

Security Service Bill

[Bill 38 of 1995-96]

Research Paper 96/2

4 January 1996



This paper seeks to explain the background to the *Security Service Act 1989* and the effect of the amendments to the Act proposed in the current Bill. These amendments would give the Security Service an intelligence role in relation to serious crime. It also looks at issues of accountability and oversight of MI5 and the police.

Mary Baber, Helena Jeffs
Home Affairs Section

House of Commons Library

Library Research Papers are compiled for the benefit of Members of Parliament and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public.

CONTENTS

	Page
I Background	5
A. The Security Service Act 1989	5
1. Functions	5
2. The Director-General	6
B. Organisation and Staffing of the Security Service	6
C. Allocation of the Service's Resources	8
D. Warrants	10
II The Security Service Bill [Bill 38 of 1995-96]	11
III Current national arrangements for developing and assessing information and intelligence on serious crime, including organised crime	13
IV Work of the Security Service and the Police in relation to Terrorism	19
V Role of the Security Service in Criminal Matters	21
VI Complaints, Accountability and Oversight	28
A. Police Powers and Accountability	28
B. Interception of Communications	29
C. The Security Service Commissioner and the Security Service Tribunal	29
D. The Intelligence and Security Committee	33
Appendix: Relevant Library Papers	39

I Background

A. The Security Service Act 1989

1. Functions

The broad purposes of the 1989 Act were to put the Security Service (MI5) on a statutory footing and to define its functions and management. It also provided for the issuing of warrants by the Secretary of State for entry on and interference with property so that such actions will not be unlawful. In addition, the Act provided for a Commissioner to review the issuing of warrants and for a Tribunal to consider complaints against the Service. The Act replaced the published 1952 Directive from the Home Secretary to the Director-General of the Security Service [the "Maxwell-Fyfe Directive"].

The main functions of the Service are set out in **section 1** of the Act. The first of these functions is set out in **section 1(2)** as the "protection of national security". National security is not defined in the Act but this subsection provides that it includes "protection 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," (ie. including protection against subversion). The second function of the Service is set out in **section 1(3)** and is "to safeguard the economic well-being of the United Kingdom against threats posed by the actions or intentions or persons outside the British Islands". Essentially MI5's role is to collect intelligence. In her BBC Dimpleby lecture the Director-General of the Security Service, Stella Rimington, said "MI5 has no executive powers, so we pass information on to others and discuss with them what action they can take - to the police, for example, so that arrests can be made; or to the Home Office or the Foreign Office, so that terrorists or intelligence officers can be deported or expelled".¹

The 1989 Act did not identify or amend the powers of any other organisation, such as the police. A Home Office circular to the police on the 1989 Act² specifically stated that the Act does not "seek to amend the present nature or level of co-operation between the security service and police forces, in particular police Special Branches".³

¹ *Security and Democracy - Is there a conflict?* - The Richard Dimpleby Lecture 1994, p10

² Circular 89/89

³ para 3

2. The Director-General

Section 2 of the Act provides for the operations of the Service to continue to be under the control of a Director-General appointed by the Secretary of State. In practice the Director-General is appointed by the Home Secretary in consultation with the Prime Minister. By **section 2(2)**⁴ the Director-General is responsible for the efficiency of the Service and is under a duty to ensure that there are arrangements for securing that no information is obtained by the Service unless necessary for the proper discharge of its functions and that none is disclosed except for that purpose or for the purpose of preventing or detecting serious crime or for the purpose of any criminal proceedings. The Director-General is also specifically required to ensure that the Service does not take any action to further the interests of any political party.⁵

The Director-General is required to make an annual report on the work of the Service to the Secretary of State (ie. the Home Secretary) and the Prime Minister. The Director-General also has the right of direct access to the Prime Minister.⁶

B. Organisation and Staffing of the Security Service

The organisation and staffing of MI5 was described in the 1993 booklet on *The Security Service*⁷:

The Management of the Service

The Director General has two deputies who are responsible for Operations and Administration respectively and are appointed after consultation with the Home Secretary. There are five Intelligence Branches as well as Protective Security, Personnel and Support Branches, each of which is headed by a Director. There is also a Legal Adviser who is responsible to the Director General. The Director General, Deputy Directors General and Directors meet regularly as the Management Board of the Service to consider policy and strategic issues.

⁴ as amended by the *Intelligence Services Act 1994*, section 11(2) and Schedule 4, para 1

⁵ section 2(2)(b)

⁶ section 2(4)

⁷ pp9-10

Finance and Resource Management

An important part of the brief of the Board is the management of the Service's financial resources. Expenditure provision for the Service is determined by arrangements which are similar to those which apply to Government departments. As part of the public expenditure survey the Service submits a detailed plan showing proposed resources, objectives and performance measures. These are scrutinised by a senior official committee in Whitehall which reports to Ministers who agree the appropriate level of funding for the Service. Within the Service a group of auditors reports to the Director General on the effectiveness of internal control mechanisms. The Comptroller and Auditor General certifies the accounts for all votes that carry Service expenditure.

Staffing

The Service employs about 2000 people of whom just over half are women, while about the same proportion is under the age of forty.

Staff are assigned to one of thirteen occupational groups within the individual Directorates. In many of the posts - for example, secretarial, clerical and administrative - much of the work is similar to that carried out in any Government department. However, there are a number of functions which require specialised skills.

The General Intelligence group (GI), which has just under 340 staff, is responsible for much of the Service's investigation, assessment and policy work, as well as operational tasks. These include the recruitment of agents, as well as interviews with members of the public who can provide information on target organizations, or on individuals under investigation. GI staff are also primarily responsible for contact with officials elsewhere in Whitehall, as well as with police forces and other services overseas.

Recruitment, Training and Development

The Service recruits all its own staff and, as might be expected, each candidate is vetted to high levels of security clearance.

The Civil Service Selection Board contributes to the process of selecting candidates to the GI, whose members are usually graduates. For example, over recent years those who have joined the GI were drawn from more than 30 different universities, with approximately a quarter coming from Oxford and Cambridge. Although many are recruited shortly after leaving higher education, some join at more senior grades, having been selected because they can bring to the Service wider experience obtained elsewhere, for example, in the professions, business or the Armed Services.

Many staff, particularly those in the GI, are moved regularly during their careers to different areas of work. This policy ensures they acquire a range of experience and complements the extensive training available, most of which is carried out internally, although considerable use is made of outside consultants and institutions. Staff also have the opportunity to study for additional educational or other external qualifications.

The Staff Counsellor

All staff have access to the external Staff Counsellor for the security and intelligence services, Sir Philip Woodfield, who was appointed by the Prime Minister in 1987. He is available to be consulted by any member of the Service who may have anxieties about the nature of his or her work.

C. Allocation of the Service's Resources

In the 1993 booklet the current approximate allocation of the Service's resources was set out as follows⁸:

Subversion	5%
Counter espionage and counter proliferation	25%
Counter terrorism : International	26%
Irish and other domestic	44%

In her 1994 Dimpleby Lecture the Director General of MI5 said that in the post-Cold War era countering espionage takes up half the resources it did three years before.⁹ She also said that the threat from subversion has "diminished dramatically" over the last ten years.¹⁰ The Service's focus has then been concentrated on terrorism but since the IRA ceasefire, work in this area has been diminishing.

There has been speculation for some time that MI5 would seek a greater role in relation to organised crime. However, in her introduction to the 1993 booklet the Director General of MI5 said that there were no plans for the Service to become involved in the investigation of, for example, the misuse of illegal drugs, or organised crime.¹¹ Again in her 1994 Dimpleby Lecture she said¹²:

"The Security Service Act makes clear that the work of the Service must be strictly limited to countering only threats to national security. We are not involved in countering drug trafficking or organised crime, and we would only become involved if they came to pose such a threat to this country."

Following the IRA ceasefire from 1 September 1994, the police began to express concern that the Security Service would seek to work in the areas of drugs and organised crime. The Director-General said on a number of occasions that by virtue of the 1989 Act the Service could work in those areas only if they presented a threat to national security or the economic well-being of the United Kingdom.

⁸ p12

⁹ *Security and Democracy - Is There a Conflict?* - The Richard Dimpleby Lecture 1994, p4

¹⁰ p6

¹¹ p5

¹² p9

However in November 1994 the *Times* reported on a lecture given by the Director-General in which she was reported to have indicated that she saw benefits in closer links with the police.¹³ It was then suggested in the *Observer* that MI5 had drawn up a position paper arguing that police work in intelligence against drugs and organised crimes was ineffective and badly co-ordinated and that Ministers should give the Service lead responsibility for intelligence in these areas.¹⁴

On 16 May 1995 the Home Secretary said in a Written Answer in response to questions from Mike O'Brien about the future role of MI5 in relation to drug trafficking and organised crime¹⁵:

Mr. Howard: The functions of the Security Service are set out in section 1 of the Security Service Act 1989. The Government has no plans to amend that legislation. If, however, resources were available to the Security Service and if, within their statutory functions, a useful role were identified for them in support of the police and other law enforcement agencies in their work to counter serious crime, I would be ready to consider such proposals.

Speculation continued until the Prime Minister's speech to the Conservative Party Conference on 13 October in which he announced the setting up of a national squad to deal with organised crime. This has been seen as a precursor to an FBI-type agency for the United Kingdom. In addition he announced legislation to enable the Security Service to become involved in this area. He said:

"But all our available skills are not yet involved in this battle (ie. the battle against drugs and organised crime). For many years the Security Service has protected us against espionage and terrorism. But they can't help the police because it is illegal for them to do so. I think that's absurd. And in an age when our children are more likely to be killed by a drug dealer than by an enemy missile, I think it's indefensible. So this autumn, we will change the law. It's time to let the Security Service into the battle for the public and against organised crime."

¹³ "MI5 supports closer links with Police", *Times* 4.11.94

¹⁴ "Drugs police set to spike MI5 guns", *Observer* 6.11.94

¹⁵ HC Deb vol 260 c191W 16.5.95

Issues of differing systems of accountability and warrant authorisation procedures and relations with the police remain contentious as highlighted by the Intelligence and Security Committee (see page 24).

D. Warrants

Section 3 of the *Security Service Act 1989* gave the Secretary of State (or, in certain specified circumstances, a senior civil servant) statutory powers to issue warrants authorising entry on, or interference with specified property by the Security Service. The section was repealed and replaced by **sections 5 and 6** of the *Intelligence Services Act 1994*, which provide for the issuing of warrants by the Secretary of State (or, in certain circumstances, a senior civil servant) authorising entry on or interference with property or with wireless telegraphy by the Security Service (MI5), the Intelligence Service (MI6) or GCHQ, in the following circumstances:

- (2) The Secretary of State may, on an application made by the Security Service, the Intelligence Service or GCHQ, issue a warrant under this section authorising the taking, subject to subsection (3) below, of such action as is specified in the warrant in respect of any property so specified or in respect of wireless telegraphy so specified if the Secretary of State
- (a) thinks it necessary for the action to be taken on the ground that it is likely to be of substantial value in assisting, as the case may be,-
 - (i) the Security Service in carrying out any of its functions under the 1989 Act; or
 - (ii) the Intelligence Service in carrying out any of its functions under section 1 above; or
 - (iii) GCHQ in carrying out any function which falls within section 3(1)(a) above; and
 - (b) is satisfied that what the action seeks to achieve cannot reasonably be achieved by other means; and
 - (c) is satisfied that satisfactory arrangements are in force under section 2(2)(a) of the 1989 Act (duties of the Director-General of the Security Service), section 2(2)(a) above or section 4(2)(a) above with respect to the disclosure of information obtained by virtue of this section and that any information obtained under the warrant will be subject to those arrangements.

The statutory functions of the Intelligence Service, which are set out in **section 1** of the *Intelligence Services Act 1994*, include obtaining and providing information and performing other tasks relating to the actions or intentions of persons outside the British Islands "in support of the prevention or detection of serious crime."¹⁶ Similarly the functions of GCHQ,

¹⁶ Section 1(2)(c)

set out in **section 3** of the 1994 Act, are only exercisable in certain circumstances, including "in support of the prevention and detection of serious crime."¹⁷

The Security Service's statutory functions do not currently include acting "in support of the prevention and detection of serious crime" and **section 5(3)** of the *Intelligence Services Act 1994* provides that a warrant issued under that Act "authorising the taking of action in support of the prevention or detection of serious crime may not relate to property in the British Islands." Thus under the current arrangements only the police, other law enforcement agencies such as HM Customs and Excise and other bodies with statutory powers of entry are able lawfully to enter or interfere with property within the British Islands¹⁸ for the purposes of preventing or detecting serious crime.

II The Security Service Bill [Bill 38 of 1995-96]

Clause 1 of the *Security Service Bill* seeks to add the following provision to the list of functions of the Security Service set out in **section 1** of the *Security Service Act 1989*:

"(4) It shall also be the function of the Service to act in support of the prevention and detection of serious crime."

Clause 1 is also designed to require the Director-General, in addition to his existing duties under **section 2(2)** of the 1989 Act, to ensure that there are arrangements for co-ordinating the activities of the Service in support of the prevention and detection of serious crime with the activities of police forces and other law enforcement agencies.

Clause 2 of the *Security Service Bill* substitutes a new **section 5(3)** of the *Intelligence Services Act 1994* (prohibition of the issuing of warrants which authorise the entry on or interference with property or with wireless telegraphy in the British Islands in support of the prevention or detection of serious crime) which would maintain this prohibition as far as warrants issued on the application of the Intelligence Service or GCHQ are concerned. The new provision is, however, designed to permit the issuing of warrants on the application of the Security Service, authorising entry on or interference with property or with wireless telegraphy in the British Islands, for the purposes of the Service's new additional function of acting in support of the prevention and detection of serious crime. The Secretary of State will be able to issue such a warrant only if it authorises the taking of action in relation to particular types of conduct, which are described as follows:

¹⁷ Section 3(2)(c)

¹⁸ that is, the United Kingdom, the Channel Islands and the Isle of Man - *Interpretation Act 1978* s.5, Sch.1.

Research Paper 96/2

(3B) Conduct is within this subsection if it constitutes (or, if it took place in the United Kingdom, would constitute) one or more offences, and either-

- (a) it involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose; or
- (b) the offence or one of the offences is an offence for which a person who has attained the age of twenty-one and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of three years or more."

This is broadly similar to the definition of conduct which is to be regarded as "serious crime" for the purposes of the issuing of warrants under the *Interception of Communications Act 1985*. This Act authorises the Secretary of State to issue warrants to the police, the security and intelligence services and other law enforcement agencies, bodies and persons within the UK, enabling them to intercept communications transmitted by post or through a public telecommunication system. The purposes other than the prevention of detection of serious crime for which such warrants may be issued are where they are considered necessary in the interests of national security, and for the purpose of safeguarding the economic well-being of the UK.¹⁹

The Interception of Communications Act 1985 and the current *Security Service Bill* thus endeavour to define what amounts to serious criminal conduct for the purposes of invoking powers to issue warrants to intercept communications or enter or interfere with property or with wireless telegraphy within the UK or the British Islands. There is however no definition of "serious crime" where that term is used to describe one of the existing functions of the Intelligence Service or GCHQ, or the proposed new function of the Security Service.

The financial memorandum to the Bill states that the cost of the Security Service's involvement in this area will be met from within existing provision. MI5's current annual budget is about £150 million.

¹⁹ *Interception of Communications Act 1985*, section 2(2)

III Current national arrangements for developing and assessing information and intelligence on serious crime, including organised crime

As the Home Office explained in its evidence to the Home Affairs Committee for its 1994 report on organised crime, there is no legal definition of "organised crime" in UK law, nor is there an internationally recognised definition. The Home Office set out its view of the matter and described the definition of "organised crime" used by the National Criminal Intelligence Service (NCIS) as follows²⁰:

4. Organised crime is a popular and widely used expression. It is not, however, defined in the United Kingdom law. Nor is there any internationally recognised definition of organised crime. A precisely worded, formal definition may, however, be neither necessary nor helpful in tackling organised crime. Organised crime describes a way of operating rather than a specific criminal activity. In practice, organised criminal groups become involved in a range of illegal activities, none of which are exclusive to them. Evidence suggests that, internationally, the activities of organised criminal groups include drug trafficking, arms dealing, disposal of art objects, organised vehicle theft, smuggling of immigrants, environmental crime and financial crime. Organised crime contributes to the overall level of serious crime and is a part of it. More important than a formal definition of organised crime is, therefore, an understanding of the features that characterise the way in which organised criminal groups operate. It is these distinguishing features that help determine whether and how any special measures should be taken in response to organised criminal activity to ensure that serious crime is tackled effectively.

5. Although these distinguishing features are not self evident-any form of serious crime, particularly financial crime, is, for example, likely to be sophisticated and well planned-there is now, within Europe, a broad understanding of what these distinguishing features are. They are reflected in the following working definition of organised crime which has been developed by NCIS.

NCIS Definition

"Organised crime constitutes any enterprise, or group of persons, engaged in continuing illegal activities which has as its primary purpose the generation of profits, irrespective of national boundaries."

²⁰ HC 18-II Session 1994-95 pp 77-78

Research Paper 96/2

6. The characteristics of organised crime which are evident in the NCIS definition are as follows. Organised Crime:

- is a group activity;

Crime carried out by individuals, whatever its nature and however large its scale, does not constitute organised crime.

- its primary purpose is financial profit;

Financial profits can lead to power and influence but power and influence are sought primarily as a means of furthering criminal activities and not to achieve political aims. Terrorism, for example, starts from a very different motive from the generation of profits and does not in itself constitute organised crime.

- it is criminal activity which is long term and continuing;

Highly organised and sophisticated criminal groups that come together for the purpose of committing a single offence do not constitute organised crime. Organised criminal groups have the capacity to continue their activities beyond the commission of a single offence and irrespective of loss of members through, for example, arrest or death.

- it is criminal activity which is carried out irrespective of national boundaries;

Organised criminal activity does not necessarily cross national boundaries but it does so increasingly. To some extent this is part of a general pattern. As people travel more freely and business becomes more international, the potential for crime of all kinds to extend across national borders inevitably increases. However, the scale and sophistication of organised criminal groups mean that such groups are particularly well placed to exploit opportunities for cross border activities whether by movement of people, transportation of goods or use of international money markets. Drug trafficking, when it involves the growth or manufacture of drugs in one country; the transportation of drugs through a number of other countries for sale in a final destination country; and the hidden movement of financial profits through, international money markets, is an example of organised criminal activity.

7. A number of other characteristics are implicit in the NCIS definition of organised crime. Organised crime:

- is large scale;

If illegal activities are continuing, concerned with the generation of profits and carried out by a group of individuals or an enterprise, it is likely that the activity will be large scale. Small scale activities of a group of employees who over a period of time operate together to steal goods from their employer to sell to friends and acquaintances would not, for example, generally be regarded as constituting organised crime.

- generates proceeds which are often made available for licit use;

Whereas small scale profits can be made use of as cash the use of large-scale profits requires a more sophisticated method of disposal. Money laundering, investment in licit business and corruption or intimidation of lawyers, accountants, law enforcement officials and others to achieve these ends frequently accompany organised crime.

- is carried out by groups that have some form of discipline and structure;

It is unlikely that large scale, continuing criminal activity can be carried out successfully by groups without some degree of structure, discipline and control. Organised criminal groups are more than a loose criminal association of people who come together for a short period of time or for a specific purpose. They are groups with a formal structure and identity. Violence and intimidation, as well as group loyalty and appeal to common values, are often used to maintain this structure.

8. The seven characteristics reflected in the NCIS definition are evident in the working definitions of organised crime that have been adopted by other European police and intelligence agencies (two examples are given at Annex B). They are commanded to the Committee as reflecting a common understanding of the distinguishing features of organised crime that is based on the experience of police and judicial experts across Europe.²¹

Since its establishment in April 1992 the NCIS has been the central organisation responsible for developing and assessing information and intelligence about organised crime and other forms of serious crime on a national basis and passing information on, where appropriate, to local police forces, government departments and government agencies. The British office of Interpol is located there and NCIS will also be the national unit linking the UK with Europol.

The component groups which make up NCIS were described in the Home Office's evidence to the Home Affairs Committee as follows:²²

37. NCIS brought together, under one umbrella, a number of existing organisations including the National Drugs Intelligence Unit (NDIU). It is funded by the Home Office, under Common Police Service arrangements, as a central service. Its staff (currently 441 in total) are a mix of police officers, customs officers, Home Office, local authority and other civilian staff. It includes a unit of some 13 staff whose sole responsibility is the development and assessment of intelligence on organised crime (the Organised Crime Unit) and a unit of 74 staff responsible for intelligence on drug trafficking and financial crime (the Drugs Division which includes the Financial Intelligence Unit). The Financial Intelligence Unit is the central point for receipt of all disclosures of suspicious financial transactions under the Drug Trafficking Offences Act 1986 and the Criminal Justice Acts 1988 and 1993. It receives, researches and, where appropriate, develops these disclosures and then disseminates them to the relevant police and Customs operational units for investigation. Together the units that

²¹ HC 18-II Session 1994-95, pp 77-78

²² HC 18-II Session 1994-95 p 83

Research Paper 96/2

have been established within NCIS provide an important focus for the assessment and development of intelligence concerning organised crime. The principal users as well as suppliers of intelligence to NCIS are the seven Regional Crime Squads.

38. NCIS also liaises with a number of government departments and agencies including HM Customs and Excise, the Immigration Service, the Gaming Board and the Foreign and Commonwealth Office as well as with foreign law enforcement agencies. A member of the Immigration Service is currently attached to the NCIS Organised Crime Unit and the Immigration Service is also giving assistance to the NCIS Drugs Division and to the Metropolitan Police in their efforts to combat Caribbean crime.

The Home Office also made the following observations about the co-ordinated approach to collecting intelligence on organised crime:²³

40. NCIS provides a focus for the development and assessment of intelligence on all forms of organised crime. A number of different groups and committees also provide a forum for exchange of information and for exchanging experience, making best use of the enforcement provisions available and developing policy in relation to organised criminal activity.

41. The Government's central intelligence machinery provides a network for exchange of information, primarily on drug trafficking, and a forum for discussion and assessment of this information. This network includes representatives from all the relevant departments and agencies, including NCIS.

42. A separate network exists in relation to financial fraud. The recently established Financial Fraud Information Network (FFIN) provides a framework for pooling and disseminating information about possible cases of major financial fraud and other serious criminal activity which pass through and make use of the financial system. It is intended to help determine future action against fraud generally and in relation to specific cases. The group includes representatives from relevant government departments, the police, NCIS and the banking and financial service regulators.

43. The Home Office and other government departments also participate in the Metropolitan Police led Joint Action Group on Financial Crime and the Metropolitan Police led Joint Action Group on Organised Crime. Both are informal groups which provide an opportunity for exchange of information and the sharing of experience to help increase understanding of both organised crime and financial crime.

²³ HC 18-II Session 1994-95 pp 83-4

The Home Office concluded its evidence to the Home Affairs Committee by noting that it saw its priorities in relation to the threat of organised crime as:²⁴

- assessing the work of the recently formed NCIS Organised Crime Unit to ensure, in particular, the effective collection, assessment and dissemination of intelligence on organised crime;
- monitoring the effectiveness of the co-ordination between government departments and agencies in dealing with organised crime; and
- working within a European forum to implement the recommendations of the *Ad Hoc* Working Group on Organised Crime to help ensure effective co-operation against international organised crime.

In its report, the Home Affairs Committee commented on proposals for the creation of a more formal co-ordinating body and further suggestions that the Security Service might become more involved in dealing with organised crime.²⁵

90. There were some calls for a more formal coordinating body to be established. Mr Pacey of NCIS took the view that 'It is becoming necessary to have a joint intelligence group" which would undertake nationally the work that the Metropolitan Police group was successfully doing for London. Such a group should bring together the intelligence providers and analysts with the operators, enabling targets and a particular lead agency to be identified; any necessary further steps could then be determined. The police memorandum called for something similar, suggesting that "There are many examples of excellent bilateral and multilateral co-operation in tackling major and organised crime activity but there is a need to turn this largely ad hoc activity into a more formalised approach". Dr Barry Rider has also proposed that a new body (a National Crimes Authority) should be created which would coordinate intelligence information, identify threats, develop strategic plans, direct and support multi-agency investigations; the Authority's work would not be confined to the criminal sphere, unlike NCIS which would continue to be the main national authority for the collection of criminal intelligence.

91. The Home Office witness conceded that there was "no single body" which exercised a general coordinating role but felt that there was nevertheless adequate central machinery, referring to the existing joint intelligence machinery, NCIS, and the Metropolitan Police's joint action group. He suggested that the way forward was through development of existing co-operation. Customs & Excise also referred to making progress through "improving the relationships between existing law enforcement agencies, and recognising the contribution each agency makes in combatting organised crime" . We would be reluctant to encourage the creation of yet another body to co-exist with the many existing ones. The Regional Crime Squads suggested that progress could be made on a less formal level, with multi-agency task

²⁴ HC 18-II Session 1994-95 p 87

²⁵ *Organised Crime* Home Affairs Committee Third Report Session 1994-95 HC 18-I pp xxxiii-xxxiv

Research Paper 96/2

forces being set up on a case by case basis and lasting only as long as is required'. We conclude that there is a considerable need for coordination in intelligence sharing and operational action between the various agencies and that this must be achieved through further improvement and development of existing structures rather than the creation of a new one. In a recent speech, the Director General of NCIS, speaking particularly in the context of financial investigations, spoke against creating "another tier of policing" but laid some stress on the need for "a multi-agency approach involving lawyers, accountants, tax experts, and professionals from the banking industry" as well as law enforcement agencies. We consider this approach to be the right one and emphasise the importance of ensuring that all the necessary disciplines and skills are readily available in any and every agency where they are needed.

92. It has also been widely reported that because of a reduced workload, following developments in Eastern Europe and in Northern Ireland, the Security Service has sought to become more involved in combatting organised crime. We did not take any evidence specifically on this issue and therefore we do not feel able to make a recommendation. Nevertheless we feel that while the deployment of additional resources against organised crime would be welcome, the prime responsibility should always rest with the police and other bodies openly accountable to the public.

The Committee stressed the importance of establishing institutions and bodies which were able to obtain and analyse information effectively:²⁶

53. A major recurring theme in the evidence we received was the critical role in the fight against organised and serious crime played by intelligence. The establishment of effective institutions and bodies, nationally and internationally, with the capability to obtain and analyse information was thus of the highest importance. Similarly the powers available to the different bodies, both in respect of technical surveillance measures and in respect of legal powers to demand papers or statements in response to questions had to be considered. The way in which information (for example intelligence submitted by informants) could be used in a prosecution also had to be examined. Intelligence from the financial world, about the use made of the proceeds of criminal activity, could potentially be a particularly effective tool: as witnesses stressed to us, organised crime was all about the generation of profits and the way in which these proceeds were used was often the most visible - and therefore traceable - part of the whole criminal process.

In responding to demands that law enforcement bodies be given greater powers to obtain intelligence with particular reference to providing access to tax records, the Committee concluded that:

"While we recognise that intelligence gathering has a vital role to play in the fight against organised crime we do not conclude that the present situation yet calls for

²⁶ HC 18-I Session 1994-95 pp xxi-xxii

substantial inroads to be made into ordinary citizens' freedom from intrusion by the state."²⁷

IV Work of the Security Service and the Police in relation to Terrorism

In a statement on 8 May 1992 the then Home Secretary Kenneth Clarke announced the Government's decision that the lead responsibility for intelligence work against Irish republican terrorism should pass from the Metropolitan Police special branch to the Security Service. He described the background to and reasons for this decision as follows:²⁸

The decision that I have announced today does not affect in any way the accountability of the police and security services. Both the Metropolitan police and the Security Service are accountable, through me, to Parliament. The Metropolitan police is accountable through the Commissioner to me as police authority and the Security Service is accountable through its director general to me under the Security Service Act 1989.

The need for effective action against terrorism speaks for itself. It calls for the best use of all the skills and experience available within the law to the Government. The decision that I have announced is designed to strengthen still further the effective intelligence work already being done against Irish republican terrorism in Great Britain, a task in which both the Security Service and the police have vital roles to play. The Government will keep these arrangements under review and where they can be improved still further, we shall take the necessary action.

This will bring the arrangements broadly into line with those that already exist for other forms of terrorism. The purpose of this change is to enable the Security Service to use to the full the skills and expertise which it has developed over the years in its work on counter-terrorism. I wish to emphasise that under the new arrangements the Metropolitan police special branch will continue to play an indispensable part in intelligence work against Irish republican groups. The substantial experience and expertise that it has developed will not be lost, and it will continue to work in the closest co-operation with the Security Service.

Intelligence is a key part of the action being taken against Irish republican terrorism, but it is only a part. Operations on a wider basis, including the collection of evidence and the arrest and prosecution of those suspected of terrorist offences, are plainly essential in dealing with terrorism. This wider responsibility for protecting the public against the threat of terrorism, and for the investigation of terrorist offences, must rest with the police service. It will continue to do so under the new arrangements that I have described.

²⁷ HC 18-I Session 1994-95 p xxii

²⁸ HC Deb vol 207 cc 297-298 8.5.92

Since 1990, the effectiveness of police arrangements against terrorism has been significantly enhanced by the appointment of the Commander of the Metropolitan police anti-terrorist branch as national co-ordinator of police counter-terrorist investigations, and by the creation of the Association of Chief Police Officers' advisory group headed by a very senior officer of the Metropolitan police, the assistant commissioner for specialist operations.

The transfer of the lead responsibility for intelligence work from the Metropolitan police special branch to the Security Service does not in any way affect the roles of the national co-ordinator or the advisory group. It does not affect the responsibility of individual chief officers for policing their areas and for the work done by police special branches outside London. It is only in the lead responsibility for the intelligence work that a change is being made.

In the debate which followed this announcement Mr Clarke went on to comment about questions of accountability and the division of responsibility between the Security Service and the police in dealing with Irish republican terrorism:²⁹

I acknowledge and accept that accountability for the Security Service is an important part of our concerns in this Parliament. I think that we have greatly improved the openness of the operation of the security services and made them more accountable. The operation of the Security Service Act 1989 has changed these matters very much in recent years. There is now a commissioner who produces an annual report to Parliament. There is a source or redress for those who have complaints against the Security Service and access to a tribunal. The service is accountable, through me, to the House.

The hon. Member for Huddersfield asked why we made the key change, which is to transfer the lead responsibility for intelligence gathering against Irish republican activity in this country. We always keep these matters under review. The issue was examined in the reports that the hon. Gentleman described, and it was examined again in a more recent report.

For reasons that everyone will understand, we are now in a position to transfer some resource within the Security Service and enhance our intelligence-gathering efforts. It was a good moment to consider which service should have the

lead responsibility. Both the Security Service and the special branch of the Metropolitan police will continue to make a substantial effort. They will work together as they always have. Giving the lead to the Security Service will get the best out of both. It is putting the lead in the hands of those whose speciality is the collection and use of intelligence of this sort.

As the hon. Member for Huddersfield said, operational matters must remain with the police. They are the people who collect evidence, prepare prosecutions and bring those responsible for these matters to justice, and they will continue to be so. There need be no conflict, and there will be no conflict, between intelligence gathering and operations. Over the years, the police and the Security Service have worked together on many matters and have successfully brought to justice those who have been damaging to the security of this country.

It is only history that gives the Police the lead responsibility for Irish republican terrorism. It is an accident of history that in the 19th century they were given that lead at the time of the Fenian outrages. The Security Service has always had the lead, for example, for loyalist terrorist activity in

²⁹ HC Deb vol 207 cc 299-300 8.5.92

this country. Starting from scratch, I think that the arrangements today are those which would always have been in place.

I agree that what is done by the Security Service and the police must be within the law. I stress that both services will act within the law. I regard the activities of terrorist gangs in this country as crime. It is important that we enhance our efforts all the time against that crime and against those criminals and bring them to justice. I think that the arrangements that we are proposing will help to improve our efforts.

V Role of the Security Service in Criminal Matters

In a Written Answer to a Question from Mr Llew Smith on 11 February 1993, Mr Clarke made the following comments about extending the role of the Security Service to cover more general criminal matters:³⁰

Mr. Llew Smith: To ask the Secretary of State for the Home Department what changes in legislation will be required to permit the security service to develop its role in combating threats from terrorism and drug importers.

Mr. Kenneth Clarke: The Security Service Act 1989 defines the functions of the service as being the protection of national security and the safeguarding of the economic well-being of the United Kingdom against threats from overseas.

The security service may conduct investigations only into areas which satisfy one or both of these criteria. Terrorism is referred to in the Act as a particular threat to national security and therefore falls within the criteria. The scale of drugs trafficking and other types of organised crime is not such that there is a current threat to national security. The security service therefore has no role in investigating these criminal matters and, contrary to recent press allegations, is not seeking one. The Government have no plans to amend the Act to redefine the functions of the service in this respect.

³⁰ HC Deb vol 218 c 770W 11.2.93

Research Paper 96/2

Further discussion of the events leading up to giving MI5 a role in criminal matters can be found on pp. 8-9 of this Paper. The decision to use resources within the Security Service to deal with Irish republican terrorism was seen by commentators as a result in part of reduced threat to national security from espionage and other related activities following the end of the Cold War. The IRA ceasefire in the late summer of 1994 may also have reduced the day-to-day workload of the Security Service as far as its activities in dealing with Irish republican terrorism are concerned. The Government may have taken the view that the resources available within the Security Service should be preserved and used in other areas, at least while the long-term risks to national security remain unclear. The involvement of the Security Services in criminal matters may lead to some duplication and overlap with the intelligence-gathering activities of the police service in general and NCIS in particular. The power to issue warrants enabling the Security Service to enter and interfere with property might also be criticised as creating an additional overlap with the powers and lines of accountability of the conventional law enforcement agencies.

The Intelligence and Security Committee set up under the *Intelligence Services Act 1994*, undertook a review of the change of policy involved in bringing the Security Service into the fight against organised crime. In its report, published in December 1995, the Committee noted that an interdepartmental group on a possible role for the Security Service in this field had reported to ministers in the last summer and that preliminary agreement had been reached on a number of principles that would guide any Security Service contribution. These were listed in the Committee's report as follows¹:

- primacy of responsibility for countering organised crime lies, and should remain with, the law enforcement organisations;
- in respect of intelligence work on organised crime, the Security Service should work through NCIS and the existing coordinating groups (see paragraph 4 below). It should not operate independently and unseen by those bodies;
- the Security Service should act in support of NCIS, Chief Officers of Police, Regional Crime Squads and HM Customs and Excise;
- in order to assist to the greatest extent possible, the Security Service should be able to draw on its full range of skills, capabilities and expertise; and
- the Security Service should bear the costs of its own contribution.

The Committee went on to set out its understanding of the proposed structures for co-operation between the Security Service and the police and to comment on unresolved issues surrounding a proposal to set up a national squad to deal with organised crime²:

4. The agreement on principles is a useful starting point from which to take forward the detailed debate over the weeks and months ahead. It makes clear that the Security Service will act *in support of* the law enforcement organisations and work through the existing co-ordinating groups, which we understand to be:

- an Operations Group, chaired by NCIS, which brings together all the relevant agencies and agrees on operational plans and priorities; and
- a policy level group, chaired by the Home Office, to which the Operations Group reports and which, in turn, reports to the Home Secretary.

5. You announced also the setting up of a national squad to take on organised crime. Parliamentary scrutiny of this proposal will be primarily the responsibility of the Home Affairs Select Committee. Our interest is to see that the working arrangements for such a "squad" enable the Intelligence and Security Agencies to pursue their supporting roles effectively. We cannot yet comment on this as the evidence given to us indicates that certain important issues still remain to be resolved, in particular how such an organisation would be constituted, how it would relate to existing law enforcement organisations and the extent to which there would be central direction. Nor is it clear whether it would be intended to operate on a UK-wide basis, or only in England and Wales.

The Committee agreed that the Security Service had a distinct package of skills which could be used in dealing with organised crime. It also reported suggestions that, given the Security Service's existing commitments, the initial available resources to deal with this area of work would be small. It appeared unlikely that any resources would be transferred permanently and was equally possible that resources would have to be moved back to work against the "traditional national security targets" at some later date³.

The Committee was concerned that some of what it regarded as key aspects of the policy change, such as the command, integration and accountability of the Service, had not yet fully been resolved, particularly where its operational work in the fields of surveillance, agent handling and the use of technical devices was concerned. The Committee commented that

"... there is still much work to be done on the practicalities of co-operation in an area where the Service must operate clearly within the constraints of the Criminal Justice System."³¹

³¹ Cm 3065 p 4

Research Paper 96/2

The Committee made the following concluding comments about legislation to enable the Security Service to deal with organised crime³²:

8. In respect of the legislation, the Committee are of the view that it would be insufficient simply to add the countering of organised crime to the Service's responsibilities under the Security Service Act 1989 - for example, by the addition of a phrase such as that used in sections 1 and 3 of the Intelligence Services Act 1994 (ISA) for SIS and GCHQ. (It is worth noting also that the phrase used in the ISA is "serious" rather than "organised" crime, and it will be necessary for the legislation to address itself to this point.) Moreover, as compared with SIS and GCHQ - who are 'providers' working to tasks levied on them by their customers - the Security Service essentially is 'self-tasking' in relation to its existing statutory functions. The Service can and does already work on this self-tasking basis, with the law enforcement organisations, against those aspects of organised crime that have significance for national security or which may threaten the economic well-being of the state. In so far as the Service is to, be given a new role in countering 'conventional' criminal activity, the legislation needs to make very clear that it will be working in *support of* the law enforcement organisations. Accountability issues will also need to be resolved, as will the differing systems under which authorisation is given for the interception of communications and for the entry on, or interference with, property.

In the Lords Debate on the Queen's Speech Lord Rodgers expressed the view that perhaps it would be better to transfer resources to the police rather than to involve MI5 in combating organised crime³³:

I hope that I am wrong but I confess I am a little uneasy about the Bill to enable the Security Service, MI5, to assist in combating organised crime. We are all in favour of more resources for the police and we are all concerned about the growth of organised crime. However, if the Security Service really has spare capacity, surely some contraction and a straight transfer of resources to the police would serve the purpose better. There are dangers in an alliance between two competitive forces with a different culture and accustomed to different tasks.

The Bill will have to define organised crime. I understand that the intelligence and security committee is currently trying to do so. There will have to be clear lines of accountability. It would be unfortunate, to say the least - I choose my words carefully - if the public began to feel that secret police were operating on our streets, whatever the purpose to which they were committed. We await the Bill with interest.

³² Cm 3065 p 4

³³ HL Deb vol 567 c148 - 20.11.95

Lord McIntosh, Deputy Leader of the Opposition in the Lords, agreed with this view³⁴:

The noble and learned Lord spoke at some length about organised crime and related it to the security services. I rather agreed with the noble Lord, Lord Rodgers, when he described it as being more the danger of a secret police. If the security services have much to contribute to dealing with organised crime, let them do it within the context and the constraints of the police services as we already have them, rather than as a separate body, confusing the issue and providing powers for non-uniformed services which would be difficult to control. I find the idea deeply offensive of security services personnel having, for example, the right to burgle, as they would have.

However Lord Cuckney, a former member of the Security Service, was in favour of the proposed extension of MI5's functions³⁵:

I should like to make the following points. First, I recognise the natural and understandable concern from a civil liberties point of view over extending the remit and area of operations of the Security Service. But perhaps I may point out that there are now strong and effective control and oversight arrangements in place. The Security Service is subject to judicial oversight by two separate commissioners, one of whom is the noble and learned Lord, Lord Nolan, and by two tribunals, as set out in the Security Service Act 1989 and the Interception of Communications Act 1985. Additionally, in the Intelligence Services Act 1994 provision was made for the establishment of a statutory oversight committee, reporting directly to the Prime Minister, made up of nine non-ministerial Members of both Houses, one of whom is my noble and learned friend Lord Howe of Aberavon.

Secondly, full account should be taken of the great changes to which the director general has recently drawn attention publicly that have taken place in the Security Service's priorities and experience. By last year the proportion of effort

devoted to counter-terrorism had doubled compared with the previous four years, and over the same period resources applied to counter-terrorism had halved. Only a fraction of the work now concentrates on countering subversion compared with 10 years ago.

The important point that I should like to make is that those changes have meant a fundamental change in the working practices and methodologies and closer co-operation with other government departments and the police. The skills of countering terrorism have a direct and relevant application to countering organised crime, especially in the skill and care needed to convert intelligence into evidence. The very trends which have helped the growth of international terrorism-ease and speed of travel and communications-have also aided the growth of organised crime, which is increasingly becoming transnational.

Thirdly, while I accept that the Security Service and the police are different services with clearly defined roles and functions, they have both demonstrated that they complement one another in

³⁴ c213-4

³⁵ c151-2

Research Paper 96/2

their approach to common problems. I believe that in the Security Service, as it is now overseen and controlled and with its considerable counter-terrorism experience, we have a valuable national asset, the greater deployment of which to help fight organised crime would be of benefit to the stability of the country.

May I conclude by recalling that, although this alone is not the sole basis for the amendment being proposed, one of the functions of the Security Service as defined in the 1989 Act is:

"to safeguard the economic well-being of the United Kingdom against threats posed by the actions or intentions of persons outside the British Islands".

I am delighted that there is recognition of the importance of the challenge posed by serious and organised crime and that action, as was outlined by my noble and learned friend the Lord Chancellor earlier this afternoon, is being taken to strengthen the fight against it.

In reply, the Minister, Baroness Blatch said that the Bill was one of a number of measures that are to be taken to deal with organised crime³⁶:

The Bill will be a small but significant one. It will ensure that the valuable skills and expertise that the Security Service possesses can be deployed in the fight against organised crime. It is one of a series of measures that the Government will be introducing over the coming months, all of which are designed to make certain that the resources being directed against organised crime are used to maximum effect.

These were described in the more detail by the Lord Chancellor in his speech opening the debate³⁷:

Continuing with the theme of law and order, in October the Prime Minister announced a package of measures to reinforce the fight against organised crime. That reflects a firm commitment on the part of the Government to respond decisively to the

threat from that type of criminal activity, and indeed we will bring forward a Bill in this Session to allow the Security Service to support the law enforcement agencies in their efforts against organised crime.

³⁶ c222

³⁷ c138-9

At present, the Security Services Act 1989 restricts the functions of the Security Service to protecting national security and safeguarding our economic well-being against threats from abroad. Tackling organised crime does not come into either of those categories, so the Security Service is prevented from lending its support, even though organised crime is a cause for serious concern. It is also becoming an increasingly complex and international phenomenon. That is why the skills and experience of the Security Service, acquired over the years in countering espionage and terrorism, will be of great value to the law enforcement agencies in combating organised crime. Accordingly, we will amend the 1989 Act to allow the Security Service to act in support of the law enforcement agencies against serious crime.

I said that this was just the first part of a package of measures for dealing with organised crime and a number of other changes will be introduced over the coming months. The Home Office has begun discussions with chief police officers on how to provide a better coordinated police response to organised crime at a national level. The National Criminal Intelligence Service will be central to that response and we are already exploring new ways to strengthen its contribution. We are also looking to build on the considerable achievements of the regional crime squads to give them a more focused, national role. I should add that that will not detract from the role of individual local police forces which will remain the primary focus for policing.

Changes are also taking place within the Home Office, with a new Directorate of International and Organised Crime being established on 1st April 1996. The intention is to ensure that policy work on that issue is properly co-ordinated.

Taken together, the Government believe that those measures represent a formidable, focused and effective response to the problem of organised crime.

Clause 1 of the Bill does add the countering of organised crime to the Service's responsibilities under the *Security Service Act 1989* in similar terms to those used for the Intelligence Service and GCHQ in the *Intelligence Services Act 1994*. Like them it states that the Service is to work "in support of the prevention and detection of serious crime" rather than in support of the law enforcement organisations. The Bill imposes a duty on the Director-General of the Security Service that arrangements for co-ordinating the Service's activities with those of the other law enforcement agencies exist, but does not refer to the different mechanisms under which the various agencies may obtain authorisation for the interception of communications or for entering or interfering with property and with wireless telegraphy.

VI Complaints, Accountability and Oversight

A. Police Powers and Accountability

Police and customs officers on the staff of the National Criminal Intelligence Service retain their individual ranks and powers but do no operational police work or other activities which would result in their giving evidence in court. The staff of NCIS collect intelligence and deal with information under specific guidelines and are headed by a Director of Intelligence who is responsible within the organisation to its Director-General. The Foreign and Commonwealth Office's background brief of April 1993 on *The UK's National Criminal Intelligence Service* explains that:

"The NCIS is not a British counterpart to the American Federal Bureau of Investigation (FBI). Detection and prevention of crime in the UK are the work of local police forces, regional crime squads and Her Majesty's Customs and Excise".

The general powers of the police in England and Wales to enter and search premises, seize goods and carry out other related aspects of their operational work are set out in the *Police and Criminal Evidence Act 1984* and codes of practice issued under that Act. There are separate statutory provisions for Scotland and Orders in Council for Northern Ireland, as well as separate powers in the prevention of terrorism legislation for police forces within the UK.

The *Police and Criminal Evidence Act 1984* established the Police Complaints Authority and made provision for complaints and disciplinary procedures, details of which were set out in subsequent subordinate legislation. There are separate procedures for making complaints about the police in Scotland and in Northern Ireland, where the current system is under review. Complaints against the police may in some cases result in disciplinary proceedings or criminal charges being brought against particular proceedings or criminal charges being brought against particular officers. In appropriate cases civil actions may also be brought against the police for assault, malicious prosecution, trespass and other torts or civil wrongs. The Security Service Tribunal (see below) has no power to adjudicate on a complaint about the alleged actions of police officers, whether or not those actions are thought to have been undertaken in order to assist the work of the Security Service.

B. Interception of Communications

The Interception of Communications Commissioner is appointed under **section 8** of the *Interception of Communications Act 1985*. The Commissioner's functions are defined by **section 8(2)** as the keeping under review the carrying out by the Secretary of State of his functions in relation to the issuing of interception warrants. Warrants are issued by the Home Secretary, the Foreign Secretary and the Secretaries of State for Scotland and Northern Ireland. They are applied for by the Metropolitan Police Special Branch, National Criminal Intelligence Service, HM Customs and Excise, GCHQ, the Security Service, the Secret Intelligence Service (MI6), the Royal Ulster Constabulary and the Scottish Police Forces.

In his Annual Report for 1992³⁸ the then Commissioner, Sir Thomas Bingham, said that there were four major safeguards against abuse in relation to interception warrants³⁹:

- The professional vigilance, competence and integrity of those who initiate and prepare warrant applications for consideration by Secretaries of State
- The requirement in the Act that a Secretary of State should personally sign or authorise every warrant
- The Commissioner's review of warrants issued
- The Tribunal whose function is to investigate cases of alleged contravention and (if any contravention is found) report it to the Prime Minister

No complaints have been upheld by the Tribunal to date.

C. The Security Service Commissioner and the Security Service Tribunal

The complaints mechanisms under the 1989 Act are similar to those which apply to the interception of communications under the *Interception of Communications Act 1985*. This model was followed in relation to MI6 and GCHQ under the *Intelligence Services Act 1994*.

³⁸ Cm 2173

³⁹ pp 1-2

Research Paper 96/2

Actions by the Security Service may also be the subject of a complaint under the 1985 Act in respect of the interception of communications (ie. letters, telephone calls etc.). **Section 4** of the 1989 Act provides for the appointment of a Security Service Commissioner who must be a senior judge or a retired senior judge (ie a Judge of the High Court or above). The Commissioner is responsible for keeping under review the issue of warrants by the Secretary of State for the entry on or interference with property or with wireless telegraphy by the Security Service⁴⁰.

By **section 4(4)** of the 1989 Act it is the duty of every member of the Service and of every official of the department of the Secretary of State to disclose or give to the Commissioner such documents or information as he may require for the purpose of enabling him to discharge his functions. The Commissioner is required to make an annual report to the Prime Minister on the discharge of his functions and the Prime Minister is required to lay a copy of that report before each House of Parliament subject to the exclusion of any matter which would be prejudicial to the continued discharge of the functions of the Service.

Section 5 of the 1989 Act provided for the setting up of the Security Service Tribunal for the purpose of investigating complaints about the Service. By paragraph 1 of **Schedule 1** any person may complain to the Tribunal if "aggrieved by anything which he believes the Service has done in relation to him or any property of his". The Tribunal is required to investigate whether the complainant has been the subject of inquiries by the Service and if so, whether the Service had reasonable grounds for deciding to institute or continue such inquiries⁴¹. By **section 5(3)** the Commissioner is required to give the Tribunal "all such assistance in discharging their functions under that Schedule as they may require". Insofar as the complainant alleges that anything has been done by the Service in relation to any property of his, the Tribunal shall refer the complaint to the Commissioner who shall investigate whether a warrant has been issued appropriately⁴². The Tribunal must consist of three to five members, all of whom must be lawyers of not less than ten years' standing⁴³. The Tribunal currently consists of three members. Again it is the duty of every member of the Service to disclose or give to the Tribunal such documents or information as they may require for the purpose of enabling them to carry out their functions under the 1989 Act⁴⁴.

⁴⁰ section 4(3)

⁴¹ para 2 of Schedule 1

⁴² para 2(4) of Schedule 1

⁴³ para 1 of Schedule 2

⁴⁴ para 4(1) of Schedule 2

The Tribunal may order one of the following courses of action if it finds in favour of the complainant⁴⁵:

- The Service to end its inquiries about the complainant
- The Service to destroy any records it holds about those inquiries
- The quashing of a property warrant
- Financial compensation

If the Tribunal concludes that a complaint should be rejected, but is uneasy about some aspect of what the Service has done, it may refer the matter to the Commissioner who will then investigate⁴⁶. He may then report his findings to the Secretary of State who may take such action as he thinks fit in the light of the report, including any action which the Tribunal have power to take or direct as described above⁴⁷.

The Tribunal has no power to adjudicate on a complaint about the alleged actions of police officers, whether or not those actions are thought to have been undertaken in order to assist the work of the Security Service. In such cases the usual police complaints mechanisms would have to be employed. In addition the work of the Tribunal does not extend to considering applications about the interception of communications under the *Interception of Communications Act 1985*.

The Security Service Commissioner has reported that so far no complaints have been upheld by himself or the Tribunal. In his annual report for 1991⁴⁸ the Commissioner refuted the suggestion that the Tribunal does not fulfil a useful function, either because it is not doing its job properly, or because it is not being provided with adequate information or access by the Security Service or for some other reason. He said:

7. When the Security Service Bill was debated in Parliament Members in both Houses anticipated that there would be a substantial number of complaints from persons who were suffering from delusions of one sort or another. That has proved to be the case; but the Tribunal has taken the view that these should not be regarded as frivolous or vexatious and thus not investigated. Since the investigation of such complaints is relatively straightforward it has been thought preferable to err on the side of caution and to accept them rather than reject them on this basis.

⁴⁵ para 6 of Schedule 1

⁴⁶ para 7(2) of Schedule 1

⁴⁷ para 7(3) of Schedule 1

⁴⁸ Cm 1946, May 1992

Research Paper 96/2

8. The Act provides that no complaint shall be entertained if and so far as it relates to anything done before the date on which the Act came into force i.e. 18 December 1989. There is an exception to that where inquiries by the Service had been instituted but no decision had been taken before that date to discontinue them. A significant number of complaints have related to periods before the Act came into force. Before deciding that it cannot entertain a complaint for that reason the Tribunal will investigate whether, assuming that inquiries have been carried out by the Security Service, it is correct that these inquiries had been discontinued prior to 18 December 1989.

9. The Tribunal has investigated a number of complaints relating to vetting in connection with employment. It has not upheld any of these complaints. The Tribunal does not have power to investigate at large why a complainant was refused employment by a department. The reason may well be quite unconnected with any information provided by the Service.

10. A number of complainants have asked to be told whether the Security Service has a file on them and, if so, to be informed of its contents or to be allowed to see it. Some have simply asked the Tribunal to order the destruction of any file which may be held on them. Having regard to the terms of the Act the Tribunal cannot accede to such requests.

11. Every member of the Security Service is required to disclose or give to the Tribunal such documents or information as they may require for the purpose of enabling them to carry out their functions under the Act. The Tribunal is satisfied that members of the Security Service have complied with this requirement. The Service has also assisted the Tribunal on a number of occasions by explaining their procedures. The Tribunal has had the opportunity to comment on these from the point of view of the public interest.

12. Other official agencies than the Security Service have or may have an interest in security. The Tribunal has no power to require those agencies and their members to disclose documents or information which may have a bearing on its investigation of a particular complaint. It may, however, require the Service to produce material supplied by the other agencies. The Tribunal's jurisdiction is solely as to complaints against the Security Service.

13. There can be no doubt that the very existence of the Tribunal as a body empowered to investigate complaints provides the Security Service with a strong additional incentive to ensure that its procedures are designed to eliminate the chance of a complaint being found justified.

In his report for 1993⁴⁹ the Commissioner discussed three cases which had been considered by the European Commission of Human Rights in which it had been alleged that the protection offered under the 1989 Act is inadequate and ineffective for, *inter alia*, the following reasons:

⁴⁹ Cm 2523, March 1994

- (a) the wide scope of the term "protection of national security"
- (b) the fact that the Tribunal gives no reasons for its failure to make a determination in the applicant's favour
- (c) the inability of the applicant to verify or correct information recorded
- (d) the fact that the Tribunal cannot examine inquiries which ceased before the Act came into force
- (e) the limited scope of the Tribunal's jurisdiction, in particular since it cannot examine whether the information, if true, renders the person a security risk
- (f) the inability of the Commissioner to make binding decisions

In all three cases the Commission rejected those arguments and the Commissioner made the following comments about the significance of those cases:

40. The importance of these cases is that they show that in the view of the Commission the 1989 Act and the procedures set up under it comply with the requirements of the Convention. In particular-

- (a) The Act provides a sufficient basis in domestic law for the operations of the Security Service to be in accordance with the law; the definition of the functions of the Service as being the protection of national security, though wide, is not too wide and does not require to be more closely defined
- (b) The machinery set up in the Act for consideration of complaints by the Tribunal and the Commissioner is an adequate remedy, notwithstanding that reasons may not be given when the Tribunal does not make a determination in the complainant's favour
- (c) The power of the Tribunal to refer matters to the Commissioner under Para 7 of the first Schedule of the Act and my willingness to investigate the matters referred is regarded by the Commission as an important safeguard.

D. The Intelligence and Security Committee

A detailed account of the issue of oversight of the Security Service is contained in Library **Research Paper** 94/34.

The *Intelligence Services Act 1994* provided for a new system of oversight for MI5, MI6 and GCHQ. This represents a significant departure from the previous situation where calls for a system of oversight and review were rejected during the passage of the 1989 Act. The main argument advanced by Ministers against accountability during the passage of the 1989 legislation was that outsiders could never be in a position to make a judgement about the rights and wrongs of why and how the security services acted in any particular case. It was also argued that an independent body which was allowed inside the "barrier of secrecy" would

Research Paper 96/2

have no effective function - and would simply encourage false expectations - since it would not be able to disclose anything it had learned to anyone outside that barrier, including MPs. In addition, the Government argued that if the body itself was outside the barrier of secrecy it would not have access to the necessary material to carry out its task and would thus be equally unconvincing. The Government also took the view that any independent scrutiny would dilute, or muddle, the responsibility of the Prime Minister and the Home Secretary to the Commons. The 1989 Act was said to contain adequate safeguards in the form of the Security Service Commissioner and the Tribunal.

Calls for more openness and accountability continued notwithstanding the introduction of the 1989 Act and from December 1991, when the appointment of Stella Rimington as the new Director General was announced, there started to be more steps towards greater openness. Then in 1994 the *Intelligence Services Act* created the Intelligence and Security Committee⁵⁰. This Committee has nine members and each member is required to be a member of either House⁵¹. At least one Committee member must be a member of the House of Lords. Members of the Committee are appointed by the Prime Minister after consultation with the Leader of the Opposition⁵² and Ministers are expressly excluded from membership⁵³.

The current membership of the Committee is:

The Rt. Hon Tom King CH MP (Chairman)

The Rt. Hon Lord Howe of Aberavon QC

Mr Barry Jones MP

The Rt. Hon Alan Beith MP

Mr Michael Mates MP

The Rt. Hon Dr John Gilbert MP

Mr Allan Rogers MP

The Rt. Hon Sir Archibald Hamilton MP

Sir Giles Shaw MP

The Committee is largely able to determine its own procedures⁵⁴ and the chairman has a casting vote⁵⁵.

⁵⁰ section 10 and Schedule 3

⁵¹ section 10(2)

⁵² section 10(3)

⁵³ section 10(2)(b)

⁵⁴ para 2(1) of Schedule 3

⁵⁵ para 2(2) of Schedule 3

The terms of reference of the Committee are "to examine the expenditure, administration and policy of the Security Service, the Intelligence Service and GCHQ"⁵⁶. Operational matters are not included in the terms of reference and it is not clear whether the Committee can look at past performance. Complaints by individuals about alleged abuses cannot be considered by the Committee and so these may only be considered by the Commissioner and the Tribunal.

Service chiefs are required to provide the information requested by the Committee or to inform the Committee that the information cannot be disclosed either on the grounds that it is sensitive or because the Secretary of State has determined that it should not be disclosed⁵⁷. Sensitive information is defined as follows⁵⁸:

- (a) information which might lead to the identification of, or provide details of, sources of information, other assistance or operational methods available to the Security Service, the Intelligence Service or GCHQ,
- (b) information about particular operations which have been, are being or are proposed to be undertaken in pursuance of any of the functions of those bodies; and
- (c) information provided by, or by an agency of, the Government of a territory outside the United Kingdom where that Government does not consent to the disclosure of the information.

Sensitive information may, however, be disclosed if the relevant Service chief considers it safe to do so or if the Secretary of State considers it desirable in the public interest⁵⁹.

The determination by the Secretary of State that information should not be disclosed may be made only if he considers that, if he were asked to show the information in question to a Departmental Select Committee, he would not think it proper to do so; but he must not make a determination on the grounds of national security alone⁶⁰. Information which is deemed as not proper for disclosure to Select Committees includes advice given by the Law Officers and confidential information about the private matters of individuals.

⁵⁶ section 10(1)

⁵⁷ para 3 of Schedule 3

⁵⁸ para 4 of Schedule 3

⁵⁹ paras 3(2) and 3(3) of Schedule 3

⁶⁰ para 3(4) of Schedule 3

Research Paper 96/2

The Committee is required to make an annual report to the Prime Minister⁶¹ which he is required to lay before each House with a statement on what has been excluded from the report on the grounds that it would be prejudicial to the continued discharge of the Services' functions⁶². It is interesting to note that the grounds for excluding information are not that it would be prejudicial to national security.

In general this new form of oversight of the security and intelligence services has been welcomed but there have been doubts about its effectiveness. During the passage of the 1994 Act Liberty expressed concern that "the Committee will be unable to exercise adequate influence on the three services because of the draconian controls on its access to information"⁶³. Liberty also believed that the Bill (now the 1994 Act) failed to give "real and substantial control of the work of the services to Parliament"⁶⁴ and that there would be no real accountability to the law as "the vague and wide definitions in the Bill mean that it is difficult if not impossible for any court to adjudicate on the issues"⁶⁵. Other commentators saw the committee as more of a government committee than a parliamentary committee as it is required to report to the Prime Minister rather than to Parliament.

In May 1995 the Prime Minister published the *Interim Report of the Intelligence and Security Committee*, their first report⁶⁶. In that report the Committee described its proceedings as follows:

2. For the first time, a Committee of 'outsiders' has been established to oversee the intelligence and security Agencies' activities. The intelligence and security field is a specialist and complex one, about which relatively little is reliably known from the outside. Even though several Committee members have relevant past experience as Ministers over parts of this field, none has been responsible for the whole range. Both for them and for those coming new to these matters there is a lot to absorb and assess before a start can be made on our more detailed enquiries into specific intelligence and security issues. This has been the Committee's initial task since it first met on 15 December last year - the day that the Intelligence Services Act came into force. Since the beginning of this year, we have met every week during the Parliamentary session, and intend so to do for the foreseeable future.

3. First and foremost, we set out to learn something of the three Agencies themselves: their individual roles, working methods and current priorities.

⁶¹ section 10(5)

⁶² sections 10(6) and 10(7)

⁶³ p7 *The Intelligence Services Bill : A Briefing from Liberty* December 1993

⁶⁴ p7

⁶⁵ p8

⁶⁶ Cm 2873

We made initial visits to each of the Agencies in turn, on their home ground, and had briefings on their work. These covered:

- their roles, functions, management and key working relationships;
- the various tasks against which they work, and the priorities attached to those tasks;
- the extent to which their work is subject to existing oversight and political controls; and
- their internal resource allocation, structure and staffing.

4. At the same time, we have been concerned to understand the overall structure within which the Agencies work: the central Government machinery that determines their overall tasking and resources, and the way in which their performance is assessed by Government. We wished also to consider the systems currently in place to ensure that the Agencies are accountable for their activities, including Ministerial responsibilities in intelligence and security matters. It is already clear that the relatively recent establishment of the Ministerial Committee on the Intelligence Services (IS) should be a significant improvement in structure for collective Ministerial oversight of the Agencies.

The Committee said that "in general terms, we have been encouraged by the openness of the intelligence 'insiders' that we have come into contact with so far, and in particular by the helpful approach of the heads of the Agencies themselves. We look forward to developing close but business-like relationships with the Agencies and others in the community. In doing so, we hope and expect to be kept informed of information that is of relevance to our remit."⁶⁷.

The Committee went on to identify the major issues which it would focus on, including that of the Agencies' work with the police⁶⁸:

- the extent to which it is appropriate to try to maintain a 'global reach' in intelligence terms;
- increasing resource pressures and their effects on Agency capabilities and staff;
- the extent to which the Agencies are able to maintain their 'core' capabilities and their major investment patterns and commitments;
- the protection afforded to Agency information and operations, where the UK's own earlier experiences and the recent reports on

⁶⁷ para 8

⁶⁸ para 10

Research Paper 96/2

the Ames case in the US are the starkest possible warnings of the disastrous consequences if this is neglected;

- the Agencies' work with the police and other enforcement bodies in the UK, and their relationships with the civil community; and
- how the Agencies are coping with the ever increasing flow of information, in particular avoiding duplication of effort in terms of that which is already available openly and often at considerably less cost.

Appendix

Relevant Library Papers:

Background Paper 114	Security	30 March 1983
Research Note 223	The Interception of Communications Bill [Bill 83 of 1984-85]	4 March 1985
Research Note 319	Accountability of the Security Service (MI5)	2 December 1986
Reference Sheet 88/1	Protection of Official Information Bill [Bill 20 of 1987-88]	5 January 1988
Research Note 423	Security Service Bill [Bill 7 of 1988-89]	1 December 1988
Reference Sheet 88/7	Official Secrets Bill	16 December 1988
Research Note 437	The Official Secrets Bill 1988-89 The Commons Debates	2 March 1989
Research Paper 94/34	Intelligence Services Bill [HL] Bill 49 of 1993-94	21 February 1994

Please cut

Research Paper 96/2

Title: Security Service Bill [Bill 38 of 1995-96]

Section Code: HA

It would greatly help to ensure that Research Papers fulfil their purpose if Members (or their staff) would fill in and return this brief pre-addressed questionnaire. Negative responses can be as useful as positive.

For your purposes, did you find this paper:

1.	Very useful	<input type="checkbox"/>	Quite useful	<input type="checkbox"/>	Not much use	<input type="checkbox"/>	Any comments?
	Too long	<input type="checkbox"/>	The right length	<input type="checkbox"/>	Too short		_____
2.	Clear	<input type="checkbox"/>	Not always clear	<input type="checkbox"/>	Rather unclear		_____
3.							_____

Name **MP/Assistant to**
(Please print)

Please fold

INTERNAL

**Miss Nicola Harland
House of Commons
Department of the Library
1 Derby Gate
London SW1A 2DG**

Please fold

Recent Research Papers on this subject include:

Government & Parliament

94/34 Intelligence Services Bill [HL] Bill 49 of 1993-94 21.02.94

1. *Report on Security Service Work against Organised Crime* Intelligence and Security Committee Cm 3065 December 1995 p 2
2. Cm 3065 pp 2-3
3. Cm 3065 p 3