



Government Response to the
Intelligence and Security
Committee's
Annual Report 1998–99

Presented to Parliament by the Prime Minister
by Command of Her Majesty
JANUARY 2000

1. In its Annual Report for 1998–99, the Intelligence and Security Committee has once again stressed the importance of maintaining effective security and intelligence Agencies to meet the challenges we face. The Committee lists a number of difficult and vital areas, notably the events in Kosovo and continued international terrorism, which the three Agencies have had to tackle in the last year. The Committee describes a year in which the Agencies have again made a strong contribution to the promotion of our interests and the protection of national security. It is however in the nature of the work of each of the three Agencies that most of their work cannot be made public, either to confirm success or deny fanciful allegation. The Intelligence and Security Committee, operating within “the ring of secrecy”, therefore plays an important role in the accountability of the Agencies.
2. The Committee has made a number of conclusions and recommendations in its Annual Report. The Government’s response to those conclusions and recommendations is set out in this paper.

The Agencies’ Current Priorities and Plans

3. The tasks of the Agencies are constantly changing, as events unfold around the world and at home. A keynote of the capabilities of all three Agencies is flexibility, something which the Intelligence and Security Committee itself remarked on in its report about Sierra Leone published last year (Cm 4309). At any time the Agencies must prioritise in dealing with the tasks they face. The process through which the requirements on them are set and their priorities determined is, as the Committee says, well established. The process was described in the booklet *Central Intelligence Machinery*. It ensures that decisions on Agency tasks and priorities are taken by Ministers and that the needs of Government as a whole are fully taken into account.
4. The Committee emphasises its support for the Agencies’ work in relation to UK and allied operations in the Gulf and the Balkans and to counter the threats of terrorism. These are indeed among the areas of Agency work which command the highest priority.
5. During its planned move to new accommodation GCHQ is paying considerable attention to ensuring that degradation to its operating capabilities is kept to a minimum and that all essential services are maintained.

IT Systems

6. The Agencies have advanced and powerful IT systems. They have standing arrangements for co-operation with each other over systems development and operation. They also co-operate with other organisations that undertake related work. The Government welcomes the Committee’s continuing interest in this area.

Y2K Compliance

7. As IT systems are so important to the Agencies, considerable attention was paid to the problems which flowed from the Millennium date change. The Government welcomes the Committee's recognition that the Agencies adopted a thorough approach to the problem, and looks forward to the Committee's further interest. In the event the Agencies' preparations proved successful and there was no interruption to their operations.

Recruitment

8. It is a constant challenge to recruit sufficient staff who can meet the Agencies' need for varied and expert language skills. The security requirements that are a necessary prerequisite of employment by the Agencies undoubtedly complicate an already difficult task. However, as the Committee notes, there is a high level of co-operation between the Agencies in tackling the problem of scarce language skills, and barriers to recruitment and deployment are kept under constant review.

Employment Tribunals

9. The Government legislated quickly to allow all staff of the Agencies to take grievances to an employment tribunal. This followed the Committee's recommendation last year. The Government also took into account the views of Lord Justice Stuart-Smith, who is both the Intelligence Services Commissioner and the Security Service Commissioner. The Government is therefore disappointed at the reaction of the Committee to this prompt improvement in the rights of members of staff of the Agencies.
10. Parliament accepted that it might still be necessary on grounds of national security to exclude an applicant or his or her representative from part, or exceptionally all, of the employment tribunal hearing the case. The Government explained at the time that it did not believe it was right to refer decisions by a Minister about such exclusions to the Commissioners for the Agencies. This is because Ministers' decisions in such cases will be openly arrived at and communicated to the applicant. Should the applicant wish to challenge a Minister's decision, he or she would be able to apply for judicial review, which could provide an immediate remedy. An applicant will always be able to state his or her case to the tribunal, and a special advocate would be appointed to represent the applicant's interests whenever the applicant or his or her representative were excluded from the hearing on grounds of national security.
11. In view of the Committee's recommendation, the Government will consider, in the light of experience of the operation of Ministers' powers of exclusion, whether there would be any benefit from involvement by the Commissioners.

Commissioners' Reports

12. The confidential annexes to annual reports by the Commissioners appointed under the Interception of Communications Act 1985, the Security Service Act 1989 and the Intelligence Services Act 1994 contain extensive amounts of material which discusses the sources and operational methods of the Agencies and particular operations. Such information is defined as "sensitive" by the Intelligence Services Act 1994, which recognises that the heads of the Agencies may be unable to disclose it to the Intelligence and Security Committee. The Government does not therefore expect to be able to make the confidential annexes to the Commissioners' reports available to the Intelligence and Security Committee. The Commissioners' published reports do however give an opinion on the whole area which they have under review. If the Committee had a particular concern, the Government would seek to provide it with the information necessary to satisfy its interest.

Expenditure

13. The Government set spending plans for the Agencies in the Comprehensive Spending Review. These plans were designed to enable the Agencies to maintain their current outputs through to 2001–02. Spending plans will be reviewed later this year.
14. The Government has removed the breakdown of expenditure within the Single Intelligence Vote from the published version of the Committee's Annual Report. Many other Western Governments adopt a similarly cautious approach to revealing details of their intelligence expenditure. The Government will, when the Committee is ready, discuss with it whether it may be possible to give further information about spending within the Single Intelligence Vote without compromising essential security needs.
15. The Agencies continue to be vigorous in their pursuit of efficiency. The Committee notes the appointment of Sandy Russell, formerly Deputy Chairman of HM Customs and Excise, to advise the Agencies on efficiency. The Government will welcome the Committee's continued scrutiny of the efficiency of the Agencies. Following Sandy Russell's initial work, the heads of the Agencies appointed a Co-ordinator of Joint Working to report to them collectively. His task has been to ensure that opportunities for co-operation between the Agencies are fully exploited, and that effective mechanisms for its supervision and development are established.

Publication of NAO Reports

16. The National Audit Office reports on the acquisition and refurbishment of Thames House and Vauxhall Cross were dealt with in accordance with the arrangements for sensitive projects, which were explained to Parliament by the then Chairman of the Public Accounts Committee on 27 January 1987 (Hansard Col 246). The Committee asks that these reports be published in full. They contain some sensitive information and the

Government's view remains that they still could not be published in full without damaging Agency security. But, in view of the Committee's recommendations, we will consider with the Chairman of the Public Accounts Committee what changes might be made to make the reports fit for publication by the National Audit Office.

GCHQ New Accommodation Project

17. The Government has noted the Committee's endorsement of three guiding principles in the management of the GCHQ New Accommodation Project. GCHQ has sought to ensure that the maximum likely costs have been identified (and included in value for money assessments) before Ministers are invited to reach a final decision on whether or not the project should proceed. GCHQ has and will continue to supplement its own project management experience and expertise by the use of contractors and expert advisers. GCHQ understands the need to control costs at all stages and to manage properly the use of consultants in the initial phase. Limits on spending will be set before work commences, and any need for subsequent adjustment will be carefully scrutinised.

Sierra Leone

18. On the provision of secure communications equipment to the High Commissioner, the Government agrees with the Committee that it should be able to provide overseas posts with such equipment promptly when their circumstances change, subject to any necessary security considerations. It notes, however, that Mr Penfold was in a unique position during his time in Conakry in that he was accredited to a state whose government had gone into exile in a country in which there was no permanent UK Mission. The Government considers that in future it may be unwise to repeat this precedent.

Proliferation of Weapons of Mass Destruction

19. The Government does not accept that it puts too much faith in the effectiveness of international control regimes and treaties. These are but one element in its efforts against proliferation. The regimes, some of very recent origin, are being reinforced and made wider in application.
20. Nor does the Government accept that the record of the regimes proves that they are ineffective. A wide range of policies has to be applied towards countries of proliferation concern. Effective international export controls are an important component. There will always be attempts at breaches of regimes and controls by both states and private entities. The Government does not believe that the mix of policies it pursues are not worth continuing simply because they do not prevent all proliferation.
21. The Committee expresses concern that the Foreign Office put too much faith in sanctions regimes. The Government is under no illusion that sanctions regimes are always fully enforced. That is why officials from across all the interested Government departments

meet regularly to discuss reports of breaches and follow-up action. Ministers would be informed of any confirmed sanction breaches by UK companies. Any information on reported breaches of sanctions and control regimes involving UK companies is brought to the attention of the enforcement authorities. On many occasions Ministers also raise reported breaches in bilateral contacts with other countries.

22. The Committee calls for a more proactive approach to tracking down and stopping proliferators. The Government believes such an approach is already followed. Intelligence is acted on directly, for example to prevent illegal proliferation activities by companies or brokers. The Government supports these policies but wider implementation will depend on the circumstances and nature of the intelligence. The Committee notes correctly that greater efforts by the Agencies against proliferators would require a diversion of resources from other tasks.

Serious Crime

23. The law enforcement agencies are of course in the lead against drug trafficking and other serious crime. The National Criminal Intelligence Service (NCIS) co-ordinates tasking of serious crime work for the Security Service. The co-ordination includes consideration with the Service of how best to use the skills and resources of both the Service and law enforcement agencies. Similar arrangements govern the work of SIS and GCHQ on serious crime. These parallel the arrangements for the Security Service with similar consideration being given before either Agency starts work on any serious crime tasks in support of law enforcement agencies. There is not a simple link between the level of Agency resource employed and the degree of importance placed on a task. Much depends on the type of task undertaken.
24. The Government intends in the next year to undertake a review of the Security Service's contribution in support of the law enforcement Agencies' efforts against serious crime.

Drugs

25. The Government notes the Committee's view of the effort being focused on stopping illegal drugs reaching the UK. The Government remains committed to exploring every avenue of appropriate action in the fight against illegal drugs.

Other Serious Crime

26. The Government shares the Committee's concern at the loss of revenue to the Exchequer through the illegal evasion of duty and tax caused by cigarette and tobacco smuggling, and will continue to keep under consideration the resources needed to combat such smuggling.

NCIS and the Agencies

27. NCIS funding is not based on negotiations between the NCIS Service Authority and English and Welsh police authorities. The majority of funds come from a levy imposed on police authorities under the Police Act 1997. The contribution made to the funding of NCIS, by each police authority, is based on the proportion it receives of the overall police grant, in accordance with the NCIS Service Authority (Levying) (Amendment) Order 1998 (SI 1998 No 3258). NCIS also receives funds by direct contributions from Scotland, Northern Ireland and HM Customs and Excise. The level of these contributions is a matter for negotiation with the contributing organisations. The Service Authority for NCIS is however reviewing the funding and levying arrangements for NCIS.

Commercial Encryption

28. The Government welcomes the Committee's support for the provisions of the Electronic Commerce Bill and looks forward to the Committee's continued interest. The Government has announced that the provisions in the Electronic Commerce Bill relating to the production of encryption keys will be transferred to a Bill on the Regulation of Investigatory Powers, which the Government expects to lay before Parliament next week.

Security Policies and Procedures

29. The Government also looks forward to the Committee's conclusions on security policies and procedures following the work which their Investigator has undertaken in this area.

Records and Files

30. The Government acknowledges the work the Committee has done in examining the issues surrounding the Agencies' files, and is pleased to note the Committee's welcome for the process whereby the Public Record Office may examine files earmarked by the Security Service for destruction.
31. The Committee was disappointed at the Security Service's continuation of its programme of reviewing and destroying files while the Home Secretary reviewed the need for external scrutiny. The Home Secretary invited the Advisory Council on Public Records to validate the criteria employed by the Service in reviewing its records for destruction. The Advisory Council endorsed those criteria, with some additional points for which the Government was grateful. The Government is confident that in reviewing files for destruction during the period in question, the Service was diligently applying those criteria.
32. The Government notes the Committee's intention to examine Agency policy on the release of information, the creation of files and the rights of access for individuals. These are important and complex issues, and in addressing them the Committee will want to

bear in mind the importance of protecting the Agencies' sources and methods. The Government looks forward to the Committee's conclusions.

Defence Intelligence Staff

33. The Government notes that, because of pressures on the Ministry of Defence, the Committee did not pursue an examination of the effect of the Strategic Defence Review on the Defence Intelligence Staff. Although the Ministry of Defence could provide a briefing for the Committee on any implications for the Agencies of changes in funding and structure of the Defence Intelligence Staff, the Government notes that Parliamentary oversight of the Defence Intelligence Staff, a part of the Ministry of Defence, is a matter for the House of Commons Defence Committee.

Investigator

34. The Government welcomed the appointment of an Investigator to support the Committee's work. As the Committee itself envisaged, he will operate in support of the Committee within the current legal framework, as set out in the Intelligence Services Act 1994. He will have the same access to the Agencies, including their staff and papers, as does the Committee. In agreeing to the appointment of an Investigator, the Prime Minister laid down the following arrangements:

The Intelligence and Security Committee may appoint an Investigator, with the concurrence of the Prime Minister, to enquire into matters within the responsibility of the Committee. As with the Committee's existing staff, provision for the remuneration of the Investigator will be made within the Cabinet Office Vote, and he will be subject to the appropriate security vetting.

The Committee is expected to deploy the Investigator on matters which have been raised with the Agencies, and on which the Agencies have had an opportunity to reply formally. Whenever it wishes the Investigator to make enquiries, it will write with details of the information it seeks to the relevant Head of Agency, with a copy to the Secretary of State. The Head of Agency will promptly provide all possible assistance to the Investigator, consistent with the provisions of schedule 3 of the Intelligence Services Act 1994, subject to any views the Secretary of State may give.

The Investigator will consult the Agency concerned before reporting to the Intelligence and Security Committee information acquired in the course of his investigation, so as to allow the Head of the Agency to determine whether any particular material should be withheld from the Committee in accordance with the provisions of schedule 3 of the Intelligence Services Act 1994. If the Investigator is denied access to papers or staff within the Agency which he believes to be necessary to his enquiries, he will so inform the Committee who may wish to raise the matter with the Head of Agency or Secretary of State.

Before drawing up any report to the Prime Minister, the Committee will afford the appropriate Head of Agency an opportunity to comment on the Investigator's findings.

The Heads of Agency may inform their responsible Secretary of State of all communications with the Investigator.

Future Programme of Work

35. The Government is grateful to the Committee that, in addition to its existing heavy programme of work, it has agreed to look at the policy and procedures adopted by the Agencies for the handling of information supplied by Vasili Mitrokhin.



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