



Government Response to the Intelligence and Security Committee's Report on Rendition

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

JULY 2007

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GOVERNMENT RESPONSE TO THE INTELLIGENCE AND SECURITY COMMITTEE'S REPORT ON RENDITION

The Government is grateful to the Intelligence and Security Committee for its comprehensive and wide-ranging Report, which draws on the Committee's extensive access to the work of the intelligence and security Agencies on this topic. The Report contains a number of conclusions and recommendations. These are reproduced below (in **bold**), followed immediately by the Government's response.

- A. Our intelligence-sharing relationships, particularly with the United States, are critical to providing the breadth and depth of intelligence coverage required to counter the threat to the UK posed by global terrorism. These relationships have saved lives and must continue.**

The Government welcomes the Committee's recognition of the importance of the UK's international intelligence relationships, particularly with the United States, in countering the threat to the UK from international terrorism, and the recognition that these relationships must continue. Many of the terrorist threats to the UK have international connections which can only be dealt with effectively in cooperation with the intelligence and security agencies of other States.

The Government also welcomes the Committee's related conclusion (Q) that, to maintain the security of the UK, the Agencies need to share appropriately protected intelligence on suspected extremists with foreign liaison services.

- B. We are concerned that Government departments have had such difficulty in establishing the facts from their own records in relation to requests to conduct renditions through UK airspace. These are matters of fundamental liberties and the Government should ensure that proper searchable records are kept.**

The Government acknowledges that there were difficulties in accessing information from files dating from the late 1990s and early 2000 on requests to conduct rendition through UK airspace. These stemmed from the fact that rendition was not the high-profile issue then that it has since become. Further, it was not always clear on which Government department's records such information would have been held. The Foreign and Commonwealth Office (FCO) now has the clear lead on rendition policy, and there are established points of contact within other relevant Whitehall departments.

- C. Prior to 9/11, assistance to the U.S. "Rendition to Justice" programme – whether through the provision of intelligence or approval to use UK airspace – was agreed on the basis that the Americans gave assurances regarding humane treatment and that detainees would be afforded a fair trial. These actions were appropriate and appear to us to have complied with our domestic law and the UK's international obligations.**

- D. Those operations detailed above, involving UK Agencies' knowledge or involvement, are "Renditions to Justice", "Military Renditions" and "Renditions to Detention". They are not "Extraordinary Renditions", which we define as "the extra-judicial transfer of persons from one jurisdiction or State to another, for the purposes of detention and interrogation outside the normal legal system, where there is a real risk of torture or cruel, inhuman or degrading treatment". We note that in some of the cases we refer to, there are allegations of mistreatment, including whilst individuals were detained at Guantánamo Bay, although we have not found evidence that such mistreatment was foreseen by the Agencies. The Committee has therefore found no evidence that the UK Agencies were complicit in any "Extraordinary Rendition" operations.**
- E. In the immediate aftermath of the 9/11 attacks, the UK Agencies were authorised to assist U.S. "Rendition to Justice" operations in Afghanistan. This involved assistance to the CIA to capture "unlawful combatants" in Afghanistan. These operations were approved on the basis that detainees would be treated humanely and be afforded a fair trial. In the event, the intelligence necessary to put these authorisations into effect could not be obtained and the operations did not proceed. The Committee has concluded that the Agencies acted properly.**

The Government welcomes these important conclusions, which corroborate the Government's assurances on this matter. Whether any particular rendition is lawful depends on the facts of each individual case. Where we are requested to assist another State and our assistance would be lawful, we decide whether or not to assist taking into account all the circumstances. We would not assist in any case if it would put us in breach of UK law or our international obligations, including under the UN Convention Against Torture.

- F. SIS was subsequently briefed on new powers which would enable U.S. authorities to arrest and detain suspected terrorists worldwide. In November 2001, these powers were confirmed by the Presidential Military Order. We understand that SIS was sceptical about the supposed new powers, since at the time there was a great deal of "tough talk" being used at many levels of the U.S. Administration, and it was difficult to reach a definitive conclusion regarding the direction of U.S. policy in this area. Nonetheless, the Committee concludes that SIS should have appreciated the significance of these events and reported them to Ministers.**

The Government notes the Committee's conclusion. It is important to remember the context, however: events were moving quickly, the settled direction of the U.S. Government's response to the 9/11 attacks was not clear, and the priority for the UK and U.S. intelligence agencies was to identify and seek to prevent further attacks. SIS did inform Ministers of exchanges with U.S. counterparts in November 2001.

- G. The Security Service and SIS were also slow to detect the emerging pattern of "Renditions to Detention" that occurred during 2002. The UK Agencies, when sharing intelligence with the U.S. which might have resulted in the detention of an**

individual subject to the Presidential Military Order, should always have sought assurances on detainee treatment.

The Government accepts that, with hindsight, an emerging pattern of renditions during 2002 can be identified but notes that, as the Committee acknowledges elsewhere in the Report (Conclusion U), at the time the Agencies' priorities were correctly focused on disrupting attacks rather than scrutinising U.S. policy. Moreover, as the Committee has also recognised (Conclusions I and J), once the potential risk of mistreatment arising from renditions became clear, SIS and the Security Service routinely sought approval from Ministers and assurances from foreign liaison services on humane treatment whenever there were real risks of rendition operations arising from their actions. They also took steps to provide more detailed guidance to staff.

- H. The cases of Bisher al-Rawi and Jamil el-Banna and others during 2002 demonstrated that the U.S. was willing to conduct "Rendition to Detention" operations anywhere in the world, including against those unconnected with the conflict in Afghanistan. We note that the Agencies used greater caution in working with the U.S., including withdrawing from some planned operations, following these cases.**
- I. By mid-2003, following the case of Khaled Sheikh Mohammed and suspicions that the U.S. authorities were operating "black sites", the Agencies had appreciated the potential risk of renditions and possible mistreatment of detainees. From this point, the Agencies correctly sought Ministerial approval and assurances from foreign liaison services whenever there were real risks of rendition operations resulting from their actions.**
- J. After April 2004 – following the revelations of mistreatment at the U.S. military-operated prison at Abu Ghraib – the UK intelligence and security Agencies and the Government were fully aware of the risk of mistreatment associated with any operations that may result in U.S. custody of detainees. Assurances on humane treatment were properly and routinely sought in operations that involved any risk of rendition and/or U.S. custody.**

The Government welcomes these conclusions, which the Government believes reflect the fact that the intelligence and security Agencies responded appropriately as their awareness grew of the potential risks arising from U.S. rendition operations.

- K. The Committee has strong concerns, however, about a potential operation in early 2005 which, had it gone ahead, might have resulted in the ***. The operation was conditionally approved by Ministers, subject to assurances on humane treatment and a time limit on detention. These were not obtained and so the operation was dropped. *****

***.

The Government notes the Committee's strong concerns. The operation in question was the only viable option open to the Government to counter a terrorist threat. As the Committee notes, it was approved subject to safeguards but was not pursued as the Government was not satisfied that the necessary safeguards could be met.

L. We are satisfied that the UK intelligence and security Agencies had no involvement in the capture or subsequent "Rendition to Detention" of Martin Mubanga and that they acted properly.

The Government welcomes this conclusion.

M. There is a reasonable probability that intelligence passed to the Americans was used in Binyam Mohamed al-Habashi's subsequent interrogation. We cannot confirm any part of al-Habashi's account of his detention or mistreatment after his transfer from Pakistan.

The Government notes the Committee's comments. The Government has no information to confirm al-Habashi's account of his detention following his arrest in Pakistan.

N. We agree with the Director General of the Security Service that, with hindsight, it is regrettable that assurances regarding proper treatment of detainees were not sought from the Americans in this case.

As the Committee notes in paragraph 106 of its Report, the fact that assurances were not sought was understandable, given the lack of knowledge at that stage of the possible consequences of U.S. custody of detainees. Assurances would be sought in similar circumstances now.

O. Whilst this was not a rendition but a deportation, and the Security Service and SIS were not in a strong position to impose conditions on it, we accept their view that they should nevertheless have sought greater assurances that the individual would be treated humanely.

The Government notes the Committee's remarks concerning this operation, which the Agencies themselves had already concluded should have been subject to greater assurances.

P. Given el-Banna's and al-Rawi's backgrounds and associations, it was reasonable to undertake a properly authorised covert search of the men's luggage. The decision to arrest the men was taken by the police on the basis of the suspicious items they found and was not instigated by the Security Service.

The Government welcomes this conclusion. Searches of this type are authorised under the procedures set out in the Intelligence Services Act and are subject to review by the Intelligence Services Commissioner.

- Q. The sharing of intelligence with foreign liaison services on suspected extremists is routine. There was nothing exceptional in the Security Service notifying the U.S. of the men's arrest and setting out its assessment of them. The telegram was correctly covered by a caveat prohibiting the U.S. authorities from taking action on the basis of the information it contained.**

The Government welcomes this finding. As the Committee has acknowledged in Conclusion A, the routine sharing of intelligence with foreign liaison services is a crucial part of the fight against terrorism.

- R. In adding the caveat prohibiting action, the Security Service explicitly required that no action (such as arrests) should be taken on the basis of the intelligence contained in the telegrams. We have been told that the Security Service would fully expect such a caveat to be honoured by the U.S. agencies – this is fundamental to their intelligence-sharing relationship. We accept that the Security Service did not intend the men to be arrested.**
- S. The Security Service and Foreign Office acted properly in seeking access to the detained British nationals, asking questions as to their treatment and, when they learnt of a possible rendition operation, protesting strongly.**

The Government welcomes the Committee's conclusion that the Security Service and FCO acted appropriately.

- T. We note that eventually the British nationals were released, but are concerned that, contrary to the Vienna Convention on Consular Relations, access to the men was initially denied.**

The Government shares the concern of the Committee over the lack of consular access.

- U. This is the first case in which the U.S. agencies conducted a "Rendition to Detention" of individuals entirely unrelated to the conflict in Afghanistan. Given that there had been a gradual expansion of the rendition programme during 2002, it could reasonably have been expected that the net would widen still further and that greater care could have been taken. We do, however, note that Agency priorities at the time were – rightly – focused on disrupting attacks rather than scrutinising American policy. We also accept that the Agencies could not have foreseen that the U.S. authorities would disregard the caveats placed on the intelligence, given that they had honoured the caveat system for the past 20 years.**

The Government notes the Committee's comments.

- V. This case shows a lack of regard, on the part of the U.S., for UK concerns. Despite the Security Service prohibiting any action being taken as a result of its intelligence, the U.S. nonetheless planned to render the men to Guantánamo Bay. They then ignored the subsequent protests of both the Security Service and the**

Government. This has serious implications for the working of the relationship between the U.S. and UK intelligence and security agencies.

Despite our serious concerns over this case, the UK has a close, long-standing, extensive and valuable intelligence relationship with the U.S. As the Committee has commented elsewhere (Conclusion Z), the Agencies have adapted their procedures to work round problems and maintain the exchange of intelligence that is so critical to UK security.

W. Whilst we note that Bisher al-Rawi has now been released from Guantánamo Bay and that el-Banna has been cleared for release, we nevertheless recommend that the UK Government ensures that the details of suspicious items found during the Gatwick luggage search (including the police’s final assessment of these items) are clarified with the U.S. authorities.

We will draw the U.S. Administration’s attention to this conclusion. The Government believes that the information referred to is already available to the U.S. As the Committee notes, al-Rawi has now been released from Guantánamo Bay and el-Banna has been designated as eligible for transfer.

X. We recognise the contribution of the Foreign and Commonwealth Office in securing Bisher al-Rawi’s release. However, having seen the full facts of the case – and leaving aside the exact nature of al-Rawi’s relationship with the Security Service – we consider that the Security Service should have informed Ministers about the case at the time, and are concerned that it took * years, and a court case, to bring it to their attention.**

The Security Service accepts, with hindsight, that it should have notified Ministers more quickly. It has reviewed and revised its procedures to ensure that, if there were to be similar cases in the future, Ministers would be informed in a timely manner.

Y. What the rendition programme has shown is that in what it refers to as “the war on terror” the U.S. will take whatever action it deems necessary, within U.S. law, to protect its national security from those it considers to pose a serious threat. Although the U.S. may take note of UK protests and concerns, this does not appear materially to affect its strategy on rendition.

Since before September 2001, we have worked closely with the U.S. on a wide range of counter-terrorism issues to achieve our shared goal of combating terrorism. The UK has had continued dialogue with the U.S. on detainee-related issues, including rendition.

In response to a letter from the then Foreign Secretary, Condoleezza Rice, the U.S. Secretary of State, made a statement on 5 December 2005 in which she stated: “The United States has respected – and will continue to respect – the sovereignty of other countries. The United States does not transport, and has not transported, detainees from one country to another for the purposes of interrogation using torture.” Dr Rice also confirmed that the U.S. respects the rules of international law,

including the UN Convention Against Torture, that the U.S. does not authorise or condone the torture of detainees, and that torture and conspiracy to commit torture are crimes under U.S. law wherever they may occur in the world.

In addition, the U.S. Detainee Treatment Act, enacted on 30 December 2005, provides that no individual in the custody or under the physical control of the U.S. Government, regardless of nationality, shall be subject to cruel, inhuman or degrading treatment or punishment. This legislation makes a matter of statute what President Bush had made clear was already U.S. Government policy.

Z. It is to the credit of our Agencies that they have now managed to adapt their procedures to work round these problems and maintain the exchange of intelligence that is so critical to UK security.

The Government agrees.

AA. The Committee notes that the UK Agencies now have a policy in place to minimise the risk of their actions inadvertently leading to renditions, torture or cruel, inhuman or degrading treatment (CIDT). Where it is known that the consequences of dealing with a foreign liaison service will include torture or CIDT, the operation will not be authorised.

BB. In the cases we have reviewed, the Agencies have taken action consistent with the policy of minimising the risks of torture or CIDT (and therefore “Extraordinary Rendition”) based upon their knowledge and awareness of the CIA rendition programme at that time.

The Government welcomes these important conclusions, which underline the fact that, as the Committee reflects in paragraph 46 of its Report, the UK’s intelligence and security Agencies will not assist or involve themselves in a rendition operation where there are grounds to believe that the person being rendered would face a real risk of torture or CIDT.

CC. Where, despite the use of caveats and assurances, there remains a real possibility that the actions of the Agencies will result in torture or mistreatment, we note that the current procedure requires that approval is sought from senior management or Ministers. We recommend that Ministerial approval should be sought in all such cases.

The Government accepts that, where the Agencies consider that counter-terrorist work with foreign services raises a real possibility that torture or mistreatment could occur, they should consult Ministers before proceeding. In practice this already happens.

DD. The Committee considers that “secret detention”, without legal or other representation, is of itself mistreatment. Where there is a real possibility of “Rendition to Detention” to a secret facility, even if it would be for a limited time, then approval must never be given.

The Government notes the Committee's view. The UK opposes any form of deprivation of liberty that amounts to placing a detained person outside the protection of the law.

As we have pointed out in response to Conclusions C to E, when we are requested to assist another State in a rendition operation, and our assistance would be lawful, we would decide whether or not to assist taking into account all the circumstances. We would not assist in any case if to do so would put us in breach of UK law or our international obligations, including under the UN Convention Against Torture.

EE. GCHQ has played no role in any U.S. renditions, whether "ordinary" or "extraordinary". Theoretically, given the close working relationship between GCHQ and the National Security Agency (NSA), GCHQ intelligence could have been passed from the NSA to the CIA and could have been used in a U.S. rendition operation. However, GCHQ's legal safeguards and the requirement for explicit permission to take action based on their intelligence provide a high level of confidence that their material has not been used for such operations.

The Government welcomes this conclusion.

FF. The use of UK airspace and airports by CIA-operated aircraft is not in doubt. There have been many allegations related to these flights but there have been no allegations, and we have seen no evidence, that suggest that any of these CIA flights have transferred detainees through UK airspace (other than two "Rendition to Justice" cases in 1998 which were approved by the UK Government following U.S. requests).

GG. It is alleged that, on up to four occasions since 9/11, aircraft that had previously conducted a rendition operation overseas transited UK airspace during their return journeys (without detainees on board). The Committee has not seen any evidence that might contradict the police assessment that there is no evidential basis on which a criminal inquiry into these flights could be launched.

JJ. The alleged use of military airfields in the UK by rendition flights has been investigated in response to our questions to the Prime Minister. We are satisfied that there is no evidence that U.S. rendition flights have used UK airspace (except the two cases in 1998 referred to earlier in this Report) and that there is no evidence of them having landed at UK military airfields.

The Government welcomes these clear conclusions, which support the Government's repeated assurance that there is no evidence to suggest that renditions have been conducted through the UK without our permission, or in contravention of our obligations under domestic and international law. The conclusions support our clearly stated position that we have not approved, and will not approve, a policy of facilitating the transfer of individuals through the UK to places where there are substantial grounds to believe they would face a real risk of torture.

HH. We consider that it would be unreasonable and impractical to check whether every aircraft transiting UK airspace might have been, at some point in the past, and without UK knowledge, involved in a possibly unlawful operation. We are satisfied that, where there is sufficient evidence of unlawful activity on board an aircraft in UK airspace, be it a rendition operation or otherwise, this would be investigated by the UK authorities.

The Government agrees that it is not possible to check every flight – instead an intelligence-led approach is and must be employed. If individuals are reasonably suspected of committing criminal offences, or if there are reasonable grounds to suspect that aircraft are being used for unlawful purposes, then action can be taken. The nature of that action would depend on the facts and circumstances of any case.

II. The system of flight plans and General Aviation Reports is outside the remit of this inquiry, although we are concerned that it appears to be systemically flawed. The Home Secretary has assured the Committee that the e-Borders and Border Management Programme (being introduced from 2008) will address our concerns relating to general aviation documentation and security risks. This would, however, be a matter for the Transport and Home Affairs Select Committees to review in greater depth, if they felt it merited it.

The Government notes the Committee's comments regarding General Aviation Reports (GARs), but also notes that GARs themselves are not the only means of addressing the general aviation risk to the UK. The border agencies pursue a clear intelligence-led and risk-based approach (i.e. attendance or assessment is not contingent on a GAR being completed). This includes meeting known arrivals and also unannounced visits to provide information on activities at particular locations. The Border Management Programme, jointly directed by Home Office and Treasury Ministers, has begun a thorough review of general aviation. Its initial focus is the completion of a comprehensive threat and risk assessment, which will increase the ability of the border agencies jointly to take effective action.

Given the number of general aviation flights through the UK, this risk-assessed approach will remain the most effective way of policing such flights until the introduction of the e-Borders programme, which will collect and analyse passenger and crew data, provided by carriers (air, sea and rail), in respect of all journeys to and from the UK in advance of their travel. This will ensure that all travel information can be submitted through a common portal to a joint operations centre that will be at the heart of the new e-Borders system.



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