



Note of Additional Information from the Secretary of State for Foreign and Commonwealth Affairs, the Home Secretary, and Defence Secretary:

Consolidated Guidance to Intelligence Officers and Service Personnel on the Detention and Interviewing of Detainees Overseas, and on the Passing and Receipt of Intelligence Relating to Detainees

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We currently face a diffuse, diverse and complex threat from international terrorism. This is not a threat we can counter on our own. In order to protect British citizens at home and abroad, including our troops in Afghanistan, it is absolutely essential that our security and intelligence services and armed forces are able to work with partners overseas to combat this threat.

This means working in challenging environments where we are not always in total control. This is the reality of combating the cross-border, international terrorist threat we live with today.

Nowhere is this reality more acute than in the case of detainees held abroad. Where the UK detains individuals itself, we can be confident of our standards and obligations. We cannot always have the same level of assurance with detainees held by third parties overseas. There have been concerns raised publicly about the nature of UK's involvement in such situations. That is why we are publishing today the Consolidated Guidance for intelligence officers and service personnel on the detention, interviewing and handling of intelligence in relation to detainees held overseas – putting into the public domain for the first time the policy framework within which we operate.

The UK stands firmly against the use of torture and cruel, inhuman or degrading treatment or punishment. We do not condone it, nor do we ask others to do it on our behalf. We, and in particular our personnel on the ground, work very hard to reduce the risks of detainees being subjected to mistreatment when they are held by other countries. But sometimes we cannot remove this risk completely. This raises difficult questions about how we should engage in those circumstances where the risk of mistreatment remains unclear, but the risk of inaction may have dire consequences.

The Consolidated Guidance makes clear the standards that our intelligence officers and service personnel must apply during the detention and interviewing of detainees held overseas. It provides a framework for dealing with the range of circumstances in which officers and personnel might have involvement with a detainee. It makes clear

that we act in compliance with our domestic and international legal obligations and our values as a nation.

There are occasions when officers and personnel are faced with difficult situations which are not within their control, when the information is often patchy and when, despite our efforts, a serious risk of mistreatment of a detainee at the hands of a third party remains. In such circumstances, the Guidance makes clear that personnel must consult Ministers and provide them with all the details of the particular case. It is right that responsibility in these cases lies with the democratically elected Government, and that ultimately it is Ministers who will make these judgements.

There is an absolute ban on and a clear internationally accepted definition of torture. There are no circumstances where we would authorise action in the knowledge or belief that torture would take place at the hands of a third party. If such a case were to arise we would do everything we could to prevent the torture occurring.

Where the situation is less clear personnel must provide Ministers with the full details of the case including the risks associated with acting and those we face if we do not proceed. Ministers may themselves attempt to mitigate the risk through personal intervention. In circumstances where despite efforts to mitigate the risk, a serious risk of torture remained, our presumption would be that we will not proceed.

The decision can be more complicated in relation to other forms of mistreatment. The reality is that the term cruel, inhuman or degrading treatment or punishment covers a spectrum of conduct. At the lower end some have argued that this can include certain conditions of detention that are commonplace in many of the countries with which we must work if we are to effectively protect British lives. While the UK is at the forefront of efforts to try to tackle unacceptable treatment of detainees we recognise, for example, that it is unrealistic to expect that prisons in these countries will be built to the standards we expect in this country.

In cases involving cruel, inhuman or degrading treatment or punishment, officers must follow the same mitigation process and may ultimately consult Ministers. Consulting Ministers does not imply that action will be authorised but allows us to look at the circumstances of the case and the different considerations and legal principles which may apply.

We will consider a number of factors, including but not limited to: the credible and mitigating steps that can be taken, if necessary through our personal involvement, to reduce the risk of mistreatment; the range of UK action proposed and whether it would increase or decrease the likelihood of mistreatment taking place; whether there is an overwhelming imperative for the UK to take action of some sort, e.g. to save life;

and, above all, whether there is a legal basis for taking action. These are extremely difficult decisions and it is right that Ministers ought to bear responsibility for them.

The standards and approach outlined in this Guidance are not new. They are consistent with the internal guidelines under which the security and intelligence services and our armed forces currently operate. However, the Guidance published today is unprecedented because it makes those standards public. We are confident that it will enable our security and intelligence agencies and our armed forces to continue their crucial work to protect UK national security while maintaining the high standards we expect of them.

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