



INTELLIGENCE AND SECURITY  
COMMITTEE OF PARLIAMENT  
*Chairman: The Rt. Hon. Sir Julian Lewis MP*



The Lord Sharpe of Epsom OBE  
Parliamentary Under Secretary of State  
Home Office  
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ISC 4.7.393

[*By email*]

3 July 2023

Dear Lord Sharpe,

**National Security Bill: Amendment 122  
to update the ISC's Memorandum of Understanding (MoU)**

I write on behalf of the Intelligence and Security Committee in respect to the National Security Bill (NSB), specifically in relation to comments that you made from the dispatch box during the Lords' Report Stage on 7 March 2023 and Lords' consideration of Commons' amendments on 21 June 2023. These comments formed part of the debate on Amendment 122 (and subsequent versions of the same amendment) seeking to require the Government to update the ISC's MoU in light of any changes made by the NSB. Whilst I appreciate that you will not have intended to mislead the House, these comments were either not accurate or did not set out the full facts so as to be inadvertently misleading and it is important therefore to correct them for the record. The Committee will therefore place a copy of this letter on its website, and I suggest that you may wish to place a copy in the House library.

## **1. Prime Minister's review of the changes proposed to the ISC's MoU**

At Lords' Report Stage you told the House:

- a) that the ISC had proposed changes to its MoU in its Annual Report 2021-2022 which was published in December 2022; and
- b) that it was therefore not appropriate to mandate the Prime Minister to update the MoU "*so soon*" after a change had been proposed.

However that is not entirely correct:

- a) the ISC first proposed changes to its MoU on 20 May 2021, and set out the specific changes required in a letter dated 3 June 2021, asking the National Security Adviser to address them with the Prime Minister (having already raised the issue in Parliament during the passage of the National Security and Investment Act);
- b) these were then published in its Annual Report of 2019 - 2021 (laid before the House on 10 December 2021); and
- c) the changes you referred to, in our Annual Report of 2021-2022, were in fact the third time they had been proposed.

It was therefore not accurate to state that the changes had been proposed in December 2022 and therefore it was inappropriate to mandate the Prime Minister to update the MoU "*so soon*" after a change had been proposed, given that it was by that time already over 21 months since the ISC had proposed the changes.

Further, at Lords' Report Stage, you told the House that the amendment could not be accepted as the Prime Minister was currently considering the proposed changes and "*will respond in due course*". However, subsequently, during Lords' Consideration of Commons' Amendments, you said that "*His Majesty's Government consider the current MoU to be sufficient to allow the ISC to discharge its statutory oversight duties of the agencies and the wider intelligence community.*" Yet no evidence was provided, or decision communicated, to the ISC by the Government between those two positions to indicate that the Prime Minister had completed his consideration and concluded that the changes were not necessary: one or other statement is therefore inaccurate.

## **2. Purpose of Amendment 122**

At the Lords' Consideration of Commons' Amendments, you told the House that the "*true driver*" of the amendment was to compel the Prime Minister to attend a session with the ISC. This is absolutely not the case and it is not clear why the Government is seeking to attribute an ulterior motive when the ISC has been completely transparent about the intent to update its MoU (through repeated statements in Parliament, private correspondence and meetings with the Government).

The ISC would indeed wish to meet the Prime Minister as there are important matters of national security to discuss, and for that reason we have said so publicly in our Annual Reports for a number of years now. However, the Committee has no interest whatsoever in compelling the Prime Minister to attend a session. Moreover we rebut in the strongest possible terms any suggestion that we are seeking to do so in an underhand manner through an amendment to update our MoU in the name of proper democratic parliamentary oversight.

## **3. Security Minister's attempt to find a resolution to Amendment 122**

At the Lords' Consideration of Commons' Amendments, you told the House that the Security Minister had recently met with the ISC Chairman to "*better understand the Committee's concerns and find an agreeable resolution to the issue.*" I am afraid that the Chairman is quite clear that that is not an accurate representation. Whilst the Security Minister did indeed meet the ISC Chairman to discuss Amendment 122, the Minister clearly reiterated that the Government remained opposed to the amendment. No solutions were proposed and none discussed. There was no suggestion of any movement or interest in resolving the issue, and therefore it is not accurate to say that the Minister met the Chairman to find an agreeable resolution.

## **4. Security Minister's offer to attend an ISC session**

At the Lords' Consideration of Commons' Amendments, you also told the House that at that meeting between the ISC Chairman and the Security Minister, the Security Minister had committed to attending an evidence session of the ISC

to discuss the powers in the National Security Bill in greater detail and the plans for implementation. You also said that this was evidence that the Government took the ISC's concerns about the need to update its MoU seriously.

However this was not the generous offer that was implied. The ISC has the power to require Ministers to appear before it and can do so at any point: the Committee therefore had no interest in any such offer.

Further, as you will recall, the ISC had already undertaken detailed scrutiny of the NSB. Three ISC Members formed part of the Commons' Bill Committee which helped to develop the Bill and the ISC subsequently held several evidence sessions with the Government, providing recommendations to improve the Bill further. The ISC clearly understands the powers provided in this piece of legislation and an offer for the Security Minister to explain them further was therefore not only entirely redundant, but rather peculiar.

Crucially, explaining the powers within the Bill (to a Committee which already understands them quite clearly) has no connection whatsoever to the need to update the ISC's MoU. It is therefore simply not true to claim that this offer was evidence that the Government took the ISC's concerns about the need to update its MoU seriously.

#### **5. Security Minister's offer to provide further information through quarterly updates**

At the Lords' Consideration of Commons' Amendments, you also told the House that at the meeting between the ISC Chairman and the Security Minister, the Security Minister had committed to providing further updates on the progress of implementation of the NSB to the ISC through "*quarterly written updates.*" Again you suggested that this was further evidence that the Government took the ISC's concerns about the need to update its MoU seriously.

The Home Office is already required - as part of standard operating procedure - to provide quarterly reports to the ISC covering a full range of policy, operational and administrative issues relating to security matters. This would

naturally include the implementation of the NSB. Again, therefore, this is not a generous offer since it is already an obligation.

Moreover, as with the previous point, such an 'offer' does not relate to the need to update the ISC's MoU. It is therefore misleading to suggest that: 1) this is a new commitment; and 2) this is evidence that the Government takes the ISC's concerns about the need to update its MoU seriously.

In conclusion, as I have said, the ISC appreciates that in asserting the above statements, you will not have had any intention to mislead the House. Nonetheless, making claims that are either inaccurate or fail to disclose the full set of facts so as to be misleading, is unhelpful, even if inadvertent. It is essential that Parliament is provided with the correct position so that it can make an informed decision when considering how to revise the NSB. I will therefore be repeating the above corrections when the Bill is next considered in the House.

Further, it may be helpful to have notice that I will be asking you to state on the record the Government's position that it does not consider itself to be bound by the commitments given by a previous Government. As has been stated many times now, the previous Government gave a clear undertaking to Parliament during the passage of the Justice and Security Act 2013 (JSA) when the Bill Minister told Parliament that it was "*the intention of the Government that the ISC should have oversight of substantively all of central Government's intelligence and security activities to be realised now and in the future*".

This is reinforced in the MOU itself, as agreed by the Prime Minister, which clearly states: "*only the ISC is in a position to scrutinise effectively the work of the Agencies and of those parts of Departments whose work is directly concerned with intelligence and security matters*". The Bill Minister also made clear that the MoU was designed to be a living document: "*Things change over time, Departments reorganise, the functions undertaken by a Department one year may be undertaken by another the following year ... An MOU is flexible: it can be changed much more easily than primary legislation*".

The Government's commitment to Parliament was that the ISC would oversee all security matters across Government and the MoU would enable that and be kept up to date. The Committee has been told that the Government does not consider itself to be bound by statements made before the House by a previous

Government, however we are concerned that Parliament may not have realised that there has been such a significant constitutional shift. You will, I am sure, wish to be clear to the House as to the Government's position.

I am copying this letter to the Home Secretary and the Security Minister, and placing a copy on the Committee's website.

Yours sincerely,

Admiral Alan

**Admiral the Rt. Hon. Lord West of Spithead GCB DSC PC**