

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT  
GENERAL COMMITTEES

## Public Bill Committee

### JUSTICE AND SECURITY BILL [*LORDS*]

*First Sitting*

*Tuesday 29 January 2013*

*(Morning)*

---

#### CONTENTS

Programme motion agreed to.  
Written evidence (Reporting to the House) motion agreed to.  
CLAUSE 1, as amended, under consideration when the Committee  
adjourned till this day at Two o'clock.

---

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

£6.00

Members who wish to have copies of the Official Report of Proceedings in General Committees sent to them are requested to give notice to that effect at the Vote Office.

No proofs can be supplied. Corrigenda slips may be published with Bound Volume editions. Corrigenda that Members suggest should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

**not later than**

**Saturday 2 February 2013**

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

© Parliamentary Copyright House of Commons 2013

*This publication may be reproduced under the terms of the Open Parliament licence,  
which is published at [www.parliament.uk/site-information/copyright/](http://www.parliament.uk/site-information/copyright/).*

**The Committee consisted of the following Members:**

*Chairs:* MR DAVID CRAUSBY, † MR JAMES GRAY

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

## Public Bill Committee

Tuesday 29 January 2013

(Morning)

[MR JAMES GRAY *in the Chair*]

### Justice and Security Bill [Lords]

8.55 am

**The Chair:** In welcoming you all to the Committee, may I make a couple of brief introductory remarks?

I will apply the same rules and procedures in this Committee as are applied in the Chamber, and therefore unless we suffer from extreme discomfort, for example, the code of dress will be identical to that which we would like in the Chamber. The same applies to the rules on eating, drinking and all those kinds of things. Mobile phones should be turned off or switched to silent. I will apply all those rules as strictly here as Mr Speaker would in the Chamber, if that is agreeable to the Committee.

I should tell members that, generally speaking, my fellow Chair and I will not call starred amendments, which have not been tabled with enough notice. The required notice period in Public Bill Committees is three working days, which means that amendments for consideration on a Thursday should be tabled by the rise of the House on the Monday, and amendments for the following Tuesday should be tabled by the rise of the House on the Thursday.

For the benefit of those who have not sat on Public Bill Committees before, I should say that the selection list for today's sitting, and for each day, is available in the room, on the table at the back. The list shows how amendments are selected for debate and how they have been grouped together for debate. Amendments that are grouped together are generally about the same or a similar issue, and the Chairman will make sure that the grouping is satisfactory, under close advice from our learned friends the Clerks. Obviously, if people were not happy with the grouping at any stage, perhaps they would let the Chairman know that they thought it somehow inappropriate. By and large, however, the grouping tends to be done eminently professionally.

The member who puts his name on a leading amendment in a group is called first, and other members of the Committee are then free to catch my eye if they wish to speak to the group. Any member may speak more than once on each group of amendments if they wish. At the end of the debate on a particular group of amendments, I call the member who moved the leading amendment again; before they sit down, they have to indicate whether they wish that amendment to go to a Division or whether they intend to seek leave of the Committee to withdraw it. If any other member who is leading on any other amendment in that group wishes for there to be a vote on it, they must let me know that that is the case, otherwise I will not know. I work on the assumption that the Government want all Government amendments to go to a decision.

You probably all know this perfectly well, but decisions on amendments are not called in the order in which they are debated, but in the order in which they appear on the amendment paper. That often confuses people.

I will use my discretion to decide whether we should have stand part debates on each clause. By and large, the rule that I apply is that where there has been a reasonable debate on the main substance of the clause, we will not have a stand part debate, but where there has been insufficient debate for one reason or another, I will allow a stand part debate, if any member asked for that. I hope that clears things up and is helpful to you all.

Before we move on to line-by-line consideration of the Bill, there are two or three procedural matters that we must deal with. First, I call the Minister to move the programme motion.

**The Parliamentary Under-Secretary of State for the Home Department (James Brokenshire):** I beg to move,

That—

(1) the Committee shall (in addition to its first meeting at 8.55 am on Tuesday 29 January) meet—

(a) at 2.00 pm on Tuesday 29 January;

(b) at 11.30 am and 2.00 pm on Thursday 31 January;

(c) at 8.55 am and 2.00 pm on Tuesday 5 February;

(d) at 11.30 am and 2.00 pm on Thursday 7 February;

(e) at 8.55 am and 2.00 pm on Tuesday 12 February; and

(f) at 11.30 am and 2.00 pm on Thursday 14 February;

(2) proceedings on consideration of the Bill in Committee shall be taken in the following order: Clause 1; Schedule 1; Clauses 2 to 16; Schedules 2 and 3; Clause 17; new Clauses; new Schedules; remaining proceedings on the Bill;

(3) the proceedings shall (so far as not previously concluded) be brought to a conclusion at 5.00 pm on Thursday 14 February.

I welcome you to the Chair, Mr Gray. On behalf of the Committee, I should say that we look forward to serving under your chairmanship—and that of your co-Chair, Mr Crausby.

This is a significant and important Bill, which seeks to address three main areas: oversight, in terms of reform of the Intelligence and Security Committee; proceedings, to ensure that the Government are able to defend themselves effectively in circumstances where matters or evidence involve national security; and measures to deal with what is known as the Norwich Pharmacal jurisdiction and its scope in certain national security cases.

I very much look forward to our debates and discussions in the sittings ahead. Some right hon. and hon. Members are familiar with my Committee style, so I look forward to lively debates on significant issues. We believe that the programme motion provides sufficient time for discussion, and that we can improve the Bill so that it has its rightful effect of providing justice and security.

9 am

**Diana Johnson** (Kingston upon Hull North) (Lab): I, too, welcome you, Mr Gray, and your co-Chair, Mr Crausby.

As the Minister said, the Bill is very important, with implications for liberty, security and justice alongside the role of Parliament. There has already been considerable scrutiny of the Bill in the other place, but I am sure that there will be even more scrutiny in our Committee.

The Committee is very high powered. During his distinguished parliamentary career, my right hon. Friend the Member for Torfaen chaired the ISC and held a number of senior Cabinet and ministerial roles that directly relate to some of the Bill's provisions. I pay tribute to the hon. Member for New Forest East, who is a serving member of the ISC; his contributions to our deliberations will be very valuable. My hon. Friend the Member for Hackney South and Shoreditch has great experience as a former Home Office Minister, and my hon. Friend the Member for Edinburgh East comes to Parliament from a distinguished legal career.

My hon. Friend the Member for Houghton and Sunderland South has considerable knowledge of contemporary defence and home affairs issues, and my hon. Friend the Member for Lewisham East will, of course, make sure that Opposition Members behave ourselves. My hon. Friend the Member for Hammersmith will lead on the justice clauses and, with his background as a distinguished lawyer, brings great experience to the Committee.

I pay tribute to the Minister. I have had the pleasure of sitting on a number of Committees with him. He prepares thoroughly for Committee sittings and listens carefully to comments made by all members. I look forward to our debates.

*Question put and agreed to.*

*Resolved,*

That, subject to the discretion of the Chair, any written evidence received by the Committee shall be reported to the House for publication.—(*James Brokenshire.*)

### Clause 1

#### THE INTELLIGENCE AND SECURITY COMMITTEE

**James Brokenshire:** I beg to move amendment 4, in clause 1, page 1, line 5, after 'Committee', insert 'of Parliament'.

**The Chair:** With this it will be convenient to discuss Government amendments 49, 50 and 51.

**James Brokenshire:** We start with the important provisions relating to oversight of the Intelligence and Security Committee. Like the hon. Member for Kingston upon Hull North, I very much welcome the contributions we shall receive in our debates on part 1 from my hon. Friend the Member for New Forest East, given his membership of the ISC, and from the right hon. Member for Torfaen, a distinguished former Chair of the Committee. We shall have well informed debates on the proposals to strengthen and further develop scrutiny of intelligence and security matters.

The Bill makes significant changes to the status of the ISC. The ISC will be appointed by Parliament and will report to Parliament as well as to the Prime Minister. The amendments concern other aspects of the ISC's status, and the Government amendments in the group will further strengthen the ISC in a number of ways.

On Report in the other place, Lord Taylor announced the Government's intention to make clear the parliamentary character of the ISC; to make a number of necessary consequential amendments; and to consider whether to

give the ISC bespoke statutory immunities that would provide it with protections that would replicate certain aspects of parliamentary privilege.

The Government amendments deliver on the Government's intention. Amendment 4 would change the name of the Intelligence and Security Committee to "the Intelligence and Security Committee of Parliament". The amendment will more fully realise the Government's intention that the ISC should be a Committee of Parliament, created by statute. It will not have all the attributes of a departmental Select Committee, but it will become a Committee of Parliament for the purposes of other statutes, some of which I shall come to presently.

I note that the lead amendment has cross-party support; the hon. Member for Kingston upon Hull North has put her name to it. That reflects the strong feeling across the Committee—and, I am sure, the House—about the need to strengthen and enhance the scrutiny that the existing ISC provides. That is not in any way to undermine or criticise the incredible work that the ISC already does; the issue is about how we can strengthen that and take it further forward through the amendments.

As we are making it clear that the ISC will be a Committee of Parliament, we consider it necessary to make a number of consequential amendments. As a Committee of Parliament, the ISC would, for the first time, come within the ambit of the Freedom of Information Act 2000. Like other Committees, it would be a part of the House of Commons and the House of Lords for the purposes of the Act. To avoid a number of consequences and reflect the special character of the ISC, amendment 50 would amend references to the House of Commons and House of Lords in schedule 1 to the Freedom of Information Act to make it clear that they were not subject to the Act as regards

"information held by the Intelligence and Security Committee of Parliament."

The amendment preserves the status quo, in that the Freedom of Information Act does not apply to information held by the ISC now. It will not do so in future. That is a desirable outcome, given the great sensitivity of much of the material held by the ISC. In addition, amendment 50 adds the ISC to the list of bodies under section 23 of the Freedom of Information Act. The result would be that ISC information—in other words, information supplied to or by the ISC, whether directly or indirectly, or which relates to it—in the hands of another public body or public authority subject to the Freedom of Information Act, was exempt information for the Act's purposes. Section 23 is the absolute exemption. Any information falling within the terms of the exemption can be withheld without there being a duty to consider the public interest balance that would otherwise come into play under section 2 of the Freedom of Information Act.

We believe that the ISC sits comfortably in the list of bodies in section 23 and the exemption provided. The security and intelligence agencies are in that list and the ISC is a natural fit, given that the vast majority of its work deals with very sensitive information.

Adding the ISC to the list of section 23 bodies is also a protection for witnesses before the ISC. If an ISC witness is an employee in a Government Department, the Department inevitably holds copies of the witness's written and oral evidence—the latter because the ISC's practice is to send witnesses a transcript of their oral

[James Brokenshire]

evidence for checking. Without the full protection of a section 23 exemption, witnesses who do not represent the agencies might feel constrained about what they could say in evidence. That would make the ISC's scrutiny role less effective; naturally, it relies on witnesses being frank about subjects that are, by their very nature, sensitive.

The ISC was set up deliberately, and rightly, to deal with sensitive national security material. It is the only Committee of parliamentarians that sees protectively marked material up to the "top secret" strap. Indeed, almost all the ISC's work involves dealing with such protectively marked material. Its accommodation allows it to access and store such material, and its staff have all gone through developed vetting.

It may be argued that the existing section 23, because of its application to information supplied directly or indirectly by—or relating to—the agencies, provides sufficient protection. However, as the Bill broadens the ISC's statutory oversight role beyond the agencies to the wider intelligence and security community, the ISC will increasingly hold material that is not covered by section 23 of the Freedom of Information Act, as it is not being provided to it by the three intelligence agencies.

Alternatively, it might be said that section 24, an exemption for national security-sensitive information, provides sufficient protection. However, that section is a qualified exemption, which means that it offers protection only in so far as the public interest in withholding the information for the purposes of safeguarding national security outweighs the public interest in disclosure of that information.

We believe that witnesses would be more guarded in what they said were there anything less than a complete guarantee that the information they provide to the ISC will not ultimately be disclosed under the Freedom of Information Act. It is worth noting that evidence given by witnesses before Select Committees is protected by an absolute, rather than a qualified, exemption; section 34 of the Freedom of Information Act provides an absolute exemption for information that is subject to parliamentary privilege. We would not, however, want the addition of the ISC to the list of section 23 bodies to inhibit disclosure of information about the ISC's administration and running costs. We would therefore like to include, in the memorandum of understanding with the ISC, a commitment that each of the ISC's annual reports will contain details of its staffing and running costs for the relevant period.

The Data Protection Act 1998 applies to Parliament, but with special rules to determine who is the data controller—the person within any organisation on whom most of the obligations under the Act fall. Section 63A of the Act says:

"Where the purposes for which and the manner in which...data are...processed are determined by or on behalf of"—

either House—

"the data controller...shall be the Corporate Officer of that House."

We do not believe that it is appropriate that the corporate officer should be the data controller for data processed by the ISC, but that is the likely effect of section 63A once the ISC is a Committee of Parliament. The sensitivity

of much of the data handled by the ISC means that the corporate officers will not be entitled to have access to them, making it impossible for the officers to ensure that the requirements of the Data Protection Act are followed. That is why we sought to make modifications in this regard.

In conclusion, the changes proposed by the amendments are intended to ensure that the ISC is able to operate effectively as a statutory Committee of Parliament, recognising the need for candour of witnesses and, we believe, recognising the special characterisation of the ISC.

**Diana Johnson:** I thank the Minister for his thorough explanation of the Government's amendments. I read the deliberations of the other place in Committee, on Report and on Third Reading, and it was quite clear that the Government were struggling over exactly what to do about the status of the ISC. Even on Report, they were unable to table the exact changes they wanted to make to the Bill. We now have a series of amendments, which were tabled last Thursday, setting out the Government's intentions to the Committee. It is helpful that the Minister went through in detail the Government's thinking on how the ISC should be constituted.

9.15 am

It will be helpful if I start by saying that the Opposition support the Government's aim, in introducing part 1, of strengthening the ISC. The ISC has been in operation for 18 years and was originally established under the Intelligence Services Act 1994. When it was set up, it represented a sea change in the relationship between Parliament, the public and the security services. There was great nervousness in the security services about how the ISC would work and about Parliament's involvement.

Since the creation of the ISC, the relationship between Parliament, the public and the security agencies has changed beyond recognition, and that is why part 1 is before us today. That change happened because of the ISC's work, but it is also down to efforts on behalf of the agencies to open up their work. In the other place, Baroness Manningham-Buller led the way in opening up, and speaking about, the role of the intelligence and security services.

Events such as 11 September and many other terrorist atrocities have made the public much more aware of, and interested in, what is happening with the security and intelligence agencies. In addition, the amount of taxpayer's money spent on those agencies—about £2 billion—means there is a real appetite for making sure that money is spent properly and appropriately, with good scrutiny of how it is spent. Finally, in the debate on the ISC's annual report in 2011, the Committee's Chair raised the need for radical modernisation of the machinery that has operated since 1994.

I stress that the Opposition want reform and we support the amendments, but that is not because we question the ISC's current functioning. The Committee has steadily grown since its inception in 1994, and it is now extremely effective. The changes that the Committee itself is seeking are absolutely right and proper.

Let me move on to how the amendments will help to build the public's confidence in the ISC's operation. A couple of days before the Minister tabled amendment 4,

I tabled an identical amendment, but I cannot claim the credit for his, because it is in fact a re-tabling of an amendment that was first tabled in the other place by Lord Butler and the Marquess of Lothian, who are members of the ISC. That amendment was supported by my noble Friend Baroness Smith.

I concur with much of what the Minister said about the benefits of amendment 4. Some are practical, but some are largely symbolic. I draw the Committee's attention to the letter from Sir Robert Rogers, the Clerk of the House of Commons. I hope, Mr Gray, that it was distributed to members of the Committee yesterday and that they have had an opportunity to consider its contents.

**The Chair:** I have not seen it, but a nod from the floor indicates that Members have seen it.

**James Brokenshire** *indicated dissent.*

**Diana Johnson:** I am slightly worried, Mr Gray. The Minister is indicating that he has not seen it.

**Paul Murphy** (Torfaen) (Lab): I have not seen it.

**The Chair:** Order. There is some confusion. Perhaps I can ask my learned friend the Clerk to look into the matter and make sure that the letter is circulated to all members of the Committee, including me.

**Diana Johnson:** I apologise if the letter has not been sent to all members of the Committee, because it is a useful document for our discussion of part 1 of the Bill.

**Heidi Alexander** (Lewisham East) (Lab) *rose—*

**The Chair:** Order. Before the hon. Lady intervenes I am informed that copies are in fact in the room, on the table at the back, and the letter was e-mailed to all members of the Committee yesterday.

**Heidi Alexander:** Your advice to the Committee, Mr Gray, covered what I was going to say in my intervention. I wanted to inform members that the letter was circulated by e-mail yesterday.

**Diana Johnson:** I am grateful to the Clerk of the House of Commons for his assistance in providing the clear explanation in the letter, which gives advice on the status of the Government amendments and what they do. He says clearly that there is a precedent for statutory Committees to be created in the way in question, and he makes particular reference to the Ecclesiastical Committee. I think I am right in saying that the current ISC is already a statutory Committee established under the Act I mentioned earlier, and comprises Members of both the House of Commons and the House of Lords.

In the letter, the Clerk of the House makes a clear distinction between a statutory Committee, which can be called a Committee of Parliament—or, as I understand it, can be called anything else it wants—and a Committee that Parliament itself establishes, not by statute but by resolution of the two Houses, and set up under their Standing Orders, and of itself attracts parliamentary

privilege. I am sure that we shall have a longer debate about parliamentary privilege when we debate future groups in clause 1, but we need to be clear at this point that Government amendment 4 is intended to establish a statutory Committee, not a Select Committee, of Parliament.

Since its inception, the ISC has comprised Members of Parliament, yet because of its uniqueness, it has often seemed more like part of the Executive, not least because its secretariat is provided by the Cabinet Office, its membership is appointed by the Prime Minister, and it reports to him. Changing the name of the ISC to the Intelligence and Security Committee of Parliament emphasises the fact that not only does the ISC comprise parliamentarians, but that they are doing the work of Parliament while serving on it. We may not think that is particularly controversial now, but it is worth remembering that, as I mentioned earlier, the idea that Parliament had any role in overseeing the security agencies was pretty radical when the ISC was first proposed. That, again, shows how far things have come in recognising the importance of parliamentary oversight.

There are practical considerations that this Committee should spend some time considering, in terms of moving the ISC towards becoming a Committee of Parliament, even if it remains a statutory Committee. The Minister in the Lords, Lord Henley, set out the Government's intention to move the secretariat and support structures that the Committee enjoys from the Cabinet Office to Parliament. That is a significant undertaking, and I should appreciate it if the Minister would explain the following points.

How does the Minister expect the secretariat to be provided? The parliamentary Clerks are unrivalled in their professionalism and competence, but they do not have particular experience of such sensitive material, and it would seem necessary for the ISC to maintain at least some of its current staff. Does the Minister envisage that the staff who service the ISC now would be transferred to Parliament under TUPE? What discussions did the Government and the Minister have with the Clerk of the House of Commons about the matter?

Has the Minister written formally to the Clerk, requesting that the Clerk now start to make preparations for the transfer of such staff and to make the other preparations that will be necessary if the Committee is to come to Parliament? To what degree will the ISC staff remain separate to the other clerking arrangements in Parliament? Does the Minister envisage that there will be a special area for the Committee to be housed, bearing in mind the nature of the documents and so on with which it will be dealing?

Let me turn to the issue of money. As I understand it, the ISC is a very expensive body to run, for good reason. It costs several million pounds a year to operate. As I understand it, that is far more than any other parliamentary Committee. I understand that the running costs of a Select Committee are in the region of £600,000 a year. Will the Minister say how much he believes becoming a Committee of Parliament will cost, and how that money will be found?

I note that there has been generally a view that with the expanded remit of the ISC, additional resources will be given to the Committee. Can the Minister tell us about that and about the additional funds that have already been allocated to ensure that the ISC can do its

[Diana Johnson]

new work? Given that Parliament is not funded by the Treasury, as I understand it, it is not simply a case of transferring money from the Cabinet Office to Parliament. I also understand that Parliament is trying to reduce its costs by 25% in the course of this Parliament. Can the Minister comment on how that is to be achieved if it then has to adopt the secretariat for the ISC? How will that work?

Finally, I turn to Government amendments 49 and 51. The Minister presented them as a necessary consequence of the ISC's becoming a Committee of Parliament and therefore being subject to freedom of information and data protection requirements. The Opposition largely accept that and will be supporting the amendments, but I raise a word of caution about Government amendment 50. The Minister tried to address this point, but I would like him to explain it a little further. At present, the ISC is not subject to the Freedom of Information Act. With some exceptions for privilege matters, Parliament is of course subject to FOI requests. Making the ISC a body of Parliament opens up the possibility that the Minister mentioned—of its being declared subject to FOI requests. At this point, there is no suggestion of the ISC's being subject to privilege, which of course would protect it, so we need to look at what other protections—statutory protections—the ISC requires, as the Minister rightly said..

I think that we could all agree that the ISC needs to be able to provide absolute security for the sensitive information that it receives. As the Minister pointed out, under section 23 of the Freedom of Information Act, there is already a complete exemption for information

“if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).”

Subsection (3) includes all the security agencies. Government amendment 50 will add the ISC to that list.

I listened carefully to what the Minister said. He talked about section 24 and the exemption for national security issues in the Freedom of Information Act, but also made the point that it was not an absolute exemption and had to be weighed. The point I was trying to get to, in raising my concerns, was that Government amendment 50 would not only prevent freedom of information requests for information that the Committee receives, but would exempt all requests for information about the Committee itself. As the Minister rightly pointed out, that could involve the costs of the Committee or how often the Committee would meet. The Minister recognised that we ought to be very careful about stopping the public having access to information about the way Parliament chooses to operate and how it spends its money, and said that his approach was to put within the memorandum of understanding an explicit reference to the fact that the Committee would provide information if requested. Will he say more about that?

In the other place, some Lords requested sight, at least, of the memorandum of understanding's framework. It was promised at various stages, as I noticed when reading the debate, but I do not think that it was ever delivered. I may be wrong, in which case I would be happy if the Minister corrected me.

9.30 am

As the Bill sets out, the memorandum of understanding will simply be presented to Parliament, so we will not have an opportunity to vote on its contents. A later amendment will try to give Parliament more oversight of the contents of the memorandum of understanding. Will the Minister say what the status is of any direct reference in the MOU to the running of the ISC, its costs and how often it meets in relation to FOI requests? I am not sure about that relationship, and whether the MOU could be relied on in court or tribunal proceedings that might arise from non-compliance with a freedom of information request. I would be grateful if the Minister dealt with that point.

**Dr Julian Lewis** (New Forest East) (Con): It is a great pleasure to serve under your chairmanship in Committee, Mr Gray. I shall see you, as it were, with a new profile. I should explain that I am an interloper on behalf of my right hon. and learned Friend the Member for Kensington (Sir Malcolm Rifkind), who is Chair of the Intelligence and Security Committee. He would have liked to participate directly in the work of this Committee, but because the ISC holds regular meetings on Thursday mornings, that is not possible. In a sense, I am the messenger.

The Intelligence and Security Committee is a model of non-partisanship—as it should be, given the subject matter with which it has to deal—and it is therefore appropriate that both Government and Opposition Front Benchers have put their names to this first group of amendments. I congratulate the hon. Member for Kingston upon Hull North on homing in on precisely the sorts of areas that the amendments tabled both by the Government and by me on behalf of the ISC seek to address. She will find that my interventions in Committee will sometimes be nearer to her position than to the Government's, and that the reverse will sometimes be true. I am confident that, with the right spirit of approach to this subject matter, we will make great progress, building on the definite improvements already made to the Bill by prior consideration in the upper House.

On this group of amendments, I will confine my remarks to saying that I strongly support their thrust. I look forward to improving the Bill further by agreement, in the way that is absolutely necessary if this important work is to be regulated properly.

**Paul Murphy:** It is, indeed, a great pleasure to serve under your chairmanship, Mr Gray. I have not served on a Public Bill Committee for 17 years, so I hope that the rules are the same as they were in 1995; if they are not, there is no doubt that you will put me right, as you will the rest of the Committee.

The Government and the Minister, in tabling this first group of amendments, are absolutely right. It is appropriate, as the hon. Member for New Forest East has just said, that there is generally consensus among the political parties in this place on intelligence and security issues, and about the nature and operations of the Intelligence and Security Committee. That is why my hon. Friend the Member for Kingston upon Hull North added her name to the amendment that the Minister ably moved at the beginning of the sitting.

On consensus, my memory is that no vote has ever been held in the Intelligence and Security Committee—bar one, which was about whether the Committee should go by plane or train to wherever it was going. That is a

measure of its consensual nature. It is not cosy, but it is consensual. It discusses matters of great secrecy, and its members are generally old codgers like me who have done our time in government and have some experience to give, and because it meets in private, unlike Select Committees, there is no need to be more partisan than necessary.

That is the background, but hon. Members—certainly older Members—may recall that before 1994 there was no parliamentary oversight of the intelligence services. Indeed, the Secret Intelligence Service, otherwise known as MI6, was deemed not to exist when I first entered the House in the late 1980s. It was a great measure of our approach as parliamentarians to the intelligence services that from not acknowledging its existence in the 1980s we now have a Committee of parliamentarians to oversee its business. That is a huge development and shows huge progress during the last two decades.

I am told by those who served on the Committee when it started in 1994 that there was inevitably some mistrust and tension between the intelligence services and the Committee, albeit that it met in secret because of the nature of the matters they were dealing with. It is a measure of the Committee's success and indeed of its Chairs—I was one—over the years that trust between the intelligence services and the Committee grew considerably. Today, we are debating formally whether to make the ISC a Joint Committee of Parliament. That would not have been possible for the first decade or so, but as the Committee grew in strength and trust developed between the heads of the agencies and the Committee's members, they were able to discuss issues that we will deal with later in other amendments, but which were unquestionably issues that could not be dealt with as the Committee went on during the early years.

I do not believe that the ISC should be an ordinary Select Committee. That would simply not work. The trust that has developed over the years and the relationship that is necessary for the ISC to exist and to do its job properly would break down completely if it were simply like another Select Committee. In other words, quite rightly from its point of view, the agency would simply not say anything to a Committee that always meets in public and operates on the same basis as any Select Committee. However, the Committee that was originally set up—it was a statutory Committee and consisted of parliamentarians of both Houses—was in one sense a parliamentary Committee, but in fact it was not. As a result, and as my hon. Friend the Member for Kingston upon Hull North said, public confidence in the Committee can be eroded as a consequence of meeting in private, because the great issues it discusses cannot be brought out into the open.

When I chaired the Committee for just over three years, the most significant issue was the July bombings of 2005. The Committee met and produced two reports on that dreadful incident. The second report was produced because my right hon. Friend the Member for Kirkcaldy and Cowdenbeath (Mr Brown) asked the Committee to do so on the basis that the public simply did not have sufficient confidence that the Committee had spotted what would happen. They wanted to know why the Committee did not know what was going to occur. The Committee had to go through the raw evidence and the intelligence material, listen to tapes, and go into the great detail of the secret issues. It came up with conclusions,

but even then there was a problem, because it could reveal the nature of only some of those deliberations, not all. There will always be a problem with a Committee that, by its very nature, meets in private and deals with highly sensitive information, so cannot speak about everything that it does.

I can only say that during my time on the Committee—I am sure the hon. Member for New Forest East will echo what I say—that questioning of heads of agencies, other members of the intelligence services, Ministers and others was extremely robust. Inevitably, that takes place in private, but somehow we try to explain that the questioning is no different from questing by the Home Affairs Committee, the Foreign Affairs Committee and so on. Later, we will debate whether the Committee should sometimes meet in public; I would agree with that proposal. The thrust of the first amendment goes to the heart of the big change. The Government should be congratulated on giving sufficient parliamentary time in the Bill, although it deals with other things, to ensure the greater transparency and accountability of the Committee that deals with these highly sensitive issues.

Some years ago, my right hon. Friend the Member for Kirkcaldy and Cowdenbeath introduced a Green Paper that included various recommendations, all of which it seems are to be recommended by this Government and supported by the Opposition, perhaps even more so than then. It is a good day for democracy, when this particular Committee ceases to be statutory and becomes a Committee of Parliament, albeit with the restrictions that will inevitably apply to ensure that we safeguard national security. It is a good step and, along with my hon. Friends, I support the Government in what they are doing.

**James Brokenshire:** It is a privilege to follow the right hon. Member for Torfaen with his eloquent summation of the work of the ISC and its contribution over a number of years. He rightly drew attention to its work following the appalling terrorist attack on 7/7. That underlines the importance of scrutiny around these sensitive issues. His comments rightly indicate the different nature of the ISC and why it would not necessarily sit comfortably as a Select Committee of the House, with some of the challenges that would be a consequence of that. That has been the clear view of the ISC itself when looking at reform and the best way forward to strengthen its existing role. I welcome the right hon. Gentleman's contribution, even if it is his first Bill Committee contribution for 17 years. It is very valuable and underlines the importance of having expert input in Bill Committees to assist our analysis and assessment of legislation.

I also welcome the support that my hon. Friend the Member for New Forest East offered to the amendments and the broad thrust of the changes that the Government seek to make to part 1, to strengthen, respect and recognise the issues relating to the ISC. I look forward to a constructive analysis and assessment of the amendments that my hon. Friend has tabled on other aspects of part 1.

I join the hon. Member for Kingston upon Hull North in paying tribute to the work of the ISC and expressing the need to ensure that the work of agencies is effectively and appropriately scrutinised. That point came through in all the contributions to the debate. The hon. Lady also highlighted some issues I was to address

[James Brokenshire]

in subsequent amendments to this part of the Bill, particularly in relation to staffing arrangements, on which there is a specific amendment from my hon. Friend the Member for New Forest East.

I am sure we will debate that matter further, but at this stage I will say that discussions are under way with the House authorities and the ISC. Clearly, staff engaged would need to be develop-ved, and specific premises would need to be attached to ISC office accommodation arrangements, given the nature of the materials that the ISC holds. We are in close contact with the House authorities and, from my brief look at the letter from Sir Robert Rogers—I am sorry not to have been able to review the matter in further detail before our sitting this morning—I think he recognises that that dialogue is ongoing. We are engaged with the ISC on further discussions and details, to ensure that the right balance is struck, recognising the need for the support to the ISC to be appropriate in enabling it to conduct its duties.

9.45 am

**Diana Johnson:** Will the Minister say something about the time frame for all of that? When does he think, if the Bill goes through, there would be a Committee of Parliament? When would we see the need for transfer of staff or new accommodation?

**James Brokenshire:** Obviously, we want the arrangements in place as quickly as possible. I certainly want to have a final position on the staffing and support arrangements on Report, so that we can have the detail clearly set out before the Bill leaves this place and goes back to the other place for any final considerations. That is very much on the mind of the ISC. Discussions are very much ongoing on that point.

**Dr Lewis:** The staffing of the ISC is at the heart of all the changes because, if they are botched, everything else will fail. The staff are, in a sense, the hidden jewels on which the success of the organisation has always depended. They are seriously overstretched, undermanned and even under-graded for the level of the work that they do. If the changes go through, some of the extra ISC responsibilities will be of an investigatory nature, so additional staff will need to be appointed as Committee assistants. Therefore, the ISC is most anxious for the Government to respond to such matters urgently—we are in danger of losing some of our first-rate people, because their career demands might take them elsewhere.

**James Brokenshire:** I am grateful to my hon. Friend for highlighting the ISC issues. We fully recognise the importance to the ISC of the staffing and support arrangements, to ensure that it carries out its duties in the way that we all want it to be able to do, robustly and effectively. I take on board what he said and the importance that the ISC and, indeed, this Committee attach to the issues. We will be pursuing the matter with all necessary speed, to ensure that we are able to give the House and the ISC itself the assurance that the ISC as a statutory Committee of Parliament will be able to fulfil the important functions that we attach to it, not only in statute but practically.

On the memorandum of understanding mentioned by the hon. Member for Kingston upon Hull North, a summary document was issued in the latter stages of the House of Lords consideration of the Bill. I am happy to write to her and other Committee members with a copy of that document. Indeed, my intention is to update that summary of intended content as our consideration in Committee progresses, to ensure that it is as up to date as we can make it on what will be covered in the memorandum of understanding, which is still under discussion between the Government and the ISC, so that the relevant issues are covered effectively.

*Amendment 4 agreed to.*

**Diana Johnson:** I beg to move amendment 5, in clause 1, page 1, line 6, at end insert—

‘(1A) Article 9 of the Bill of Rights shall apply to the proceedings of the ISC as if they were proceedings in Parliament.’.

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

Government amendment 48.

New clause 3—*Criminal, civil and disciplinary proceedings and tribunals: disclosure of information held by the ISC*—

‘Information held by the ISC in connection with the discharge of its functions under sections 1 to 4 and Schedule 1 may not be disclosed in any criminal, civil or disciplinary proceedings or tribunal.’.

**Diana Johnson:** I do not intend to divide the Committee on the amendment, because I fully appreciate the problems that it poses. However, I wanted the opportunity to debate the matter in Committee and to look at some related issues.

I refer again to the letter that the Clerk of the House of Commons has provided, which clearly lays out some of the problems. I elicited that advice, and I thank the Clerk for providing such a clear explanation. It is important that we spend a few moments addressing the powers and protections that the ISC will require in order for it to be an effective Committee of Parliament. The amendment would explicitly include the ISC in the Bill of Rights, which would afford the Committee, including its members and witnesses, parliamentary privilege and may also enable it to take evidence under oath. Government amendment 48 offers protections similar to those under privilege to witnesses of the Committee, and new clause 3, tabled by the hon. Member for New Forest East, also deals with giving protections.

If we are to discuss making the ISC a Committee of Parliament, it is absolutely right that we consider the ultimate asset available to parliamentarians, which is that of privilege. Privilege is a legal immunity covering both civil and criminal matters that protects Members of both Houses in carrying out their parliamentary functions as both legislators and scrutineers. If we are to say that it is now the role of Parliament to oversee the security services, it seems logical that the Committee performing that role should be afforded privilege.

Members of the ISC already enjoy privilege when they are acting as parliamentarians, but they do not seem to enjoy it while sitting on the Committee. That undermines the idea that they are acting as parliamentarians while sitting on the Committee. Should its members

require the protection of Parliament in order to publish information, as I understand it, they could already do so by making a statement on the Floor of the House. I recognise that members of the Committee have to sign the Official Secrets Act and behave in a completely responsible way. Therefore, it would be extremely unlikely that any member of the ISC would feel the need to go on to the Floor of the House and disclose information. However, as I understand it, if they did that, they would be protected. Even though they had signed the Official Secrets Act, parliamentary privilege would protect them.

Returning to the real advantage of the Committee operating under privilege, my main concerns relate to its being able to receive information, and to allowing witnesses to provide information, entirely uninhibited by the threat of civil or criminal action. Given the significant legislative framework, both civil and criminal, that governs the supply of information that the ISC receives, we should not underestimate the worth of such protection being afforded to witnesses. We do not expect anyone to provide information to the ISC on a whim, of course, and very rarely would we expect evidence to be provided in a personal capacity, nor would we want the Committee to afford protection to evidence provided unscrupulously.

**Robert Neill** (Bromley and Chislehurst) (Con): I have been following the hon. Lady's argument closely. I understand what she seeks to achieve, and I think that we all sympathise with her. However, is not the problem that the issue that she has just raised, the protection of witnesses, is effectively covered by Government amendment 48, whereas her amendment seems to run contrary to the advice of the Clerk in relation to the assertion of parliamentary privilege, which cannot in effect be conferred upon third parties? How would that dilemma be resolved?

**Diana Johnson:** As the hon. Gentleman will have heard me say in my opening remarks, I tabled this amendment to open up the debate. I have some questions for the Minister about the extent of his amendment, including whether it is wide enough to do everything that I think Committee members would want in offering protection to witnesses and, perhaps, to members of staff and other people associated with the Committee. The amendment provides the opportunity to explore the issue. There was great debate on this matter in the other place and many hon. and right hon. Members feel strongly about it. I think it is worth discussing issues relating to this group of amendments.

Having mentioned the Committee and witnesses, and giving evidence, I want to discuss Government amendment 50 and new clause 3—

**The Chair:** I think the hon. Lady means amendment 48.

**Diana Johnson:** Yes, I apologise. Government amendment 48 and new clause 3 both attempt to ape parliamentary privilege by affording statutory immunity from legal proceedings to witnesses of the Committee and in respect of Committee proceedings generally. Although I can accept that those amendments are steps in the right direction, I question whether, as statutory protections, they go far enough in dealing with the protections that the Committee needs.

In relation to what the Clerk of the House of Commons said in his letter, we need to be clear that it is possible to make provisions to confer parliamentary privilege, but that would be unprecedented, and I believe it would be misconceived and potentially damaging. I will return to that in a moment.

Clause 1 would create a statutory Committee. Therefore the most that we can do is to award statutory protections, because we accept that parliamentary privilege will not apply as a right to that Committee. However, will the Minister, and perhaps the hon. Member for New Forest East as well, explain whether the amendments are drafted widely enough to do everything that we think needs to be done to protect the Committee?

I should like to ask the Minister about the status of documents under the Government amendment. Unsolicited documents might be sent to the Committee, although a witness might not be brought in to give evidence. Will the Minister explain a little bit more about documents that are sent in just because somebody feels that the Committee ought to consider them? Would that attract statutory immunity, or would that apply only if the Committee accepted information from a third party, saying, "We accept this information, therefore it will be covered by any type of immunity that is granted under statute"?

Will the Minister explain what protections would be offered to members of staff in relation to advice and comments they made to the ISC? Does the Government amendment allow protection for staff who, for instance, might make some comment to Committee members about information that they had come across in relation to a witness appearing before the Committee? Perhaps they would say that the Committee ought to be concerned about the witness, and ought to have knowledge about them before interviewing them, because issues had arisen. How much protection would be offered to members of staff in respect of any comments that they made formally or informally to the Committee? Would protections attach to such an instance?

10 am

The letter from the Clerk of the House of Commons raises the issue of how providing statutory protections could open up the Committee to court interference. I am conscious that the Houses of Parliament guard parliamentary privilege jealously and feel that it is not appropriate in any sense for the courts to start interfering with, questioning or debating what parliamentary privilege means. Has the Minister sought advice about whether the amendments would open up a discussion in the courts about what exactly constituted the formal proceedings of a statutory Committee, and whether that could have read-across and have a bearing on the rights of parliamentary privilege? Could we open up a can of worms?

Has there been any other opportunity to consider widening the amendment to make it more obviously all-encompassing than it is at the moment? I am interested in the narrowness of its drafting and why there has not been a much broader approach. On that basis, I conclude my remarks.

**Dr Lewis:** The amendment is one of a small number about which the ISC feels very strongly indeed—so strongly that we will push the matter to a Division, unless the Minister feels able to say that he will look at it again.

[Dr Julian Lewis]

The Government's proposal to restrict the protection to evidence given by a witness is, in our view, far too narrow—narrow to the point of unacceptability. I know that there are provisions elsewhere in the Bill that give exemptions from freedom of information requests, for example, but that is not the only danger the Committee would face. Unless new clause 3 or something similar were incorporated, its proceedings could become vulnerable to release by order of a court, for example.

I will not unnecessarily detain the Committee by saying anything more than this on the subject: there has already been a significant chilling of relations as a result of the compromising of what is called the control principle, whereby a court ordered some intelligence that originated with our US allies to be put into the public domain. We have to be absolutely certain that no court could do anything of the sort with any of the material supplied to our agencies or any other classified material handled by the Committee.

In the upper House, the ISC proposed that the Committee have the same rights, privileges and protections as those enjoyed by Select Committees, as suggested by the hon. Member for Kingston upon Hull North. It was the objections of the parliamentary authorities that have led us to propose new clause 3 as an alternative. The Government propose what might be described as bespoke statutory immunity, which would replicate some aspects of privilege, but, as I say, the proposals in Government amendment 48 are far too narrow, in that they provide protections only for witnesses, not for the Committee's proceedings more generally.

With new clause 3, we therefore propose that statutory immunity provide protection for a wider range of the ISC's material. It would ensure that witnesses' evidence could not be used against them in legal proceedings, but would also protect the full range of sensitive material with which the ISC is entrusted and ensure that the Committee could continue to oversee the agencies robustly. If there were not an assurance that material could not leach out from the Committee, the agencies would naturally cease to be as open with the Committee as, to their credit, they have been in the past. I therefore strongly urge Members to agree to new clause 3. I encourage the hon. Member for Kingston upon Hull North to marshal her troops behind it, just as we would, as second preference, support her amendment. However, we will not accept Government amendment 48, because, as I have explained, it will not go wide enough to meet the needs of the Committee.

**Paul Murphy:** I think everybody wants the same thing, which is, first, to protect witnesses who go to the Committee. Remember that all the evidence in the ISC and all the formal proceedings are transcribed, even though they are held in private. Secondly, I think everyone wants to ensure that members of the Committee and the people who work for it are protected. If we start on that premise, I am sure that we will find a way through.

The amendment tabled by my hon. Friend the Member for Kingston upon Hull North, which relates to the Bill of Rights, is a good one, except that I think it has been scuppered by the Clerk of the House. I am sorry that I did not see my e-mail—that is one of the big changes that have happened in 17 years; 17 years ago, there were

no e-mails for us to see. I should have seen it, because the previous Prime Minister, unwisely and inappropriately, made me the Minister with responsibility for digital inclusion. I will never know what possessed him to do that, but he did. It was an interesting job, but I missed it; I can now see the letter.

The letter is pretty clear to me. The Clerk of the House said:

"It is wrong to see parliamentary privilege as a kind of stardust which the House can choose to sprinkle where it wishes."

I think that we have had our chips on that one, to be perfectly honest.

However, the other two amendments in the group, if taken together, would be acceptable. I agree with the hon. Member for New Forest East that the Government amendment on its own will not go far enough. I talked yesterday to the right hon. and learned Member for Kensington (Sir Malcolm Rifkind), the excellent Chair of the ISC. I simply do not think that the amendment will be sufficient to cover what we all want. Taken in conjunction with the protection for witnesses, new clause 3 would be sufficient.

**Robert Neill:** The right hon. Gentleman has covered my point about the inappropriateness of using the Bill of Rights procedure in light of the Clerk's advice.

It is nice to recognise you in the Chair, Mr Gray.

**The Chair:** I think the hon. Gentleman realises that it is my job to recognise him, not his job to recognise me.

**James Brokenshire:** I certainly hear the point that has been made loud and clear about the ability of the ISC to conduct its work as it does now, ensuring that the candour of witnesses will not be affected by the changes introduced by the Bill.

The proposed changes are intended to deal with the main issues of concern, which are about the need to ensure candour. I will reflect carefully on the points made by the Opposition and by my hon. Friend the Member for New Forest East. There is a clear understanding of what we want to achieve: witnesses being able to present their cases clearly and fully, and ensuring that we have the evidence for the ISC to be able to come to the conclusions necessary for it properly to fulfil its functions.

It might be helpful if I addressed the specifics of Government amendment 48 and explained why we think that our approach is the appropriate one and why there are complications and challenges attached to amendment 5 and new clause 3. Regarding Government amendment 48, when the Bill was debated on Report in the other place, Lord Butler said, on behalf of the ISC:

"I want to make it clear that the safeguards that are provided by parliamentary privilege are essential—not parliamentary privilege itself. Provided those safeguards can be in the Bill—in other words, the protection of witnesses and the protection of the proceedings of the committee from judicial intrusion or the Freedom of Information Act—that is equally satisfactory."—[*Official Report, House of Lords*, 19 November 2012; Vol. 740, c. 1648.]

Obviously, in the previous group of amendments, we dealt with certain provisions relating to the Data Protection Act 1998 and the Freedom of Information Act 2000.

Government amendment 48 will provide protection to witnesses before the ISC and prevent evidence given by a witness before the ISC from being used against them in any criminal, civil or disciplinary proceedings,

unless the evidence was given in bad faith. It is right to phrase the amendment in that way. I think that we would all ask, if evidence was not given in good faith, why should protection attach to it?

The amendment therefore replicates an important part of the protection of witnesses before a Select Committee by virtue of the fact that Select Committee proceedings are subject to parliamentary privilege. It will thus encourage witnesses appearing before the ISC, in our judgment, to be full and frank in the evidence that they provide. It is an important measure in ensuring that the ISC can perform its oversight function effectively. The fuller and more candid the evidence received by the ISC, the more effective it is likely to be in supervising the security and intelligence community. That point has consistently emerged from the debate that we have had so far on this group of amendments.

**Meg Hillier** (Hackney South and Shoreditch) (Lab/Co-op): The Minister touched on the issue of people giving evidence in good or bad faith. Can he enlighten us as to who would be making that judgment?

**James Brokenshire:** I suppose that if the proceedings take place before a court, the court would ultimately have to decide whether somebody had been deliberately misleading. That framing is the important part. If evidence is deliberately misleading, it is of no assistance to the ISC in its analysis. We have sought to approach the problem by saying that the protection should not apply to evidence given in bad faith.

**Sheila Gilmore** (Edinburgh East) (Lab): I have been following carefully what the Minister says. The suggestion was that the issue would come up in subsequent court proceedings. On that basis, how can one ascertain whether evidence is in good faith without having heard at least some of the evidence surrounding it?

**James Brokenshire:** One would have to take it as a point of evidence. I am sure that the hon. Lady will appreciate that if it is at issue whether a specific piece of evidence was admissible, in order to trigger the scenario that we are debating, there would need to have been some sort of proceedings against the individual in question. In other words, a witness gives evidence to the ISC, and thereafter is subject to proceedings, whether criminal or civil. The issue of self-incrimination is the essence of what we are considering, and it would need to be considered as part of that.

Ultimately, there are clear rules and requirements for a fair trial in article 6 on the European convention on human rights. Part of that includes not allowing self-incrimination, and the tenor of Government amendment 48 is to ensure that a witness does not self-incriminate. That is the basis on which we have proposed amendment 48.

To take the hon. Lady's point directly, relevant proceedings would have to have been brought against the witness, and as an initial part of the consideration of that case or trial, that would have to have been considered.

**Robert Neill:** On the basis that I have knowledge neither of the ISC nor of digital matters—I happen to be a dry lawyer who deals in evidence—is it not the reality,

as my hon. Friend says, that for this to arise there would have to be some material which impugns the faith of the evidence to start with? If then it was sought to invoke the protection, the normal procedures—certainly in the criminal case—either of the pre-trial hearings if there was an argument for abuse of process, or a trial within a trial on admissibility would perfectly properly cover the point.

10.15 am

**James Brokenshire:** I think my learned Friend, who certainly has more legal experience in court than I do, has set out how this would work in practice. I am grateful to him for his intervention as to how those issues would be addressed procedurally. It is the Government's view that this amendment, together with the amendments in relation to the Freedom of Information Act that have already been considered, provide the ISC with protections that would allow it to operate effectively. It is a question of ensuring that we strike an appropriate balance on proportionality on addressing the fair and rightful concerns that have been expressed by right hon. and hon. Members across the Committee. However, we must be careful to ensure that we are not, for example, breaching the requirements of article 6 on a fair trial either.

**Dr Lewis:** May I draw the Minister's attention to the opening words of new clause 3? It states:

"Information held by the ISC in the connection of the discharge of its functions".

For us, this is not just about the giving of evidence by witnesses; we are given all sorts of sensitive information, some by foreign intelligence agencies for example, and we need to be able to assure them that that will not be compromised. What my hon. Friend is proposing in relation to witnesses is fine as far as witnesses are concerned, but it does not address this wider issue of the other material.

**James Brokenshire:** My hon. Friend raises a fair point. Public interest immunity would potentially be available to cover those circumstances as well, and if we are looking at the closed material proceedings, which we will get on to in part 2 of the Bill, that would equally be potentially available to those items as well. I acknowledge the in principle point that my hon. Friend is highlighting; I am just saying to him that there are other ways in which this can be addressed. I am happy to look at this issue and to see whether we can give protection for witnesses' evidence more generally—in other words, not just when it is being used against the witness in that sense—to see if we can strengthen the provision in amendment 48.

I accept what my hon. Friend says about the need to ensure that witnesses have candour, and that the information before the Committee is properly protected in the sense of the control principle, which we will come on to in terms of the debates on the Norwich Pharmacal jurisdiction. He has already rightly underlined the importance of ensuring that the control principle on intelligence from overseas Governments is properly protected so that our security and intelligence relationships with those other countries are not compromised.

[James Brokenshire]

There are other mechanisms and means that this Bill itself is equally seeking to draw upon to address the points that have been highlighted. New clause 3 would provide that

“Information held by the ISC in connection with the discharge of its functions under section 1 to 4 and Schedule 1 may not be disclosed in any criminal, civil or disciplinary proceedings or tribunal.”

In our judgement, this protection is drawn too widely and if the concern of my hon. Friend is to prevent disclosure of information that would be damaging to national security, then there are other established routes through which such material could be protected. Public interest immunity could be asserted as part of this, or if it is accepted in relation to part 2 of the Bill, the closed material proceedings would be able to address some of those concerns as well.

New clause 3, in common with Government amendment 48, serves the legitimate aim of encouraging candour in the evidence that is submitted to the ISC. Amendment 48 is proportionate to that aim, as it excludes only a limited category of evidence and is subject to an exception for evidence given in bad faith. New clause 3, with its broad blanket prohibition—included for the reasons my hon. Friend has highlighted—is unlikely to be found compatible with article 6 of the European convention on human rights.

As I have indicated to the Committee, I attach seriousness to ensuring that we have candour and that we have confidence in the Committee’s proceedings. While I cannot accept new clause 3 in its current formulation, because of its breadth and the proportionality issues, I will consider the points that my hon. Friend has made on behalf of the ISC to establish whether there are other steps we can take to strengthen our position in relation to amendment 48 in respect of witnesses and to consider material more broadly. I take on board the point that my hon. Friend has fairly sought to advance this morning.

Even information held by the agencies does not have a blanket protection of the nature of new clause 3, as it applies to the ISC. Section 2 of the Security Service Act 1989, for example, permits the Security Service to make a disclosure of information it holds for the purpose of any criminal proceedings so far as this is necessary. There are corresponding provisions in respect of the Secret Intelligence Service and GCHQ in the Intelligence Services Act 1994. I hope that my hon. Friend will be minded to withdraw new clause 3 on the basis that I will examine and review his clear concerns and return to the issue to ensure that the points that have been flagged this morning are considered further. As I understand it, the ISC as it is currently structured does not have the same breadth of exemptions that he seeks, but I am happy to consider the issue further to see how we can address the concerns expressed.

The hon. Member for Kingston upon Hull North said that amendment 5 was a probing amendment. In many ways it reflects the advice the Clerk gave the Committee in setting out the challenges of seeking to assert privilege as contrasted with granting privilege and the important distinction between the two. We are clear that nothing in the Bill seeks to cut across that assertion of parliamentary privilege, in other words,

the separation of powers argument between Parliament and the courts themselves which the Clerk rightly underlined. Indeed, this has been a subject of debate between the Government, the ISC and the Clerks in Parliament. Broad constitutional issues could be flagged if in some way by statute we sought to assert privilege and to have the courts interpret what may be in a Bill seeking to assert privilege, as contrasted with parliamentary privilege which, in essence, Parliament itself already has and seeks to utilise.

The point the hon. Lady makes is relevant but we are clear that the provisions in the Bill do not cut across those issues. Indeed, we have not sought to assert parliamentary privilege in that formal sense because of those wide-ranging implications and the challenges that could be highlighted. That point has been well understood by the ISC. The right hon. Member for Torfaen has already indicated that he did not feel that this would be the appropriate way forward or that making the ISC a Select Committee would be the appropriate way forward.

We have taken a very careful view on how to structure this and therefore how to structure the protections without crossing the line in terms of saying that this is asserting parliamentary privilege in that specific way. Rather, we have sought to ensure that statute is properly reflected in terms of the practical operation of the ISC in order for it to be able to conduct its duties effectively and appropriately.

I hope the hon. Lady will be minded to withdraw her amendment 5 on the basis of not only my comments, but the comments of the Clerk in his letter to her, which has been copied now to other members of the Committee.

I hope hon. Members will be minded to support Government amendment 48 for the reasons that I have identified and indeed that my hon. Friend the Member for New Forest East will be minded to withdraw his new clause 3. I would underline to him, however, that I take his point extremely seriously and I commit to review this matter further and to ensure that further discussions are held with the ISC to establish what further protections can be forwarded so that we all have confidence that witnesses can act with candour and that the ISC itself is able to operate in the way in which we would want it to.

**Diana Johnson:** This has been a useful debate. As I said in my opening remarks, I am minded to withdraw amendment 5. I listened carefully to the Minister, and I note that he is willing to look again at this issue. The scope of the Government amendment is too narrow and needs to encompass the gamut of areas that we need to have statutory protection for on the ISC, and I certainly would support such a change. The key issue for me is to provide certainty to the ISC about what its procedures will mean and the protections it has available to it. I am worried, however, that the courts will have an opportunity to get involved in matters before the ISC in which we would generally not want them to be involved.

I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

**Diana Johnson:** I beg to move amendment 6, in clause 1, page 1, line 9, at end insert—

‘(2A) A majority of the ISC’s members shall be drawn from the members of the House of Commons.’

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

Amendment 7, in clause 1, page 1, line 16, at end insert—

‘(5A) The Prime Minister must ensure that no more than six members of the ISC are members of parties participating in Her Majesty’s Government.’.

Amendment 8, in clause 1, page 2, line 1, after first ‘ISC’, insert ‘who is in opposition to Her Majesty’s Government’.

**Diana Johnson:** May I just confirm, Mr Gray, that new clause 3 will be considered at a later stage and voted on?

**The Chair:** That is absolutely correct. New clause 3 will be considered for decision at the appropriate moment, which will be quite some time from now.

**Diana Johnson:** Thank you for that explanation.

The amendments relate to three distinct issues about the membership of the ISC. Amendment 6 would ensure that a majority of the ISC are Members of Parliament. At present, the legislation would allow possibly eight Lords and one Member of Parliament to be appointed. I would like to explain why I think we need a clear view about the membership of the ISC included in the Bill.

Amendment 7 would limit the number of Government members of the ISC to a maximum of six. I believe this would strengthen the current provision in the Bill to consult the Leader of the Opposition to ensure that at least three members could be drawn from Opposition parties. Amendment 8 considers the possibility of a Member of the Opposition chairing the Committee.

The Opposition have tabled the amendments to strengthen and bolster the ISC in order to make it very clear that Parliament takes the ISC very seriously and wants it to be as accountable as possible. Amendment 6 therefore relates to having a majority of Members of Parliament on the Committee.

**The Chair:** Order. I think that the hon. Lady means Members of the House of Commons. Of course, peers, too, are Members of Parliament.

**Diana Johnson:** Thank you, Mr Gray. You are absolutely right.

The amendment would mean that Members of the House of Commons were in the majority. We tabled it because reform of the House of Lords now seems to be off the table for some time to come. There is an unelected House of Lords and an elected House of Commons, and to make the body to be created by the Bill as accountable as possible, the Opposition think that the majority of places on the Committee should be held by those who are democratically elected and accountable, which is the basis of the amendment.

10.30 am

As the Bill is now phrased, it would be possible to have eight Members of the House of Lords and one Member of House of Commons in the current membership of nine. In the other place, Lord King, who is a former Chair of the ISC, spoke about the prospect of a majority

of Lords sitting on the ISC and commented that that was a potential anomaly. It would be very helpful if this Committee put into the Bill an acceptance that the majority will be Members of the House of Commons. I imagine that, when the Minister responds, he might point out that it has never been the case, since 1994, that the House of Lords has held the majority of places allocated to the Committee. However, in making other changes to the Bill, this is an opportunity for the Committee to make it clear that the House of Commons should have the majority of members.

Amendment 7 seeks to limit the number of members of the ISC who are drawn from the governing parties. It suggests that the limit should be six, which would give the Government a two thirds majority on the Committee. As currently drafted, the Bill gives some protection by requiring the Prime Minister to consult with the Leader of the Opposition. On that basis, one would assume that a certain number of places will be allocated to the Opposition. Of the present membership of the Committee, five are drawn from the governing parties and there are three spaces for Opposition Members, with one distinguished Cross Bencher from the Lords.

The present composition works well, but the amendment seeks to strengthen the provisions to ensure that that balanced composition is maintained. Without that, there is always a danger that a future Prime Minister might use his powers of appointment as a form of patronage, which would be hugely damaging to the Committee. It might deprive the Committee of valuable expertise, compromise its independence from the Executive and make it appear more subservient to the Government than it should be, which is why that amendment was tabled.

Amendment 8 opens a debate about the Chair of the ISC by proposing that it should be held by an Opposition Member. I make it clear that, in suggesting this amendment, I in no way cast aspersions on the competence of the current Chair. He is a very distinguished Member of the House of Commons, with excellent qualifications for being Chair, and he is a very distinguished Chair of the currently constituted ISC; neither do I seek to criticise any of the previous Labour chairs of the Committee, who held that position while the Labour party was in government. I am particularly pleased that my right hon. Friend the Member for Torfaen is on this Committee, and I am sure that he will comment on this amendment.

My respect for what has happened in the past, under the former and current Chairs, means that I do not propose to divide the Committee on this amendment. However, it is important that we look at who chairs such an important Committee. There is a precedent in the House of Commons that senior Committees, such as the Public Accounts Committee, should be chaired by an Opposition Member to ensure that they are independent and offer good and effective scrutiny of what the ruling party does. Amendment 8 was tabled to raise that issue. The shadow Home Secretary, my right hon. Friend the Member for Normanton, Pontefract and Castleford (Yvette Cooper), spoke in a debate in the House way back in 1998 about the need for that to be considered, so it has been raised over a number of years. This is a good moment, while we are revising the terms of the ISC, to look again at the issue of who will chair it. With those points, I have completed what I wanted to say.

**Dr Lewis:** The Committee is content to support amendment 6, it has no strong view on amendment 7, but it is opposed to amendment 8. I see from the hon. Lady's reaction that she is not entirely surprised about that.

The current arrangements in the Bill allow the members of the ISC themselves to choose who will chair it. We are content with that change, and we consider it a step in the right direction. We do not wish to see the freedom of action of the Committee's membership unduly constrained. To legislate that the Chair must be an Opposition Member seems restrictive. Let us imagine a scenario where the chairmanship had changed a year before a general election, and the new Chairman was very highly regarded by Government and Opposition members of the Committee. Should that person be forced out of the Chair just because there had been a change of Government at the election? We feel that this matter should be for the judgment of ISC members.

There is an immensely non-partisan atmosphere in the Committee. I say to the hon. Lady, with hand on heart, that I can think of one or more members of the Labour contingent under whose chairmanship I would be perfectly happy to serve, and whom, if they were Chairman and there were a change of Government, I would be very disappointed to see forced out. I am sure that Labour members of the Committee would say the same thing about my right hon. and learned Friend the Member for Kensington.

On amendments 6 and 7, I can see no possible objection to specifying that Members of the House of Commons must be a majority. On the question of whether the Prime Minister must ensure that no more than six members are members of Government parties, that is, of course, a higher threshold than is currently the case. I have no particular objection to it, but it is a little bit obvious to require imprinting on the face of the Bill. That is the ISC's view at present.

**Paul Murphy:** The first amendment is an excellent suggestion. It says that the Bill should state that there be a majority of Members of the House of Commons on the joint Committee. Think of the difference between now and what might be. At the moment, the Prime Minister has absolute discretion about who to put on the Committee. He or she could appoint only Government Members, although that has never been the case. Prime Ministers of the day have indicated—quite rightly—that there should be proportionality in the membership of Committees. The two amendments reflect the change in nature of the Committee to a parliamentary Committee. The Prime Minister will still have a powerful influence over who sits on it—indeed, he will have the final say because he can veto candidates and ask Parliament to put new ones forward. Nevertheless, we are in a new situation, and the Government should think very carefully about these two amendments.

The second amendment refers to the change in circumstances of the coalition. Doubtless, coalitions will be here for a long time; between whom, we do not know, but nevertheless the principle applies. I want also to emphasise the importance of the work of Members of the House of Lords who sit on the ISC. At the moment, two distinguished Members of the House of Lords, the Marquess of Lothian and Lord Butler, are on the Committee. Michael Ancram, as he was, was a

distinguished member of the Committee as a Member of the House of Commons, and everybody knows Lord Butler's position. Previously, Baroness Meta Ramsay—the highest serving member of a security agency now in public life—was a member of the Committee. It is important to remember that. The way in which the Committee reports also changes. At one time, the ISC's report was dealt with only by the House of Commons, but now it is dealt with by the House of Lords as well. It is important to emphasise that it is right for Members of the House of Lords to be on the Committee, but they should not be in a majority.

As for the third amendment in the group, which would stipulate that the Chair of the ISC be an Opposition Member, I am not persuaded by the case for it at all. The first Chair, Lord King, was a member of the governing party. When his party lost an election, the Prime Minister kept him on, and he continued to chair the Committee while in opposition. He grumbled and grizzled a bit when I was appointed in 2005. I am not quite sure why, but I think he had a view that at that stage an Opposition Member should be Chair. I think that that is unnecessary, for this reason. The difference between this Committee and others is that, although there are robust discussions and arguments, and even great rows, sometimes—there may not be votes, but that does not mean to say that they just agree on things—it is not a party political, partisan Committee of Parliament.

The suggestion that the members of the ISC should appoint their own Chair is a good one, because it takes the matter out of the hands of the Prime Minister. The Prime Minister clearly would have to approve the position because he has approved the membership, but he would not have the right to appoint the Chair; that would be a matter for the members of the Committee. That means that there must be genuine consensus among the members of the Committee, no matter from which party or House they come, that the Chair is the best person to do the job. The fact that the members of the Committee will choose the Chair obviates the need to have a Public Accounts Committee-type Chair from the Opposition. If the Bill did not stipulate that the Chair be chosen by the members of the Committee, it might be worth considering having alternate Chairs from the Opposition and the Government, or something similar, but that is not necessary as the Bill stands.

**James Brokenshire:** This has been a helpful and informative debate about the make-up of the ISC. The amendments would require that a majority of members of the ISC be MPs rather than Members of the House of Lords; that at least one third of the Committee's members be from the Opposition; and that it be chaired by an Opposition Member. We have already been clear about the important role that the ISC has played. The hon. Member for Kingston upon Hull North hinted at that in her opening comments. She spoke about recognising the work of previous Committee Chairs, from whichever party, and how they have done their duties to the best of their ability regardless of whether their party was in government. Although I respect what she has said about the arrangements in certain Parliamentary Committees, it is not right to characterise as a necessity the proposal that the Chair be from the Opposition.

My hon. Friend the Member for New Forest East hit on an important point about what would happen if the chairmanship changed immediately before an election.

Because of the special nature of the materials and the work involved, it would be appropriate, if the ISC as a whole agreed, for an individual in such circumstances to continue as Chair after the general election, even if that meant that the Chair was of the same political colour as the Government. It is a question of focusing on the qualifications, skills and nature of that individual, rather than looking at what party they represent. That has been the fair way in which the ISC has conducted its duties to date. I have every confidence that it will continue to do so following the changes that we propose in the Bill.

10.45 am

Amendment 6 would require that the majority of ISC members be drawn from the House of Commons. The intention is that the Committee should, in effect, largely be made up of elected Members to strengthen the accountability of the intelligence and security services to the electorate by way of the oversight work for which it is responsible. I am sure that such amendments and some of the comments made are designed to strengthen the position of the Committee in that way. The ISC has historically had a majority of members from the House of Commons. As the hon. Lady highlighted, there are currently two Lords out of the nine Committee members on the ISC. That has been the continuing nature of the balance between the House of Commons and the House of Lords in terms of the Committee's membership.

The ISC is unique in that its members have access to extremely sensitive information and scrutinise matters of great national importance relating to the intelligence and security agencies and their functions. Compared with other Committees of this House, it is a Committee the like of which we do not have. It therefore follows that the role should be fulfilled by the most qualified, competent and suitable candidates, regardless of whether they are MPs or peers. We believe that the balance of MPs and peers is best left to be handled by the usual channels, as it would be in relation to other Committees. Subject to what I will say in a moment about the representation of the parties on the ISC, those best equipped for those roles, whether from either House, are appointed. I question the need specifically to legislate for and put in primary legislation the membership in a way that, as far as I can think, would not be characteristic of any other Committee of Parliament.

**Diana Johnson:** I am listening carefully, but can the Minister help me on other Committees of Parliament? If they are Select Committees, the membership is apportioned on the basis of membership of the House of Commons, as I understand it. So there are rules about how it is done. The Committee will become a Committee of Parliament, therefore, would it not be better to set out at the beginning the expectation in terms of membership?

**James Brokenshire:** I suppose our view is that, given the desire to see the ISC become a Committee of Parliament, the general procedures and processes that normally govern the settlement of Select Committees should equally apply to the ISC. Therefore, by in essence legislating and putting it in statute, this again makes it separate and different. Our view is that it would be better to leave the normal processes and procedures

that, as far as I am aware—and I am sure that the usual channels will leap to their feet to correct me if I am wrong—have worked effectively on the settlement of Select Committees of this House.

Yes, of course, this is not a Select Committee for the clear reasons that were enunciated in our debates this morning. However there is a strong desire to make it something that looks more like a standard Select Committee of this House, recognising the constitutional differences, the different material and the nature of the work. It would be better not to mark it out separately, but to treat it in the way in which we treat other Committees of this House.

Amendment 7 would require the Prime Minister to ensure that no more than six members of the ISC are Members of Parliament or peers drawn from the governing party or parties, so at least three of the Committee members would be drawn from the Opposition or other parties not within the Government. I note from what the hon. Lady said that the amendment is intended to strengthen the Committee's credibility. However, we have already heard from a former Chair of the ISC and obviously a current member of the ISC why that may not necessarily be the appropriate way forward.

Indeed, in wanting the Committee to be more akin to a Select Committee, and recognising the differences, it would be more appropriate to leave its composition and make-up to the usual channels. They have assured us that the make-up of previous Intelligence and Security Committees has been representative of the make-up of the two Houses, and we certainly expect that to continue under the new Committee.

As for amendment 8, I have already touched on the position of the Chair of the ISC and for the reasons that I highlighted, it would not be appropriate to specify again in statute that the Chair should be a member of a particular party, reflective of the party in government. Ultimately, it should be the choice of the ISC, based on the best possible candidate for the job.

**Ian Paisley (North Antrim) (DUP):** Can the Minister comment on whether the provision will require legislative consent from the devolved regions of the United Kingdom? Has there been an attempt by the devolved Assembly in Northern Ireland to block consent?

**The Chair:** Order. Before the Minister responds to that question, I must point out that it has nothing whatever to do with the amendment that we are discussing at the moment, so he need not answer it.

**James Brokenshire:** Given that we are talking about Parliament, we are not discussing a devolved matter so a legislative consent motion would not be required in respect of the provisions. I apologise if my answer was not quite in order, Mr Gray, but I hope that at least it is helpful to the hon. Gentleman when considering the amendments that we are debating. For the reasons that I have set out, I hope that the hon. Lady will withdraw the amendment.

**Diana Johnson:** That was a useful debate. I am very much persuaded by what my right hon. Friend the Member for Torfaen said, and I shall not press amendment 8 to a Division, nor am I minded to press amendment 7,

[Diana Johnson]

in light of what the Minister and others have said about the way the Committee was constituted in the past, and the clear view from both sides of the House about the importance of balance and for the Committee not to be partisan, but to bring together expertise from the House of Commons and the House of Lords.

However, I feel strongly about amendment 6. Because of what has happened in the recent past, particularly relating to the House of Lords and the fact that we shall not have a reformed House of Lords for some time to come, the establishment of a new Committee gives us an opportunity to set out clearly under the Bill that the House of Commons should take the majority of places on the newly constituted ISC. I want to test the opinion of the Committee on the amendment.

*Question put*, That the amendment be made.

*The Committee divided*: Ayes 8, Noes 10.

#### Division No. 1]

#### AYES

Alexander, Heidi	Murphy, rh Paul
Gilmore, Sheila	Paisley, Ian
Hillier, Meg	Phillipson, Bridget
Johnson, Diana	Slaughter, Mr Andy

#### NOES

Brazier, Mr Julian	Huppert, Dr Julian
Brokenshire, James	Neill, Robert
Crockart, Mike	Nokes, Caroline
Evans, Graham	Scott, Mr Lee
Evennett, Mr David	Wright, Jeremy

*Question accordingly negated.*

**Dr Lewis:** I beg to move amendment 29, in clause 1, page 2, line 1, after ‘members’, insert

‘and the Chair shall be remunerated in line with the arrangements for Chairs of Departmental Select Committees of the House of Commons.’.

**The Chair:** With this it will be convenient to discuss amendment 13, in clause 1, page 2, line 1, at end insert—

‘(6A) Financial support shall be available to members of the ISC who are members of the House of Commons as if they were members of a Select Committee of that House; and to those who are members of the House of Lords as if they were members of a Select Committee of that House.’.

**Dr Lewis:** I have proposed amendment 29 to ensure that the Chair of the ISC will be treated as a Chair of a Select Committee and remunerated for his work. The work of the ISC Chair is at least as demanding as that of the Chairs of other parliamentary Committees. If the ISC is to become closer to Parliament and more like a Select Committee the Chair should receive remuneration similar to that of Select Committee Chairs. Of course, at the time the ISC was set up, no Chairman of any Select Committee was paid. The situation has since changed for Chairmen of Select Committees but not for the Chairman of the ISC.

The Government have suggested that it is a matter for the Independent Parliamentary Standards Authority to take forward. Has the Minister had any discussions

with IPSA about whether it would be sympathetic to the proposal? In the absence of any such indication, we feel we must seek mention in the Bill, if the Chair of the ISC is not to be disadvantaged by comparison with his counterparts.

Amendment 13, tabled by the hon. Member for Kingston upon Hull North, may be designed to achieve the same aim. If that is the case, I could support that amendment instead.

**Diana Johnson:** Amendment 13 is similar to amendment 29 tabled by the hon. Member for New Forest East, and follows others brought forward to strengthen the role of the new ISC within Parliament. As the hon. Gentleman has just said, the role of the Chair of the ISC is every bit as important and intensive in time and effort as that of Chair of a Select Committee. We recognise that there ought to be the same remuneration for both roles.

At present, the ISC is a statutory body funded by the Cabinet Office. If responsibility for funding the ISC transferred to Parliament payment of the Chair would also be a matter for Parliament. I appreciate that the matter would probably need to be dealt with through Standing Orders rather than statute, in which case, I would be happy not to press my amendment. I am sure the Minister will be able to explain the funding situation.

I would like to highlight the differences between amendments 13 and 29. Amendment 13 refers to all members of the Committee. At present, we do not pay members of Select Committees. The difference might seem irrelevant but it could be significant in two circumstances. The first is if in future we begin to remunerate Select Committee members specifically for their work, especially those on Committees that demand a large amount of time and investment. At the moment the ISC meets almost weekly, and I understand that its members have to spend half a day looking at information and preparing for the Committee, followed by a day in the Committee. Members are expected to commit a major amount of time, so we make the proposal just in case we decide in future that they should be remunerated in a special way.

11 am

The second issue—a live issue—concerns Members of the House of Lords, who unlike Members of Parliament do not get a flat salary but an attendance allowance. I read in the debates of the other place that at present the Lords do not get their allowance for attending the ISC on days when the Lords are not sitting. As we are to consider the ISC as a Committee of Parliament—so of both Houses—it would be appropriate to amend this for Lords as if they had attended a sitting of Parliament. I am sure the Minister will explain what thought has gone into the provision, and whether it follows automatically from the ISC being declared a Committee of Parliament, and whether the Lords would then be able to receive their parliamentary allowance for doing what is very obviously parliamentary work as members of the ISC.

**Paul Murphy:** I support both amendments. The point about the House of Lords is very important. If membership of the ISC is not treated in the same way as membership of an ordinary Joint or Select Committee, there is a

severe disadvantage to the Members of the upper House, so I entirely support it. The only point concerning the Chair that I think is defective is that the provision is not retrospective [*Laughter.*] There is three years' worth of back salary for me somewhere, but when I was appointed everybody thought that the Chair was paid, and indeed the Prime Minister thought that I was paid. It turned out that I was not, and none of the Chairs of the ISC had been paid.

There was a point when the ISC was a statutory Committee, not a parliamentary one, which would have meant a change in the law. No Chair of the ISC would have wanted a separate Bill asking for him to be paid. It therefore seems to me—now that we consider it—that the parliamentary nature of the Committee should reflect exactly what a Select Committee does.

I also believe very strongly that the House of Commons and the House of Lords—Parliament combined—should make the decision about whether the Chair of the ISC should in fact be paid; certainly not IPSA. IPSA does not know much about what MPs do, and knows even less about what the Chair of the ISC does. There is a very strong case for the proposal to be on the face of the Bill, because it is then absolutely the case that the ISC is in line with other Select Committees and Committees of Parliament. I suppose IPSA would have a role to play in determining the amount of salary paid, but that is a separate issue. The principle of paying the Chair of the ISC should be a matter for Parliament, and should be on the face of the Bill.

**James Brokenshire:** I seek to reassure the right hon. Gentleman on that last point, and equally on the point made by my hon. Friend the Member for New Forest East in moving the amendment. There is a distinction between the role of IPSA in setting amounts, and Parliament deciding who should actually be awarded the additional enhancements. At the outset it may be worth my clarifying how the rules on remuneration for Committee Chairs operate, both for the Lords and for the Commons, as it may be helpful in considering these amendments.

The pay of Commons Members is the responsibility of the Independent Parliamentary Standards Authority. Currently IPSA pays MPs' salaries in accordance with resolutions of the House, and the relevant resolutions make no provision for additional financial support for ordinary members of Select Committees. I add for the sake of completeness that from 1 April 2013 IPSA itself will determine MPs' salaries. IPSA will have responsibility for setting the salaries of MPs generally, and may determine that MPs who hold a position or office specified in a resolution of the House of Commons should receive a higher salary than ordinary MPs. IPSA will have no say about which positions are on the list; that is a matter for Parliament. IPSA will only say what the pay should be for those holding the positions named.

Members of the other place who are currently ordinary members of Select Committees do not receive financial support purely because of their membership of such a Committee. For Lords, any question of financial support is a question for the House Committee. Any additional allowance for attendance, as if the Committee were equivalent to a Select Committee, would therefore seem to be a matter for the House Committee.

It seems to the Government that deciding on the appropriate level of financial support for members of the ISC is very much a matter for the existing mechanisms by which Members of each House are financially supported. It seems very much a matter for IPSA in the case of Members of the House of Commons, and for the House Committee for the Lords, which already makes some provision for members of the ISC who are peers. Those are well understood mechanisms for the financial support of Members of each House, and I encourage members of this Committee to consider them as mechanisms in further discussions about such support. It seems undesirable to make a specific provision in the Bill in relation to the ISC alone. It would be more appropriate to allow the existing structures—IPSA and resolutions of the House of Commons, or the authorities in the House of Lords—to make that determination.

**Diana Johnson:** Does the Minister think it is fair for Members of the Lords to do all their preparation and attend a Committee, but because the House of Lords is not sitting, not be entitled to the allowance that they would normally get?

**James Brokenshire:** It is for the House authorities to determine what is appropriate for Members of the Lords in such circumstances. I am not sure that it is right for the Government to say what the House authorities in the other place should be doing. Obviously, the point was carefully considered in the other place and was not addressed in the version of the Bill that left the Lords to come to this place. It really is a matter for the House authorities to deal with.

**Dr Lewis:** Would the Minister be willing to consider the option that the payment of the Chairman could be dealt with in the memorandum of understanding? If he felt able to give that assurance, I might feel able not to press my amendment to a vote.

**James Brokenshire:** Can I first address my hon. Friend's amendment? We will see where that takes us. Amendment 29 would remunerate the Chair of the ISC

“in line with the arrangements for Chairs of Departmental Select Committees of the House of Commons.”

However, I highlight the fact that there is no real consistency in the way that Select Committee Chairs are treated. Not all Commons Select Committee Chairs currently receive an additional salary. In the Lords, there is only one salaried Chair—that of the European Union Select Committee, who is paid a salary not by virtue of that position, but by being also the Principal Deputy Chairman of Committees. It is a challenge to see where consistency may lie. Ultimately, it is resolutions of the House that specify the Committee Chairs who should receive additional pay, which not all of them do.

**Paul Murphy:** I am following the Minister's comments with great interest. He is of course absolutely right that certain Select Committee Chairs are paid differently from others, but I think he must accept that the work load of the Chair of the ISC is equal to that of the Chairs of the Select Committees for the great Departments of State.

**James Brokenshire:** Then we get into the issue we have already touched on: when IPSA takes over responsibility for determining MPs' salaries from 1 April, it will be able to determine whether MPs who hold a position or office specified in a resolution of the House of Commons should receive a higher salary than ordinary MPs. There will be a structure for recognising that there is a group of MPs who, because of their duties and responsibilities or the office they hold, should be given an additional sum to reflect such responsibilities, but ultimately it would be for the House, through resolution, to say who those people should be and which positions should be affected, mirroring the nature of the resolutions in respect of Select Committees.

If we are seeking to make the ISC more like a Select Committee, surely taking the same approach to the ISC as we do to Select Committees—a resolution of the whole House rather than a specific provision in statute—is appropriate. That would provide an effective mechanism by which to recognise the role and responsibility of the ISC's Chair and show respect for the incredible work that former Chairs of the ISC have conducted without remuneration. I pay tribute to the sense of duty with which Chairs of the ISC, past and present, have undertaken their responsibilities, recognising the import and significance of that work, without seeking monetary gain. That says an awful lot. Some people outside this House suggest that the only reason anyone within this House does anything is for some sort of monetary or personal gain, but that is certainly not the case for the incredible work of ISC Chairs, past and present.

**Paul Murphy:** My fear about IPSA is that, although it may have some idea what the Chair of the Foreign Affairs Committee or the Home Affairs Committee does, I am sure it does not have a clue about what the Chair of the ISC does. The reason the hon. Member for New Forest East is pressing this issue is, I think, that he and I know that all the work done by the Chair, and indeed the members, of the ISC is done not only behind closed doors, but in a separate building: members of the ISC have to go to that building and to an office to read the material. That would not be known to IPSA. Somehow or other we have to get through to IPSA that the ISC is a Committee that is certainly on a par with the great offices of state.

**James Brokenshire:** I understand the practical challenges of handling sensitive material to ensure that it is dealt with securely. As we have already heard, the work that the ISC does, the need to review documents in advance of meetings in secure premises, the nature of the information that is being dealt with, the very sensitive work that that Committee undertakes and the importance of that work, mean that that Committee has a special nature, different from that of other Select Committees.

**Dr Lewis:** I am sure that, until that exchange, members of this Committee would have had little idea that ISC members have to give up several hours the day before the weekly meeting to go to the secure offices to read all the classified material, so that they can take part in the meeting. Given that not many people understand such work burdens, will the Minister at least give an undertaking to discuss those matters and the special nature of that special Committee's work with IPSA? Will he give us an

assurance that IPSA will left in no doubt? If he does so, and in order to be helpful, I might feel that I do not need to press the matter any further.

**James Brokenshire:** IPSA is currently analysing MPs' pay and the enhancement, if I can call it that, for those MPs who hold particular responsibilities in the House, such as Chairs of Select Committees and others. I will confirm the position with regard to the status of the consideration that IPSA has given, and whether it is possible to make the sort of representations that my hon. Friend has highlighted. It may help him if I say that Chair of the ISC is certainly an office that could be specified by the House as eligible to receive a higher salary. I suggest to the Committee that that would be the most effective and appropriate way of dealing with this matter, with the House itself underlining the points rightly made this morning about the special nature of the Chair's work, the responsibilities held and the time and commitment required of the individual.

11.15 am

It is my understanding that there is a motion coming before the House in the next few weeks that will list eligible posts in advance of the new IPSA scheme coming into force on 1 April. When that motion is debated, any Member could table an amendment to include the Chair of the ISC on that list, rather than seek to amend the Bill. If our aim is to bring the ISC more into the practices and general stance of Parliament, that would be a more appropriate and immediate way of dealing with this matter, and one that would be more sympathetic to the workings of other Committees in Parliament than making specific provision in the Bill, as suggested in the amendment.

In conclusion, the Government's position remains as it was when this question was debated in another place. The ISC is an important Committee that carries out a valuable oversight function and the Chair of that Committee has a critical role. However, deciding on the appropriate level of financial support for the chair is a matter for the existing mechanisms in the two Houses, which we believe is the most appropriate way to resolve this issue. We could draw upon those mechanisms, recognising the enhancement IPSA is considering for special posts, the work of the House authorities in the other place and, indeed, the will of this House in determining which posts should receive enhancement under the IPSA scheme, when it takes effect in April.

**Dr Lewis:** If the Minister could give me an indication as to whether the Government are minded to support the listing of this post, even if it were a mere nod of the head, should he go down that route, it may be possible for me to leave the matter at that and withdraw the amendment.

**James Brokenshire:** As a Minister who has access to a range of secure documents, just as the ISC members do, and as one who has the utmost respect for its Chair, in a personal capacity I say to my hon. Friend that I recognise the strength of the argument that he puts forward.

**Dr Lewis:** As always, the Minister responds with good grace. It behoves me to respond with equal grace, so I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

**Dr Lewis:** I beg to move amendment 30, in clause 1, page 2, line 1, at end insert—

‘(6A) The ISC shall be supported by a body to be known as the ISC Secretariat about which a memorandum of understanding under section 2 may make further provision.’.

The amendment deals with a serious matter, to which I referred earlier this morning. It relates to the work of the secretariat without which the ISC would not be able to function at the level of repute that it has deservedly achieved over the years.

The Committee is supported by a small secretariat that comprises civil servants and is housed, for pay and rations purposes, in the Cabinet Office. That could create a problem because although informally in recent years the ISC has undertaken oversight of the Joint Intelligence Committee, which is a Cabinet Office body, the new ISC of Parliament will have formal oversight of both the JIC and the national security secretariat, which is another body housed in the Cabinet Office. We believe that it is not tenable for the staff who support the ISC to be managed by an organisation that the Committee oversees, because that could lead to a blurring of the lines of accountability.

The Government have previously suggested that the ISC’s staff should be security-cleared parliamentary staff, but since the work of the ISC must be kept separate, the parliamentary authorities are understandably reluctant to accept the secretariat within the parliamentary body when they can have no sight of its work or any say in its staffing or the way that it operates. For independence reasons, the Committee’s secretariat must therefore be separate from Government; for security reasons, it cannot report to Parliament. It is a distinct entity that is separate of both.

The ISC has proposed a solution that would ensure no risk of any such conflict of interest. Our proposal is that ISC’s secretariat becomes an independent arm’s length body on the precedent of bodies such as the National Audit Office, which, albeit on a different scale, is essentially a parliamentary non-departmental public body. We have not as yet been given any good reasons why the Government do not support our proposal, other than that it takes some work to set up an independent body. That is not a strong argument. Surely it is more important that we do the work and get it right, even if it requires a bit of extra work to be done.

Given that we still do not have a satisfactory solution to the problem, the amendment is proposed as an enabling provision to provide the flexibility to finalise a

solution, which can be detailed in the memorandum of understanding. It is important to leave the matter open in that way now, or else we will regret it later.

**Paul Murphy:** I strongly support the amendment, which offers an ingenious compromise. The staff of the ISC are the unsung heroes of the story. They are dedicated, clever and bright and there are not enough of them. Of course, no one knows what they do because of the nature of the job, but they do the job well. However, there is also the issue of where the secretariat meets, remuneration, the nature of the work, which is highly classified, and so on. As the hon. Gentleman has said, the organisation certainly cannot be a creature of Government—that would be wrong. That was always the problem in the past: the ISC met physically in the Cabinet Office and, because the Cabinet Office has many important tasks regarding intelligence and security, it could be argued—although it was never the case—that the ISC could be compromised. The other problem, if it were based here in Parliament, is: where would it go? What oversight would the parliamentary authorities have? What the hon. Gentleman has proposed is a good way through that, and I hope the Minister will give it serious consideration.

**Diana Johnson:** I feel slightly uncomfortable with the amendment. I can understand why the hon. Member for New Forest East has tabled it, but we have just spent quite a lot of time discussing how the ISC will be a Committee of Parliament and will have parliamentarians sitting on it, so to consider supporting the Committee by setting up a NDPB concerns me a little. Earlier, I asked about the Government’s thinking on the support mechanisms that they will put in place when the ISC becomes a Committee of Parliament.

**Dr Lewis:** Does the hon. Lady have the same reservations about the way the NAO services the Public Accounts Committee? That is the parallel.

**Diana Johnson:** I am interested that that has been raised as the parallel. My initial concern is that in looking at—

11.25 am

*The Chair adjourned the Committee without Question put (Standing Order No. 88).*

*Adjourned till this day at Two o’clock.*

