

Parliamentary scrutiny of the UK intelligence and security services:

summary research report

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Parliamentary oversight of intelligence and security agencies is fundamental in providing democratic legitimacy to the agencies. Alongside other forms of oversight it can also help to ensure that agencies operate within the law, and that they provide value for money.

Parliamentary oversight of the British intelligence and security agencies is a relatively recent phenomena. From the late 1980s legislation has placed the intelligence and security agencies on a statutory footing, and the Intelligence Services Act 1994 established a committee of parliamentarians to oversee the administration, policy and expenditure of the agencies. In recent years Parliament has also been increasingly involved in the scrutiny of government policy and legislation related to the use of intelligence.

This research, funded by the Leverhulme Trust, examined the role of Parliament and parliamentarians in the scrutiny of the intelligence and security agencies as it has developed since the Security Service Act 1989. Previous research has focused overwhelmingly on the Intelligence and Security Committee, and while the work of the Committee formed an important part of this project, the study also looked more broadly at the scrutiny of intelligence and security issues within Parliament as a whole, with a particular focus on the nature and extent of parliamentary interest and understanding.

There were a number of elements to the research including: analysis of the published output of the Intelligence and Security Committee since 1994 and of debates on the Committee's reports since 1998; examination of the work of select committees since 1994 as it has related to intelligence and security issues; analysis of parliamentary questions and early day motions relating to intelligence and security issues since 1994; and consideration of all party groups which might relate to intelligence and security issues. The research has also drawn on interviews with a large sample of MPs and Peers. In total 52 MPs and 59 members of the House of Lords were interviewed. Although this was not intended to provide a representative sample of parliamentarians, it was broadly balanced to represent the political parties. Those interviewed also comprised a broad cross-section of parliamentary experience. It included parliamentarians with particular experience in this area, among them a number of past or current members of the ISC, and parliamentarians with Ministerial experience in this area including a number of former Home and Foreign Secretaries. It also comprised parliamentarians serving on select committees with an interest in related areas, such as the Defence, Foreign Affairs and Home Affairs committees, and the Joint Committee on Human Rights. The sample also included parliamentarians with no particular interest in this field, including a number of newly elected MPs and recently appointed Peers.

This short paper summarises the findings of the research. Some of this material has already been presented at academic conferences, and it is anticipated that much of it will be published as journal articles and a book. Although the scope of the research was broad, some of the main findings are summarised below.

The Intelligence and Security Committee

The Intelligence and Security Committee was a significant step forward in intelligence oversight in the United Kingdom. The ISC is a statutory committee which is appointed by and reports to the Prime Minister. The Committee's membership of nine has been drawn primarily from the House of Commons, with one member from the House of Lords, until 2010 when two Peers were appointed. Changes introduced in 2008 mean that Parliament may now nominate members to the Committee. There has been a clear preference

towards seniority in appointments, with 22 of the 37 parliamentarians who have served on the ISC having held Ministerial office before being appointed to the Committee.

The Committee's remit is to examine the administration, policy and expenditure of the Security Service (MI5), Secret Intelligence Service (MI6), and the Government Communications Headquarters (GCHQ), although it is clear that since 1994 the ISC has expanded its mandate significantly, to cover operational issues and other parts of the intelligence community including Defence Intelligence and the Joint Intelligence Committee and assessments staff. The ISC sets its own agenda, but has also on occasion been asked by the Government to carry out investigations. It meets in secret but does publish reports, and its work is the subject of an annual debate in both Houses. To date the Committee has published fourteen annual reports, two interim reports, and ten additional reports on a range of subjects.

The Government's *Justice and Security* Green Paper, published in October 2011, included proposals for significant reforms of the ISC, among them: that the ISC should become a committee of Parliament, reporting to both Parliament and the Prime Minister; that its remit should include the wider intelligence community, rather than just MI5, MI6 and GCHQ and that it should include all of the work of the agencies, not simply policy, administration and finances; that it should have the power to require information to be provided; and that it should have greater resources for investigation and research.

Whilst it is difficult to assess the impact of a committee that operates entirely in secret, it is possible to draw a number of conclusions:

- the ISC has allowed a small number of parliamentarians wide-ranging access to the intelligence and security agencies, their documents and staff. Perhaps the ISC's most significant achievement has been the development of a relationship of trust with the intelligence and security agencies. Moreover, this may in part have facilitated the wider engagement between the agencies and parliament documented elsewhere in this report;
- while the ISC is often criticised for focusing largely on questions of organisation and efficiency, in interviews members of the Committee claim that the scope of its work extends some way beyond that which is reflected in the published output, with one Committee member observing that 'every intelligence story which comes to public attention, and many which do not' are raised with the agencies;
- while the Committee has been successful in establishing a working relationship with the agencies, it has been less successful in securing the confidence of parliament. In contrast to current and former members of the ISC, who were overwhelmingly positive about its work, other parliamentarians expressed considerable scepticism about the independence of committee and its ability to hold the agencies to account;
- some critics have suggested that the Committee has tended to be reactive rather than proactive, undertaking inquiries into some issues, such as rendition, only after they have been raised elsewhere, such as in the media or by other parliamentary bodies. Others point to evidence, such as Lady Justice Hallett's report on the 7/7 bombing and reports by the Committee itself, which suggest that the agencies have at times been less than candid in providing material to the Committee;
- perhaps the most significant area of parliamentary concern has been the anomalous status of the committee. This has been the source of considerable parliamentary debate since its creation, and was reflected in

interviews with parliamentarians for this research. While most parliamentarians appreciate the need to maintain security in relation to appointments and the operation of the Committee, there was a widespread view that ISC should be reconstituted as a committee of parliament;

- until recently the ISC itself appears to have been a significant barrier to reform. Since 1994, with one or two notable exceptions, ISC members have consistently objected to suggestions that the Committee should be reconstituted as a select committee. In this respect the proposals in the Green Paper mark a significant break with the past;
- while some parliamentarians had particularly strong views about the ISC, it is also clear that many are unfamiliar with its role and its work. It is apparent that ISC reports are not widely read, and that the annual debates are not well attended and as a result are dominated by current and former members of the Committee. While the ISC should not be held entirely responsible for the lack of parliamentary interest in intelligence issues, there would appear to be an opportunity for the Committee to engage further with Parliament.

Select Committees

The interest of select committees in intelligence and security issues predates the establishment of the ISC, and there has continued to be some interest, particularly from the Home Affairs Committee, the Foreign Affairs Committee, and the Joint Committee on Human Rights. Select committee interest reflects the role of intelligence in the work of a number of Government departments, and also a feeling on the part of some MPs and Peers that the ISC has paid insufficient attention to the human rights aspects of intelligence and security work. This has been a source of tension between the select committees, the ISC and successive governments, who have denied select committees access to intelligence material on the grounds that this is the preserve of the ISC.

- The ISC has also been resistant to working with the select committees. In interviews, only three out of fifteen ISC members interviewed felt that the select committees had a legitimate interest in scrutinising intelligence issues, whilst 87% of MPs and 56% of Peers, thought that the existence of the ISC should not preclude the select committees from examining intelligence issues;
- while ISC members have tended to attribute select committee interest in intelligence to ambition on the part of some select committees, our research indicates that select committee interest is in large part a reflection of the more prominent role of intelligence in informing decision-making in a number of policy areas. There is little evidence that various select committees wish to take on the scrutiny of the agencies, but there is considerable select committee interest in the government's use of intelligence, and government control of the agencies;
- in some respects the agencies have been more willing than the ISC to work with the select committees, and a number of select committees now receive confidential briefings from the intelligence and security agencies. While these sessions have tended to focus on agency assessments of current security concerns, and do not therefore constitute parliamentary oversight of the agencies as such, they have allowed select committee members to develop a greater understanding of the role of the intelligence agencies;
- another positive development has been the appointment of former ISC members to other parliamentary committees. In the past the seniority of members of

the ISC has meant that on leaving the Committee MPs have tended to move to the House of Lords or retire from politics altogether, resulting in a loss of expertise from the House of Commons. In recent years a number of former members of the ISC have remained in the Commons and gone on to serve on related select committees such as those for defence and foreign affairs;

- however, proposals to expand the mandate of the ISC may create further overlap with the work of the select committees and could therefore be the source of further tension. This may be overcome if the reconstitution of the ISC as a committee of parliament enhances its legitimacy amongst MPs, and if the ISC makes greater efforts to work with the select committees.

Wider Parliamentary Interest

The research also examined a number of other indicators of parliamentary interest, including parliamentary questions, debates, Early Day Motions, and the work of all-party groups.

Parliamentary Questions

Written and oral parliamentary questions on intelligence and security issues have increased in both the House of Commons and the House of Lords, particularly during the last ten years. Prior to the 2001-02 parliamentary session fewer than ten written questions were asked in each House per year, with the exception of the 1997-98 session. There was then a sharp rise from the 2001-02 session. In the House of Commons this peaked in 2003-04, with MPs submitting 160 written questions. This increase is largely explained by the number of questions related to the role of intelligence in the decision to go to war in Iraq, which accounted for 71% of questions during that session. However, the number of questions continues to be much higher than before the Iraq war, and covers a wider range of issues, from terrorism and torture to questions on reports, inquiries and the staffing of the security services.

During the last decade most written questions on intelligence in the House of Commons have been asked by Labour MPs, who asked significantly more questions than did Conservatives during each parliamentary session between 2001-02 and 2004-05. From 2004 onwards, Conservative MPs have asked more questions each session than those from any other party, with the exception of 2005-06. During that session Liberal Democrat MPs asked more questions than both the Labour and Conservative parties combined, although three-quarters of those were asked by only three MPs. Written questions in the House of Lords, as well as oral questions in both Houses, follow a broadly similar pattern. However, while in the Commons a significant proportion of written questions are asked by a small number of MPs, oral questions and those in the House of Lords are asked by a wider range of parliamentarians. The majority of questions in both Houses, both oral and written, appear to be asked in response to external stimuli, such as media stories, and as such they do not appear to represent a sustained interest in either the intelligence agencies or the government's handling of intelligence.

Debates

There has also been an obvious increase in the occurrence of intelligence and security issues in parliamentary debates (in addition to the annual debate on the ISC's report) since the passage of the first intelligence legislation in 1989. Earlier debates were largely on the legislation itself, and single-issue subjects such as the unmasking of Anthony Blunt and the publication of *Spycatcher*. The number of debates on such topics in each parliamentary session from the early

1990s has generally been very small. However, the number of times intelligence issues are raised within debates (either briefly or in some instances more substantially) is significantly higher than earlier periods, particularly as part of debates on security and counter-terrorism, weapons of mass destruction, torture, police-related issues and Northern Ireland. This has been the case in both the Commons and the Lords; it is also the case that a much broader range of parliamentarians from all parties participate in these debates than is the case for those asking written or oral questions on the subject.

Early Day Motions

While academics have sought to use Early Day Motions as indicators of parliamentary opinion, this has never been straightforward. Around two thousand EDMs may be tabled each session, and the majority achieve only one or two signatures. In an average parliamentary session around seventy to eighty will get over one hundred signatures, and only six or seven will achieve more than two hundred signatures. Ministers and government whips, parliamentary private secretaries and the Speaker and his deputies do not sign EDMs. From the 1989-90 to 2009-10 parliamentary sessions while the numbers of EDMs concerned with intelligence and security issues has ebbed and flowed, there have never been more than 25 (2003-04), and there is no pattern of an increase over time (for example there were only 4 EDMs on such issues in 2009-10). Furthermore, very few EDMs focus on intelligence and security issues specifically, and even fewer on the agencies. As with parliamentary questions, EDMs are largely reactive to external stimuli. Moreover, while EDMs may represent some degree of parliamentary interest in intelligence issues, and can attract quite significant support, in general this is from Labour members, who are much more likely to sign EDMs than are MPs from other parties.

All-Party Groups

All-Party Groups are informal cross-party groups within Parliament, which are essentially run by and for backbench members of both Houses, although Ministers can be members. While there are few All-Party Groups which might conceivably have any real interest in intelligence and security issues, the All-Party Group on Extraordinary Rendition is an example of a group which has been active in this area, and which has made its activities public through its website, www.extraordinaryrendition.org. The Group was established by its Chair, the Conservative MP Andrew Tyrie, in December 2005, in response to allegations that the UK had been involved in the US rendition programme. It has been a particularly active group, interviewing alleged British victims of rendition, writing letters to government departments and submitting numerous Freedom of Information requests seeking information about what exactly was known about rendition. It has also attempted, with some success, to press the formal parliamentary institutions such as the select committees and the ISC to look more closely at this issue, and contributed to the Council of Europe investigation into rendition. It has also generated considerable media interest. Whilst it is clearly an untypical example of an All-Party Group, both in terms of its focus and the extent of its activity, the APG on Extraordinary Rendition does illustrate the ways in which parliamentarians access information and seek to influence debate on intelligence issues beyond the formal structures of intelligence oversight.

Conclusions

It is important for Parliament, for parliamentarians, for the government, and for the agencies, to ensure that appropriate democratic oversight takes place while preserving the level of secrecy necessary for intelligence and security issues. As this research makes clear, it is apparent that over the past two decades there has been significant progress on all sides, and the reforms in the Green Paper appear likely to take this a step further. However, to build upon recent progress and to ensure the health of parliamentary oversight in the future, it may be appropriate to consider further ways of raising the levels of interest in and understanding of intelligence issues and the work of the agencies in Parliament.

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