



Consolidated Guidance to Intelligence Officers and
Service Personnel on the Detention and Interviewing of
Detainees Overseas, and on the Passing and Receipt of
Intelligence Relating to Detainees

July 2010

Consolidated Guidance to Intelligence Officers and Service Personnel on the Detention and Interviewing of Detainees Overseas, and on the Passing and Receipt of Intelligence Relating to Detainees

1. This consolidated guidance sets out the principles, consistent with UK domestic law and international law obligations, which govern the interviewing of detainees overseas and the passing and receipt of intelligence relating to detainees. This guidance must be adhered to by officers of the UK's intelligence and security agencies, members of the UK's Armed Forces and employees of the Ministry of Defence ('personnel'). Personnel whose actions are consistent with this guidance have good reason to be confident that they will not risk personal liability in the future.
2. The security and intelligence agencies (the Agencies) do not have powers of detention either in the UK or overseas. UK Armed Forces may have a power to detain individuals in overseas operations depending on the circumstances of the operation. For MOD and UK military personnel, 'interviewing' includes tactical questioning, interrogation or debriefing.
3. To pursue their statutory functions, in particular to counter threats against the UK, the Agencies need to work with a range of overseas security and intelligence services ("liaison services") for the proper discharge of their functions.
4. UK Armed Forces may need to detain individuals and interview them in support of mission objectives (e.g. in order to understand threats to Armed Forces units). The Ministry of Defence (MOD) and UK Armed Forces may also need to work with liaison services for similar reasons, as well as military partners within a coalition where appropriate.

Policy regarding torture and cruel, inhuman or degrading treatment or punishment

5. Personnel will be aware of concerns about torture and cruel, inhuman or degrading treatment or punishment (“CIDT”). There is an absolute prohibition of torture in international law and a clear definition of what constitutes torture. There is also an absolute prohibition on CIDT, but there is no agreed or exhaustive definition of what constitutes CIDT. Although it is legitimate to differentiate between torture and CIDT, individual instances of mistreatment that might in isolation constitute CIDT could amount to torture in circumstances in which e.g. they are prolonged, or coincide with other measures.

6. The United Kingdom Government’s policy on such conduct is clear – we do not participate in, solicit, encourage or condone the use of torture or cruel, inhuman or degrading treatment or punishment for any purpose. In no circumstance will UK personnel ever take action amounting to torture or CIDT. We take allegations of torture and cruel, inhuman or degrading treatment or punishment very seriously: we investigate allegations against UK personnel; and we bring complaints to the attention of detaining authorities in other countries except where we believe that to do so might itself lead to unacceptable treatment of the detainee.

7. When we work with countries whose practice raises questions about their compliance with international legal obligations, we ensure that our co-operation accords with our own international and domestic obligations. We take great care to assess whether there is a risk that a detainee will be subjected to mistreatment and consider whether it is possible to mitigate any such risk. In circumstances where, despite efforts to mitigate the risk, a serious risk of torture at the hands of a third party remains, our presumption would be that we will not proceed. In the case of cruel, inhuman or degrading treatment or punishment, this will cover a wide spectrum of conduct and different considerations and legal principles may apply depending on the circumstances and facts of each case. Our aim is to

develop and promote human rights in those countries, consistent with the lead the UK has taken in international efforts to eradicate torture.

Policy regarding the involvement of UK personnel with detainees overseas in the custody of a liaison service

8. Some liaison services adopt a different approach and different standards to the UK in the way that they detain people and treat those they have detained. The extent to which they are prepared to take account of UK views on the way that they should behave varies, depending on such factors as the extent to which a relationship of trust exists with the UK, the extent to which there is international consensus on the issue, and the extent to which the liaison service believes it has a justification or need for taking a different approach. Personnel need to be aware of the tensions this can create and the need to manage them in a manner that is consistent with the policy described above in paragraph 6. Distinct from any personal liability, the circumstances covered by this guidance may engage the responsibility of the UK – with the potential for damage to its international reputation.

9. Before interviewing or seeking intelligence from detainees in the custody of a liaison service, or before soliciting an individual's detention by a liaison service, personnel must consider whether the detainee or individual may have been or may be subjected to unacceptable standards of detention or treatment. Personnel should consider attaching conditions to any information to be passed governing the use to which it may be put (where applicable) and/or to obtaining assurances from the relevant liaison service as to the standards that have been or will be applied in relation to that detainee or individual to minimise any perceived risk in this regard. Personnel should feel free to raise any concerns with senior responsible personnel nominated personally by the head of their Agency or Department ("senior personnel").

10. The table at paragraph 11 gives details of what officers should do when considering whether to proceed with action when there is a risk of torture or CIDT

occurring at the hands of third parties. Personnel should also refer, where available, to departmental views on the legal framework and practices of liaison services and authorities involved in detention in the country concerned. The Annex describes the issues which should be taken into account when considering whether standards of detention and treatment are acceptable but officers should consult senior personnel and/or legal advisers if they are in doubt.

11. Officers should use the following table (see next page) when considering whether to proceed with action when there is a risk of torture or CIDT occurring at the hands of a third party.

| Situation | Action |
|---|--|
| If you know or believe torture will take place | <ol style="list-style-type: none"> 1. You must not proceed and Ministers will need to be informed 2. You should raise concerns with liaison or detaining authority to try and prevent torture occurring unless in doing so you might make the situation worse. |
| In circumstances where you judge there is a lower than serious risk of CIDT taking place and standards of arrest and detention are lawful | You may proceed, keeping the situation under review. |
| In all other circumstances | <ol style="list-style-type: none"> 1. You must consult senior personnel. You must not proceed unless either: <ol style="list-style-type: none"> a) senior personnel and legal advisers conclude that there is no serious risk of torture or CIDT, or; b) you are able to effectively mitigate the risk of mistreatment to below the threshold of a serious risk through reliable caveats or assurances. 2. If neither of the two preceding approaches apply, Ministers must be consulted. <ul style="list-style-type: none"> • Ministers will need to be provided with full details, including the likelihood of torture or CIDT occurring, risks of inaction and causality of UK involvement. • Ministers will consider whether it is possible to mitigate the risk of torture or CIDT occurring through requesting and evaluating assurances on detainee treatment; whether the caveats placed on information/questions would be respected by the detaining liaison partner; whether UK involvement in the case, in whatever form, would increase or decrease the likelihood of torture or CIDT occurring. • Consulting Ministers does not imply that action will be authorised but it enables Ministers to look at the full complexities of the case and its legality. |

12. Where UK Armed Forces personnel are operating in a coalition and are under time sensitive military operational conditions, they may find themselves engaged in tactical questioning of detainees held by other nations with no opportunity to refer to senior personnel or Ministers for guidance on any concerns over standards of detention or treatment. If such a situation arises, UK Armed Forces personnel should continue to observe this guidance so far as it is practicable and report all the circumstances to senior personnel at the earliest opportunity.

Roles and responsibilities

13. Personnel must ensure that they comply with the guidance in this paper, together with any supporting legal, administrative and procedural material which may be relevant to its application in their specific Agency or Department. The Agencies, MOD and UK Armed Forces will ensure that personnel receive appropriate training. Agency, Departmental and Armed Forces' legal advisers will be able to advise on any legal issues that arise in particular cases. Crown servants should be aware that they are subject to English criminal law in respect of their actions in the course of their duties overseas.

14. Ministers must be consulted in line with the circumstances described in the table in paragraph 11. Ministers will consider all relevant facts in deciding whether an operation should proceed. Consulting Ministers does not imply that an operation will be authorised but it enables Ministers to look at the full complexities of the case and its legality.

15. Personnel should make themselves aware of departmental views on the legal framework and practices of States and liaison services with which UK personnel are engaged.

Procedures for interviewing detainees overseas in the custody of a liaison service

Prior to an interview

16. Before interviewing a detainee in the custody of a liaison service, personnel must consider the standards to which the detainee may have been or may be subject. Personnel should consider obtaining assurances from the relevant liaison service as to the standards that have been or will be applied to address any risk in this regard.

17. The table in paragraph 11 explains what personnel should do if there is a serious risk that a detainee has been or will be subject to unacceptable standards. Senior personnel must be consulted and further consideration should be given to obtaining assurances from the relevant liaison service as to the standards that have been or will be applied in relation to that detainee, before any action is taken. Where personnel believe that the assurances are reliable, they may continue with the proposed interview. If, despite any assurances obtained, personnel believe there is a serious risk of torture or cruel, inhuman or degrading treatment or punishment of an individual taking place, Ministers must be consulted.

18. The Agencies, MOD and UK Armed Forces cannot act as a consular authority in place of the FCO. Where the detainee is a UK national, the FCO must be briefed about the plans to interview the detainee.

During an interview

19. The essential requirements are that the detainee must be treated fairly, humanely, and with dignity and respect. Interviews must not involve torture or cruel, inhuman or degrading treatment or punishment. Again, the Annex describes the issues that need to be taken into account when considering the acceptability of standards.

20. Interviewing personnel must withdraw from the interview should they become aware of, or witness anything, which causes them to believe that there is a serious risk that the standards to which the particular detainee has been or will be subject are unacceptable, or if the detainee makes specific complaints in this respect that are considered credible by interviewing personnel. Interviewing personnel should also bring any complaints to the attention of the detaining authority, except where they believe that to do so might itself lead to unacceptable treatment of the detainee.

Reporting concerns and complaints

21. Where interviewing personnel have withdrawn from an interview, owing to the standards to which they believe the detainee has been or will be subject or following specific credible complaints by the detainee, senior personnel must be consulted and consideration should be given to obtaining assurances from the relevant liaison service as to the standards that have been or will be applied in relation to that detainee. Where personnel believe that the assurances are reliable, they may continue with the proposed interview. If, despite any assurances obtained, personnel believe there is a serious risk of torture or cruel, inhuman or degrading treatment or punishment of an individual taking place, Ministers must be notified. The Agencies, MOD and UK Armed Forces will then need to consider whether the concerns were such that this would have an impact on their engagement with that liaison service in relation to other detainees.

Recording the interview

22. Personnel conducting or witnessing an interview must complete a record of the interview (or, where more than one person conducts or witnesses an interview, one of them must produce an agreed record). This record must include any concerns about the standards to which the detainee may have been or may be subject, a statement on the physical and mental health of the detainee as observed by interviewing personnel, and a statement of any undertakings given to the detainee.

Seeking intelligence from a detainee in the custody of a foreign liaison service

23. Before feeding in questions to or otherwise seeking intelligence from a detainee in the custody of a liaison service, personnel must consider the standards to which the detainee may have been or may be subject. Personnel should consider attaching conditions to any information to be passed governing the use to which it may be put (where applicable) and/or to obtaining assurances from the relevant liaison service as to the standards that have been or will be applied in relation to that detainee to address any risk in this regard.

24. Where personnel believe there is a serious risk that a detainee has been or will be subject to unacceptable standards, senior personnel must be consulted and further consideration should be given to attaching conditions to any information to be passed governing the use to which it may be put (where applicable) and/or to obtaining assurances from the relevant liaison service as to the standards that have been or will be applied in relation to that detainee before any action is taken. Where personnel believe that the caveats attached will be observed, or believe that the assurances are reliable, they may continue with the proposed action, informing Ministers as appropriate. If, despite any conditions attached or assurances obtained, personnel believe there is a serious risk of torture or cruel, inhuman or degrading treatment or punishment of an individual taking place, Ministers must be consulted.

Soliciting detention by a foreign liaison service

25. Before soliciting an individual's detention by a liaison service, personnel must consider the standards to which the individual may be subject. Personnel should consider attaching conditions to any information to be passed governing the use to which it may be put (where applicable) and/or to obtaining assurances from the relevant liaison service as to the standards that will be applied in relation to that detainee to address any risk in this regard.

26. Where personnel believe there is a serious risk that an individual will be subject to unacceptable standards, senior personnel must be consulted and consideration should be given to attaching conditions to any information to be passed governing the use to which it may be put (where applicable) and/or to obtaining assurances from the relevant liaison service as to the standards that will be applied in relation to that individual, before any action is taken. Where personnel believe that the conditions attached will be observed and/or the assurances are reliable, they may continue with the proposed action, informing Ministers as appropriate. If, despite any conditions attached or assurances obtained, personnel believe there is a serious risk of torture or cruel, inhuman or degrading treatment or punishment of an individual taking place, Ministers must be consulted.

Receiving unsolicited information obtained from a detainee in the custody of a foreign liaison service

27. In most instances, liaison services do not disclose the sources of their intelligence and it will therefore not be apparent whether intelligence received has originated from a detainee or to what standards that detainee may have been subject. However, in the cases where personnel receive unsolicited intelligence from a liaison service that they know or believe has originated from a detainee, and which causes them to believe that the standards to which the detainee has been or will be subject are unacceptable, senior personnel must be informed. In all cases where senior personnel believe the concerns to be valid, Ministers must be notified of the concerns.

28. In such instances, Agencies, MOD or UK Armed Forces will consider whether action is required to avoid the liaison service believing that HMG's continued receipt of intelligence is an encouragement of the methods used to obtain it. Such action could, for example, include obtaining assurances, or demarches on intelligence and/or diplomatic channels. They will also consider whether the concerns were such that this would have an impact on engagement with that liaison service in relation to other detainees.

Procedures for interviewing detainees held overseas in UK custody

29. Individuals may be detained and questioned by UK forces overseas in accordance with the rules of engagement for the specific operation. Interviewing of detainees for intelligence purposes may only be undertaken by authorised personnel. All detainees held by UK Armed Forces must be treated humanely at all times, in accordance with international law and any UK law that may be applicable. Guidance on the handling of detainees is published by MOD in Joint Doctrine Publication 1-10¹. All UK facilities for the holding of detainees are subject to inspection by Provost Marshal Army, and by the International Committee of the Red Cross.

30. On occasion subject matter experts may be authorised to observe or join the questioning of detainees in the custody of UK or other forces. In such circumstances they must only be involved in the posing of specialist questions to the detainees which are specifically directed to their area of expertise. Any participation must always be conducted in the presence of authorised personnel, and the conduct of these experts during the questioning must comply with applicable UK law and international law at all times.

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¹ Available on line at www.mod.uk

Annex

STANDARDS OF ARREST, DETENTION AND TREATMENT (Paragraph 10)

This Annex is not exhaustive, nor is it descriptive of any legal term. However, when considering what might be unacceptable, personnel should take account of -

- a. The lawfulness of arrest (under local law).
- b. The lawfulness of detention (under local and international law) and access to due process.
Considerations here may include:
 - (i) 'incommunicado detention' (denial of access to family or legal representation, where this is incompatible with international law);
 - (ii) whether the detainee has been given the reasons for his arrest;
 - (iii) whether he will be brought before a judge and when that will occur;
 - (iv) whether he can challenge the lawfulness of his detention;
 - (v) the conditions of detention; and
 - (vi) whether he will receive a fair trial
- c. Torture.
An offence under UK law, torture is defined as a public official intentionally inflicting severe mental or physical pain or suffering in the performance or purported performance of his duties.
- d. Cruel, inhuman or degrading treatment or punishment.
Cruel, Inhuman or Degrading Treatment or Punishment (CIDT) is a term which is used in some international treaties but is not defined in UK law. In the context of this guidance, the UK Government considers that the following practices, *which is not an exhaustive list*, could constitute cruel, inhuman or degrading treatment or punishment:
 - (i) use of stress positions;
 - (ii) sleep deprivation;
 - (iii) methods of obscuring vision or hooding (except where these do not pose a risk to the detainee's physical or mental health and is necessary for security reasons during arrest or transit);
 - (iv) physical abuse or punishment of any sort;

- (v) withdrawal of food, water or medical help;
- (vi) degrading treatment (sexual embarrassment, religious taunting etc); and
- (vii) deliberate use of 'white' or other noise.

In any case of doubt interviewing personnel should seek guidance from senior personnel who may take appropriate advice on whether any conduct may amount to torture or cruel, inhuman or degrading treatment or punishment.

Note on the text

A. It is envisaged that each organisation will continue to provide more detailed advice to their officers and personnel where such material is necessary to prescribe precisely how the principles and requirements set out in this guidance should operate within their individual organisational structure. Where helpful, this advice may include additional detail on the legal principles that govern the detention and treatment of detainees. It is envisaged that minor updates can be made to such material without revisiting this overarching guidance.

B. Where developments call for significant updates that affect the principles and requirements set out in this guidance, Ministers will be consulted on any changes and an updated version will be published



Cabinet Office

70 Whitehall

London

SW1A 2AS

Tel: 020 7276 1234

www.cabinetoffice.gov.uk