

OPERATION ISOTROPE: MILITARY PRIMACY FOR COUNTERING SMALL BOAT MIGRATION IN THE CHANNEL

MEMORANDUM OF UNDERSTANDING BETWEEN:

MINISTRY OF DEFENCE
HOME OFFICE
AND
DEPARTMENT FOR TRANSPORT

v.2
(REVISED 08 September 2022)

Amendments:

Version	Date	Changes made
2.0	01 July 22	Updated format to standard MOU. Updates to #1 to reflect the ongoing arrangements for Defence primacy and #19 to reflect the Home Secretary's rescinding of permissions to turn boats back to France. Included details on detention timing (#9), financial accountability (#21), publishing data on crossings (#31), and new governance structures (#33). Minor changes for accuracy elsewhere.
-	08 September	Signed copy received by Home Office and DfT

1. This MOU has been approved by the Permanent Secretaries of the Ministry of Defence, Home Office, and Department for Transport. It covers MOD Military Primacy for countering small boat migration in the channel (Operation ISOTROPE). The objective of Military Primacy is to prevent uncontrolled small boat landings on the UK and ensure that migrant boats are identified, safely intercepted and that individuals on board are appropriately brought into the Home Office immigration system. Any change to the objectives of Op ISOTROPE are to be approved by the Ministry of Defence, Home Office, and Department for Transport.

COMMAND AND CONTROL OF COUNTER MIGRATION OPERATIONS

2. As directed by the Prime Minister on 14 January 2022, Defence took primacy for HMG's response to countering small boat migration in the Channel on 14 April 2022. To deliver this the counter small boat migration maritime operation will be led by the Royal Navy, with a senior officer appointed as the Joint Inter-Agency Task Force (JIATF) Commander. The JIATF Commander will report to the 3* Commander of Standing Joint Command (UK).

3. To achieve the objectives of Op ISOTROPE, MOD will take command of relevant functions of the Clandestine Channel Threat Command (CCTC) (required operational staff, assets and capabilities). MOD will have full support of, and be able to direct, relevant operational staff for the purposes of delivering Op ISOTROPE. Defence will supplement the headquarters with additional military personnel as required. The headquarters element of CCTC will work alongside the JIATF Commander to ensure decisions which have an impact on operational delivery and generate increased risk, are taken in agreement, ensuring full awareness within Defence.

4. Once tasked to Op ISOTROPE, the JIATF Commander will have full operational control over all maritime assets and relevant personnel operated by Defence and HMG partners for the purposes of Op ISOTROPE (further detail on Search and Rescue is provided in paragraph 10). Once allocated to Op ISOTROPE, Border Force, Home Office and wider HMG maritime assets are not to be diverted from Op ISOTROPE tasking, excluding for Safety of Life at Sea (SOLAS) purposes, without the express agreement of the JIATF Commander – who will consider any re-allocation of assets away from Op ISOTROPE against the updated Maritime Risk Prioritisation Tiers, previously agreed by the Maritime Security Ministerial Small Group in November 2020 (Annex A). Direction to Border Force staff and contractors from the JIATF Commander and suitably senior staff that they delegate authority to, will be considered a 'reasonable management instruction' e.g. as though the Commander were a senior member within Border Force. Departments will give the necessary direction to ensure this can happen.

5. All departments who currently provide staff, including contractors, to CCTC, Western Jetfoil and Manston (including staff who support existing beach reception activity as well cross-Channel migrant processing in other locations) will need to be prepared to respond to requests to surge resource in response to high-demand days, subject to Ministerial agreement.

6. Home Office staff under the direction of the JIATF Commander will remain under Home Office line management and employment. The JIATF Commander will use all

reasonable endeavours to ensure that the activity of Home Office personnel under their direction complies with Home Office human resources practices. Home Office will ensure that the JIATF Commander has access to all relevant Home Office Human Resource advice and advisers to facilitate this. All management instructions, including those from the JIATF Commander and those under their command are to be treated by Home Office personnel in the usual way.

7. From 14 April 2022, Defence's operating model is premised on greater availability of Defence and HMG assets for the response to counter small boat migration/SOLAS operations in the English Channel, and optimised control of these assets through the JIATF Commander. Government organisations and arm's length bodies that have been fulfilling tasks in line with national or international legal frameworks will be expected to maintain those responsibilities. Every effort will be made to ensure Defence activity does not impede on their delivery (further detail on Search and Rescue is detailed in paragraph 10). The responsibilities HMG deliver include:

- a. The JIATF Commander is responsible for the delivery of countering cross-Channel small boat migration operations, including assisting the migrant triage and processing pathway (Op ISOTROPE).¹
- b. The Home Office remains responsible for the delivery of counter-terrorism, counter-narcotics, and countering other illicit threats in UK territorial waters including goods and other forms of clandestine arrivals and all immigration matters not covered by Op ISOTROPE.
- c. Department for Transport remains the sponsor for the Maritime and Coastguard Agency (MCA), including HM Coastguard (HMCG). HMCG retains statutory responsibility for Search and Rescue operations.
- d. DEFRA remains responsible for fisheries and environmental protection and pollution in English waters.

TRIAGE AND PROCESSING

8. While immigration sites (Manston, and Western Jetfoil) will remain within the possession of the Home Office, the MOD will be responsible for the operational effectiveness of the reception, triaging, and processing of migrants. To achieve this, the MOD will have the relevant authority to direct activity to existing personnel, including contractors (through Home Office personnel).

9. The Home Office is responsible for decisions on detention timing, including where to formally start considering a migrant as detained, consistent with their wider immigration enforcement responsibilities. MOD expects that, in line with the current statutory obligations, migrants should only be detained at Manston for up to 24 hours, with any cases exceeding 24 hours being properly authorised due to exceptional circumstances in accordance with Rule 6(2) of the Short-Term Holding Facility Rules 2018.

SEARCH AND RESCUE

¹ Op ISOTROPE relates exclusively to the countering of overt small boat facilitated migration. It does not extend to other forms of clandestine cross-Channel migration such as stowaways, people smuggling etc.

10. Her Majesty's Coastguard (HMCG) retains statutory responsibility for Search and Rescue operations, including tasking and coordinating Search and Rescue in the Channel. From the point at which Defence primacy commences, HMCG will retain the ability to task and coordinate any necessary assets to perform Search and Rescue operations, including civilian assets and personnel aligned to Op ISOTROPE in priority to other direction from the JIATF Commander. The tasking of military assets and personnel to Search and Rescue operations by HMCG will continue to be governed by the arrangements in place immediately prior to the commencement date. HM Coastguard categorises all migrant vessels to which they are notified of as being 'in distress.' An Op ISOTROPE asset which encounters a migrant vessel must immediately inform HMCG who will then assume co-ordination of a Search and Rescue response. No enforcement action is to be delivered against any vessel in the 'distress', 'urgency' or 'uncertainty' phases of a Search and Rescue incident. The JIATF Commander may offer suggestions to the MCA regarding asset allocation but the responsibility for asset selection, tasking, and co-ordination rests with the HMCG.

LEGAL POWERS

11. The initial arrangements will be delivered without any changes to legislation, and all agencies and personnel will continue to act within existing powers. We are not seeking at this stage to confer new legal powers on any of the HMG agencies or Armed Forces operating in the Channel, including any new use of force or evidence gathering powers on groups that do not currently have them. However, we reserve the right to revisit this issue as the operation develops, and much will depend on any further proposals for new tasks to be taken on by military personnel.

12. For the avoidance of doubt, existing legal duties will continue to apply as they did immediately prior to the implementation of Defence primacy. In particular, this applies to the powers of the Secretary of State for Transport to give safety directions under Schedule 3A to the Merchant Shipping Act 1995, and the powers with the Secretary of State for Transport, as the UK competent authority for the International Ship and Port Facility Security Code (set out in domestic legislation, derived from SOLAS), to set security levels and provide instruction or guidance to UK ports and ships, including on directing commercial shipping.

ASSETS

13. The existing asset base will need to be increased to meet the intent of no uncontrolled beach landings. It is critical that MOD can control, prioritise, and task sufficient maritime assets, personnel and capabilities required for Op ISOTROPE, including:

- a. CCTC relevant assets and operational staff to come under Defence control.
- b. Infrastructure upgrade to CCTC.
- c. All operational Border Force Vessels operating in the Channel.
- d. Newly contracted Vessels.
- e. All extant counter migration ISR under Home Office / CCTC contract.

- f. New ISR platforms & operators.
- g. Extant Border Force resources (for counter-migration operations), including staff at S&I
- h. Sufficient Border Force/Home Office Immigration Officers, to ensure small boat arrivals can be processed in 24 hours and that all small boats not intercepted at sea are met by a beach reception team, to include appropriate warranted Home Office staff.

14. All additional assets and personnel that do not fall into existing budgets will require funding. No new agreements that incur additional costs should be entered into without necessary funding having been agreed. Defence will work with CCTC Chief Technical Officer to investigate ISR options, including additional ISR contracts to enhance overall capability to deliver the necessary detection capability; and will ensure integration.

Public Interest/Operational Sensitivity

OPERATIONAL PERMISSIONS

16. The JIATF Commander will have full operational control over all maritime assets and relevant personnel, including those delivering migrant triage and processing, operated by Defence and HMG partners when they are allocated to Op ISOTROPE in accordance with Annex A (subject to paragraph 9).

17. Defence personnel deployed on Op ISOTROPE will act only within the limits of their current powers, in particular the power to use force only with consent, or pursuant to the right of self-defence, including defence of others and where necessary and proportionate the power to use reasonable force to rescue where this is necessary to save life.

18. All Home Office staff and non-Defence personnel will continue to act in accordance with their operational permissions, including any relevant protocols and SOPs (Standard Operating Procedures). On the 24 April, the Home Secretary confirmed that the previously extant policy and procedures relating to the turnaround tactic had been withdrawn. Accordingly Border Force will not implement turnaround tactics under Defence primacy, or otherwise, unless a new policy is created. The Royal Navy position remains unchanged and will not implement or assist in the implementation of turnaround tactics under Defence primacy². Where Home Office Staff and non-Defence personnel become aware of any issues that have the potential to impact on their adherence to operational permissions or SOPs, they are to inform MOD. Any new tactics or permissions for Border Force and other non-Defence personnel, or substantive changes to extant SOPs, must be agreed by both MOD and Home Office before they are used.

² It should be noted, the previous version of the MOU (V1) agreed by Home Office, Ministry of Defence and Department for Transport allowed for the military commander to authorise Border Force to implement the turnaround tactic where it is legal and safe to do so and assessed to be of appropriate utility. Between the 14 April and 24 April 22, the Joint Commander was not given permission to exercise this authority.

19. The JIATF Commander may direct all personnel allocated to Op ISOTROPE subject to these constraints. The JIATF Commander may delegate this direction as they see fit.

FINANCE

20. Costs and funding associated with the HMG assets and personnel detailed in the Op ISOTROPE operational plan will continue to lie with the existing 'owning' department, unless formally listed by Defence against the agreed £50M allocation from HMT. The £50M is provisioned for Financial Year 22/23 to facilitate Defence Primacy, therefore spending decisions will require engagement between Home Office and MOD to optimise capability delivery during this period. MOD will not, nor require co-operating OGDs to enter financial or commercially binding commitments for new capabilities, workforce or contracts, or anything that is considered as novel and contentious, until there is agreement from respective OGDs (as required). Existing funding allocated for the CCTC from the Home Office will need to be provided over the current HMT settlement period to enable CCTC to meet the challenge of the projected increase in migrant crossings. Noting that the additional HMT funding for Defence primacy has been re-profiled into year 1 only, MOD will not, nor require co-operating OGDs to, enter financial or commercially binding commitments in years 2 or 3 without their express permission for capabilities that are currently unfunded. It is not anticipated further funding will be provided in year, therefore any amendments to planned activity will be re-balanced within the existing £50M envelope. This rebalancing may include provision of funding for use of MOD assets, should planned capability not be delivered to the agreed timescale.

LIABILITIES

21. Subject to paragraph 22 below, MOD agrees to indemnify the Government departments with personnel (including personnel from their agencies or sponsored organisations) that might be allocated to Op ISOTROPE in relation to any and all claims, including legal costs associated with defending such claims, arising from or in connection with the actions of their personnel undertaken in order to comply with a direction from or on behalf of the JIATF Commander within the Op ISOTROPE operational plan, where those actions are in accordance with that direction, and where the personnel are acting properly, consistent with their training and instructions. For the avoidance of doubt, the indemnity referred to in this paragraph will include (but is not limited to):

- a. any claims brought by personnel for whom the relevant government departments are responsible; and
- b. any legal fees, damages or other costs incurred or payable by the relevant government departments.

22. MOD will not be liable in circumstances where the event or series of events giving rise to the claim or claims were caused by wilful default of the relevant departmental personnel in the conduct of their duties.

23. Subject to paragraph 21 above and 25 below, all other Government departments with personnel (including personnel from their agencies or sponsored organisations) that might be allocated to Op ISOTROPE agree to indemnify MOD in relation to any and all other claims, including legal costs associated with defending such claims, arising from or in connection with the actions of their respective personnel.

24. For the avoidance of doubt, the indemnity referred to in paragraph 23 will include (but is not limited to):

- a. any claims brought by personnel for whom MOD are responsible; and
- b. any legal fees, damages or other costs incurred or payable by MOD.

25. Other government departments will not be liable in circumstances where the event or series of events giving rise to the claim or claims were caused by wilful default of the relevant military personnel in the conduct of their duties.

26. Home Office agrees to indemnify MOD in relation to any and all other claims, including legal costs associated with defending such claims, arising from or in connection with decision making or processes on detention timing which, as set out in paragraph 9, are the responsibility of Home Office.

27. All other costs relating to personnel, such as salaries, will continue to be the responsibility of the department that was responsible for them immediately prior to the implementation of Defence primacy. Where these indemnities are relied on, the agreement of the department providing the indemnity must be gained before any step is taken in relation to any litigation or other dispute resolution. All other litigation risk arising from Op ISOTROPE lies where it falls.

ACCOUNTABILITY, PARLIAMENTARY RESPONSIBILITY AND MEDIA ENQUIRIES

28. The Home Secretary retains overall accountability for the Government's illegal migration strategy; Border Security on land; and the response to other threats at sea including illegal migration other than by small boats, counterterrorism, crime including drugs, and public order at sea within the overall Department for Transport coordination of UK maritime security. The Cabinet Office will continue to cohere the cross-HMG effort to counter small boat migration in the Channel.

29. The Defence Secretary has assumed control of the response to irregular migration by small boats in the Channel. MOD is the lead Government Department for reporting to Parliament, FOI Requests, media enquiries and communication on Op ISOTROPE. The Home Office retain the lead for media enquiries and communication relating to counter-migration outside of Op ISOTROPE. In the event of a migrant-related serious incident (e.g. SOLAS event) Departments will follow the agreed serious incident handling Standard Operating Procedure.

30. MOD is responsible for the publication of the daily and weekly statistical data set, 'migrants detected crossing the English Channel in small boats,' on GOV.UK. Information on migrants crossing the English Channel in small boats is collected and recorded by personnel and assets assigned to Op ISOTROPE. CCTC disseminate data on Op

ISOTROPE and migrant crossings to MOD daily and are responsible for the assurance of this data. Data received from CCTC reporting is used to produce the aforementioned statistical data set.

GOVERNANCE AND PRIORITISATION

31. The strategic direction for Maritime Security will be set by Ministers through the National Security Council, using a clear prioritisation model which is aligned with the HMG Maritime Risk Assessment, National Security Risk Assessment and updated maritime risk prioritisation tiers, previously agreed by the Maritime Security Ministerial Small Group in November 2020. The Cabinet Office, cohered by the Chancellor of the Duchy of Lancaster (CDL), retains oversight of HMG's counter-migration efforts. Annex A sets out the Tiers, updated to reflect the higher relative priority which the Government is setting on small boats response. The Maritime Security Concept of Operations and Playbooks, which are maintained and developed by the JMSC, remains the current response arrangements for all maritime security incident response and is the principle from which new operational approaches and response procedures are developed.

32. The Domestic and Economic (Illegal Migration) Committee remains the Ministerial forum for Illegal Migration (including Op ISOTROPE). The committee will be supported at a senior officials level by meetings convened by the Cabinet Office as required. Governance at an operational level will be provided by the fortnightly MOD and Home Office Operational Working Group. The group discusses Op ISOTROPE developments in detail in conjunction with departmental meetings such as the Home Office Illegal Migration Board and the MOD Commitments Management Group. Terms of Reference (TOR) will be agreed by the respective groups.

DURATION

33. These arrangements should be presumed to finish by 31 Jan 2023 at the latest, at which point the Home Office would resume primacy for countering small boat migration in the Channel, and all other arrangements set out above would revert to pre-14 April 2022 status, **unless** an extension has previously been agreed by respective Secretaries of State. Departments should provide advice to their respective Ministers to inform whether an extension to the arrangements is justified, in consultation with other interested Departments.

34. The position set out above reflects the joint position of the Ministry of Defence, Home Office, and Department for Transport.

Personal Data	Personal Data	Personal Data
Name Permanent Secretary to the Ministry of Defence	Name Second Permanent Secretary to the Home Office	Gareth Davies Second Permanent Secretary to the Department for Transport

ANNEX A - MARITIME RISK PRIORITISATION TIERS

There are four maritime risk prioritisation tiers, built on the categorisation of risks outlined in the Maritime Security EU Exit Risk Assessment.

Public Interest/Operational Sensitivity

Public Interest/Operational

The Tiers are listed below:

TIER 1: IMMINENT RISK TO LIFE

- Public Interest/Operational Sensitivity
- Public Interest/Operational Sensitivity
- Public Interest/Operational or any other SOLAS event;
- Public Interest/Operational Sensitivity

TIER 2a: SIGNIFICANT PUBLIC CONFIDENCE/COMMUNITY IMPACT FOR UK

- Unauthorised overt small boat migration (Operation ISOTROPE).

TIER 2b: SIGNIFICANT PUBLIC CONFIDENCE/COMMUNITY IMPACT FOR UK

- Public Interest/Operational Sensitivity
- Public Interest/Operational Sensitivity
- Public Interest/Operational Sensitivity
- Public Interest/Operational Sensitivity
- Public Interest/Operational Sensitivity

TIER 3: PUBLIC ORDER INCIDENT

Public Interest/Operational Sensitivity

- Public Interest/Operational Sensitivity

TIER 4: AN INCIDENT REQUIRING MONITORING

- Public Interest/Operational Sensitivity