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Date: 6 June 2006
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RENDITION: HANDLING

ISSUE

1. How to answer a Written Parliamentary Question and handle new flight data information which are likely to generate a renewed focus on UK responsibilities in respect of US flights transiting the UK on the way to or from alleged rendition operations. In slower time we also need to respond to a related recommendation from the Joint Committee on Human Rights.

TIMING

2. As soon as possible. Andrew Tyrie MP's Written PQ is overdue for reply and the Dept for Transport plan to release the new flight data this week (probably 9 June).

PREFERRED OPTION

- a) Answer the PQ in general terms along the lines of the draft at flag A;
- b) Deploy the draft press lines at flag B, to cover both the PQ and the new flight data information; and
- c) Pending further consideration of our reply to the Joint Committee, not be drawn on speculative questions about future scenarios of this sort.

Legal Advisers, HRDDG, PRDDT and Press Office agree. DfT and Home Office will draw on similar press lines.

ARGUMENT

[REDACTED]

Parliamentary Question

- The main focus of the rendition debate has been on allegations that detainees may have been transferred through the UK. On this the Government's position is clear: such transfers would require consent and there is no evidence of such transfers having taken place except the two acknowledged cases in 1998.
- NGOs including Amnesty International and Redress have, however, argued, although without demonstrating a clear legal basis, that the UK has a responsibility if an aircraft alleged to be on its way to or from a rendition operation were to transit the UK. Redress included this point in a threat to seek judicial review earlier this year, although they have not pursued this. Andrew Tyrie MP has specifically asked whether we would have such a responsibility in respect of an aircraft transiting the UK on its way to a rendition operation.
- The legal position in such cases is not clear. There would be a responsibility if we were knowingly to assist in an internationally wrongful act, but whether this were the case would depend on the facts and circumstances of any individual case. Relevant information might include, for example, whether the transit was clearly an integral part of a given rendition operation; the extent of our advance knowledge; and the lawfulness of the rendition.
- Given this uncertainty, the draft reply (flag A) is in general terms, but implicitly acknowledges a hypothetical responsibility.

Release of Eurocontrol data

- On 25 January Amnesty International wrote to the Prime Minister claiming that on three specific occasions aircraft not carrying detainees, but involved in rendition operations, transited the UK on their way back to the US from those operations. At the time, we had no information about the flights and the former Foreign Secretary replied to Amnesty accordingly on 23 February. In his reply, the Foreign Secretary observed that: "*While we can insist, as we do, that no foreign aircraft should be used to commit criminal offences within our jurisdiction, we cannot impose restrictions on the use of aircraft outside our jurisdiction*" (flag C). Separately, a BBC journalist requested under Freedom of Information details of one of the flights identified by Amnesty and two other similar flights. Again, we had no information, so replied accordingly.
- On 4 May, however, the Department for Transport received copies of flight plan data from Eurocontrol which they had provided to the Parliamentary Assembly of the Council of Europe (PACE)'s enquiry into rendition. This is the second set of such data from Eurocontrol. There are two sets because the PACE initially asked for data on one list of aircraft registrations, and subsequently added a second list. The second set is likely to attract more attention than the first, because three entries in the data confirm that the three flights identified by Amnesty, including the one also identified by the BBC did transit UK airports on the dates in question. The data does not provide any evidence of the alleged prior rendition.

- [REDACTED]
- The Secretary of State for Transport released the first set of data on 7 April, and plans to release the new data on 9 June. There is no evidence in either set of data that any of the flights carried detainees through the UK so the data does not affect our existing position. We have never denied that US flights routinely transit the UK on all sorts of business. The release of the second set of data is therefore right for consistency with the first set, and in the interests of transparency.
 - After the data is released, the first question likely to arise is why in the past we have said that we have no information on the three flights in question (and any others, should new allegations arise). The answer to this is that the data is genuinely new to us. DfT do not routinely collect such data and we only have it because Eurocontrol provides copies of information given to PACE in response to their specific questions. This is reflected in the draft press lines at **flag B**.
 - Given the coincidental timing with Andrew Tyrie's Question, a second possible question, particularly from Amnesty, is whether the draft reply regarding aircraft on their way to rendition operations is consistent with the former Foreign Secretary's observation with respect to alleged returning aircraft. The draft press lines at **Flag B** explain that there is no inconsistency given the Foreign Secretary was referring to allegations about flights four and five years about which we had no information at the time.

Future scenarios

- A third possible question relates to handling of future cases. The Joint Committee on Human Rights, in its 26 May report on the Convention Against Torture, includes in its recommendations that the Government should establish a clear policy as to the action to be taken if aircraft alleged to be en route to or from rendition operations transit the UK. The Department for Constitutional Affairs must co-ordinate a reply from the Government within three months. As any such question will be hypothetical, we should refer to the draft answer given to Andrew Tyrie and as necessary confirm that the Government will reply to the Committee in due course. This is included in the press lines at **Flag B**.
- As the question has not been examined in detail previously, before responding to the Joint Committee on Human Rights, if there is an opportunity we will seek views of other States' lawyers (including the US) with whom we have informally discussed legal aspects of rendition in the past.

BACKGROUND

3. The Written Question from Andrew Tyrie MP is the latest in a long series of questions he has asked about rendition.
4. Eurocontrol sent the first set of data relating to the UK as submitted to the Parliamentary Assembly of the Council of Europe (PACE) to DfT on 23 January and the second set on 4 May. In their letter covering the second set, Eurocontrol explained that this had followed a request from the PACE for details of flight registrations not covered by their original request.

- [REDACTED]
5. The Eurocontrol data which matches the alleged transits through the UK contained in the Amnesty International 25 January letter are:
 - 24 October 2001: Gulfstream V registration N379P recorded as stopping at Prestwick en route from Frankfurt to Washington. (Amnesty allege it was involved in a rendition to Jordan the previous day).
 - 20 December 2001: Gulfstream V registration N379P recorded as stopping at Prestwick en route from Cairo to Washington. (Amnesty allege it was involved in a rendition from Sweden to Cairo on 18-19 December.)
 - 15 January 2002: Gulfstream V registration N379P recorded as stopping at Prestwick en route from Cairo to Washington. (Amnesty allege it was involved in a rendition from Jakarta to Cairo on 12 January.)
 - The BBC journalist also included the 24 October 2001 flight in his question. The flight registrations of the other two flights he asked about appear in the Eurocontrol data, but not on the dates he cited.
 6. In addition to Amnesty International's 25 January letter to the Prime Minister, on 18 May Dr Howell's replied to a further Amnesty letter. The further letter did not deal with aircraft en route to or from alleged renditions.
 7. The Joint Committee on Human Rights published its report on 26 May. The relevant recommendation, in paragraph 170 of the report, is at **flag D**.

PARLIAMENTARY AND MEDIA

8. In addition to the points in the Argument paragraphs and flags, given the high level of Parliamentary interest in rendition, we can anticipate that the Foreign Affairs Committee and others may also return to issues in this submission.
9. The press lines emphasise that there is still no evidence of detainees being transferred through UK airports.
10. In order to help avoid any suggestion that information has been withheld, on the day that DfT publish the Eurocontrol data on their website, Press Office will draw this to the attention of Amnesty International and the BBC journalist who previously wrote on this subject.

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