THE GOVERNMENT RESPONSE TO THE SEVENTEENTH REPORT FROM THE HOME AFFAIRS SELECT COMMITTEE SESSION 2013-14 HC 231:

Counter-terrorism

Presented to Parliament
by the Secretary of State for the Home Department
by Command of Her Majesty

February 2015

Cm 9011

This publication is available at www.gov.uk/government/publications

Any enquiries regarding this publication should be sent to us at:

OSCT Secretariat
Home Office
2 Marsham Street
London
SW1P 4DF

OSCT.Secretariat@homeoffice.gsi.gov.uk

Print ISBN 9781474115056
Web ISBN 9781474115063

Printed in the UK by the Williams Lea Group on behalf of the Controller of Her Majesty's Stationery Office

ID 03021501 02/15 46905 19585

Printed on paper containing 75% recycled fibre content minimum

RESPONSE TO THE SEVENTEENTH REPORT FROM THE HOME AFFAIRS COMMITTEE SESSION 2013-14 HC 231: COUNTER-TERRORISM

Table of Contents

RESPONSE TO THE SEVENTEENTH REPORT FROM THE HOME AFFAIRS COMMITTEE SESSION 2013-14 HC 231: Counter-Terrorism

Introduction

This Command Paper is published in response to the House of Commons Home Affairs Select Committee's report in to counter-terrorism published 9th May 2014.

Since the publication of the Committee's report in to counter-terrorism, the Government have announced significant changes to the powers available to protect the UK from terrorists. We are now in a position to provide the Committee with a full response to their recommendations.

The Government welcomes the Committee's consideration of the terrorist threat to the UK and the Government's response to it. As the Committee acknowledges, the threat is complex, and comes from an increasingly wide range of countries and groups. This has created new challenges for our work. The UK's counter terrorism strategy, CONTEST, has been proven over many years and we consider the range of work carried out under the *Pursue*, *Prevent*, *Protect* and *Prepare* strands, which continue to evolve, appropriate for the threats we face. Many of the Committee's recommendations are already in hand and we have taken the opportunity in this response to highlight where that is the case.

Like the Committee, we take seriously the threat posed by individuals travelling to engage in foreign conflicts, particularly the unprecedented numbers travelling to Syria and Iraq. This threat is reflected in the rise of the Threat Level for International Terrorism from SUBSTANTIAL to SEVERE. The attacks in France in January, in which 17 people were murdered, were a sobering reminder of the threat we all face.

It is a key priority to dissuade people from travelling in the first place, explaining the dangers of travelling and pointing to other ways of helping the humanitarian effort. Our existing multi-agency processes are central to this. We have enhanced our ability to remove passports from British citizens who want to travel abroad to engage in terrorism-related activity under the Royal Prerogative and welcome the Committee's suggestion to report regularly to Parliament on the use of this power.

We are also legislating to ensure that we can prosecute people for all terrorist activity, even where that activity takes place overseas. We have passed the Data Retention and Investigatory Powers Act 2014 to ensure continued retention of communications data.

Since the Committee's report, the Government has also introduced the Counter-Terrorism and Security Bill, which includes measures to stop people travelling to fight for terrorist organisations (and subsequently returning to the UK), to deal decisively with those already here who pose a risk, and for communications data provisions on IP resolution.

We agree that the public must have trust and confidence in our security and intelligence agenda and understand how we are accountable. In the UK, intelligence

activity is overseen by the Executive (via Secretaries of State), judicially by the independent Investigatory Powers Tribunal and two Commissioners and by Parliament through the Intelligence and Security Committee of Parliament (ISC). Oversight was significantly enhanced by the Justice and Security Act 2013, which expanded the remit of the ISC.

In the Committee's final report, 28 recommendations were set out. In this response, each recommendation is considered in detail.

Foreign fighters

Committee Recommendations

1. We require an immediate response targeted at dissuading and preventing those who wish to go to fight from going; helping countries who are key to intercepting those who are entering Syria, and ensuring those who return do not present a danger to the UK. (Paragraph 58)

2. We recommend that the Government maintain representation from the UK Counter Terrorism command to help the Turkish authorities identify those who are at risk of crossing the border into Syria intending to fight and make available any relevant intelligence to the Turkish authorities that may be beneficial. The Government should also work with transit countries such as Turkey, Lebanon and Jordan to better establish who is likely to be travelling for genuine humanitarian reasons. (Paragraph 59)

3. We recommend that the Government implement a programme, similar to Channel, for everyone returning to Britain where there is evidence that they have fought in Syria. The engagement in this strategy should be linked to any legal penalties imposed on their return. In developing the strategy the Government must work with mental health practitioners and academia to ensure that the programme best integrates those returning from conflict zones such as Syria. (Paragraph 60)

Government Response

Our priority is to dissuade people from travelling to areas of conflict in the first place.

We are delivering targeted projects that address risks arising from the conflict in Syria and Iraq. More than 70 projects have been approved for 2014/15 so far, including training for frontline staff who may come into contact with potential travellers and work to equip parents with the skills and knowledge to identify risks and vulnerabilities and the confidence to seek support should they need it. We are funding projects for young people, including mentoring and an interactive workshop that highlight the risks of travel to Syria.

We have a range of measures that can disrupt an individual from travelling abroad. These include exercising the Royal Prerogative to withdraw or refuse passports (the prerogative process was updated in April 2013 to redefine the public interest criteria to refuse or withdraw a passport); using a Terrorism Prevention and Investigation Measures (TPIM) notice which can contain measures restricting foreign travel; and applying for restrictive licence or bail conditions for individuals who are going through the criminal justice system.

The UK is undertaking a range of activity to support Syria's neighbours to secure their borders and stop the flow of foreign fighters. The Police and Security and Intelligence Agencies are co-operating with counterparts to detect and disrupt individuals suspected of terrorist offences and we are sharing best practice with a number of countries on strengthening border security, through protective security measures and analysis of passenger data. The UK has regular meetings with

international counterparts on how best to persuade individuals against travel and stop foreign fighters before they reach Syria. We are working closely with the Turkish authorities and using our CTELO (counter-terrorism and extremism liaison officer) network to build capability with key partners across the region.

We are not trying to criminalise genuine humanitarian efforts. But the best way to help Syrians is to donate to, or work with, UK registered charities that have relief operations in Syria, not to travel.

We can manage the risk individuals pose on their return to the UK through a broad range of disruptions including imposing restrictive TPIMs, asset freezing, and prosecuting for Terrorism Act (TACT) or other offences where appropriate. Dual nationals can also be deprived of their British citizenship on public interest grounds and non-nationals may be excluded from the UK. The existing Prevent Case Management process, including the multi-agency Channel programme, enables police to work with local partners to manage individuals who are vulnerable to radicalisation. This coordinated approach aims to ensure that such individuals are given the appropriate support depending on their circumstances.

The extra powers in the Counter-Terrorism and Security Bill are designed to support work on Syria/Iraq by:

- Providing the police with a power to seize a passport at the border temporarily, during which time they will be able to investigate the individual concerned.
- Creating a Temporary Exclusion Order that can temporarily disrupt the return to the UK of a British citizen suspected of involvement in terrorist activity abroad and ensures that they return in a manner which we control.
- Enhancing our border security for aviation, maritime and rail travel, with provisions relating to passenger data, authority-to-carry (‘no fly’) lists, and security and screening measures. These will help us to enforce our security requirements with carriers that provide transport to and from the UK.
- Enhancing existing Terrorism Prevention and Investigation Measures, including stronger locational constraints on subjects and a power to require them to attend meetings as part of their ongoing management e.g. with the probation service or JobCentre Plus staff.
- Enabling the retention of additional information by communications service providers in order to attribute an Internet Protocol address to a specific individual, enhancing vital investigative capabilities.
- Explicitly prohibiting insurers from reimbursing a payment that has been made in response to a terrorist demand.
- Creating a general duty on a range of organisations to have due regard to the need to prevent people being drawn into terrorism.
- Putting the voluntary programme for people at risk of radicalisation on a statutory basis.

Capacity building

Committee's Recommendations

4. In the light of the announcement that the Prime Minister is considering using some of the UK's aid budget on peace keeping and other defence-related projects, we recommend that within the definitions of Overseas Development Aid, money could be used to increase resource for capacity building abroad. (Paragraph 75)

5. We accept that some of the UK's capacity building programmes are sensitive but we believe that greater transparency about how much the Government spends on capacity building overseas and who funds these programmes (i.e. fully by UK Government or jointly between UK and EU) is crucial for accountability. (Paragraph 78)

6. We recommend that the Government raise the issue of Interpol databases as part of discussions around counter-terrorism at the next EU Justice and Home Affairs Council and encourage others to utilise the tools at their disposal. (Paragraph 85)

7. We recommend that the Government take the lead in working with Interpol and the UK's international partners to create an international operational platform supporting terrorist investigations. The UK should use its pivotal position in the G7 to ensure that this change is achieved. Whilst UK policing may lack sufficient resources to supply a significant number of staff to such a platform, we also recommend the Government consider offering to host the permanent base of the platform. (Paragraph 87)

Government Response

The Government's Justice and Human Rights Partnership (JHRP) overseas capacity-building programme seeks to reduce the threat to the UK and its interests by developing the capacity of countries from which terrorist threats originate to investigate and prosecute terrorists with full respect for human rights.

The resources allocated to departments under the Spending Review 2010 reflected the assessment of priorities in the Strategic Defence and Security Review (SDSR), and a decision was taken in the SDSR to maintain counter-terrorism capabilities, while delivering efficiency gains.

The government have put in place five key safeguards around our Justice and Human Rights Partnership work overseas:

- Only carrying out such work where there is a serious or potentially long-running threat to the UK or our interests abroad
- Ensuring capacity building is carefully considered in line with our Overseas Security and Justice and Assistance Guidance (OSJA) to assess and mitigate human rights risks;
- That intelligence work is subject to the same robust scrutiny and oversight that exists in other areas of intelligence activity;

- We also ensure that JHRP work is not carried out in isolation, but is part of UK and international diplomatic and development efforts in that country; and
- Every aspect of this work receives Ministerial oversight and approval.

The new £1 billion Conflict Stability and Security Fund (CSSF) may also be a source of funding for capacity building of developing countries security and justice systems and institutions. The CSSF will not duplicate core departmental programmes, for example the CT Programme Fund, but could be used to tackle the root causes and drivers of terrorism, to address violent extremism, and build resilience and security. All NSC departments and agencies will be able to access these resources, including the Home Office, which is already engaged in the development of regional strategies and specific programme bids. The CSSF will also contain a mix of both Overseas Development Aid (ODA) and non-ODA funds, with ODA funding strictly reserved for activity that is primarily intended for the economic development and welfare of the (ODA-eligible) developing country.

We do not provide in-depth detail of the projects we are carrying out or detailed costing breakdowns. We welcomed the Foreign Affairs Committee's judgment, in its 2012 report on the Government's human rights work, which emphasised the significance of the accountability to Parliament and the wider public that flows from ministerial oversight and approval for work of this nature.

The Government makes every effort to use international organisations to combat threats to the UK, and greatly values the role of Interpol to facilitate and deliver closer and more effective police co-operation around the world. It will not always be appropriate to work as closely with such organisations on counter-terrorism investigations, but where we can do so we will.

The UK's response to the terrorist threat

Royal Prerogative

Committee Recommendation

8. We recommend that the Home Secretary report quarterly on its use to the House as is currently done with TPIMs and allow the Independent Reviewer of Terrorism Legislation to review the exercise of the Royal Prerogative as part of his annual review. (Paragraph 96)

Government Response

The Government notes this recommendation and is pleased that the Committee acknowledges the valuable role the Royal Prerogative can play in disrupting travel where this is in the public interest. The Government shares the Committee's commitment to transparency and intends to publish the number of times the Royal Prerogative has been used annually.

Deprivation of Citizenship

Committee's Recommendation

9. We have grave concerns about how effective the deprivation of mono-citizenship powers will be. Drafting legislation on the basis of an individual case lessens the impact of the legislation because the exact circumstances are unlikely to repeat themselves. We support the Minister's commitment to the power being used sparingly. We recommend that the Government endeavour to use the power only when the person subject to the decision is outside the UK. (Paragraph 101)

Government Response

Since the Home Affairs Committee Session took place, the Immigration Act 2014 has been granted Royal Assent. Section 66, relating to the deprivation of citizenship, was agreed following substantial debate in the House of Commons and House of Lords.

The legislation will strengthen the Home Secretary's power to deprive a naturalised British citizen of his nationality in cases where he has conducted himself in a way which is seriously prejudicial to the vital interests of the UK and where the Home Secretary has reasonable grounds for believing that the individual is able to become a national of another country.

The Al-Jedda case, to which the Committee refers, highlighted the need for this provision, but it will have general applicability. Previously, the Home Secretary was unable to deprive an individual of citizenship on national security and other non-conducive grounds if it left him stateless, even if only temporarily. The Supreme Court identified that this requirement in relation to statelessness went further than the Government required in order to meet its obligations under international law.

As the Committee's report indicates, the Government has been clear that it only envisages using the new power in a small number of cases where the conduct of a naturalised British citizen has crossed the very high 'seriously prejudicial to the vital interests of the UK' threshold. It is an important principle that those who pose a national security threat to the UK and have betrayed the values or laws of this country should not enjoy the privileges of British citizenship.

The Home Secretary must have the ability to take deprivation action against individuals who threaten national security, whether they are in the UK or overseas at the time of that decision. National security and operational considerations may dictate that a decision should be taken while an individual is out of the country, but the Government would not want to rule out the possibility of taking deprivation action against an individual simply because he is in the UK. In such a scenario, deprivation could still pave the way for an individual's removal from the UK and/ or provide the basis for immigration restrictions which would help to disrupt the threat he may pose.

TPIMs

Committee's Recommendations

10. We recommend that a review of the types of measures placed upon subjects needs to be conducted to ensure that enough is being done to prevent absconsion. (Paragraph 109)

11. We recommend that the Government and Crown Prosecution Service produce specific guidance on investigating and prosecuting breaches. The continued failure to secure a conviction undermines the system of TPIMs. (Paragraph 112)

12. Deliberately tampering with a tag must be viewed as an attempt to abscond and we recommend that the Home Office request independent testing of the tags provided by G4S to definitively prove, as they claim, a tag-tamper alert can only be caused through deliberate actions. (Paragraph 115)

13. We recommend that all TPIM subjects are placed on a graduated scheme, which commences concurrently with the measures, with the sole purpose of engagement and de-radicalisation ... We recommend a continuation of the de-radicalisation engagement programme which they would have started under the TPIM which evolves into a more practical scheme enabling the former subject to reconnect with society through work or education. (Paragraph 120)

Government Response

The Government has made clear to the police and Security Service that every available power under TPIMs should be used to its fullest possible extent, based on an individual assessment of the circumstances of each TPIM subject.

On 1st September the Prime Minister announced the Government's intention to make changes to the TPIM regime, including:

- A new locational measure allowing a TPIM subject to be moved to be relocated.
- A new power to require TPIM subjects to meet with appropriate agencies, such as Prevent officers or others who can contribute to the ongoing management of TPIM subjects.

These are being taken forward in the Counter-Terrorism and Security Bill currently before Parliament.

Although there have been no jury convictions for breaches of control orders or TPIMs there have been guilty pleas to both. There have therefore been a number of convictions for breaching control orders and TPIM notices.

A Memorandum of Understanding (MOU) for both the review of control orders/TPIMs and the prosecution of breaches, designed to ensure a consistent and robust approach and engage CPS from the outset has already been agreed by the Home Office, police, CPS and Security Service. This has been discussed regularly and updated to take account of new processes and any lessons learned.

We note the Committee's recommendation regarding independent testing of electronic tags. Following discontinuation of the prosecutions, G4S commissioned a

range of tests on the tags to look at their vulnerability to wear and tear, and we continue to keep under review whether tags can be further improved to detect absconsion. There will always remain a possibility that an individual may damage their tag without deliberately intending to do so. Our priority when a tag is damaged, whether deliberately or otherwise, is that timely action is taken in response to tag-tamper alerts.

Each TPIM subject's management is based on the individual circumstances of their case and is subject to regular review. This includes considering their employment and educational needs, along with other forms of engagement appropriate to the individual. The Government continues to keep under review what further measures are appropriate to manage TPIM subjects both while subject to a TPIM notice and after its expiry. This includes the new powers being taken forward in the Counter-Terrorism and Security Bill, which incorporates an ability to require subjects to meet with appropriate agencies that can contribute to the ongoing management of TPIM subjects.

Counter-Narratives

Committee's Recommendation

14. We recommend that the Government asks the European Union and other independent funders to prioritise resources for community projects such as Abdullah-X. (Paragraph 126)

Government Response

We currently support community activists and civil society groups to deploy counter narrative work on and off line. We regard this as a vital part of Prevent. We are also working with the communications industry to deal directly with extremist and terrorist material online. We routinely work with the European Commission, the External Action Service, and the EU Counter Terrorism Co-ordinator on all these matters. We provide regular advice on counter narrative work to the Commission and many other EU countries.

Countering Terrorist Financing

Committee's Recommendation

15. We recommend that the responsibility for countering terrorist financing be given to the Office for Security and Counter-Terrorism where it will be considered a higher priority. Although it is not an area where success comes easily, cutting off the flow of money to terrorist organisations and the identification of foreign fighters are vital to the UK's response to the terrorist threat. (Paragraph 129)

Government Response

Following discussions between the Home Office and HM Treasury earlier this year, the responsibility for terrorist finance policy and strategy has now transferred to the Office for Security and Counter-Terrorism in the Home Office, with HM Treasury remaining a key delivery partner.

Charities

Committee's Recommendations

16. We recommend that the Charity Commission be granted extra resources and stronger legal powers to counter the abuse of charities by terrorists. We also recommend that the Charity Commission be able to undertake unannounced inspections in order to audit their accounts. (Paragraph 134)

17. We welcome the Independent Reviewer of Terrorism Legislation's inquiry in to the impact of counter-terrorism legislation on charities and recommend that it be expanded to look at the scale of abuse of charitable status to support terrorist actions. We recommend that he assess the response to such abuse and suggest changes which will improve the ability of the authorities to tackle terrorist financing whilst ensuring that law-abiding charities can continue their vital work. (Paragraph 135)

Government Response

We believe that exploitation of the charity sector by extremists or terrorists is rare, but charities can be vulnerable to abuse of this kind. As the regulator of the charity sector in England and Wales, the Charity Commission is at the forefront of tackling terrorist abuse of charitable giving; it works closely with law enforcement and other agencies to identify and disrupt abuse of the charity sector for terrorist purposes. The Commission also works with the sector to increase awareness and provide guidance on how charities can reduce the risk of abuse through greater compliance and best practice; and runs 'Safer Giving' campaigns to highlight to the public that they should donate to legitimate, registered and well-established charities.

The Charity Commission's response to charity abuse has been considered numerous times over the past few years, including by the Public Accounts Committee (PAC), the Public Administration Select Committee (PASC) and the National Audit Office (NAO); and in Lord Hodgson of Astley Abbotts' review of the Charities Act. We agree that the Commission's existing regulatory powers – most of which are over twenty years old – need updating. The Commission itself has requested greater powers. This has been endorsed by the National Audit Office, Extremism Task Force, and indeed by the Home Affairs Select Committee; and responses to a Government consultation on possible new powers showed that most charities supported strengthening the role of their regulator to tackle abuse and protect public trust in charities. (The Commission can undertake unannounced inspections under existing powers.)

The draft Protection of Charities Bill was published on 22 October 2014. The proposed legislation will increase protection for charities in England and Wales from all kinds of abuse, both criminal and terrorist; and will equip the Charity Commission to tackle such abuse more effectively and efficiently. The proposals would:

- Protect charities from abuse by people who present a known risk;
- Make it easier for the Charity Commission to take robust action against individuals and charities in cases of abuse; and

- Support public trust and confidence in the effective regulation of charities.

The Independent Reviewer of Terrorism Legislation will continue to assess the impact of terrorism legislation on the charity sector insofar as it pertains to his statutory functions. However, it should remain the responsibility of Government, law enforcement agencies and the regulator to assess and address terrorist abuse of the charity sector.

NCA Responsibility for Counter-Terrorism

Committee's Recommendation

18. The National Crime Agency was established as a national mechanism as part of the changing landscape of policing. Like all new organisations, it is still seeking to establish a strong identity and its own remit. For instance, we remain concerned that the NCA does not have full operational capacity in Northern Ireland. The Metropolitan Police have a wide remit which has many complexities and the current difficulties faced by the organisation lead us to believe that the responsibility for counter-terrorism ought to be moved to the NCA in order to allow the Met to focus on the basics of policing London. The work to transfer the command ought to begin immediately with a view to a full transfer of responsibility for counter-terrorism operations taking place, for example within five years after the NCA became operational, in 2018. (Paragraph 141)

Government Response

The limited role of the National Crime Agency in Northern Ireland

The current situation regarding the NCA's limited operational capacity in Northern Ireland is disappointing and we are committed to resolving it. Whilst the NCA does operate in Northern Ireland it does so with limitations and may only operate in relation to matters that are not devolved. The NCA is doing less than that of the Serious and Organised Crime Agency before it, putting extra pressure on the Police Service of Northern Ireland. The Chief Constable, Director General and the Minister for Justice have made clear the damage this is doing to the fight against organised crime in Northern Ireland. We want the people and communities of Northern Ireland to benefit from the full range of the NCA's capabilities, like the rest of the UK.

We fully support the proposals that the Northern Ireland Justice Minister has put to the political parties which provide the transparent accountability they seek. Of course, it will take the support of all the main parties in Northern Ireland to make the proposals work.

The NCA and counter-terrorism

Our national counter-terrorism policing structure is very effective and the police and security service work tirelessly around the clock to detect and disrupt the threats we face. Much of this work is not visible to the public, given the need to keep sources and methods secret, but it makes a significant contribution to our national security. The Home Office is committed to enhancing our counter terrorist capabilities including by improving collaboration between police and agencies working on counter-terrorism and organised crime. However, in light of the recent increase in the terrorist threat level we can confirm there will be no review of counter-terrorism policing during this Parliament.

Crowded Places

Committee's Recommendation

19. We note that the British Council of Shopping Centres have updated their guidance following the Westgate attack. We recommend that all police forces ensure that local shopping centres have received this guidance and put in place and test a Response Plan. (Paragraph 144)

Government Response

Government provides advice and guidance to crowded places sites throughout the UK, including through police Counter-Terrorism Security Advisers (CTSAs) who are engaged at priority sites, including retail centres, training staff in CT awareness and encouraging managers to develop response plans to a range of threats including firearms attacks.

There is long-standing collaboration between the police and industry associations, including the British Council of Shopping Centres (BCSC).

Oversight of the security and intelligence agencies

Committee's Recommendations

20. Whilst we recognise the importance of limiting the access to documents of a confidential nature, we believe that as the relevant departmental select committee, we ought to be able to take oral evidence from the head of the security service. (Paragraph 157)

21. Furthermore we recommend that the Commons membership of the Intelligence and Security Committee should be elected like other select committees and that the Chair, who should always be a member of the Commons, ought to be subject to election of the whole House, as is the case for Select Committees. We further recommend that the Chair should always be a member of the largest opposition party. (Paragraph 158)

22. We recommend that the if the Investigatory Powers Tribunal are unwilling to voluntarily produce a detailed annual report on their work, that legislation be amended so that they are required to do so. We also recommend that the data be broken down to show which agency the complaint was against. (Paragraph 162)

23. It is unacceptable that there is so much confusion around the work of the Intelligence Services Commissioner and the Interception of Communications Commissioner. We recommend that as a matter of urgency data is collected on how many applications there were under the Regulation of Investigatory Powers Act and how many people were subsequently subject to an application. (Paragraph 166)

24. We recommend that the Commissioners are made full-time positions and that their resources are increased to allow them to examine half of the requests for information. (Paragraph 167)

25. We recommend that each of the Commissioners and the Investigatory Powers Tribunal develop an outreach strategy which ought to be published as part of their annual reports along with details of how they have tried to fulfil the objective of improving knowledge of their work. (Paragraph 168)

26. The current system of oversight belongs to a pre-internet age, a time when a person's word was accepted without question. What is needed is a scrutiny system for the 21st century, to ensure that sophisticated security and intelligence agencies can get on with the job with the full confidence of the public. (Paragraph 170)

27. It is essential that the legal position be resolved clearly and promptly. It is currently unclear whether CSPs are obliged to store communications data as they were previously, or indeed if they are allowed to, because of the Data Protection Act. It is also unclear if the Home Office will continue to pay CSPs for their work on communications data. (Paragraph 174)

28. We recommend that a Joint Committee of both Houses of Parliament should be appointed in order to hold an inquiry with the ability to take evidence on the Regulation of Investigatory Powers Act with a view to updating it. We recommend

that the inquiry address the areas of concern raised with us concerning communications data and the oversight of Section 94 of the Telecommunications Act 1984. (Paragraph 177)

Government Response

As the Foreign Secretary said on 17 January 2014, the UK has one of the strongest systems of checks and balances and democratic accountability for secret intelligence anywhere in the world. Intelligence activity is overseen on multiple levels by the Executive via Secretaries of State, independently by the Intelligence Services Commissioner and the Interception of Communications Commissioner, by Parliament via the cross-party Intelligence and Security Committee of Parliament, and judicially by the independent Investigatory Powers Tribunal.

These arrangements were significantly enhanced by the Justice and Security Act 2013, which transformed the Intelligence and Security Committee of Parliament – expanding its remit, strengthening its powers, increasing its budget and bringing it closer to Parliament. We have removed the power for the intelligence agencies to withhold information from the ISC on the basis of its sensitivity, and given the ISC additional investigative powers and more resources to consider past operational activity. We have also widened the ISC's statutory remit to include parts of the Home Office, Ministry of Defence and Cabinet Office. These changes followed widespread public consultation on the best way to improve oversight of intelligence activity and hold to account the intelligence agencies. These changes need time to take effect before further revision of intelligence oversight arrangements could be considered.

Overseeing the work of HM Government's intelligence and security activity requires both a deep understanding of the work that they do and a range of costly security measures, practices and infrastructure to safeguard sensitive material. Having more than one Parliamentary Committee responsible for oversight of intelligence and security activity would create duplication and represent poor value for money for the taxpayer.

The arrangements for appointments to the Intelligence and Security Committee of Parliament were discussed and approved by Parliament upon the passing of the Justice and Security Act 2013. As set out in section 1 of the Act, potential members of the Committee are nominated by the Prime Minister and, with the approval of the Leader of the Opposition, are passed to the Intelligence and Security Committee of Parliament for selection.

Though not required to do so, the Investigatory Powers Tribunal (IPT) does periodically produce reports on its activities and it is currently working on a report for publication in 2015 after the conclusion of some of its ongoing cases. The content of the report is a matter for the entirely independent Tribunal chair and its members, though we understand that it is likely to cover the cases they have considered recently as well as general business.

In June 2014 the Tribunal significantly updated its public website, which now explains its work and makes it easier for members of the public to make a complaint. The website:

- Explains more clearly what the Tribunal does, their workload and volume of its cases.
- Gives more information on how to complain, either by post or online.
- Gives statistics on case outcomes for the last four years.
- Gives details and analysis of previous rulings made by the IPT.
- Provides detail on the IPT President's recent BBC interview and Public Law Project debate about the work of the Tribunal.

The Interception of Communications Commissioner and the Intelligence Services Commissioner are appointed by the Prime Minister. Sections 57 and 59 of the Regulation of Investigatory Powers Act 2000 (RIPA) set out the statutory responsibilities of both Commissioners. The Commissioners each produce an annual report to the Prime Minister setting out their respective areas of oversight and the findings of the inspections they conduct. Their reports are laid before both Houses.

The Interception Commissioner, Sir Anthony May, published his annual report for 2013 in April 2014. In this report Sir Anthony outlined that, in his view, the statistical requirements of the Home Office's Acquisition and Disclosure of Communications Data Code of Practice are flawed and inadequate[1]. The Home Office has consulted with the Commissioner's Office (IOCCO) on this point and is considering how the statistical requirements could be enhanced.

Sections 57(7) and 59(7) of RIPA state that the Secretary of State shall provide the Commissioners' with the necessary technical facilities and staff to enable them to properly carry out their functions.

In his Annual Report, Sir Anthony May said that he has encountered no difficulty in securing agreement to the provision of some necessary additional resources, but awaits progress on some accommodation and technical facilities issues[2]. We are working with the Commissioners to address these.

He also outlines the level of random sampling his office conducts in his 2013 Annual Report: a third of the extant Interception Warrants were examined; 10% of the Communications Data Applications were randomly sampled in the intelligence agencies, police forces and law enforcement agencies; in small public authorities, 100% of the applications were examined. In addition to the random sampling, query-based searches are conducted in the larger public authorities that enable specific areas to be tested for compliance and these searches substantially increase the 10% random figure. Sir Anthony also makes the point in his Annual Report that while

[1] Paragraphs 4.14 to 4.26 of the 2013 Annual Report of the Interception of Communications Commissioner IOCCO Annual Report 2013

[2]Paragraphs 6.2.1 to 6.2.12 of the 2013 Annual Report of the Interception of Communications Commissioner IOCCO Annual Report 2013

looking at individual applications is essential, inspecting and understanding systems is more important. We agree.

The Committee expresses concern that Sir Mark Waller, the Intelligence Services Commissioner, examined "less than 10% of warrants that allow intrusion into the private lives of individuals" and recommends that at least 50% should be examined. In his oral and written evidence to the HASC (on 18th March) the Intelligence Services Commissioner explained that he sees all warrants in summary form and investigates a random sample of them. In his subsequent statement, Sir Mark said that though it is vitally important that he scrutinises a representative sample of individual warrants, he is of the view that understanding the systems and processes in place in the agencies is more important than having numerical targets. We agree.

As Sir Mark said in his oral evidence to the Committee, he is firmly of the view that the strength of the Commissioner system is personal responsibility. The Commissioner is the senior judicial figure who goes into the agencies, scrutinises their warrants and interviews members of their staff. However, he already has funding agreed for two further members of staff to assist him in carrying out his functions in the future.

Both the Commissioners and the IPT understand that the public must have trust and confidence in their work and the oversight that they provide. While the Commissioners have a statutory duty to report on their work annually, set out in RIPA, they and the IPT are entirely independent of Government and how they choose to go about informing the public of their work, over and above their statutory duties, is a matter for them to decide.

The Interception of Communications Commissioner's annual report for 2013 is more detailed than previous reports. This comprehensive and accessible report provided the public and Parliament with a clear insight into the work of the Commissioner. There was also no confidential annex to the report this year. The Interception Commissioner's Office (IOCCO) has an engagement strategy and the Commissioner has already spoken publically about his role at two events this year in addition to giving evidence to the HASC Counter-terrorism Inquiry. Further details can be found on the Interception Commissioner's website: www.iocco-uk.info. The Intelligence Services Commissioner published his annual report in June 2014 covering his inspections during 2013.

While the manner in which the Interception of Communications Commissioner informs the public about his work is for him to decide, in July 2014 Parliament elected to amend RIPA via Section 6 of the Data Retention and Investigatory Powers Act 2014 to increase the frequency of his statutory reporting from every 12 months to every six months. The next report will cover the execution of the Commissioner's duties following the enactment of the Data Retention and Investigatory Powers Act 2014.

The Government greatly values the work performed by staff within the security and intelligence agencies, who typically receive little public recognition for their work to safeguard national security. Oversight of the work of the agencies is stringently

undertaken by Government, by Parliament, and independently by the Judiciary. As set out above, oversight was recently reformed via the Justice and Security Act 2013 to ensure greater Parliamentary scrutiny of intelligence activity. With these enhancements, this triple layer of oversight ensures that the agencies are acting in accordance with the law and are robustly held to account. The Intelligence and Security Committee of Parliament is currently reviewing what is proportionate activity for the intelligence agencies in the modern age. We are co-operating fully with their inquiry and look forward to considering their conclusions.

Following the judgment of the European Court of Justice, the UK Government brought forward legislation to put the status of the UK's data retention regime beyond doubt. The Data Retention and Investigatory Powers Act 2014 gained Royal Assent on 17 July 2014 and the Data Retention Regulations made under the Act came into force on 31 July 2014. These Regulations revoked and replaced the Regulations made under the EU Data Retention Directive.

The Regulation of Investigatory Powers Act 2000 (RIPA) provides a strict legal framework that ensures the activities of the agencies are authorised, necessary and proportionate, in accordance with Article 8 of the European Convention on Human Rights. As with other legislation, it is kept under regular review to ensure it is effective in light of advances in technology, and continues to provide the appropriate safeguards. The Intelligence and Security Committee of Parliament has already initiated a review into Security and Privacy and, in that context, may scrutinise RIPA

The Government announced on 10 July 2014 that there will be an independent review of interception and communications data powers, as well as the way those powers and capabilities are regulated, in the full context of the threats we face. The Data Retention and Investigatory Powers Act 2014 put this review on a statutory footing. This review is being undertaken by the Independent Reviewer of Terrorism Legislation, David Anderson QC, and will report ahead of the General Election. We envisage that this will then inform a subsequent Parliamentary review in the next Parliament.

Alongside that Act, the Government committed to a number of other proposals that will build on the extensive oversight and transparency arrangements that already govern the use of these powers. This will include a Privacy and Civil Liberties Board to support the work of the Independent Reviewer (provision for this is being made in the Counter-Terrorism and Security Bill) and an Annual Government Transparency Report.

ISBN 978-1-4741-1505-6