

## *Justice and Security Act 2013*

### *Part 1 – Oversight of intelligence and security activities*

#### *The 'Intelligence & Security Committee' of Parliament*

1. The existence of the Committee is established by Section 1(1) of the Act, and under Section 1(2) it is to consist of 9 members drawn from each House of Parliament.
2. Under Section 1(3) members are appointed by the House from which they are drawn, however members are only *eligible* for appointment if they have been nominated by the Prime Minister, personally, under Section 1(4)(a). The only duty falling upon the Prime Minister in exercising his discretion to nominate is to “consult” the Leader of the Opposition under Section 1(5) – but there is no obligation on the Prime Minister to accept the advice offered as a result of this consultation. Put another way, the Prime Minister is free to ignore the advice, and nominate whoever he wishes.
3. The Committee has the discretion to appoint its own Chair, but only from among its existing members, all of whom have been personally nominated by the Prime Minister.
4. Under Section 2(1) of the Act there is a provisional power for the Committee to “examine or otherwise oversee the expenditure, administration, policy and operations” of the Intelligence and Security Services (as defined within the Intelligence Services Act 1994 and Security Services Act 1989). However, the exercise of this power is restricted by virtue of Section 2(2) to those areas approved by a “memorandum of understanding” agreed between the Committee and the Prime Minister, whose contents are not regulated by the Act but are authored on a purely voluntary basis between the parties under Section 2(5).
5. Section 2(3) of the Act restricts the right of the Committee to consider “any particular operational matter” to when the Prime Minister thinks that it is not part of any ongoing intelligence or security operation (under Section 2(3)(a)(i)), or to when *either* the Intelligence and Security Services *or* a Government Department have *voluntarily* decided to provide information to the Committee (under Section 2(3)(c)).
6. Under Section 3(1) the Committee is required to make an annual report to Parliament on the discharge of its functions. It may also under Section 3(2) make any other reports to Parliament as it sees fit. However, under Section 3(3), the Committee is obliged to send these reports to the Prime Minister *before* making them available to Parliament. This is in order to allow the Prime Minister to censor any contents of the report in accordance with Section 3(4) if he “considers the matter would be prejudicial to the continued discharge of

the functions of the [Intelligence & Security Services]”.

7. Section 4 of Schedule 1 to the Act governs the Committee's “Access to Information”. Requests for information must by virtue of Section 4(2) of Schedule 1 be made to either the Director of GCHQ or MI5, or the Chief of MI6. However, by virtue of Section 4(2)(b), these individuals are entitled to refuse to disclose this information if the Secretary of State for the relevant Department “has decided that it should not be disclosed.”
8. The same restriction applies to the Committee when requesting any information be disclosed by any Government Department, by virtue of Section 4(3) of Schedule 1.
9. The circumstances under which the Secretary of State may decide not to disclose the information sought by the Committee are circumscribed by Section 4(4) of Schedule 1. This states that the information sought may be withheld if it is “Sensitive Information” (Section 4(4)(a)(i) of Schedule 1) or if “it is information of such a nature that, if the Secretary of State were requested to produce it before a Departmental Select Committee of the House of Commons, the Secretary of State would consider (on grounds which were not limited to national security) it proper not to do so.”
10. The definition of “sensitive information” is provided by Section 5 of Schedule 1 as being information “which might lead to the identification of, or provide details of, sources of information, other assistance or operational methods available to [The Intelligence & Security Services *or* any part of a government department, or any of Her Majesty's forces, which is engaged in intelligence or security activities]” (Section 5(a) of Schedule 1), or “information about particular operations which may have been, are being or are proposed to be undertaken in pursuance of any of the functions mentioned in paragraph (a)” (Section 5(b) of Schedule 1), or information provided by the Governments of foreign countries where that government does not consent to its being released (Section 5(c) of Schedule 1).
11. Under Section 7 of Schedule 1 no person may be subject to civil suit or criminal prosecution as a result of information provided to the Committee.
12. In summary:
  - a) This is a Committee whose members are nominated by the executive;
  - b) Its investigatory locus is circumscribed by a Memorandum of Understanding which must be agreed to by the executive;
  - c) It may only investigate matters that the executive may or may not decide fall within its remit;
  - d) It may only consider evidence that the executive may or may not voluntarily choose to disclose;
  - e) It may not consider evidence the source of which was a foreign government where that

government has not consented to its release;

- f) Any report it produces must be submitted to the executive for approval, whereupon the executive may or may not choose to censor its contents, in part or in entire;
- g) Any discovery it makes of conduct which would ordinarily be the subject of civil or criminal liability is not amenable to civil suit or criminal prosecution by virtue of the amnesty clause of Section 7 to Schedule 1 of the Act.