All Party Parliamentary Group on Extraordinary Rendition

House of Commons

Press release: Immediate, Tuesday 11th December 2012

Statement by Andrew Tyrie MP

Chairman of the APPG, Andrew Tyrie MP said: "It was clear from the Prime Minister's evidence today that he has not yet had an opportunity to hear all the arguments on this. The House of Lords sent a strong and clear message that the Bill is not tolerable in its current form. The Government must now accept the amendments proposed by the Lords and allow the judge to have the final say on whether CMPs should be used in a case and to ensure that CMPs are used only as a last resort."

NOTES FOR EDITORS: Some Points Made by the Prime Minister on the Justice and Security Bill

1. **CMPs fill a gap in legal proceedings**

The evidence for this is weak. The Special Advocates, the security-cleared lawyers who best understand how CMPs work have stated that "there is as yet no example of a civil claim

involving national security that has proved untriable using PII and flexible and imaginative use of ancillary procedure."[1]

2. CMPs are not a massive departure from the current legal system

CMPs are a "radical departure from the UK's constitutional tradition of open justice and fairness".[2] The Bill, as introduced by the Government into the Lords, would allow the Government, in civil cases, to introduce secret evidence in court in a closed material procedure (CMP), which would be heard in the absence of one party, his or her lawyers, the press and the public. The excluded party would not be able to see or challenge the evidence. This would happen on the application of a Government minister if disclosure would damage "national security" – no matter how trivial the damage.[3]

3. The judge has discretion to decide whether a CMP is appropriate.

Under the Bill as introduced in the Lords, the judge may not balance any competing public interests in any application for CMP. If there is potential damage to national security, however insignificant, the judge must make the declaration for CMP. He has no discretion to allow disclosure in the public interest or in the interests of justice or fairness.[4] This will be compulsory even where the judge considers that the case could and should be fairly tried under existing Public Interest Immunity (PII) rules, and that there is no need for a CMP. The judge's hands are tied.

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[1] Note from Angus McCullough QC, Martin Chamberlain, Jeremy Johnson QC, Tom de la Mare, Charlie Cory-Wright QC and Martin Goudie, Special Advocates, on the Supplementary Memorandum from the Independent Reviewer of Terrorism Legislation submitted to the JCHR (JS 27), para 7 (p 232).

[2] JCHR, *Legislative Scrutiny: Justice and Security Bill*, Fourth Report of Session 2012-13, 13 November 2012, p.3.

[3] The Lords, by overwhelming vote, amended this.

[4] Justice and Security Bill, Clause 6(2). The Lords voted to amend this part of the Bill as well.

4. Independent Reviewer of Terrorism had access to all material he wanted.

David Anderson QC, the Independent Reviewer of Terrorism Legislation, asked to see the papers in the cases that the Government claimed were so saturated in national security material that they were untriable in open court, but his request was initially refused. After considerable pressure, the Government let him examine some papers relating to only 3 damages cases (and 4 judicial review cases).[5] He said: "I assume they were chosen for their ability clearly to illustrate the Government's point of view."[6]

Andrew Tyrie is Conservative MP for Chichester and Chairman and founder of the All Party Parliamentary Group on Extraordinary Rendition. Mr Tyrie can be contacted on 0207 219 6371. His office email is tyriea@parliament.uk. The website of the All Party Group is www.extraordinaryrendition.org.

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[5] David Anderson QC, *Supplementary Memorandum for the Joint Committee on Human Rights*, 19 March 2012.
[6] *Id.*