PARLIAMENTARY DEBATES

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OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

JUSTICE AND SECURITY BILL [*LORDS*]

Third Sitting

Thursday 31 January 2013

(Morning)

CONTENTS

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Monday 4 February 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 David Crausby, Mr James Gray

† Alexander, Heidi *(Lewisham East)* (Lab)
† Brazier, Mr Julian *(Canterbury)* (Con)
† Brokenshire, James *(Parliamentary Under-Secretary of State for the Home Department)*
† Crockart, Mike *(Edinburgh West)* (LD)
† Evans, Graham *(Weaver Vale)* (Con)
† Evennett, Mr David *(Lord Commissioner of Her Majesty's Treasury)*
† Gilmore, Sheila *(Edinburgh East)* (Lab)
† Hillier, Meg *(Hackney South and Shoreditch)* (Lab/Co-op)
† Huppert, Dr Julian *(Cambridge)* (LD)
† Johnson, Diana *(Kingston upon Hull North)* (Lab)
† Lewis, Dr Julian *(New Forest East)* (Con)
† Murphy, Paul *(Torfaen)* (Lab)
† Neill, Robert *(Bromley and Chislehurst)* (Con)
† Nokes, Caroline *(Romsey and Southampton North)* (Con)
† Paisley, Ian *(North Antrim)* (DUP)
† Phillipson, Bridget *(Houghton and Sunderland South)* (Lab)
† Scott, Mr Lee *(Ilford North)* (Con)
† Slaughter, Mr Andy *(Hammersmith)* (Lab)
† Wright, Jeremy *(Parliamentary Under-Secretary of State for Justice)*

Steven Mark, Lloyd Owen, *Committee Clerks*

† attended the Committee

Public Bill Committee

Thursday 31 January 2013

(Morning)

[Mr David Crausby *in the Chair*]

Justice and Security Bill [*Lords*]

Schedule 1

The Intelligence and Security Committee

Amendment proposed, (29 January): 21, in schedule 1, page 16, leave out from 'ISC' in line 30 to end of line 38. —*(Diana Johnson.)*

11.30 am

Question again proposed, That the amendment be made.

The Chair: I remind the Committee that with this we are discussing amendment 28, in schedule 1, page 16, line 34, at end insert—

'except that the ISC may have access to information that is sub judice or that relates to papers of a previous administration.'

Dr Julian Lewis (New Forest East) (Con): I rise to speak to amendment 28. Amendments 21 and 28 relate to the right of the Secretary of State, albeit one very rarely used, to withhold information from the Intelligence and Security Committee on the grounds of excessive cost, its being sub judice or because it relates to the papers of a previous Administration. The guidance on that is sometimes referred to as the Osmotherly rules. The Minister has correctly pointed out that the Intelligence Services Act 1994 contains similar wording to that in sub-paragraph 3(3)(b) of schedule 1 of the Bill, and that the existing powers have been used only very rarely. Since this Committee last adjourned, I have been able to undertake further research, and it appears that in the past 18 years the Government have used the powers on only one occasion, which involved a previous Administration's papers on a sensitive operational matter.

The Minister will no doubt be pleased to know that the ISC of the day did not agree that the information should be withheld and that, after just eight years, the Prime Minister of the time eventually chose to overturn the decision so that the ISC was able to see the papers. I agree with the Minister, who has put on the record a lot of comforting assurances, that based on the experience of the past 18 years the power that allows a Secretary of State to withhold information is, in essence, a technical and theoretical one that will probably never be used.

Furthermore, as other members of this Committee have noted, including the right hon. Member for Torfaen, the new ISC will have oversight of retrospective operations, which leads to a further consideration in that it will inevitably result in the ISC's use of the powers being more necessary, and a Secretary of State's use of them becoming even more theoretical in nature and so rarely used that they will surely be close to extinction.

Regarding the Minister's reasons for retaining the near-obsolete provisions, I seek to use against him the arguments he used against my earlier amendment. He argued that my new clause on the ISC secretariat should not be added to the Bill because it would not have any effect. The same could be said of the provisions we are discussing if, as he says, they would never really be used. He rightly said that the Bill seeks to strengthen oversight and improve on the current arrangements, and if that is so why does he seek to maintain the status quo on this rather theoretical and technical matter? We are improving on much of the existing legislation, and the argument that the current provisions are satisfactory because they are in that existing legislation should not be decisive.

Having said all that, I expect that the Minister's brief says that he should resist the amendment and I do not expect him to give any more ground, given that he has not given much on any of my other amendments. I therefore suggest a compromise. Will he support the idea that the points that I and others have made be reflected in the memorandum of understanding?

For example, the MOU could say that the powers will be very rarely used, and it could make it clear that the ISC's new remit for operations will mean that it frequently will need access to papers that are sub judice or which relate to a previous Administration. If he could agree to that—and, after all, it goes no further than the assurances he has already given—I should be happy not to press my amendment.

Diana Johnson (Kingston upon Hull North) (Lab): It has been an interesting debate, and I am grateful for the comments made by the hon. Member for New Forest East. He has put the matter into an historical context by looking at what has happened over the past 18 years. In light of that and of his suggestion to the Minister, I am not minded to press amendment 21 to test the opinion of the Committee, but I reserve the Opposition's position in case we wish to return to the matter on Report. I hope the Minister takes up the hon. Gentleman's sensible suggestion.

Glancing at the framework document, which sets out what should be in the memorandum of understanding, I note that point 13 refers to the Osmotherly rules. That would seem, therefore, to be an opportunity to insert a reference to the matter in the MOU itself.

The Parliamentary Under-Secretary of State for the Home Department (James Brokenshire): In brief response to what my hon. Friend the Member for New Forest East has said, I am always happy to reflect on all matters. He will have noted what I have already said about the context of the Osmotherly rules, and about the assessment that any Minister would have to make to satisfy them. Confidentiality would need to be a relevant part of any consideration of whether the issues should be adopted in terms of the utilisation of the powers under the rules.

As I have already said, the Government's intention is that the powers be used sparingly or rarely, and my hon. Friend has highlighted the number of times the rules have been adopted in practice. Although I am always happy to consider matters that have been flagged up through the Committee, it is important that the residual right be maintained.

Diana Johnson: On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendments made: 43, in schedule 1, page 16, line 25, leave out 'Minister' and insert 'Secretary of State'.

Amendment 44, in schedule 1, page 16, line 31, leave out 'Minister' and insert 'Secretary of State'.

Amendment 45, in schedule 1, page 16, line 33, leave out 'Minister' and insert 'Secretary of State'.

Amendment 46, in schedule 1, page 16, line 36, leave out 'Minister' and insert 'Secretary of State'.—*(James Brokenshire.)*

James Brokenshire: I beg to move amendment 47, in schedule 1, page 17, line 20, at end insert—

'Publication of information received in private

5 (1) This paragraph applies to information received by the ISC in private in connection with the exercise of its functions.

(2) The ISC—

(a) may only publish the information by way of a report under section 3, and

(b) must not disclose the information to any person if the ISC considers that there is a risk that the person will publish it.

(3) The restrictions on publication and disclosure of information in sub-paragraph (2) do not apply if—

(a) publication or disclosure is necessary for the ISC to comply with any enactment or rule of law, or

(b) the information has on an earlier occasion been disclosed to the public, in circumstances which do not contravene—

(i) sub-paragraph (2), or

(ii) any other enactment or rule of law prohibiting or restricting the disclosure of information.'.

The Chair: With this it will be convenient to discuss:

New clause 4—*Publication or disclosure of information by the ISC*—

'The ISC may not disclose or publish information if such a disclosure or publication by a person subject to the Official Secrets Act 1989 would be considered an offence for that person under that Act.'.

James Brokenshire: As I have said, the Bill makes significant changes to the ISC's status. Amendment 4, which was agreed on Tuesday, changes the name of the Intelligence and Security Committee to the "Intelligence and Security Committee of Parliament". The amendment more fully realises the Government's intention that the ISC be a Committee of Parliament created by statute. As we have already debated, although it will not have all the attributes of a departmental Select Committee, it will become a Committee of Parliament.

In making it clear that the ISC will be a Committee of Parliament, we consider it necessary to make a number of consequential amendments, some of which have already been debated. As a consequence of the ISC being a statutory Committee of Parliament, it will have a greater general power to publish information, which will sit alongside its express power to publish reports to Parliament. As a consequence, the new ISC could publish evidence it had received other than through its reports to Parliament. Although the Official Secrets Act gives some protection against disclosure of information that the ISC receives, particularly against disclosure of agency information, we do not think the Act alone will give sufficient protection. I will come to that issue in more detail shortly, when we discuss new clause 4, tabled by my hon. Friend the Member for New Forest East.

In so far as information coming to the ISC is not protected from disclosure by the Official Secrets Act, the other safeguards for protection of sensitive information in the Bill would be undermined. In other words, without some additional restriction on the power to publish, a new Intelligence and Security Committee of Parliament would be able to publish protectively marked information. The Prime Minister would not be able, as he currently is in relation to the ISC reports, to exclude material the disclosure of which would be prejudicial to the functions of the agencies, or of other parts of Government or the intelligence community.

Amendment 47 amends the Bill to provide that the ISC may not publish material that it receives in connection with the exercise of its functions, other than through its reports. This prohibition will be subject to exceptions permitting publication of such material if it has already lawfully been placed in the public domain, perhaps through the evidence having been heard in a public evidence session of the ISC, or wherever publication is necessary to meet a legal requirement. With those exceptions, and given that the prohibition applies in the first place only to material received by the ISC in connection with the exercise of its functions, we judge that the amendment will not prevent the ISC from engaging in its normal corporate activities, such as maintaining a website and advertising job vacancies.

Although my hon. Friend the Member for New Forest East agrees with the need for such a restriction on publication in the Bill, he may disagree with our approach perhaps because he feels it is too complex, but we believe it is straightforward. Alternatively, new clause 4 perhaps provides evidence for his approach, inasmuch as he considers that the Official Secrets Act 1989 alone provides sufficient protection against the possibility of damaging disclosures, and any further prohibition is unnecessary.

Under new clause 4, the ISC would not be able to disclose or publish information if such a disclosure or publication by persons subject to the 1989 Act would be considered an offence under the Act. To explain why we think that this will not provide the necessary protections against potentially damaging disclosures, I need to describe some offences under the Act in more detail.

Under section 1(1), a person who is or has been a member of the security and intelligence agencies, or a person notified that they are subject to the provisions of that subsection, is guilty of an offence if, without lawful authority, they disclose any information, document or article relating to security or intelligence which is or has been in their possession by virtue of their position as a member of any of those services, or in the course of their work, or if the notification is or was in force.

All members of the ISC are notified for the purposes of that subsection, and that will continue to be the practice in future. However, it is important to bear in mind that the existing ISC, not being a Committee of Parliament, has no general power to publish or disclose information. As I have said, the prohibition in section 1(1)

[James Brokenshire]

applies to documents and other items relating to security or intelligence. Security or intelligence is defined in section 1(9) as

"the work of, or in support of, the security and intelligence services or any part of them, and references to information relating to security or intelligence include references to information held or transmitted by those services or by persons in support of, or of any part of, them."

This definition means that information held by intelligence and security bodies other than the agencies, such as military intelligence, will not necessarily be covered by the prohibition in section 1(1), and the information the agencies receive is not necessarily covered.

Other prohibitions in the Official Secrets Act might apply to information held by the ISC but which falls outside the purview of section 1(1). For example, section 2 concerns defence information and section 3 concerns international relations. However, the prohibitions under each of these sections are not made in the same absolute terms as the section 1(1) prohibition. These sections prohibit only disclosures that are damaging to the relevant interest. It would be a defence in each case for a person charged with the relevant offence to show that they did not know, or had no reasonable cause to believe, that the document or other item related to the relevant interest, or that its disclosure would be damaging.

It is not right that members of the ISC should have to make assessments on their own as to whether publishing particular information that they hold in connection with the performance of the ISC's functions would be damaging. That is especially so, given that the consequence of a flawed assessment could be that they have committed a criminal offence. The right approach is to limit the ISC's powers of publication to publication through its reports, where damaging material is identified and excluded through consultation between the ISC and the Prime Minister. That is what the Government's amendment will bring about, reflecting the current practice. More generally, as the Bill seeks to regulate the disclosure or publication of the protectively marked information provided to the ISC, it would be inappropriate for the Bill to limit the parameters of permissible disclosure by reference only to a number of tightly defined categories of impermissible disclosure which are offences under criminal statute and therefore subject to a high standard of proof.

11.45 am

Paul Murphy (Torfaen) (Lab): I welcome you to this fascinating Committee, Mr Crausby. The situation that we are getting into is daft, because the Government's proposal actually puts further restrictions on the work of the ISC than currently exist. To give an example, when the ISC, which I chaired at the time, reviewed the intelligence on the London terrorist attacks of 2005, we met several survivors of that awful outrage in a private session. Had we wanted then to put out a press notice or publish details of that meeting, under this proposal, the ISC would have had to put it into its annual report. That is nonsense and makes the situation worse than it is at the moment.

The Bill's purpose is clear: to give greater transparency, accountability and openness to the work of the ISC. The proposal is a backward step, and I see no point in it whatsoever. It makes the position too complicated and too bureaucratic. Frankly, it is over the top. I hope therefore that the Minister will reconsider.

Dr Lewis: I warmly endorse what the right hon. Gentleman has said. The exceptions outlined by the Minister are lawfully already in the public domain or routine administrative matters dealing with the work of the ISC. This is far too great a restriction. The ISC recognises the Government's concerns, but the amendment, as it stands, not only is complex but could give rise to unintended consequences.

The right hon. Gentleman referred to the private sessions that the Committee had with survivors of the 7/7 bombings. Those were private sessions, but they did not contain any material that would have been protectively marked. Therefore, unless the proceedings of those sessions were to be reported in a special separate report or delayed until they could be incorporated into the annual report, the Committee would not be at liberty to publish anything about them or their content. That would indeed be a step backwards.

It is suggested in proposed new section 5(2)(b) that the ISC could not disclose information to any person if

"there is a risk that the person will publish it."

Even sharing information within the so-called ring of secrecy or with security-cleared personnel in Government Departments or in agencies does not actually preclude the possibility, albeit a slim theoretical possibility, that those persons might publish that information. There is always a risk that someone will make a damaging disclosure. The fact that amendment 47 only allows the ISC to publish information as reports overlooks circumstances when the ISC has written letters as opposed to formal reports. There may be an occasion where it wants to publish such letters, but amendment 47 would not allow us to do so.

Those are all examples of why we feel amendment 47 is so restrictive as to be unacceptable. I propose new clause 4 as an alternative on the basis that the simpler solution is often the best. My new clause requires that, in terms of publication or disclosure of information derived from classified material, the ISC must conduct itself in the same manner as any person subject to the Official Secrets Act. It recognises that we cannot decide by ourselves that we can publish classified information that we have been given, and we must respect the principle that the originator of classified material must control it. Even if my new clause is felt to be too liberal by the Government, that is a lesser fault than the restrictiveness from which the Government amendment suffers, and at the very least some sort of compromise between these two positions is necessary. I emphasise to the Minister that the Committee feels very strongly on that point. I feel that this should be one of the small number of measures where we put down a strong marker that he ought to undertake to consider the matter further before it is finalised.

Diana Johnson: As has been said already, Government amendment 47 introduces a specific statutory block on the ISC publishing or releasing information apart from through its annual report. New clause 4 tries to go some way to deal with the problems the Government have identified, but unlike amendment 47 it limits the restriction to information protected by the Official Secrets Act.

My right hon. Friend the Member for Torfaen made a short and eloquent speech and put very clearly the practical problems that will arise if Government amendment 47 is adopted. It seems that it would stop information being provided that would be very helpful to what the Government, and indeed the Opposition, are seeking to do, which is to aid the openness, where possible, of the ISC, by producing press releases or publishing letters where appropriate, where we know it is not against the national interest and no sensitive information is being disclosed. My right hon. Friend made an important observation, and I hope the Minister will respond directly to it. The hon. Member for New Forest East, as a serving member of the ISC, also mentioned the practical problems that he can see arising if the amendment were added to the Bill.

I would like to ask the Minister a few other questions. As he set out, the ISC will become a Committee of Parliament. I want to be clear: would the amendment include Members and other parliamentarians sitting on the Committee? Would they be covered in the same way as staff supporting the Committee?

As I understand it, all staff connected with the ISC will have signed the Official Secrets Act already, as will the parliamentarians. I am slightly confused. Will the amendment mean that both the staff and the Clerks and members of the Committee from both Houses, sitting on the ISC as parliamentarians, will be governed by this legislation when sitting on the ISC? I want to be clear on that. Where might the court order disclosure? As I read the amendment, the court could order information to be disclosed. Can the Minister give examples of where that might happen?

I am still not clear what sanction would be available if this provision were breached. Would the sanction be available to Parliament or to the security services and intelligence services if the provision were breached? I am not clear what the sanction would be if the amendment were accepted. Would not action inevitably be taken under the Official Secrets Act?

James Brokenshire: I say to my hon. Friend the Member for New Forest East and to the right hon. Member for Torfaen that the proposals we have made in the Bill are not intended to change existing practice. Under the Intelligence Services Act, the only right or power that the ISC has to make reports is to the Prime Minister. It produces an annual report. It may issue reports to the Prime Minister, and the Prime Minister may then lay before Parliament a copy of the annual report, and so on, subject to the necessary exclusions. In essence, therefore, the ISC is in practice acting beyond its current strict capabilities in some sense. We therefore recognise that that should not inhibit the issue of press releases in the ordinary way, alongside existing reports, and that it is limited to issues of conduct in connection with the exercise of the ISC's function—the direct oversight of the agencies and Government Departments. We believe that the sort of press release that was described would not fall into that category.

Dr Lewis *rose—*

James Brokenshire: I give way to my hon. Friend, who is seeking to catch my eye.

Dr Lewis: I am grateful, as always, to the Minister. I could perhaps help him by looking at the first sentence of his amendment, which states:

"This paragraph applies to information received by the ISC in private in connection with the exercise of its functions."

If it said something like "protectively-marked information" or "classified information" received in private, we might be on a convergence course, rather than having the problems we are addressing at the moment.

James Brokenshire: I certainly hear what my hon. Friend and the right hon. Member for Torfaen have said, and certainly I am not turning my face implacably against the points that they have made. The Government need to ensure that there is a mechanism in place, recognising the change in the status of the ISC, to assess sensitive material prior to its publication, and to assess whether redaction or other steps need to be taken. That is the thrust of the amendment; it simply recognises the change to the nature of the status.

Dr Lewis *rose—*

James Brokenshire: Before my hon. Friend catches my eye again, I would say to him that he has made his point about particular evidence that may not be sensitive, albeit there still probably needs to be a mechanism as to how that works. We certainly would not want to stand against the ISC in the publication of the press releases alongside its reports, as it would do now. Indeed, the reports themselves would be published, and therefore that would not offend the relevant provisions that we have outlined.

I say to my hon. Friend and to the right hon. Gentleman that I hear the point they make, and I hear the concern and anxiety being expressed as to whether in some way the amendment may inhibit or limit what is already happening in practice. That is not the Government's intent, and I will certainly look at the language to see if there is any way of giving further assurance on these practical issues, because it is certainly not the Government's intention to seek to do that.

Dr Lewis: I am sure that the Government are acting in good faith on this matter. It is simply that the wording as it stands refers to all

"information received by the ISC in private",

whereas the Government are rightly concerned about what happens to classified or protectively marked information received in private. We entirely accept why the Government are concerned about that, and I would like the Minister to hone in on that particular part of the amendment.

12 noon

James Brokenshire: I will certainly look very carefully at the relevant provisions. Equally, my hon. Friend may accept that his new clause has issues about the protection that would be afforded to members of the ISC and the nature of the existing arrangements. I will certainly re-examine the relevant provisions to ensure that the spirit of good will and the good faith that the Government are adopting are reflected.

Paul Murphy: The Minister is gracious to give way. The amendment is badly worded in that, as the hon. Member for New Forest East said, the restriction is really on the nature of the information, rather than on how the information is received. After all, everything that the ISC receives is private, because it meets only in private. Whatever it is—it could be about what the weather is like—is received in private. Perhaps the Minister will look again at new clause 4 and amendment 47. I think we all agree what needs to be protected, but in protecting what we think needs to be protected we may restrict the Committee in the exercise of its functions in another direction.

James Brokenshire: As during his original contribution to this debate, the right hon. Member makes an important point about the ISC's existing operations, and how it conducts its functions and publishes information. He will recall our debate on Tuesday about public evidence sessions. In large measure the intent was to draw a distinction so that something in a public evidence session would not be captured by the provisions in the amendment.

I recognise the right hon. Gentleman's point about the nature of the information, and acknowledge that many of the ISC's sessions will be in private, notwithstanding our debate on Tuesday about public evidence sessions. I will certainly reflect on the points that he and my hon. Friend have made so that we can ensure that the provision strikes the right balance in recognising the change in the nature of the ISC, while ensuring that appropriate safeguards are in place to ensure that protectively marked information is not disclosed inadvertently or without the proper process that already exists for ISC reports.

The hon. Member for Kingston upon Hull North highlighted a few questions on the scope and application of the provisions. I am advised that the restrictions would potentially attach to the members and staff of the ISC, albeit that the criminal sanctions that might apply would sit under the Official Secrets Act and other relevant legislation on the restriction of disclosure. Members and staff all sign the Official Secrets Act, and I think she asked whether members were governed by the Act when sitting on the ISC. I am advised that they are.

On what sanctions or teeth are intended, in essence a potential legal remedy is given, such that if the Government were aware that the ISC was about to publish information in breach of or not in keeping with the provision, some civil remedy would be enabled. An injunction could be obtained. If the breach crossed into Official Secrets Act territory, it would provide a separate remedy in any event, so that has import.

In conclusion, I will reflect further on what my hon. Friend and the right hon. Gentleman have said on the nature of the provisions. We will examine whether there is any way, through different mechanisms or by looking at the wording, to give the comfort that we all want. We all know what we want to achieve, and we need to ensure that that is best reflected. With those words, I encourage the Committee to accept the amendment.

Amendment 47 agreed to.

Amendment made: 48, in schedule 1, page 17, line 20, at end insert—

'*Protection for witnesses*

6 Evidence given by a person who is a witness before the ISC may not be used against the person in any criminal, civil or disciplinary proceedings, unless the evidence was given in bad faith.'.—*(James Brokenshire.)*

Schedule 1, as amended, agreed to.

Clause 2

Main functions of the ISC

Diana Johnson: I beg to move amendment 12, in clause 2, page 2, line 8, at end insert—

'(1A) The ISC shall consider the proposed appointment of each of the following, including by questioning the prospective appointee at a meeting of the ISC—

(a) the Director-General of the Security Service,

(b) the Chief of the Secret Intelligence Service,

(c) the Director of the Government Communications Headquarters, and

(d) such other persons as the Prime Minister may direct.'.

The Chair: With this it will be convenient to discuss the following:

Amendment 22, in clause 2, page 2, line 9, leave out from 'oversee' to end of line 11 and insert—

'any part of a government department, or any part of Her Majesty's forces, which is engaged in intelligence or security activities.'

Amendment 24, in clause 2, page 2, line 26, leave out from '(5)' to end of line 27 and add—

'A memorandum of understanding shall not take effect under this section unless a draft has been laid before, and approved by a resolution of, each House of Parliament.'

Diana Johnson: Amendment 12 would establish pre-appointment hearings for agency heads, amendment 22 would extend the scope of the ISC's oversight, and amendment 24 would apply the affirmative procedure in Parliament to the memorandum of understanding and so enable a vote on it. The amendments follow the theme that has developed in this Committee of strengthening the ISC, giving it greater independence wherever possible, and raising its profile as well. I will deal with each amendment in turn.

Under the previous Government, pre-appointment hearings were introduced for a large range of public sector roles, and we think that it is now time to extend them to agency heads. Select Committees now hold pre-appointment hearings for a number of positions and, in the light of our discussions about the status and nature of Select Committees, we believe it would help people to understand the ISC's role if it were given the opportunity to carry out this limited part of the work in which Select Committees are already involved. As has been mentioned, it is important to note that gone are the days when heads of agencies were secretive figures and nobody knew their names or what they looked like. Today, the agency heads are generally well known and have a strong profile. That is part of the agencies' efforts to open themselves up and to be more transparent about the fact of their existence and the type of work they undertake. We all recognise that that is important and we should applaud those efforts.

In the other place, Baroness Manningham-Buller and my right hon. Friend Lord Reid both argued that any person who is capable of running a hugely complex organisation, taking difficult decisions and juggling competing interests, should be able to give a competent

account of themselves and their organisation in front of parliamentarians. Another possible positive consequence of introducing pre-appointment hearings would be to encourage senior members of the agencies to foster strong relationships with the Committee, in preparation for possible future hearings.

Pre-appointment hearings were suggested in the other place, but unfortunately they elicited a weak response from the Minister, who argued that they were not necessary because agency heads are essentially civil servants and therefore not subject to pre-appointment hearings. As I understand it, Baroness Hamwee stated in an intervention that these are not civil servant positions, but Crown servant positions. They are different: they have far more autonomy than most civil servants, not only in how they structure their organisation but in operational matters. The decisions they make are of a different order of magnitude from those normally made by civil servants: they make decisions that can be a matter of life or death, not only for their staff, but for people in and outside the United Kingdom.

In addition, there is a more confusing line of accountability in these Crown servant positions. If the permanent secretary to the Home Office makes a decision or a mistake, the Home Secretary will be required to answer for it. She appears before Parliament regularly, and the decisions made by her Department are very much in the public eye because the Home Secretary is accountable to the House of Commons. I do not believe that there is such a clear line of accountability for the agency heads. The Prime Minister, as I understand it, has overall responsibility in Government for intelligence and security matters and for the agencies, and day-to-day ministerial responsibility for the Security Service lies with the Home Secretary, and for the Secret Intelligence Service and GCHQ with the Foreign Secretary, but only rarely are they called upon to account directly for the work of the agencies. We think it is important, therefore, to put greater emphasis and scrutiny on the individuals behind the scenes. That is the thinking behind amendment 12, and we hope that the Government will look on it sympathetically.

Amendment 22 follows on from our debates during consideration of schedule 1, in particular Government amendment 32, about the Prime Minister's power over the ISC's remit. Amendment 22, which would fit in just before that Government amendment, is designed to ensure that the ISC's remit is set out in fairly broad terms in statute, rather than in the memorandum of understanding. Clause 2(2) states that

> "The ISC may examine or otherwise oversee such other activities of Her Majesty's Government in relation to intelligence or security matters as are set out in a memorandum of understanding."

The amendment would remove the reference to the memorandum of understanding and assert the ISC's role and its importance, which fits in with the Opposition's aims of strengthening the Committee and making it easier to understand. As the role of the security agencies increases, the ISC must be given the powers to investigate their work, and it is the role of Parliament to try to stop the Government from infringing on the ISC's work where it is inconvenient. The amendment would ensure that a fairly broad remit for the Committee is enshrined in legislation rather than in the memorandum of understanding. That links with earlier discussions about taking references from Select Committees in which I emphasised the need for the ISC to be able to look at sensitive issues involving security matters wherever they arose. Amendment 22 would give the ISC a broader canvas.

Amendment 24 deals with the memorandum of understanding and the role of Parliament. The memorandum of understanding will govern the relationship between the Prime Minister and the ISC, including the matters that it is proper for the ISC to investigate. At present, the memorandum of understanding must be laid before Parliament, but parliamentarians have no opportunity to debate it or vote on it. The amendment would allow them to do so.

The memorandum of understanding has been rather elusive. Requests were made in the other place to see it, or at least to see a framework of its proposed contents, and such a document was promised on several occasions. By the end of the proceedings in the House of Lords a framework document had been produced, and the members of this Committee have had sight of it, as well. It is a summary of the intended content from Her Majesty's Government's perspective.

Has the hon. Member for New Forest East been involved in discussion of the contents of the memorandum of understanding? As we know, the document merely sets out what the Government think the memorandum of understanding should contain, and it would be interesting to hear from a serving member of the ISC about the discussions and the debate that have taken place so far. Unfortunately, it seems that we are unlikely to see the finished product before the end of our consideration of the Bill in Committee, and perhaps even before Report. It is therefore important that Parliament has an opportunity to debate more fully the contents of the memorandum of understanding and to vote on them. I hope that that suggestion might garner cross-party support.

Throughout the Bill, there are key references to the memorandum of understanding. Although we are giving the Bill effective scrutiny in Committee and I am sure we will also do so on Report, Parliament deserves to have a bigger role and should be able to debate the memorandum of understanding.

12.15 pm

Dr Lewis: I can give the hon. Lady some support on one amendment; my approach to the second is slightly more neutral, and to the third, I have to say, it is rather negative. I can give some support to her idea of holding pre-appointment hearings for the heads of the intelligence and security agencies. The Intelligence and Security Committee is not opposed to any such suggestion, but we would urge that, for practical purposes, if it were adopted it would be preferable if the wording was that the ISC "may" consider the appointments, rather than "must" or "shall" do so, as those are rather prescriptive. It is a little like the discussion we had on amendment 10, which dealt with public hearings and said that hearings must take place at least once every calendar year. Sometimes, pressure of work—particularly important work, or work on sudden emergency matters—means that the ISC would not like to be constrained to have to do something that is bound to use up a significant section of its time. Subject to that adjustment, however, I could support amendment 12.

[Dr Julian Lewis]

On broadening the ISC's remit, by including armed forces

"engaged in intelligence and security activities",

we fear that the wording of the amendment as it stands is too broad. In particular, one could argue that the entire British military effort in Afghanistan could be described as a security activity. Whether it is an intelligence activity—or an intelligent activity, some might say—is of course subject to debate. In making that remark, I mean no disrespect to the very serious efforts being made by our armed forces in that crucial area. The ISC would simply not be equipped to oversee such activity by the armed forces that went beyond the remit of intelligence and intelligence-oriented security matters that it has at present, so I fear I cannot support the amendment.

On amendment 24 and the question of the memorandum of understanding, let me first reassure the hon. Lady. She asked whether the ISC has been involved in what is to be in the memorandum of understanding, and the answer is yes, absolutely. The whole idea of such a document has to be that it is agreed between the two parties to the document, which are the Government and the ISC, and we attach great importance to its contents.

The document will be public, of course. I fully understand her concerns: given the importance of the matters that the document will deal with, Parliament might well have views on the subject. That is of particular importance the first time the document is drawn up and appears, but, normally, once it has appeared initially, the question that arises is: what do we do when, from time to time, we have to alter the provisions? I am sure that, on reflection, she will realise that if we had to go back for Parliament's approval every time we wanted to alter the MOU, that would result in unwanted delay and bureaucracy.

Let me give an example. What would happen if part of a Government agency that the ISC scrutinises was being restructured? As the Bill stands, we could probably sort that out through an exchange of correspondence between the ISC and No. 10, and a new remit for the Committee would be agreed in a week or so. However, if we had to amend the MOU to incorporate such a change and go back to Parliament to get it approved, given all the demands on parliamentary time it is unlikely that the House would be able to agree to such changes so rapidly. The ISC is therefore content for the current provisions on the MOU to stand, so I oppose amendment 24.

Paul Murphy: The thrust of my hon. Friend's amendments is an attempt to ensure that the ISC has a wider remit than it has had in the past and is more transparent and accountable. Amendment 12, for example, would ensure that prospective candidates for heads of the agencies could appear before the ISC. I do not see anything wrong with that at all. It is a good idea. It is held in private anyway, and the ISC would have greater stature as a result.

Amendment 22 is a bit wide, but in some ways it reflects what the ISC has done over the past 10 years anyway, with discussion of intelligence issues going beyond the three agencies. It certainly involved the Ministry of Defence and the defence intelligence staff. Over the last couple of years, the Government and the ISC have accepted that that issue should be dealt with by the ISC.

On amendment 24, I understand what the hon. Member for New Forest East said. Of course, my hon. Friend knows that the memorandum will be published in any event; her amendment affects the question of how that is dealt with in terms of speed and effectiveness.

James Brokenshire: Pre-appointment hearings are a relatively new phenomenon in the UK. Since 2008, Select Committees have conducted pre-appointment hearings for a list of posts and the Cabinet Office has published guidance on the process followed for such hearings, which includes the list of posts covered. In general, the process has been a welcome development and gives departmental Select Committees a role in questioning proposed appointees. It is important to note, however, that the posts on the list are in public bodies—for example, the chairs of Ofcom and the Social Security Advisory Committee. The pre-appointment process has never been used for the appointment of civil servants—I will come on to address the point made by the hon. Member for Kingston upon Hull North. The heads of the intelligence and security agencies are permanent secretary-level civil servants, and the recruitment process is therefore expected to follow the process for appointment of civil servants of such seniority.

Dr Julian Huppert (Cambridge) (LD): The Minister highlights the fact that these individuals are civil servants. That raises an issue also raised by the hon. Member for Kingston upon Hull North about their accountability to Parliament in other areas. It used to be that they were very secretive civil servants, but they are now able to give public speeches at the Mansion House and various other places. Does he agree that, where it is relevant—only where it is relevant—they should perhaps be prepared to give evidence to Select Committees?

James Brokenshire: Owing to the nature of the information provided and the roles that they have, the right place for them to give evidence is to the ISC, which they do within the bounds of the work that the ISC conducts. In last Tuesday's debate, we went over the challenges that would be involved in public hearings of the ISC; those challenges would be writ even more large if the heads of the agencies were to give evidence to other Select Committees. How best to address that is a real challenge, so I am not sure that I agree with the hon. Gentleman about the heads of the agencies giving evidence to other Select Committees.

There is accountability. Just as the Home Secretary is accountable for her Department, she is accountable for the Security Service under the Security Service Act 1989 and therefore open to questioning in that regard. Similarly, the Foreign Secretary is responsible for GCHQ and the Secret Intelligence Service under the Intelligence Services Act 1994. They are both held to account for the work of the agencies by being witnesses and giving evidence themselves to the ISC. I do not accept that accountability does not apply in respect of the agencies.

I come back to the specific point about the heads of the agencies themselves and their status. The agencies are excluded from the provisions of part 1 of the

Constitutional Reform and Governance Act 2010, which places the management of most of the civil service of the state on a statutory footing. Exclusion from that part of the Act merely reflects the specific nature of the agencies' operations. Staff of the agencies, including the heads, are and have always been part of the civil service of the state. That is clear from the relevant Act, and if it were not so, the specific exemption for the agencies in section 1(2) would not have been necessary. Staff of the agencies are not, however, part of the home civil service—generally referred to as the "Civil Service" with capital letters—nor are they part of Her Majesty's diplomatic service; they form a separate category of civil servants. They are also, of course, Crown servants, but that term is a wider term covering, for example, members of the armed forces.

Although the agencies are not bound by the civil service recruitment principles, I can reassure the Committee that they do in practice follow the spirit of the principles, and the Civil Service Commission is expected to be involved in the process. Pre-appointment scrutiny by Parliament is not appropriate, given that those roles are permanent secretary-level roles and, in practice, those who fill them will be recruited by a process involving a civil service commissioner. to ensure that the appointment is made on merit.

In particular, I see no reason why the agency heads should be treated differently from other permanent secretary appointments. Certainly, the roles that the agency heads play are very important and the appointments must be the right ones, but all permanent secretaries in the UK Government play very important roles. We do not believe that there is a reason to single out the agency heads for special treatment. In our judgment, the fact that all these posts are posts within the civil service of the state serving successive Administrations means that the pre-appointment process is not appropriate.

The current ISC has taken evidence from, and reported on the activities of, the wider intelligence community beyond the three intelligence and security agencies. The Bill formalises the ISC's role in overseeing the wider intelligence community by allowing the ISC to

"examine or otherwise oversee such other activities of Her Majesty's Government in relation to intelligence or security matters as are set out in a memorandum of understanding."

I want to be clear that the Government intend that, through the provisions of the MOU, substantively all of central Government's intelligence and security activities will be subject to ISC oversight. It is our specific intention that the MOU will cover: in the Ministry of Defence, the strategic intelligence direction, collection, analysis and training activities undertaken by the Chief of Defence Intelligence; in the Cabinet Office, the activities of the National Security Adviser and the National Security Secretariat in relation to matters of intelligence and security, the Joint Intelligence Organisation and the activities of the Office of Cyber Security and Information Assurance in relation to matters of intelligence and security; and in the Home Office, the Office for Security and Counter Terrorism. I think that I am right in saying that the current ISC agrees with that list.

It is right that the memorandum of understanding should spell out the precise remit of the ISC in relation to bodies other than the agencies, because the MOU can make provision at a level of detail that is not appropriate to include in primary legislation—the point made by my hon. Friend the Member for New Forest East. That is particularly important because parts of Government Departments engaged in intelligence and security activities might well be engaged in other activities that do not properly fall within the remit of the ISC.

Things change over time. Departments reorganise. The functions undertaken by a Department one year may be undertaken by another the following year. The intelligence world is no different from any other part of Government. For example, as with the recent Levene report, we could find that future reorganisations of defence might change organisational boundaries that affect MOD's intelligence activities. An MOU is flexible: it can be changed much more easily than primary legislation. It will enable 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.

If the amendment were accepted, instead of the ISC's widened remit beyond the three agencies being limited to oversight of intelligence and security activities and defined precisely in a memorandum of understanding, it would be defined under primary legislation as covering any part of a Government Department or any part of Her Majesty's force that is engaged in intelligence or security activities. That is simply too broad. The amendment would allow the ISC oversight of not just the intelligence and security activities of those organisations, but all the activities of those bodies, whether or not concerned with intelligence and security.

The Bill will already allow the ISC to oversee the activities of Her Majesty's forces relevant to intelligence or security, through its oversight of the relevant actions of the Chief of Defence Intelligence. On that basis, I hope the hon. Lady will not press her amendment to a vote.

12.30 pm

Amendment 24 would require a memorandum of understanding agreed between the Prime Minister and the ISC to be approved by a resolution of each House of Parliament before it can take effect. The MOU must be agreed between the Government—in the person of the Prime Minister—and the ISC. It is intended that the first MOU will be agreed immediately on the coming into force of the relevant provisions in the Bill, and that an agreed draft will be publicly available substantially before that.

As is usual for MOUs, there is no procedure for parliamentary approval. While the MOU itself will be an unclassified document, and it will be published and laid before Parliament, its precise terms are likely to be shaped by matters that are sensitive in national security terms and therefore cannot be made public. In such circumstances, it is particularly appropriate that the MOU can be concluded without parliamentary approval.

Of course, the terms of the MOU must be agreed with the existing ISC, comprised of parliamentarians, and which will be a Committee of Parliament, appointed by and accountable to Parliament. Requiring those parliamentarians to seek the approval of their parliamentary colleagues would be quite a restriction on the independence of that body.

We have not published the memorandum for the simple reason that it does not yet exist. We are in the process of agreeing the document with the ISC and are doing so in

parallel with the Bill's passage through Parliament. Once we have an agreed draft, we intend to publish it. It would not be appropriate to publish a draft that has not yet been agreed by both parties.

However, it was clear from the debate in Committee and on Report in the Lords that there is an appetite for more detail on what might be contained in the MOU. For that reason, before the debate on Third Reading in the Lords, the Government published a document that set out the areas that we intend the MOU to cover, premised on the assumption that the ISC-related provisions in the Bill would be enacted substantially in their current form. The document that we published records only the Government's intention, as the MOU needs to be agreed between the Prime Minister and the ISC. I would be happy to provide an updated document, taking account of our debates in Committee, before the Bill is debated on Report.

We included mention of the MOU in the memorandum that the Government provided to the Lords' Delegated Powers and Regulatory Reform Committee. We did so for completeness, not on the basis that the MOU will strictly be a delegated legislative power. As we made clear to that Committee, the purpose of the MOU is to make provision about the ISC in a flexible instrument that can readily be amended as necessary to suit changed circumstances and at a level of detail that simply would be inappropriate for primary legislation. It is emphatically not a means of avoiding appropriate parliamentary scrutiny.

The Delegated Powers Committee reported on the Bill before it was debated in Committee in the Lords. I am pleased to note that that Committee did not make any recommendations concerning the MOU. On that basis, I hope the hon. Lady will not press her amendment to a vote.

Diana Johnson: I am grateful for the contributions in this short debate on the amendments. They are probing amendments to push the Government to explain why they have set their face against pre-appointment hearings when there is a general appetite for them. I think their time will come. Perhaps it is part of a process by which the Committee inches, slowly but surely, towards becoming a Select Committee.

This has been a helpful debate, and I am grateful for the support from the hon. Member for New Forest East for amendment 12. I will certainly take on board the point he made about using the word "may", so that the ISC does not have to consider the appointments but may do so if it wishes. If the amendment were tabled again, I think the drafting would be changed to include "may".

I do not wish to push amendment 22 to a vote. I listened carefully to the Minister's explanation about the intention behind what would go into the MOU. I am satisfied with that, and I understand the flexibility the MOU gives regarding changes in Government Departments or new things that have to be incorporated. I understand that it is easier to amend the MOU.

On amendment 24, I should say that I am a little concerned. This will be the first time that the MOU is agreed. It might be helpful at the initial stage to have at least some opportunity for debate in Parliament. I understand what the hon. Member for New Forest East said about not wanting a debate every time there was a small amendment to the MOU. Is the Minister willing to think about a way for Parliament to have some opportunity to debate the MOU when it is first produced?

In an earlier part of the discussions, reference was made to the Backbench Business Committee finding time for the annual debate on the ISC report, which is held in Parliament. That is rather worrying, because that debate needs to be scheduled by the Government in Government time. Perhaps it could be linked to the MOU debate.

Dr Lewis: I stress that the Committee strongly agrees with the hon. Lady. We believe that the annual debate on the annual report should be in Government time. We should not have to negotiate with the Backbench Business Committee. That is not fair to Back Benchers or to that Committee.

Diana Johnson: I am grateful to the hon. Gentleman. That strengthens the message that is being sent to the Government. I know it is not the Minister's responsibility to schedule business in the House, but he has the ear of the Leader of the House and I am sure he can be very persuasive in making sure that the debate on the annual report—we have not yet had the debate on the last report—is scheduled appropriately, and perhaps linked with the new MOU if possible. On the basis of those comments, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendments made: 32, in clause 2, page 2, line 13, leave out from 'as' to end of line 19 and insert '—

(a) the ISC and the Prime Minister are satisfied that the matter—

(i) is not part of any ongoing intelligence or security operation, and

(ii) is of significant national interest,

(c) the ISC's consideration of the matter is limited to the consideration of information provided voluntarily to the ISC by—

(i) the Security Service,

(ii) the Secret Intelligence Service,

(iii) the Government Communications Headquarters, or

(iv) a government department.

'(3A) The ISC's consideration of a particular operational matter under subsection (3)(a) or (b) must, in the opinion of the ISC and the Prime Minister, be consistent with any principles set out in, or other provision made by, a memorandum of understanding.'.

Amendment 33, in clause 2, page 2, line 22, leave out '(3)' and insert '(3A)'.—*(James Brokenshire.)*

Clause 2, as amended, ordered to stand part of the Bill.

Clause 3

REPORTS OF THE ISC

Diana Johnson: I beg to move amendment 26, in clause 3, page 2, line 36, leave out from 'matter' to end of line 39, and insert 'contains—

(a) sensitive information (as defined in Schedule 1, paragraph 4), or

(b) information which, in the interests of national security, should not be disclosed.'.

The Chair: With this it will be convenient to discuss amendment 27, in clause 3, page 3, line 3, at end add—

'(8) Where the ISC makes a report under subsection (7), the Prime Minister or Secretary of State must provide a response to the ISC within three months of receiving the report.'.

Diana Johnson: Amendment 26 seeks clarification on the Government's redaction rights on reports produced by the ISC. At present, the Prime Minister can ask the Committee to redact any references that he feels might be prejudicial to the continued discharge of agency functions. The amendment would clarify that the Prime Minister's right of redaction applies to sensitive information as defined in schedule 1, or information that, if disclosed, would compromise national security. As has been said, the ISC is unique among Committees, in that it is the only one in respect of which we parliamentarians would accept that the Prime Minister has a right to redact information.

We have already discussed the importance of those rights, and the Opposition accept that the right to redaction must continue, whatever form the Committee takes, now that we know it will be a Committee of Parliament. We are pleased that the clause requires the Prime Minister to consult with the ISC before redacting information. We accept that, in the past, redaction has always been in the interest of national security, and not for political convenience. We also accept that there is nothing in the Bill to suggest that the Government intend to give themselves the right to redact information on the basis on convenience.

That said, we think the Bill could be a bit clearer about the Prime Minister's right to redact information. At present, the Prime Minister can ask for redaction if the release of information is

"prejudicial to the continued discharge of the functions"

of any of the agencies. Almost any criticism of the agencies, or indeed the Government, could be seen as prejudicial to the discharge of the functions. Such a broad remit allows for the possible neutering of the ISC. We are worried that the current wording does not do enough to distinguish between the need to protect sensitive information, involving intelligence or techniques, and wider issues about the governance of operations. A whole hosts of issues not related to operations may be uncovered by the ISC about any of the security agencies, which may damage their standing and, by implication, may be prejudicial to the discharge of the functions. However, prima facie, that would not always be a reason to prevent the information going public.

Amendment 26 would clarify what could be redacted, limiting it two broad and important categories: first,

"sensitive information (as defined in Schedule 1, paragraph 4)".

I am sure the whole Committee agrees that sensitive information must never be disclosed, and that even the possibility of such information being disclosed would inhibit the workings of the ISC and its all-important relationship with the agencies. The second category is

"information which, in the interests of national security, should not be disclosed."

This is a broad category, and obviously open to interpretation, but the Opposition believe this wording is a stronger test than that currently in the Bill, because it demands that the restrictions be based on the operation of the agencies in protecting the national interest, rather than their standing generally.

I turn to amendment 27:

"Where the ISC makes a report under subsection (7), the Prime Minister or Secretary of State must provide a response to the ISC within three months of receiving the report."

At present the ISC can make a report directly to the Prime Minister when it is too sensitive to be made public, but there is no requirement that the Government respond to such reports. The amendment would require that the Prime Minister or Secretary of State respond to such reports.

The Opposition welcome the provision in clause 3(7), which explicitly gives the ISC the right to report directly to the Prime Minister when it is not appropriate to publish the report more widely. That is a sensible move, which recognises the Committee's important work and the unique predicament in which it may find itself. The problem is that neither the public nor Parliament would ever know if such a report is made. Therefore, the Opposition tabled an amendment to ensure that the Government note and respond to such a report, just as they are obliged to do for reports made by Select Committees.

I am confident that the Government have no intention of ignoring the ISC and will always respond to any report, and that the Minister will accept the amendment. It would give the public and parliamentarians confidence in the ISC's powers to produce reports. It would ensure that the Prime Minister and the Secretary of State are well aware of the issues. It would ensure that a response is forthcoming, and that there is dialogue. That is why the Opposition tabled amendment 27.

Dr Lewis: I shall take the amendments in reverse order, if I may. On amendment 27, the ISC strongly agrees with the hon. Lady's attitude and reasoning. We are happy to report that the Prime Minister already invariably responds within that time frame when we make a report to him of the sort she described. However, we see absolutely no reason why, if the Government were willing to adopt the amendment, we should not support it, because her reasoning is extremely cogent.

12.45 pm

On amendment 26, we have a bit of with problem paragraph (a). It refers to

"sensitive information (as defined in Schedule 1, paragraph 4)".

However, that definition applies to highly sensitive information, such as the identity of agents in current operations. That is the sort of information that even the ISC may not be given in the first place. Therefore, to refer to that definition as the basis for redactions from ISC reports is probably inappropriate and excessively narrow.

Other than that we have no objection to register about the rest of the amendment. Likewise, we are satisfied with the existing wording of the Bill, as we believe it serves the purpose well. I hope that sheds a little light and provides encouragement for the hon. Lady, at least in respect of one of her amendments.

Paul Murphy: I think amendment 27 is fine, although I agree with the hon. Member for New Forest East that in reality, such a situation happens. There is no reason why it should not be put in the Bill.

[Paul Murphy]

It may interest the Committee to know that the ISC has to redact quite a bit from its reports. If hon. Members read the reports of the ISC they will see stars all over the place. The Committee might wonder about the process that led to those stars. There is usually lots of discussion and occasionally lots of rows. Inevitably, the Government and agency side can be rather nervous about putting some things in the public domain, even though to the eyes of members of the ISC they may not seem so sensitive. It is in the end inevitably a compromise, and rightly so, as clearly one has to protect agents, sources of information and all the rest of it.

I would not like the Committee to feel that the redactions are dealt with so quickly and easily that it does not matter. Sometimes weeks and weeks of ISC time is taken up with looking at what can and cannot be made public. It is important for the public to know that redactions are not undertaken frivolously but are regarded as extremely important. There are serious discussions about what should or should not be redacted. In the end, if the ISC fundamentally disagreed with the Prime Minister—who has the final word from the Government's point of view—it would say so in the report. It would put in the redaction but say that it did not agree with it. That rarely, if ever, happens.

James Brokenshire: I am grateful to the right hon. Gentleman for shedding light on the process of redacting ISC reports. He speaks with great authority, as does my hon. Friend the Member for New Forest East, on the approach that is taken and the way, pragmatically and practically, the issues are addressed. It is welcome that in this debate everyone has recognised the need for a mechanism to deal appropriately with potentially prejudicial information if it were disclosed more widely.

We want to ensure that the ISC is able to report candidly to the Prime Minister on sensitive matters. Therefore, inevitably the full contents of its reports cannot always be published, because of the nature of the material they contain. It follows that there has to be an ability to redact before reports can be laid before Parliament or published.

The test in the Bill, in the relevant provisions of clause 3, is modelled on that in the Intelligence Services Act 1994. We believe that it has worked well and is understood by the ISC and the Government, and it has allowed material to be excluded where it should be. It has also allowed the Government and the ISC to ensure that as much of the ISC's reports as can be published is published. We believe that the test is not too restrictive, but it covers certain categories of information that would not be covered if we accepted the amendment of the hon. Member for Kingston upon Hull North.

The functions of the agencies are not solely exercised in the interests of national security. Each agency also has functions exercisable in the interests of the economic well-being of the United Kingdom and in support of the prevention or detection of serious crime. For those instances where including a matter in an ISC report to Parliament could cause prejudice to the general functions of the agencies, but not to their national security functions, the prejudice to functions ground gives the Prime Minister the power to require that matter to be excluded from the ISC's report. My hon. Friend the Member for New Forest East has already highlighted some of the limitations to using the definition under amendment 26, and the national security ground it proposes would not attach that power, unless the information in question fell within the definition of sensitive information. On that basis, I hope that the hon. Lady will withdraw amendment 26.

Clause 3(7) states:

"The ISC may make a report to the Prime Minister in relation to matters which would be excluded…if the report were made to Parliament."

Amendment 27 would mean that, where the ISC makes a report under that provision, the Prime Minister or Secretary of State must provide a response to the ISC within three months. I can understand what the amendment intends for the relationship between the statutory committee of the ISC and how Select Committees operate, but it has been the practice, as we have heard in this debate, for the Prime Minister to respond to the ISC's published annual and special reports by way of a Command Paper laid before Parliament. The Prime Minister responds to the private reports issued by the ISC directly to the ISC. To provide reassurance that such responses are made promptly in future, the Government intend that the memorandum of understanding should state that the Government aim to respond to the ISC's published reports within 60 days.

That reflects the practice with Select Committee reports, as set out in the Osmotherly rules, with which we have become familiar in Committee. Those rules recognise that a longer period may be needed in more complex cases. They state:

"Only in exceptional circumstances should a response be deferred for more than six months after the Report's publication."

Amendment 27 would not require the Government's response to the ISC's report to the Prime Minister to be published, only that it be made to the ISC. I reassure the hon. Member for Kingston upon Hull North that it has been general practice for the Prime Minister to respond directly to the ISC on the ISC reports that are not laid before Parliament and are therefore not made public. The Government's intention is that that shall continue to be the practice with the new ISC. Again, we are happy to include reference to that in the memorandum of understanding.

We do not have any objection in principle to ensuring that those timelines for the Government to respond to Select Committee reports are adhered to in relation to the ISC; we just think that it is more appropriate to give that reassurance to the Committee through the memorandum of understanding. I hope that, based on my assurances on the matter, the hon. Lady will feel minded to withdraw her amendment.

Diana Johnson: I start by saying how useful it is to have serving and past members of the ISC on this Committee to advise on what happens there, the great deal of work that is carried out with the reports, what is redacted and the arguments and discussions that take place. That is useful to hear.

I am minded to withdraw the amendment. This group of amendments was probing and has been useful in ascertaining how the Prime Minister responds to these private reports. I am pleased that there will be an opportunity for the Government to bring forward responses on the ISC's public reports within the time frame that is

used for Select Committee reports. That is a positive move forward, and I look forward to the debate that we will have on the Floor of the House at some future point. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

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

Paul Murphy: I just have one small point before we move on. I do not want to detain the Committee, but clause 3(1) states:

"The ISC must make an annual report to Parliament on the discharge of its functions."

It "must" make a report. I hope that the Minister will be able to go to his right hon. Friend the Leader of House and let him know that it is a statutory requirement on the Committee and that therefore applications to the Backbench Business Committee would not exactly the fulfil the remit that Parliament will give the Committee when the Bill finally becomes an Act.

James Brokenshire: The point has been made clearly and it has been recognised that my responsibilities do not extend to the allocation of parliamentary time. However, I appreciate the point, which has been made by several members of the Committee, about the parliamentary debate on the ISC's annual report and will draw the Leader of the House's attention to the comments.

Question put and agreed to.

Clause 3 accordingly ordered to stand part of the Bill.

Clause 4 ordered to stand part of the Bill.

Clause 5

Additional review functions of the Commissioner

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

Diana Johnson: The Opposition welcome the clarification of the Intelligence Services Commissioner's role in clause 5. While we appreciate that the clause is drafted to codify existing practices, it is nevertheless important given the sensitivity of the commissioner's work. Given that the Bill reforms the roles of both the commissioner and the Intelligence and Security Committee, what thought have the Government given to aiding better co-operation between the two? What co-operation is there between the ISC's staff and the staff of the commissioner, especially in the light of what may happen to the ISC's secretariat in future? I want to be clear about the relationship.

Although the clause is meant to give statutory cover for the extended role, much remains at the Prime Minister's discretion, with most of the guidance being dependent on it. The Opposition therefore welcome the fact that the directions will be published to Parliament, as far as that can happen, but has any draft guidance been prepared? How often will the guidance be renewed? What role will the ISC have in influencing the directions given to the commissioner?

James Brokenshire: Clause 5 adds additional functions to the statutory oversight remit of the Intelligence Services Commissioner. It enables the Prime Minister to issue a direction to the commissioner, either the Prime Minister's own or on the commissioner's recommendation, to keep under review other aspects of the functions of the agencies or any part of Her Majesty's forces or Ministry of Defence engaged in intelligence activities.

As the hon. Lady highlights, the commissioner has an important and valuable oversight role. We believe that the extension of the commissioner's functions will provide a clear statutory basis for the duties that the commissioner has occasionally agreed, at the request of the Prime Minister, to take on outside his statutory remit. For example, the commissioner monitors compliance with the consolidated guidance on detention and interviewing detainees by intelligence officers and military personnel in relation to detainees held overseas. The Bill will ensure a clear and transparent basis for that work. If the measure is passed, the Prime Minister will give a direction to the commissioner to undertake that role. A draft direction to that effect has been published alongside the Bill as an example of how the power of direction is intended to be used. A direction given by the Prime Minister to the commissioner must be made public as the Prime Minister considers appropriate, except where doing so would be contrary to the public interest, such as, for example, if it prejudiced national security. In practice, we expect the Prime Minister to write to the commissioner and a copy of that letter will be placed in the House of Commons Library. It is important, for the reasons that the hon. Lady gave, that the commissioner's role is as open and transparent as possible, within the restrictions of national security.

The hon. Lady raises issues about the co-operation between the ISC and the commissioner and that is under consideration and development. I am sure that future discussions about the work of the ISC, and the secretariat that will sit alongside it, will cover any other bodies that co-ordinate with or strengthen the ISC or the commissioner, so I am grateful to her for highlighting the point.

Question put and agreed to.

Clause 5 accordingly ordered to stand part of the Bill.

Ordered, That further consideration of the Bill be now adjourned.—*(Mr David Evenett.)*

1.1 pm

Adjourned till this day at Two o'clock.