



Home Office

Lord Sharpe of Epsom
Parliamentary Under-Secretary of
State

Baroness Ludford
Lord Purvis of Tweed
Lord Hope of Craighead
Lord Coaker
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This letter is also to be placed in the House Library.

10 January 2023

My Lords,

Thank you for your contribution and questions in Committee for the National Security Bill on Monday 19 December.

I write to respond to queries which were raised.

Knowledge requirement for 'ought reasonably to know'

For the purposes of determining whether a person 'ought reasonably to know' (which recurs throughout Part 1 of the Bill), Lord Hope asked whether what must be proved is actual knowledge or imputed knowledge. I am grateful to the Noble Lord for raising this query. The Government's view is that this test should be interpreted as constructive knowledge based on the facts known to the individual. However, I have asked my officials to consider the concern raised further and we will revert if further detail is appropriate.

Clause 7(4)(b) – Crown Land

Lord Purvis asked whether lands categorised as being under Crown interest include those of Devolved Administration Government departments. I am grateful to the Noble Lord for raising this point and I have asked my officials to look into this further with Parliamentary Counsel. I will write to him again on this matter in due course.

College of Policing

Lord Purvis further asked whether the Government has consulted or will consult the Scottish Police College. I can assure the Noble Lord that we continue to consult with the College of Policing on the guidance on using the relevant powers in the Bill, including exploring implications on policing in Scotland. As my Lord will be aware, policing is a devolved matter. It will be down to the Scottish Policing College as to whether they choose to adopt the same guidance and we stand ready to support them as necessary.

Clause 3: legal services and private sector enterprises

Both Lord Pannick and Lord Purvis raised interesting points over the construction of clause 3, *assisting a foreign intelligence service*, and the possibility that legitimate activity could be within scope of the offences in the clause. Lord Pannick raised concerns over clause 3(1) and highlighted cases where a person might be guilty of an offence under this provision by providing legal services to a foreign intelligence service. Lord Purvis queried whether any of the defences would apply to a UK private sector body providing special forces training to a foreign intelligence service. The Government is clear that it does not wish to criminalise legitimate conduct through this clause and as such, we will consider both points carefully and provide a further response in due course.

In the vicinity of or adjacent to a prohibited place (clause 4)

Baroness Ludford asked for a definition of 'adjacent' and guidance on 'in the vicinity of' in relation to a prohibited place. The government is clear that "adjacent to" or "in the vicinity", have and retain their ordinary meaning.

Any individual, such as a rambler, only commits an offence by being in the vicinity of a prohibited place if they have a purpose they know, or reasonably ought to know, is prejudicial to the safety or interests of the UK (under clause 4). The conduct under clause 5 does not include being in the vicinity of a prohibited place. A person will commit an offence where they do not comply with an order of a constable to leave an area adjacent to a prohibited place or cordoned area. It would detract from the utility of the powers, and assist hostile actors, to set a specific distance for these terms and it is a matter for the constable to consider in the circumstances. I am pleased to reassure the Noble Lord that guidance is being developed to assist the police in exercising their powers. However, as an example, a police officer may choose to order a person to leave the "area adjacent" to prevent an individual walking the perimeter of a prohibited place – located directly outside of the fence surrounding the site – where they can survey and take photographs of the activity being conducted within. The officer must reasonably believe that it is necessary to protect the safety or interests of the UK to give such an order, so preventing them from being in this place and taking these photographs.

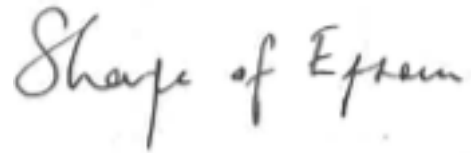
The Noble Lord drew a distinction between the provisions in clause 11, which contains a reasonable excuse defence, and clauses 4 and 5 which do not. This reflects the fact that clause 11 relates to sites that are only temporarily cordoned in order to secure military aircraft. An aircraft could crash anywhere, including on private land, such as rural farms, where – for example - the landowner may reasonably need continued access to the land.

Foreign power condition and trade secrets

Lord Coaker asked whether the foreign power condition could be met if a person obtained a trade secret and sold it not to a foreign power but to a competitor business. In such circumstances the person would only commit an offence if their action was carried out for or on behalf of a foreign power, which, as indicated in clause 29, could include via an indirect relationship through a company, or if the person in undertaking that act intends to benefit a foreign power.

I thank the noble Lords again for their contributions and look forward to further debate about this important legislation.

Yours sincerely

A handwritten signature in cursive script that reads "Sharpe of Epsom".

Lord Sharpe of Epsom
Parliamentary Under Secretary of State, Home Office