



INTELLIGENCE AND SECURITY COMMITTEE
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PRESS RELEASE

The Chairman of the Intelligence and Security Committee (ISC), the Rt. Hon. Sir Malcolm Rifkind MP, has issued the following statement on behalf of the Committee:

“The UK prides itself on a fair and open legal system and a strong and independent judiciary, and these must be preserved. However, recent civil cases involving the intelligence Agencies have exposed serious problems. We have seen the Government forced to abandon its defence of cases rather than risk sensitive intelligence material being disclosed, since that would jeopardise the safety of the British public. The arrangements for handling such cases clearly do not work and it is time for change.

“The Government’s Justice and Security Green Paper, published last year, set out proposals designed to protect such material from disclosure in open court. It proposed that where highly sensitive material is concerned, proceedings should take place behind closed doors rather than in an open court. This is counter-intuitive, given the UK’s long tradition of open justice, but given that the alternative would be to put the UK and its citizens in harm’s way, it is justified – in certain clearly defined circumstances and with safeguards. It is an important safeguard, for example, that judges will provide a check on this power.

“The advantage of this new system is that it will enable cases to be heard that otherwise would not be: it is preferable that cases are considered behind closed doors than not at all. The proposals also represent a significant improvement on the current arrangement for protecting such highly sensitive material from public disclosure – the Public Interest Immunity (PII) system. PII allows national security sensitive material to be excluded from judicial proceedings (where the public interest so demands). This means that not all the relevant information is available – to either party. The advantage of closed hearings is that all the evidence will be available.

“The Intelligence and Security Committee broadly welcomed the proposals in the Green Paper. However, the scope of the material to be covered is key.

“This Committee considers that there are only two narrow categories of information which can rightly be said to be so sensitive that it would jeopardise the national security of the UK if it were to be made public. The first is UK intelligence material which might compromise operational detail or reveal the identity of intelligence officers, their agents, sources, and/or the Agencies’ capabilities and techniques. This category is easily understood: we must not endanger the lives of those who work – in very dangerous situations – to protect us, nor must we reveal how they foil terrorist plots, or their ability to detect and disrupt future plots will be reduced. We believe that the public expects such information to be protected.

“The second category is foreign intelligence material, provided by another country on the strict promise of confidentiality. This category is perhaps less easily understood. Many of the most serious terrorist plots and attacks in the UK in the last decade have had significant links abroad, and intelligence material from other countries is therefore vital for the protection of the UK. However, when other countries share their foreign intelligence material with us, they want to

know that we will protect it. The material still belongs to them and is controlled by them: it is not ours to do with as we wish. This 'control principle' is sacrosanct, and we must not break it. If we do, foreign agencies will not trust the UK to protect their intelligence material and will not share any future intelligence material with us. Given the amount of information on plots to harm the UK that comes from foreign intelligence, this will put the UK in serious danger.

"It is important to understand that this principle applies to all foreign intelligence relationships and material, regardless of its sensitivity. For example, the foreign intelligence material in the Binyam Mohamed case was not highly sensitive, and indeed was already largely in the public domain. However the overriding principle was that the UK Agencies did not 'own' the material and therefore could not take the decision to share it with others. The courts did not accept this principle and the result has been a reduction in the willingness of US agencies to share intelligence with the UK. The Intelligence and Security Committee is in no doubt as to the impact that this has had.

"There are those who refuse to believe either that such a principle exists, or that breaking it would have any repercussions. We speak regularly with those who share intelligence material with the UK. We know how seriously the 'control principle' is treated and how damaging it would be for the UK to break its word. It is essential that the UK can be trusted: we must honour our obligations to protect intelligence material that our foreign partners shared with us, or we will be shut out. We demand the same from them.

"The consequences of publicly disclosing information in either of these two categories are so serious that we must be able to protect it and no serious commentator would argue otherwise. However, that is where the line must be drawn. These special arrangements must be an exception, not the rule, and the provisions must not be abused. The special arrangements should not be used to avoid difficult or embarrassing situations. Nor should material be excluded simply because it is labelled as 'secret'. For example, Appendix A to the Green Paper mentions diplomatic exchanges and material relating to serious crime. This is too broad by far. The focus must be only on the genuinely sensitive intelligence material of our Agencies, and the foreign intelligence material that we have given our word to protect. It is this material and this material alone that is critical to our national interest.

"The current uncertainty around the scope of the proposals has been damaging and threatens to undermine the value of those parts of the proposals that are genuinely important, and not only justified but essential. This Committee believes that it is now vital that the Government set out, in very clear terms, exactly what material will and will not be protected under these proposals. Parliament and the public must be reassured that any changes to legal proceedings will be minimal, and restricted to those situations where the alternative would be damage to our national security and the safety of the British public."

NOTES TO EDITORS:

1. The Intelligence and Security Committee (ISC) was established in 1994 to examine the policy, administration and expenditure of the Security Service, Secret Intelligence Service (SIS) and Government Communications Headquarters (GCHQ). The Committee also examines the work of the Joint Intelligence Committee (JIC), the Assessments Staff and the National Security Secretariat in the Cabinet Office, and Defence Intelligence (DI) in the Ministry of Defence.

2. The ISC is a cross-party Committee of nine Parliamentarians from the Lords and the Commons. The Prime Minister appoints ISC Members after considering nominations from Parliament and consulting with the Leader of the Opposition. The Committee's membership is as follows:

The Rt. Hon. Sir Malcolm Rifkind, MP (Chairman)

The Rt. Hon. Hazel Blears, MP

The Rt. Hon. Paul Goggins, MP

The Rt. Hon. Lord Butler KG GCB CVO

The Rt. Hon. George Howarth, MP

The Rt. Hon. Sir Menzies Campbell CBE QC, MP

Dr Julian Lewis, MP

Mr Mark Field, MP

Lord Lothian QC PC

3. The Green Paper on Justice and Security (Cm 8194) consulted on proposals to:

- better equip the courts to pass judgment in cases involving sensitive information;
- protect UK national security by preventing damaging disclosure of genuinely national security sensitive material; and
- modernise judicial, independent and parliamentary scrutiny of the security and intelligence agencies to improve public confidence that executive power is held fully to account.

4. The ISC's response to the Green Paper consultation, which was sent to the National Security Adviser on the 7 December 2011, can be found on its website at <http://isc.independent.gov.uk>

5. An edited version of this Press Release appeared as an op-ed piece in *The Times* on 27 March 2012.