwide.
4. The Foreign & Commonwealth Office launched a public consultation on the Government's proposed policy on 24 April 2009, and published a summary of responses to the public consultation, including a Government response to the contributions received, on 16 December 2009.
5. During the consultation we received a number of contributions relating to the capacity and appropriateness of the British Association of Private Security Companies (BAPSC) to combine its existing trade promotion activities with the compliance, auditing and monitoring of a code of conduct, including the enforcement of disciplinary measures.
6. As stated in the Foreign Secretary's Written Ministerial Statement on 16 December 2009, FCO officials therefore organised and chaired a multi-stakeholder working group which met during January and February 2010, comprising representatives of Government, relevant trade associations, the industry and civil society to explore these concerns further and to determine detailed proposals for a way forward. This report summarises the main findings of the working group and sets out the possible options for the way ahead.

7. In parallel, officials have continued to work towards agreeing international standards for the industry and an accountability mechanism to enforce them. A draft international standard has been produced by NGO experts in international humanitarian law (funded by the Swiss Government). The Swiss, UK and US Governments are currently facilitating an extensive consultation exercise on the draft. We aim to have agreed these international standards and an accountability mechanism within two years.

II. CONDUCTING THE WORKING GROUP

8. The workshops were hosted and chaired by the FCO on 28 January, 8 and 12 February.

Membership

9. Organisations and key individuals, who responded directly and/or contributed to the consultation, were invited to participate. The working group comprised of participants from the following groups:
 - > HMG: FCO, MoD, DfID, Home Office, the Security Industry Authority (SIA) and BIS.
 - > Industry: a cross-section of UK PMSCs including small to medium sized enterprises.
 - > NGOs: a cross-section of operational and advocacy NGOs.
 - > Academia: key experts/commentators.
 - > Members of the public.

Governance and Output

10. The three meetings focused on:
 - > A review of the draft BAPSC code and international standard to consider how best to harmonise the two.
 - > How a monitoring body should audit compliance, monitor the industry and enforce the code of conduct.
 - > Which body would be the most appropriate to audit compliance, monitor and enforce the code of conduct, and determine how the activity will be funded?
 - > What the next steps are to implement recommendations and who should be responsible for taking these steps.

III. EXECUTIVE SUMMARY

The viability of a domestic code of conduct

11. The working group process has highlighted willingness in the PMSC industry and amongst other key stakeholders to agree a domestic code of conduct and implement it. From the industry perspective however, it must be Government endorsed/backed, offer a commercial incentive to comply and provide value for money.
12. Some NGO's continue to be opposed to this policy approach and will not engage further in the design and implementation of any future voluntary code. Others will and it will be important to work with them to ensure robustness of the code so that concerns over accountability and redress are fully met.

Future Delivery partner

13. Despite strong opinions voiced in the working group in favour of a statutory body such as the SIA or a body closely resembling it, to provide oversight of the code, participants were prepared to actively consider alternative delivery partners in keeping with our preferred approach.
14. A number of innovative suggestions were made by the working group about how a trade association could avoid a conflict of interest between its trade promotion role and the enforcement of a code of conduct. The ideas included the formation of a multi-stakeholder board (including representatives from civil society) to oversee implementation of the code and/or the use of UK Accreditation Service (UKAS) approved independent monitoring bodies to audit compliance.
15. The BAPSC reaffirmed its desire to implement the code of conduct. Some participants however, despite the discussion about mitigating a potential conflict of interest, echoed concerns raised in the consultation period about the capacity and appropriateness of the BAPSC to undertake this work.
16. An alternative delivery partner, the Aerospace, Defence and Security (ADS) trade association, has provisionally expressed an interest in working with Government to implement the code.

Next steps

17. Further detailed discussions would be required with both trade associations to determine which organisation would be most suitable to implement the code. Officials would need to assess both organisations against agreed criteria focussing on the organisation's capacity and capability to perform the role. Assuming an organisation met these criteria, officials would need to work with the successful candidate to agree next steps on implementation/partnership arrangements with Government. These discussions could include a detailed examination of the financial implications for

Government. After such a process, we could envisage options being put to Ministers on the way ahead.

18. In parallel, FCO officials could continue discussions with the Home Office to establish ways in which we could learn from and/or draw on the expertise of the SIA, either directly or indirectly. It has developed significant expertise, has an existing relationship with the industry and could therefore have a positive role in the implementation of the code.

IV. KEY FINDINGS, OPTIONS AND FUTURE ACTION

Key findings

The code of conduct

19. The first working group agenda was designed to seek views on the content and scope of a future domestic code. In preparation for the meeting, officials circulated a draft UK code produced by the BAPSC in consultation with the industry and the Swiss led draft international standard.
20. The group concluded that the code:
 - Should be compliant with human rights and international humanitarian law (referencing the legal framework set out in the Montreux Document on legal obligations and good practices for States on PMSCs)
 - Draw on best practice from the SIA's Approved contractor scheme (ACS), possibly involving the licensing of individual employees
 - Should be based on defined minimum standards
 - Should be complementary to and mutually reinforcing of any future international standard.
 - Should provide a commercial incentive to comply. It must be recognised and used by clients when procuring PMSC services as well as by the insurance industry when assessing risk
21. Innovative ideas were suggested as to how the domestic code and international standard could be harmonised. For example, the international standard could set overarching principles for the international industry to adhere to; the UK code could set out the practical detail and processes required to achieve it. Alternatively, once the international standard is agreed, UK specific annexes could be drafted to set effective industry minimum standards.
22. There was support amongst Working Group participants for a voluntary but robust domestic code of conduct to deliver the Government's objective of promoting high standards of the UK PMSC industry.

How the code should be audited, monitored and enforced

23. Views from the second working group on auditing, monitoring and enforcement broadly mirrored the preferred option set out in our consultation document. Participants supported the concept of auditing of procedures and processes in the UK e.g. on recruitment, vetting and training. These would be primarily preventative in nature e.g. a robust psychological assessment would significantly reduce the chance of someone unfit to bear arms being deployed. There was also support for in country/theatre spot checks of PMSCs to ensure the highest standards of behaviour.

24. Working group suggestions on enforcement included a system of formal warnings to a company which transgresses, culminating in the loss of accreditation if effective remedial action isn't taken. This action would subsequently be published on the delivery partner's website.
25. Once again participants highlighted the importance of drawing from best practice models. For example, the SIA's use of UK Accreditation Service (UKAS) approved independent assessors, OFSTED's spot check system and the OECD guidelines for multinational enterprises' method for exposing bad corporate behaviour.

Who is the most appropriate body/organisation?

26. During the second working group participants urged HMG to provide a strong lead and if possible implement a code through a statutory body. Industry and Civil society representatives argued that only a Government body would be truly independent, provide legitimacy and encourage wide membership. A number of participants argued for SIA's Approved Contractor Scheme (ACS) to be extended to the PMSC sector. A number of PMSCs already require their employees to be ACS licensed. The Home Office explained that the SIA's remit does not extend overseas and with its currently increasing portfolio and expansion into Northern Ireland, the PMSC sector was not currently a priority.
27. A possible lead role for the insurance industry was discussed. Insurance industry representatives proposed the idea of an 'insurance club' for the industry in which members agreed to a common set of standards and compliance auditing in return for competitive liability cover. PMSC representatives argued their activities were too diverse to make the club model viable and the arrangement could be perceived as being too close to the industry. The auditing processes used by the insurance industry could however inform the development and implementation of the code, once a delivery partner had been agreed.
28. The FCO chair used the third discussion to re-focus the group's thinking on a possible delivery partner. The chair noted the group's desire for a Government body to take ownership of the code, however the preferred option on which we consulted, was for a trade association to undertake this role. This would enable the industry to take collective responsibility for its behaviour. Government would provide oversight. The SIA, at this present time was not an available option and it was unrealistic in the current financial climate for Government to create a new statutory body.
29. The BAPSC reiterated its interest in implementing the domestic code of conduct. Some members of the Group however, expressed continuing concerns about the BAPSC as a potential delivery partner as they perceive it to lack the capacity and infrastructure to perform the role. ADS expressed a willingness to become a delivery partner for this policy subject to further discussions with Government on an appropriate business model. Other ideas were discussed e.g. the establishment of a charitable 'not for profit' foundation to perform the function but were not explored further by the Group.

30. Participants made clear that further detailed work would need to be undertaken to ensure the impartiality of any future delivery partner. The Group suggested a number of ideas such as governance arrangements whereby civil society played a role to ensure independence of decision making on enforcement action. This could take the form of a multi-stakeholder board to oversee implementation of the code. The use of UKAS accredited independent monitoring bodies could also ensure impartial compliance auditing.
31. Civil Society representatives expressed their concern that a trade association delivery partner might not be compliant with the 'Protect, Respect and Remedy' framework of the UN Secretary General's Special Representative on Business and Human Rights, John Ruggie. More specifically, the preferred option did not demonstrate an effective 'remedy' component e.g. the provision of compensation to victims. Further work would be required to agree a detailed and transparent process to ensure appropriate redress.

Funding

32. The financial implications of implementation were discussed in detail. The industry is unwilling to pay for the implementation of a code unless there is a clear commercial incentive for them to do so. Larger companies are currently investing to raise the standards of their organisations and are not prepared to subsidise a system which does the same for less responsible or smaller competitors. The group argued for HMG investment to cover start up costs and until the code becomes self funding. Government financial support would need to be considered in detail when agreeing the way forward with a prospective delivery partner.

Options

33. FCO officials would need to have detailed discussions with both the BAPSC and ADS to determine which organisation would be the most suitable to implement and enforce the domestic code of conduct, overseen and monitored by the Government. It would be important to have an open and transparent selection process, therefore each organisation would need to be assessed against agreed criteria focusing on the associations' capacity and capability to perform the role.
34. The successful implementation of this policy would depend upon the avoidance of any possible conflict of interest. The trade association would therefore need to ensure a separation of functions between its role as a trade promotion organisation and delivery partner implementing a domestic code of conduct. This could be achieved in a number of ways e.g. by either instituting a multi-stakeholder board to oversee the enforcement of the code and/or ensuring the compliance auditing is undertaken by UKAS accredited independent monitoring bodies reporting directly to the trade association. Following further consideration of possible models to achieve this, we would envisage submitting options to Ministers, including a full financial breakdown and impact assessment, for approval.
35. In parallel, FCO officials could continue discussions with the Home Office to determine ways in which we could learn from and/or draw on the expertise of the

SIA, either directly or indirectly. This could help to mitigate civil society's concerns about 'self policing' and the policy 'lacking teeth'. It could also ensure the continued optimum use of SIA expertise in the development of this policy.

36. Finally, FCO officials could continue to engage with civil society stakeholders to ensure the domestic code is robust and transparent and is compliant with the Ruggie, 'Protect, Respect and Remedy' framework.