

Report of the Intelligence Services Commissioner for 2010

Commissioner:
The Rt Hon Sir Peter Gibson

Presented to Parliament
pursuant to Section 60(4) of the Regulation of
Investigatory Powers Act 2000

Ordered by the House of Commons to be printed
30 June 2011

Laid before the Scottish Parliament by the Scottish
Ministers June 2011

HC 1240
SG/2011/118

£8.50

Report of the Intelligence Services Commissioner for 2010

Commissioner:

The Rt Hon Sir Peter Gibson

Presented to Parliament
pursuant to Section 60(4) of the Regulation of
Investigatory Powers Act 2000

Ordered by the House of Commons to be printed
30 June 2011

Laid before the Scottish Parliament by the Scottish
Ministers June 2011

HC 1240
SG/2011/118
London: The Stationery Office

£8.50

© Crown copyright 2011

You may re-use this information (excluding logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/> or e-mail: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

Any enquiries regarding this publication should be sent to us at the office of the Intelligence Services Commissioner
via 2 Marsham Street, London SW1P 4DF

This publication is available for download at www.official-documents.gov.uk.

ISBN: 9780102974065

Printed in the UK by The Stationery Office Limited
on behalf of the Controller of Her Majesty's Stationery Office

ID P002439211 06/11

Printed on paper containing 75% recycled fibre content minimum.

SUBJECT

PARAGRAPH

Letter to the Prime Minister

Introduction 1 - 2

RIPA

Scope of Parts I, II, III, IV and V 3 - 8

Functions of the Intelligence Services

The Security Service, the Secret Intelligence Service and Government Communications Headquarters 9 - 12

General 13 - 15

The issue of warrants and authorisations

Intelligences Services Act 1994 (ISA) section 5 and section 7 16 - 21

Regulation of Investigatory Powers Act 2000 (RIPA)

Authorisation of intrusive surveillance 22

Authorisation of directed surveillance 23

Authorisation of covert human intelligence sources 24

Functions of the Intelligence Services

Commissioner

General 25

Identity Cards Act 2006 26

Prevention of Terrorism Act 2005 27

Guidance on Detention and Interviewing of Detainees by Intelligence Officers and Military Personnel 28

Discharge of my functions

Review of the Secretary of State's powers to issue warrants and grant authorisations 29 - 32

Part III of RIPA 33

Identity Cards Act 2006 34

Prevention of Terrorism Act 2005 35

Guidance on Detention and Interviewing of Detainees by Intelligence Officers and Military Personnel 36 - 45

Statistics 46

Intelligence and Security Committee 47

The International Intelligence Review Agencies 48

Conference of EU Parliamentary Committees for the oversight of intelligence and security services 49

Errors 50

The Investigatory Powers Tribunal

General 51

Statistics 52 - 53

Assistance to the Tribunal 54

Determination made in favour of six complainants by the Investigatory Powers Tribunal 55 - 57

Postscript 58

From: The Right Honourable Sir Peter Gibson

c/o the office of the Intelligence Services Commissioner
via 2 Marsham Street London SW1P 4DF
8th June 2011

I enclose my fifth, and final, Annual Report on the discharge of my functions under the Regulation of Investigatory Powers Act 2000. The Report covers the period 1 January 2010 to 31 December 2010.

It is for you to decide, after consultation with me, how much of the report should be excluded from publication on the grounds that any such publication is prejudicial to national security, to the prevention or detection of serious crime, to the economic well-being of the United Kingdom, or to the continued discharge of the functions of any public authority whose activities include activities that are subject to my review (section 60(5) of the Act). Following the practice of my predecessors and as I did in my first four reports, I have again taken the course of writing the report in two parts, the Confidential Annex containing those matters which in my view should not be published. I hope that you find this convenient.

Sir Peter Gibson

The Rt. Hon. David Cameron MP
10 Downing Street
London SW1A 2AA

INTRODUCTION

1. I was appointed the Intelligence Services Commissioner under section 59 of the Regulation of Investigatory Powers Act 2000 (RIPA) with effect from 1 April 2006. My appointment was initially for three years and was, from 1 April 2009, extended for a further period of three years to 31 March 2012. I stepped down as Commissioner on 31 December 2010 so that I could devote myself to the Detainee Inquiry which I have been asked to chair and a new Commissioner was appointed with effect from 1 January 2011.
2. I am required by section 60(2) of RIPA, as soon as practicable after the end of each calendar year, to report with respect to the carrying out of my functions as the Intelligence Services Commissioner. This is my fifth and final Report as Commissioner and it covers the period 1 January 2010 until 31 December 2010. In producing my report, I again propose to follow my predecessors' practice of writing the report in two parts, the main part for publication, the other part being a Confidential Annex to include those matters which cannot be fully explained without disclosing sensitive information.

RIPA

3. In my first four annual reports, and following the practice of my predecessors, I outlined the scope of each Part of RIPA. To assist those readers who may not be familiar with RIPA, it is, I think, useful to do so again.
4. Part I of RIPA is concerned with interception of communications and the acquisition and disclosure of communications data. RIPA incorporated a number of changes from the previous Act governing this area, the Interception of Communications Act 1985, which was substantially repealed, in part to extend the protection for human rights required by the coming into force of the Human Rights Act 1998 simultaneously with RIPA (and the substantive incorporation of the European Convention on Human Rights into domestic law), and in part to reflect the altered nature of the communications industry over recent years. Section 57 of RIPA provided for the appointment of an Interception of Communications Commissioner to review the Secretary of State's role in interception warrantry and the operation of the revised regime for acquiring communications data. The current Commissioner is Sir Paul Kennedy and, for the period covered by this Report, Part I of RIPA has been essentially his concern rather than mine.
5. Part II of RIPA provides a statutory basis for the authorisation and use by the intelligence agencies and certain other public authorities of covert surveillance (which covers both intrusive surveillance and directed surveillance) and also of covert human intelligence sources (undercover officers, agents, informants and the like). Part II regulates the use of these intelligence techniques and safeguards the public from unnecessary and disproportionate invasions of their privacy.

6. Part III of RIPA contains provisions designed to maintain the effectiveness of existing law enforcement powers in the face of increasing criminal and hostile intelligence use of encryption, the means of scrambling electronic information into a secret code of letters, numbers and signals. Encrypted information cannot be unscrambled without a decoding key. Part III introduced a power to require disclosure of protected (encrypted) data. Parliament approved a Code of Practice for the investigation of protected electronic information, enabling Part III to come into force on 1 October 2007. It gives power to specified authorities to require disclosure in respect of protected electronic information. The Code of Practice provides guidance for the authorities to follow. In a case where (1) a direction that the disclosure requirement can be complied with only by the disclosure of the key itself, and (2) the direction is given by a member of Her Majesty's forces who is not a member of a police force and otherwise than in connection with activities of members of Her Majesty's forces in Northern Ireland, notification of the direction must be given to the Commissioner. During the period of this Report I received no such notifications.
7. Part IV of RIPA provides for independent judicial oversight of the exercise of the various investigatory powers. My appointment under section 59 came within this Part of the Act. Part IV also established the Investigatory Powers Tribunal (the Tribunal) as a means of redress for those who complain about the use of investigatory powers against them. This Part also provides for the issue and revision of codes of practice relating to the exercise and performance of certain of the powers and duties provided for in Parts I to III of RIPA and in section 5 of the Intelligence Services Act 1994 (ISA). These codes were recently revised. The revised codes, which came into force on 6 April 2010, are available to the general public and are informative as to the relevant workings of RIPA and ISA in practice.
8. Part V of RIPA deals with miscellaneous and supplemental matters. Perhaps most relevant for present purposes is section 74 which amended section 5 of ISA as to the circumstances in which the Secretary of State may issue property warrants, in particular by introducing a criterion of proportionality.

FUNCTIONS OF THE INTELLIGENCE SERVICES

9. In my first four Annual Reports I outlined the functions of the three intelligence services. I think it appropriate and helpful to the reader if I re-state the specific statutory functions imposed upon each of the intelligence agencies and certain constraints to which all are subject.

The Security Service

10. The Security Service's functions are:
 - a. the protection of national security, in particular against threats from espionage, terrorism and sabotage, from the activities of agents of foreign powers, and from actions intended to overthrow or undermine parliamentary democracy by political, industrial or violent means;

- b. safeguarding the economic well-being of the UK against threats posed by the actions or intentions of persons outside the British Islands; and
- c. to act in support of the activities of police forces and other law enforcement agencies in the prevention and detection of serious crime.

Secret Intelligence Service (SIS)

11. The functions of SIS are to obtain and provide information and to perform other tasks relating to the actions or intentions of persons outside the British Islands either
- a. in the interests of national security, with particular reference to the UK Government's defence and foreign policies, or
 - b. in the interests of the economic well-being of the UK, or
 - c. in support of the prevention or detection of serious crime.

Government Communications Headquarters (GCHQ)

12. GCHQ's functions are:
- a. to monitor or interfere with electromagnetic, acoustic and other emissions and any equipment producing such emissions and to obtain and provide information derived from or related to such emissions or equipment and from encrypted material, but only in the interests of national security, with particular reference to the United Kingdom Government's defence and foreign policies, or in the interests of the UK's economic well-being in relation to the actions or intentions of persons outside the British Islands, or in support of the prevention or detection of serious crime;
 - b. to provide advice and assistance about languages (including technical terminology) and cryptography (and other such matters) to the armed services, the Government and other organisations as required.

General

13. The Security Service operates under the control of its Director General, SIS under the control of its Chief and GCHQ under the control of its Director. In broad terms each head of service is responsible for the efficiency of his agency and for ensuring that it only obtains and discloses information so far as is necessary for the proper discharge of its functions, and that it takes no action to further the interests of any UK political party. The Director General of the Security Service must ensure also that, when it acts in support of others in the prevention and detection of serious crime, its activities are co-ordinated with those of the police forces and other law enforcement agencies concerned.

14. In producing intelligence, both SIS and GCHQ respond to the requirements and priorities laid on them by Ministers and the Joint Intelligence Committee (JIC).
15. In the area of preventing and detecting serious crime the intelligence services work in support of the police and other law enforcement agencies to combat the threat of serious and organised crime from abroad. Each service has considerable expertise, experience and skills, which can prove and have proved invaluable in what are often complex operations.

THE ISSUE OF WARRANTS AND AUTHORISATIONS

Intelligence Services Act 1994 (ISA)

Section 5 property warrants

16. Section 5 of ISA as amended provides for the Secretary of State to issue warrants authorising entry on or interference with property or with wireless telegraphy (for convenience I shall refer to all such warrants as property warrants). Applications may be made by the Security Service, SIS or GCHQ in respect of their respective statutory functions. Additionally, where assisting the other intelligence services, the Security Service may apply on behalf of SIS and GCHQ, even if the proposed operation is outside the Security Service's own functions. This latter facility reflects the position that the Home Secretary or, in Northern Ireland, the Secretary of State for Northern Ireland, and the Security Service, should normally have responsibility for operations which may affect people in the United Kingdom. In the case of SIS's and GCHQ's anti-crime function, property warrants may not be issued for operations relating to property in the United Kingdom. Property warrants relating to property in the British Islands may, however, be issued to the Security Service in furtherance of its function under section 1(4) of the Security Service Act 1989 (SSA) as amended to act in support of the police or other enforcement agencies in the prevention and detection (as to the meaning of which see now section 1(5) of SSA and section 81(5) of RIPA) of serious crime (as to the meaning of which see section 81(2) and (3) of RIPA). Property warrants are usually signed by the Secretary of State under whose authority the agency acts, that is the Home Secretary for the Security Service and the Foreign Secretary for SIS and GCHQ. In their absence, however, or where otherwise appropriate, another Secretary of State can sign a warrant. Thus the Secretary of State for Northern Ireland usually signs warrants relating to Northern Ireland.
17. Section 5 of ISA, as amended first by section 2 of SSA and later by section 74 of RIPA, requires that before such a warrant is issued (to legitimise action by way of entry on or interference with property or with wireless telegraphy) the Secretary of State
 - a. must think the proposed action necessary for the purpose of assisting the particular intelligence agency to carry out any of its statutory functions as described above (section 5(2)(a)); must be satisfied that the action is proportionate to what it seeks to achieve (section 5(2)(b)); and

- b. must be satisfied that the agency has in place satisfactory arrangements for securing that it shall not obtain or disclose information except insofar as necessary for the proper discharge of one of its functions (section 5(2)(c)); and in deciding whether requirements (a) and (b) are satisfied, the Secretary of State must take into account whether what it is thought necessary to achieve by the action could reasonably be achieved by other means (section 5(2A)).

Section 7 authorisations

- 18. Under section 7 of ISA the Secretary of State (in practice normally the Foreign Secretary) may authorise SIS to carry out acts outside the United Kingdom which are necessary for the proper discharge of one of its functions. As with section 5 warrants, before the Secretary of State gives any such authority, he must first be satisfied of a number of matters:
 - a. that the acts being authorised (or acts in the course of an authorised operation) will be necessary for the proper discharge of an SIS function (section 7(3)(a));
 - b. that satisfactory arrangements are in force to secure that nothing will be done in reliance on the authorisation beyond what is necessary for the proper discharge of an SIS function (section 7(3)(b)(i));
 - c. that satisfactory arrangements are in force to secure that the nature and likely consequences of any acts which may be done in reliance on the authorisation will be reasonable having regard to the purposes for which they are carried out (section 7(3)(b)(ii)); and
 - d. that satisfactory arrangements are in force to secure that SIS shall not obtain or disclose information except insofar as is necessary for the proper discharge of one of its functions (section 7(3)(c)).
- 19. By virtue of section 7(4)(a) of ISA, authorisations may be given for acts of a specified description. These are known as class authorisations. Examples of the type of act which they could cover are the obtaining of documents which might involve theft, or payment to an agent which might involve bribery.
- 20. Section 7 was amended at the end of 2001 so as to apply also to GCHQ. The amendment was effected by section 116 of the Anti-Terrorism, Crime and Security Act 2001 and arose from a further consideration of the powers available to the intelligence services in the light of the events of 11 September 2001. Section 7 as amended allows GCHQ to be authorised to carry out acts outside the United Kingdom for the proper exercise of its functions in the same manner as SIS and (by subsection (9)) makes clear that activities taking place in the UK but intended only to relate to apparatus situated outside the UK are covered by section 7 authorisations.

21. The purpose of section 7 is to ensure that certain of SIS's (and since 2001 GCHQ's) activities overseas, which might otherwise expose its officers or agents to liability in the UK, are, where authorised by the Secretary of State, exempt from such liability. But I would emphasise that the Secretary of State before granting each authorisation must be satisfied of the necessity and reasonableness of the act authorised as set out in paragraphs 18 and 20 above.

Regulation of Investigatory Powers Act 2000

Authorisation of intrusive surveillance

22. Intrusive surveillance is covert surveillance undertaken in residential premises or a private vehicle for the purposes of a specific investigation or operation in a manner likely to reveal private information about someone (including particularly information relating to his private or family life). Typically it would involve a surveillance device in someone's house or car. There is provision requiring such action on the part of any of the intelligence services to be authorised by the Secretary of State by way of warrant (section 42 of RIPA). The Secretary of State can only authorise such action if he believes

- a. that it is necessary in the interests of national security, or for the purpose of preventing or detecting serious crime, or in the interests of the UK's economic well-being (sections 32(2)(a) and 32(3)); and
- b. that the authorised surveillance is proportionate to what it seeks to achieve (section 32(2)(b));

and, in deciding whether these two requirements are satisfied, the Secretary of State must take into account whether the information it is thought necessary to obtain by the surveillance could reasonably be obtained by other means (section 32(4)). Section 42(2) of RIPA allows a single warrant issued by the Secretary of State to combine both the authorisation of intrusive surveillance and a property warrant under section 5 of ISA.

Authorisation of directed surveillance

23. Directed surveillance is covert surveillance but not intrusive surveillance undertaken for the purposes of a specific investigation or operation in a manner likely to reveal private information about someone. Section 28 of RIPA provides for designated persons within each of the intelligence services (and within other public authorities including for present purposes the Ministry of Defence) to authorise such action but only if the authoriser believes that it is necessary in the interests of national security, for the purpose of preventing or detecting crime, or in the interests of the economic well-being of the UK, and that it is proportionate to what it seeks to achieve.

Authorisation of covert human intelligence sources

24. Covert human intelligence sources are essentially people who are members of, or act on behalf of, one of the intelligence services and are authorised to obtain information from people who do not know that this information will reach the intelligence service. Section 29 of RIPA provides for the conduct or use of a covert human intelligence source to be authorised by designated persons within the relevant intelligence service (or Ministry of Defence) provided that the authoriser believes that the authorisation is necessary in the interests of national security, for the purpose of preventing or detecting crime, or in the interests of the economic well-being of the UK, and that the conduct or use of the source is proportionate to what it seeks to achieve.

FUNCTIONS OF THE INTELLIGENCE SERVICES COMMISSIONER

General

25. Both I and my predecessor, Lord Brown, before me in our annual reports set out the functions of the Intelligence Services Commissioner. Despite that, it is apparent from the publicised criticisms of my appointment as chairman of the Detainee Inquiry that misconceptions as to the functions of the Commissioner still remain. The Commissioner does not have blanket oversight of the intelligence services and the Commissioner is not authorised to keep under review all activities of the intelligence services. Save where the Commissioner has been asked, and has agreed, to perform an extra-statutory function (see paragraph 28 below for one example), his functions are limited by the governing legislation and are consistent with the statutory requirement that the Commissioner should be or have been a senior judge. Those functions are:

- a. to keep under review the exercise by the Secretary of State of his powers to issue, renew and cancel warrants under sections 5 and 6 of ISA, i.e. warrants for entry on or interference with property or with wireless telegraphy, warrants in practice mainly issued by the Home Secretary or the Secretary of State for Northern Ireland;
- b. to keep under review the exercise by the Secretary of State of his powers to give, renew and cancel authorisations under section 7 of ISA, i.e. authorisations for acts done outside the UK, authorisations in practice normally issued by the Foreign Secretary;
- c. to keep under review the exercise and performance by the Secretary of State of his powers and duties under Parts II and III of RIPA in relation to the activities of the intelligence services and (except in Northern Ireland) of Ministry of Defence (MOD) officials and members of the armed forces, in practice the Secretary of State's powers and duties with regard to the grant of authorisations for intrusive surveillance and the investigation of electronic data protected by encryption;
- d. to keep under review the exercise and performance by members of the intelligence services of their powers and duties under Parts II and III of RIPA, in particular with regard to the grant of authorisations for directed surveillance and for the conduct and use of covert human intelligence sources and the investigation of electronic data protected by encryption;
- e. to keep under review the exercise and performance in places other than Northern Ireland by MOD officials and members of the armed forces of their powers and duties under Parts II and III of RIPA, in particular with regard to the grant of authorisations for directed surveillance and the conduct and use of covert human intelligence sources and the investigation of electronic data protected by encryption;

- f. to keep under review the adequacy of the Part III safeguards arrangements in relation to the members of the intelligence services;
- g. to keep under review the adequacy of the Part III safeguards arrangements in relation to officials of the MOD and members of the armed forces in places other than Northern Ireland;
- h. to give the Tribunal all such assistance (including the Commissioner's opinion on any issue falling to be determined by it) as it may require in connection with its investigation, consideration or determination of any matter; and
- i. to make an annual report to the Prime Minister on the carrying out of the Commissioner's functions, such report to be laid before Parliament.

Identity Cards Act 2006 (ICA)

26. By virtue of section 24 of ICA, the Commissioner was required to keep under review:
- a. the acquisition, storage and use made by the intelligence services of information recorded in the National Identity Register;
 - b. the provision of such information to members of the intelligence services in accordance with any provision made by or under ICA; and
 - c. arrangements made by the Secretary of State or any of the intelligence services for the purposes of anything mentioned in paragraph a or b.

Prevention of Terrorism Act 2005

27. Under section 13(3)(b) of the Prevention of Terrorism Act 2005 the Home Secretary is required to consult, amongst others, the Intelligence Services Commissioner before asking Parliament to extend the control order provision for a further period.

Guidance on Detention and Interviewing of Detainees by Intelligence Officers and Military Personnel

28. In his speech on 18 March 2009, the then Prime Minister made a statement to Parliament that he had asked the Intelligence Services Commissioner, and the Commissioner had agreed, to monitor compliance by intelligence officers and military personnel with the Consolidated Guidance on the standards to be followed during the detention and interviewing of detainees, and to report to the Prime Minister annually. The period of this extra-statutory oversight commenced on 6 July 2010 when the Consolidated Guidance to Intelligence Officers and Service Personnel (the Guidance) was published. Also published at that time was a Note of Additional Information from the Foreign Secretary, the Home Secretary and the Defence Secretary. I was not involved in the drafting of the Guidance or the Note.

DISCHARGE OF MY FUNCTIONS

Review of the Secretary of State's powers to issue warrants and grant authorisations

29. As I have already explained, property (and/or intrusive surveillance) warrants for the Security Service are generally issued by the Home Secretary and the Secretary of State for Northern Ireland and those for the SIS and GCHQ by the Foreign Secretary. Section 7 authorisations are normally granted by the Foreign Secretary. In carrying out my functions in 2010 I have made visits to the Security Service, SIS and GCHQ as well as the MOD, the Home Office and the Foreign and Commonwealth Office (FCO). I have also visited Belfast to examine authorisations relating to Northern Ireland. In the course of all these visits I have sought to satisfy myself that statutory conditions governing the exercise of investigatory powers have been met, in particular that the respective agencies' object in obtaining the information being sought has been in the discharge of one or more of its statutory functions; that the action in question has appeared to be both necessary for obtaining information which could not reasonably be obtained by other less intrusive means and also proportionate to what is sought to be achieved; and that such information is likely to be of substantial value.
30. I have read the files relating to a number of warrants and authorisations issued during the course of the year and some of those where the warrants or authorisations previously issued have been renewed or cancelled. I have questioned those involved in the preparation of the warrant or authorisation application, those who administer the system for issuing warrants and authorisations and those who have implemented the warrant or authorisation once it has been issued and acted on the information obtained under it. I have discussed with legal advisers in the relevant agency or department problems which have arisen.
31. I have questioned the Secretaries of State who normally issue warrants and authorisations and I am satisfied that they approach this part of their work with due care and that they do not simply rubber-stamp what is put before them for signature. However I recognise that the respective Secretaries of State must largely rely on the accuracy of the information contained in the application and the candour of those applying for authorisations. This depends essentially upon the integrity and quality of the personnel involved in the warrantry process both in the agencies and the government departments concerned and the care with which such applications are prepared and scrutinised. Because of the complexity of the legal requirements governing such warrants and authorisations, full use is made of the legal advisers in the agencies and departments with a view to ensuring due compliance with such requirements. I regard it as one of my functions to check these matters so far as I can. I have not seen any application made during 2010 which failed to set out properly the relevant circumstances and matters to be taken into consideration at the time of submission. Issues which arise and difficulties which may occur are fully discussed in a balanced way. Where the application relates to an overseas operation the view of the relevant UK Ambassador or High Commissioner is sought and given to the Secretary of State. I conclude that the respective Secretaries of State have properly exercised their statutory powers. So too I am satisfied that in 2010 the various members of the intelligence services

(and the MOD and armed forces insofar as they too come within the ambit of my review) have properly exercised their powers and performed their duties under Part II of RIPA.

32. Under section 60(1) of RIPA it is the duty of every member of each intelligence service, every official of the department of each relevant Secretary of State and every member of Her Majesty's forces to disclose or provide to me all such documents and information as I may require to enable me to carry out my oversight functions. I am, therefore, given very wide powers to ensure that I obtain all the assistance I need during my reviews. As in previous years, in 2010 I experienced full co-operation on the part of all those concerned. Members of the various agencies and departments of the armed forces at all levels have shown themselves willing to give me all possibly relevant information and, where appropriate, to share with me their concerns. Where they have discovered errors, they of their own initiative inform me of the errors. Moreover, when it is debatable whether or not an error has occurred, my attention has nevertheless been drawn to all the relevant circumstances. My experience of the relevant personnel in the course of the performance of my functions in 2010 leads me to conclude that they have performed their duties, in the areas over which I exercise oversight, conscientiously and well.

Part III of RIPA

33. As I have noted above, Part III of RIPA came into force on 1 October 2007. However, no notification of any directions to require disclosure in respect of protected electronic information has been given to me in 2010 and there has been no exercise or performance of powers and duties under Part III for me to review.

Identity Cards Act 2006 (ICA)

34. Following the repeal of the ICA, Identity Cards ceased to be valid legal documents on 22 January 2011 and the database has now been destroyed. I am not aware of any acquisition, storage and use made by the intelligence services pursuant to the ICA of information which had been recorded in the National Identity Register.

Prevention of Terrorism Act 2005

35. I was consulted by the Home Office about control orders in accordance with the Act on 7 January 2010 and, on 21 January 2010, I advised officials there that in the absence of viable alternative arrangements I did not object, in principle, to the extension of the control order regime for a further period of 12 months.

Guidance on Detention and Interviewing of Detainees by Intelligence Officers and Military Personnel

36. At the time when I agreed to monitor compliance with the Guidance I had not seen any draft of the Guidance and it was over 15 months before the Guidance was published and my monitoring duties began. The precise scope of those duties has been the subject of discussion between myself, my successor and the Cabinet Office. We have agreed that the compliance with the Guidance which the Commissioner is to monitor is limited to Agency/Ministry of Defence involvement with detainees held overseas by third parties. Oversight of detention operations carried out overseas by UK personnel does not fall within the scope of the role.

37. I am aware that there are two cases pending in the High Court in which challenges by way of judicial review to the legality of the Guidance have been made. I make no comment on what will be determined in those cases. I proceed on the basis that those to whom the Guidance is directed must comply with it and I report now on that compliance. In so doing and consistently with the practice followed by the respective statutory Commissioners of producing Confidential Annexes to the annual reports, I will not disclose publicly the number or details of those cases where Ministers have been consulted in accordance with the Guidance, but they are included in the Confidential Annex to this report (see further paragraph 47).
38. As was stated in the Note of Additional Information, the standards and approach outlined in the Guidance are consistent with the internal guidelines under which each of the intelligence services and the armed forces were already operating. The novelty of the Guidance lay in the publication of those standards and of that approach.
39. In accordance with the requirement of the Guidance, during the period from 6 July 2010 to 31 December 2010 SIS both separately and jointly with the Security Service sought the agreement of the Foreign Secretary with the concurrence of the Home Secretary to proceed or continue with operations involving or potentially involving detainees. It has no powers of detention. Several applications for sharing intelligence with foreign liaison services were made to Ministers. None was refused. Relevant staff have been receiving training on the Guidance with the use of workshops. These take the form of a series of increasingly complex scenarios and a question and answer session involving the Security Service's lawyers, senior managers and policy staff, thereby developing understanding of how to apply the Guidance in practice.
40. SIS also has no powers of detention. In the same period it sought from the Foreign Secretary and was granted permission to proceed with a number of operations involving or potentially involving detainees. I have considered the papers relating to such authorisations. They show that in the period between 6 July and 31 December 2010 SIS, in its submissions to the Foreign Secretary, has fully complied with the standards and approach authorised in the Guidance. The practice of SIS in that period has been to err on the side of caution in keeping the FCO informed in respect of matters relating to detainees.
41. SIS trains a wide range of its staff on its detainee policy (which conforms with the standards and approach of the Guidance) and gives more in-depth training to those closely involved in detainee-related activity to ensure that they have the detailed understanding required to implement the policy effectively.
42. The MOD through the armed forces is authorised to detain and to interview detainees in operational theatres. UK detention and tactical questioning and interrogation operations are governed through a comprehensive hierarchy of policy and doctrine which is under regular review. For example, the MOD Policy on Tactical Questioning and the MOD Policy on Interrogation refer specifically to the Guidance with which those Policies accord. Only authorised personnel may interview detainees. A detailed Standard Operating Instruction governs, among other things, detention procedures in Afghanistan. Joint Doctrine Publication 1 – 10 (on Prisoners of War, Internees and Detainees) emphasises that detainees must be treated humanely and prohibits acts of torture and cruel and degrading treatment.

43. UK military personnel have not solicited the detention of any individual by a liaison service nor sought intelligence from or participation in the interviewing of detainees whilst in the custody of a liaison service. Nor have UK personnel received unsolicited information obtained from a detainee in circumstances which raise concern. There was one instance where the UK military sought guidance on whether they could question an individual in the custody of a foreign military force but ultimately this was not pursued and no questioning took place.
44. All personnel deployed on operations overseas are required to complete training on the application of the Law of Armed Conflict and appropriate personnel are trained on the principles and procedures for the handling and treatment of detainees. When their role requires it, personnel will also receive detailed training in tactical questioning or interrogation. Consistently with the Guidance, personnel are taught the requirement to treat all captured persons humanely, irrespective of status, and to recognise what techniques in handling such persons are permitted and what is prohibited. There are regular reviews and scrutiny of the scope and effectiveness of this training through internal governance arrangements and third party inspections, such as by the International Committee of the Red Cross.
45. In conclusion, I am not aware of any failure by intelligence officers and military personnel to comply with the Guidance in the period between 6 July and 31 December 2010. It is properly recognised within the Security Service, SIS and the MOD that compliance with the Guidance is mandatory and that personnel must be trained accordingly. However, satisfying the Commissioner of due compliance is a new burden on agencies and the MOD, and I do not doubt that my successor as Commissioner will wish to develop, in cooperation with the agencies and the MOD, better ways whereby the Commissioner will be provided with and can check on the information he needs to be able to report on such compliance.

Statistics

46. I will not disclose publicly the numbers of warrants or authorisations issued to the security and intelligence agencies or the armed forces. That is because it would, I believe, assist those unfriendly to the UK were they able to know the extent of the work of the Security Service, SIS, GCHQ and the armed forces in fulfilling their functions. The figures are, however, of interest and I have included them in the Confidential Annex to this report.

Intelligence and Security Committee (ISC)

47. I met the ISC on 12 January 2010 for an informal discussion about the Guidance (then in draft) concerning my anticipated role once the Guidance was published.

The International Intelligence Review Agencies Conference

48. Along with the Interception of Communications Commissioner, I attended the seventh international biennial conference of the International Intelligence Review Agencies in Sydney, Australia between 21– 24 March 2010. The aim of the Conference was for the delegates to explore and exchange views on various principles and practices and compare models of accountability. These issues ranged from dealing with providing assurance of effective review to whether review activities should be retrospective or focus on current operations. Members of the ISC were also present. There were delegates from a number of countries from around the world – including Belgium, Canada, New Zealand, Poland, South Africa and the United States of America. I found the discussions during the conference and in the course of informal discussions to be interesting, informative and valuable.

Conference of EU Parliamentary Committees for the oversight of intelligence and security services

49. I was invited by the Belgian hosts of the Sixth Conference of the Parliamentary Committees for the oversight of intelligence and security services of the European Union Member States to be a speaker at that conference held in Brussels between 29 September and 1 October 2010. I addressed the conference on oversight arrangements in the UK and the role of the Intelligence Services Commissioner.

ERRORS

50. 28 errors in respect of RIPA authorisations and ISA warrants were made and reported to me in 2010. Six errors resulted from a delay within one Government Department in dealing with the replacement of one warrant relating to six individuals with six applications for warrants, one for each individual. It is not possible for me to say anything further about the 28 errors without revealing information of a sensitive nature, but I have referred to them in more detail in the Confidential Annex. However, I can report that the majority of the errors occurred in respect of surveillance and interference with property for which there was no valid authorisation or warrant in force for a comparatively short time. Every such breach is a matter for regret. I have been given a full description of, and explanation for, each error. All the errors can properly be categorised as minor. None of the cases involved bad faith or any deliberate departure from established practices. In all cases, following the discovery of the errors, internal procedures have been reviewed and, where possible, strengthened with a view to minimising the risk of a future recurrence.

THE INVESTIGATORY POWERS TRIBUNAL

51. The Tribunal is not obliged by statute to report on its activities but the practice has been for the Interception of Communications Commissioner and for the Intelligence Services Commissioner to publish in their respective annual reports certain statistics in respect of the Tribunal.

Statistics

52. The Tribunal, which was established by section 65 of RIPA and came into being on 2 October 2000, assumed responsibility for the jurisdiction previously held by the Interception of Communications Tribunal, the Security Service Tribunal and the Intelligence Services Tribunal and the complaints function of the Commissioner appointed under the Police Act 1997 as well as for claims under the Human Rights Act. The President of the Tribunal is Lord Justice Mummery and Mr. Justice Burton is its Vice-President. In addition, eight senior members of the legal profession served on the Tribunal in 2010, of whom one stepped down in April 2010.
53. The Tribunal received 164 new applications and completed 208 cases during the calendar year 2010. 40 cases were carried forward to 2011.

Assistance to the Tribunal

54. Section 57(3) of RIPA requires the Commissioner to give all such assistance to the Tribunal as the Tribunal may require in relation to investigations and other specified matters. My assistance was not sought by the Tribunal during 2010.

Determinations made by the Tribunal in favour of complainants

55. During 2010 the Tribunal made six determinations in favour of complainants. Since its inception the Tribunal has now upheld ten complaints. One of the upheld complaints was made by a husband and wife who lodged a joint complaint. The Investigatory Powers Tribunal Rules 2000 prohibit me on the grounds of confidentiality from disclosing specific details about the complaint made by the husband and wife, but it is sufficient to say that the conduct complained of was not authorised under the relevant provisions of RIPA nor was it a complaint against any of the agencies or persons over whom I exercise oversight.
56. Complaints were also successfully made by five members of the same family and were the subject of an open hearing in November 2009. The case was widely reported in the media. It involved directed surveillance carried out by Poole Borough Council of a family in connection with an application made by parents for a school place for their youngest child. The Tribunal found that the conduct complained of was not authorised in accordance with the relevant provisions of RIPA. The complainants made no application for remedies and none was awarded.

57. The fact that these cases were upheld has influenced changes in guidelines provided to Local Authorities on the use of directed surveillance and proposed legislation to change the procedures on the authorisation of this type of surveillance.

POSTSCRIPT

58. In signing off this fifth and final report, I would like to welcome warmly my successor, Sir Mark Waller, who was appointed as Intelligence Services Commissioner with effect from 1 January 2011. It has been a privilege for me to serve as Commissioner.



Published by TSO (The Stationery Office) and available from:

Online

www.tsoshop.co.uk

Mail, telephone, fax and email

TSO

PO Box 29, Norwich NR3 1GN

Telephone orders/general enquiries: 0870 600 5522

Order through the Parliamentary Hotline Lo-Call 0845 7 023474

Fax orders: 0870 600 5533

Email: customer.services@tso.co.uk

Textphone: 0870 240 3701

The Parliamentary Bookshop

12 Bridge Street, Parliament Square,

London SW1A 2JX

Telephone orders/general enquiries: 020 7219 3890

Fax orders: 020 7219 3866

Email: bookshop@parliament.uk

Internet: <http://www.bookshop.parliament.uk>

TSO@Blackwell and other accredited agents

Customers can also order publications from:

TSO Ireland

16 Arthur Street, Belfast BT1 4GD

Telephone orders/general enquiries: 028 9023 8451

Fax orders: 028 9023 5401



HO_01054_G