

Intelligence

Oversight

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Introduction

The Intelligence and Security Committee (ISC) has decided to publish this booklet to outline the nature of the oversight undertaken in the United Kingdom on the intelligence and security Agencies. The ISC is the principal method by which parliamentary scrutiny of the Agencies takes place. This booklet is designed to be read with the booklet *National Intelligence Machinery*, published by The Stationery Office.¹

The UK has three intelligence and security Agencies: the Secret Intelligence Service – known as the SIS or, in the public’s eye, as MI6; the Security Service – known as MI5; and the Government Communications Headquarters, GCHQ. These Agencies, which have been in operation for a considerable time, were not publicly acknowledged for much of their lives. Both the SIS and Security Service started in 1909, while there has been an official code breaker since the 16th century. The public’s perception of the SIS, Security Service and GCHQ was limited to that given in books or films – which was sometimes far from reality.

To complete the description of the national intelligence machinery, it is necessary to mention that the Ministry of Defence has its own intelligence organisation, the Defence Intelligence Staff (DIS), and the Cabinet Office has the Security and Intelligence Secretariat. This produces assessments for Ministers based on intelligence and other sources and administers the requirements and priorities for intelligence collection.

Legislation

The wish to place the intelligence and security Agencies on a firm and unambiguous basis, together with the requirements of the European Convention on Human Rights (ECHR), led the Government to put them on a statutory footing. Legislation in 1985, 1989, 1994, 1996 and 2000 created the system of authorisation and accountability for the Agencies.

Article 8 of the ECHR – the right to respect for private and family life, provides that:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society **in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime**, for the protection of health or morals, or for the protection of the rights and freedoms of others.

The Interception of Communications Act 1985 allowed communications (telephone, fax, telex and post) to be intercepted when authorised by a warrant signed by a Secretary of State for the highlighted reasons. The Security Service Act of 1989 allowed the Service to undertake activities that would otherwise be unlawful, such as interfering with property, if authorised by a warrant signed by a Secretary of State. Warrants could only be issued under the Security Service Act for the protection of national security or to safeguard the UK's economic well-being.

The Intelligence Services Act 1994 brought the SIS and GCHQ onto a similar statutory footing as the Security Service, with their activities authorised by warrants signed by a Secretary of State. The Act also set out the functions of these two Agencies, which had never previously been defined, in the terms of Article 8 of the ECHR:

- a. to undertake work in the interests of national security;
- b. to undertake work in the interests of the UK's economic well-being; and
- c. to detect or prevent serious crime.

In 1996 the Security Service Act was amended to allow the Security Service to support operations to detect or prevent serious crime, thus giving the Security Service a similar remit to the other two Agencies.

Each of these acts created a role for a Commissioner, holding or having held high judicial office, who reviews the exercise of a Secretary of State's powers and reports to the Prime Minister annually. Tribunals were also established, appointed by HM The Queen and presided over by a person who either holds or has held high judicial office, which are tasked to investigate individuals' complaints into the Agencies' actions.

The Regulation of Investigatory Powers Act 2000 (RIPA) was designed to ensure that UK legislation was compatible with the ECHR and the Human Rights Act 1998. It replaced the Interception of Communications Act 1985, rationalised the number of Commissioners relevant to the intelligence and security Agencies from three to two and amalgamated all the Tribunals into the Investigatory Powers Tribunal. Codes of Practice have been or are being published relating to the exercise and performance of power and duties under RIPA, such as the issuing of warrants for the interception of communications.

Responsibility and accountability

The Agencies' heads are required by the Security Service and Intelligence Services Acts to report annually on the discharge of their functions to the Prime Minister and the relevant Secretaries of State. The Foreign Secretary is responsible for the activities of the SIS and GCHQ as he signs their warrants and authorisations. Similarly, the Home Secretary is responsible for the activities of the Security Service and signs their warrants. Additionally, the Secretaries of State for Northern Ireland and Defence may also sign warrants, as can the First Deputy Minister in Scotland for serious crime work. The Prime Minister is ultimately accountable for the activities of the Agencies.



Oversight

There had been some discussion in the context of the Security Service Act 1989 about the role Parliament could play in the oversight of the Agencies. At that point, with the arguable exception of the Commissioners, there was no external oversight of the Service's **administration, policy or finances**. Finances, in particular, were still very hidden, normally within the Ministry of Defence and other budgets.

Following considerable discussion, it was agreed that Parliament should have an oversight role in the Agencies and that to create a degree of transparency all the Agencies' budgets would be brought together under one heading, the Single Intelligence Vote. This is now known as the Single Intelligence Account under resource accounting.

The Intelligence Services Act 1994 created the Intelligence and Security Committee – a body of nine parliamentarians drawn from both the Commons and the Lords, appointed by the Prime Minister in consultation with the Leader of the Opposition.

So whilst the Government (or Executive) is responsible and accountable for the Agencies' operations, the oversight of the Agencies is conducted in the main by three elements:

- a. the Intelligence and Security Committee;
- b. the Commissioners; and
- c. the Tribunal.

These are rooted in the Legislature and the Judiciary. It is these three elements which provide reassurance to the public.

The Intelligence and Security Committee is established to examine the administration, policy and expenditure of the three Agencies. The Prime Minister appoints the Committee and it reports to him at least annually. The reports are then laid in Parliament, together with the Government's response, and debated annually. The Committee sets its own work programme, with Ministers and the Agency heads giving evidence as necessary. For example, the Committee takes oral evidence from the Foreign and Home Secretaries, senior officials from the Ministry of Defence (the Agencies' biggest customer) and law enforcement organisations.

The Committee operates within the 'ring of secrecy', which is protected by the Official Secrets Act, so that members are bound to observe confidentiality whilst having access to a great deal of classified information and the Agencies' future plans. In terms of the Agencies' budgets, whilst Parliament as a whole sees only the total allocation for all the Agencies, the Committee sees every detail of the Single Intelligence Account – including how much they spend on staff, stationery and agents. The National Audit Office (NAO) supports the Committee in this work.

Additionally, the Chairman of the House of Commons' Public Accounts Committee (PAC) sees the expenditure details of the three intelligence and security Agencies and can question the Agencies on their expenditure through the NAO. However, the Chairman is the only member of the PAC to have access to the Agencies' accounts.

The Committee's reports to the Prime Minister contain all this detail, but the Government, with the Committee's agreement, removes all information that would be prejudicial to the continuing discharge of the Agencies' functions before they are published – replacing it with asterisks. This means that the reader can see where and how much material has been removed. Whilst the Committee is required under statute to produce an annual report, the Committee has in the past written additional reports on items such as Sierra Leone and the handling of material provided by Mr Mitrokhin on his defection.

The Committee has appointed an Investigator to conduct research in more detail than the Committee can reasonably do. The Committee tasks the Investigator to report on a given topic, such as information technology or scientific and technical research and development. The Committee then considers his report and decides what action to take. This appointment has improved the Committee's capability and it was the result of the Committee identifying a need and then addressing it with Government support.

The current Committee membership is:

Rt. Hon. Ann Taylor, MP (Chairman)

Rt. Hon. James Arbuthnot, MP

Rt. Hon. The Lord Archer of Sandwell QC

Rt. Hon. Kevin Barron, MP

Rt. Hon. Alan Beith, MP

Rt. Hon. Alan Howarth CBE, MP

Michael Mates, MP

Rt. Hon. Joyce Quin, MP

Rt. Hon. Gavin Strang, MP

The Committee is supported by a small secretariat, under the Clerk to the Committee, which is based, for security reasons, in the Cabinet Office. The current Clerk is Alistair Corbett.

The Commissioners relevant to the oversight of the intelligence and security Agencies are the Interception of Communications Commissioner and the Intelligence Services Commissioner. They examine the exercising of the powers conferred on the Secretaries of State and consequently check that the warrants and authorisations are correct and proportionate to the seriousness of the reason for interfering with an individual's privacy or property. Reasons could be that the individual has been identified as a major drugs smuggler or as a spy. The Commissioner, having checked that the warrant is appropriate, then checks that it was exercised correctly – the right telephone line was intercepted. If he finds that there was an error

or mistake, he then ensures that all material is destroyed so that it is not used by the Agency and that corrective action is taken. The Commissioners report to the Prime Minister every year outlining their findings. The Prime Minister lays these reports before Parliament, although a confidential annex that contains operational details is not published.

Currently the Interception of Communications Commissioner is the Rt. Hon. Sir Swinton Thomas and the Intelligence Services Commissioner is the Rt. Hon. Lord Justice Simon Brown.

The Investigatory Powers Tribunal has been established to enable anyone, regardless of nationality, to complain if they believe that their communications or human rights have been violated or abused by any of the Agencies. The Tribunal enquires into each complaint and investigates whether the Agencies have acted improperly. If the Tribunal supports a complaint, it has the power to award damages to the complainant. As this system is available to every individual, it is perhaps the most far-reaching in the world. Since it was established, the Tribunal has received 71 cases, none of which has been determined in favour of the applicant.

The President of the Tribunal is currently the Rt. Hon. Lord Justice John Mummery.

Does oversight work in the UK?

The Commissioners check that the Agencies' actions are within the law, whilst the Tribunal investigates occasions when an individual has a complaint. The Commissioners publish an annual report, which is made public, and this gives an element of transparency into the Agencies' work.

The Intelligence and Security Committee has access to Ministers, the Agencies and their customers. It can see what the Agencies are doing; how they spend their money; and whether they deliver their products in a timely manner to fulfil their customers' requirements. The Committee meets at least weekly whilst

Parliament is sitting, taking evidence from a wide range of witnesses. It publishes reports that reflect the Committee's findings and it monitors the Government to see that recommendations are followed.

So does the system work? The *Times* leader on 14 June 2000, the day after the Committee published its report into the handling of Mr Mitrokhin's material, said:

"Never before has a Parliamentary Committee been given such access to documents detailing MI5's operations; never has the service been so publicly reprimanded... Yet the report can do nothing but good for Britain's security and intelligence services. For the parliamentary committee has made abundantly clear that not only can it be trusted with some of the most sensitive information in British Intelligence, but that it can produce a report that is thorough, focused, rigorous in identifying individual failings and yet in no way compromising to Britain's security. This, in the end, can only solidify the basis on which the security services operate, and bolster public confidence in the way they are policed. MI5 is rightly smarting at the lapses exposed yesterday; but in the long term it should welcome this strikingly successful example of public accountability... The Mitrokhin affair involved a lamentable failure to keep Government informed; Parliament has done well to keep the country informed of that failure."

The Home Affairs Committee Report *Accountability of the Security Service*,² published in June 1999, stated that:

"... the reports of the ISC itself have shed light on areas of security service activity which hitherto had lain in darkness. These developments have been an important advance on what had gone before."

"... we wish to record our view that the establishment of the statutory Intelligence and Security Committee has been a significant step forward over previous arrangements in providing democratic oversight."

"... we note that in practice the ISC has gone beyond even the limits of the three principal Agencies to examine other intelligence work within the government."

These quotes suggest that the Committee plays a large role in maintaining public confidence in the intelligence and security Agencies, whilst drawing attention to their failings as appropriate. The key element in the Committee's relationship is trust. The Agencies have learned to trust that the Committee is secure and will not leak secrets. This means that they can respond to the Committee and be open without fear of being compromised.

The system of oversight exercised by the ISC has evolved since its establishment in 1994 and it will, without doubt, continue to do so. Oversight of the intelligence and security Agencies is now regarded as an important part of democratic society and any future developments will be based on the foundations created by the ISC.

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