

## **PRESS RELEASE**

19<sup>th</sup> January 2006

### **'Civil Servants should not become complicit in illegality' say MPs**

*Andrew Tyrie, Chairman of the All Party Parliamentary Group on Extraordinary Rendition, reminds Public Servants of their duties under the Civil Service Code*

Mr Tyrie, said:

'The leaking of the memo raises two important issues:

First, the memo makes clear that the government is simply not in a position to know about US rendition flights in enough detail to ensure that the UK is in compliance with its legal obligations to investigate allegations of torture. That is a scandal: people may be being flown through the UK for torture, but we're being told that there's no way of knowing.

Second, the leak may also show that Civil servants are disquieted about what they are being required to do.'

As to the first issue, Mr Tyrie said 'As a matter of urgency, the government should do the following:

1. Ask the American administration whether they have conducted any extraordinary rendition flights using UK airspace or UK airports, whether conducted with or without express authorisation from the UK.
2. Remind the US administration that they must meet UK standards of law in conducting any further renditions through the UK. The US's interpretation

of international obligations is not enough. For example, the US's definition of torture appears to exclude some treatment which is cruel, inhuman or degrading treatment.

3. Take reasonable steps, without relying on the US administration, to ensure that the UK is in conformity with the law. This will mean at least three things.

First, records of possible rendition flights that have already taken place, stored by British Airport Authorities, should be examined. Secondly, it will mean creating a mechanism to ensure that the government keeps proper records in future. The leaked memo shows that the government have failed to do this so far.

Thirdly, and particularly in the absence of adequate assurances from the US Administration, the government may wish to consider taking reasonable steps to monitor such possible flights in future. By doing this they will increase the likelihood that the UK will remain within the law and that the US administration will not breach UK law.'

As to the issue of the leak itself, Andrew Tyrie, MP for Chichester and Chairman of the All Party Parliamentary Group on Extraordinary Rendition said

'The law imposes a high standard on the UK's activities. It is not correct to think that only if the UK actually inflicts torture does it become liable: the UK government is under a positive obligation not to assist in acts which may lead to torture and, moreover, the UK government must investigate allegations brought to its attention.

Civil Servants know that the Government's stance on extraordinary rendition could put them in a vulnerable position, and might even mean that they would be breaking the law.'

He continued, 'I am not encouraging concerned officials to leak documents to journalists – as appears to have happened in the case of this recent memo from the FCO to Downing Street. To do so puts them in breach of their duty of confidence and is in breach of the Code.

They should follow the rules: the Code makes clear provision for Civil Servants to report any instances where they believe they may be being required to act in a way which is illegal, improper, or unethical, or in a way that raises fundamental issues of conscience. They have a duty to report these concerns to their Permanent Secretary and if they are not happy with the response, then they can report the matter to the Civil Service Commissioners.

In turn, the Permanent Secretaries, if they deem that civil servants may be in a position where they could be breaching the code, should make their Secretary of State aware. The responsibility needs to be passed to those where responsibility should and does lie: with Ministers who can be made accountable to Parliament.

I am not asking Civil Servants to put their careers at risk. On the contrary, I am asking them to do the one thing that is most likely to keep them the right side of the law.'

Ends

Andrew Tyrie is Conservative MP for Chichester and Chairman of the All Party Parliamentary Group on Extraordinary Rendition. Mr Tyrie can be contacted on 0207 219 6371. His office email is [marsha@parliament.uk](mailto:marsha@parliament.uk). The Specialist Adviser to the APPG is Mark Pallis. He can be reached on 07891 205 962. His email is [markpallis@yahoo.co.uk](mailto:markpallis@yahoo.co.uk). The website of the All Party Group is [www.extraordinaryrendition.org](http://www.extraordinaryrendition.org)

Notes:

Under the Civil Service Code, the body of rules that govern the conduct of government officials, Civil servants have a clear duty to comply with 'the law, including international law and treaty obligations, and to uphold the administration of justice.' Clauses 4 and 11 are particularly relevant. This duty applies to staff from the Government Communication Head Quarters (GCHQ) just as it does to civil servants from the Home office, Foreign office. Members of the Diplomatic Service are under a similar duty. I am told that it does not apply to M15 and M16.

The legal opinion by Professor James Crawford, commissioned last year by the All Party Parliamentary Group on Extraordinary Rendition, shows clearly that UK involvement in extraordinary rendition would be contrary to both domestic and international law. Yesterday's leaked memo shows that this view is apparently shared by the Foreign Office. They advised Downing Street that the practice was 'almost definitely illegal'. [memo of 7<sup>th</sup> December from FCO to Number 10.] . The UK and UK citizens and individuals on UK soil, could be in breach of a number of commitments, including the UN Convention Against Torture, the European Convention on Human Rights and the International Covenant on Civil and Political Rights. The domestic law on kidnapping and the laws on violence to the person may also be breached.

For further information on the laws which would be breached by UK involvement in rendition see the legal Opinion of Professor James Crawford: [www.extraordinaryrendition.org](http://www.extraordinaryrendition.org) . See also the December 2005 submission by Liberty to the Joint Committee on Human Rights: <http://www.liberty-human-rights.org.uk/resources/policy-papers/2005/jchr-extraordinary-rendition-submission.PDF>

## APPENDIX 1

### The Civil Service Code

The Civil Service Code sets out the constitutional framework within which all civil servants work and the values they are expected to uphold. It is modelled on a draft originally put forward by the House of Commons Treasury and Civil Service Select Committee. It came into force on 1 January 1996, and forms part of the terms and conditions of employment of every civil servant. It was revised on 13 May 1999 to take account of devolution to Scotland and Wales. The full text follows, and hard copies are available from the address at the end of the document.

1. The constitutional and practical role of the Civil Service is, with integrity, honesty, impartiality and objectivity, to assist the duly constituted Government of the United Kingdom, the Scottish Executive or the National Assembly for Wales<sup>1</sup> constituted in accordance with the Scotland and Government of Wales Acts 1998, whatever their political complexion, in formulating their policies, carrying out decisions and in administering public services for which they are responsible.
2. Civil servants are servants of the Crown. Constitutionally, all the Administrations form part of the Crown and, subject to the provisions of this Code, civil servants owe their loyalty to the Administrations<sup>1</sup> in which they serve.
3. This Code should be seen in the context of the duties and responsibilities set out for UK Ministers in the Ministerial Code, or in equivalent documents drawn up for Ministers of the Scottish Executive or for the National Assembly for Wales, which include:
  - accountability to Parliament<sup>2</sup> or, for Assembly Secretaries, to the National Assembly;
  - the duty to give Parliament or the Assembly and the public as full information as possible about their policies, decisions and actions, and not to deceive or knowingly mislead them;
  - the duty not to use public resources for party political purposes, to uphold the political impartiality of the Civil Service, and not to ask civil servants to act in any way which would conflict with the Civil Service Code;
  - the duty to give fair consideration and due weight to informed and impartial advice from civil servants, as well as to other considerations and advice, in reaching decisions; and
  - the duty to comply with the law, including international law and treaty obligations, and to uphold the administration of justice;together with the duty to familiarise themselves with the contents of this Code.
4. Civil servants should serve their Administration in accordance with the principles set out in this Code and recognising:
  - the accountability of civil servants to the Minister<sup>3</sup> or, as the case may be, to the Assembly Secretaries and the National Assembly as a body or to the office holder in charge of their department;
  - the duty of all public officers to discharge public functions reasonably and according to the law;

- the duty to comply with the law, including international law and treaty obligations, and to uphold the administration of justice; and
  - ethical standards governing particular professions.
5. Civil servants should conduct themselves with integrity, impartiality and honesty. They should give honest and impartial advice to the Minister or, as the case may be, to the Assembly Secretaries and the National Assembly as a body or to the office holder in charge of their department, without fear or favour, and make all information relevant to a decision available to them. They should not deceive or knowingly mislead Ministers, Parliament, the National Assembly or the public.
  6. Civil servants should endeavour to deal with the affairs of the public sympathetically, efficiently, promptly and without bias or maladministration.
  7. Civil servants should endeavour to ensure the proper, effective and efficient use of public money.
  8. Civil servants should not misuse their official position or information acquired in the course of their official duties to further their private interests or those of others. They should not receive benefits of any kind from a third party which might reasonably be seen to compromise their personal judgement or integrity.
  9. Civil servants should conduct themselves in such a way as to deserve and retain the confidence of Ministers or Assembly Secretaries and the National Assembly as a body, and to be able to establish the same relationship with those whom they may be required to serve in some future Administration. They should comply with restrictions on their political activities. The conduct of civil servants should be such that Ministers, Assembly Secretaries and the National Assembly as a body, and potential future holders of these positions can be sure that confidence can be freely given, and that the Civil Service will conscientiously fulfil its duties and obligations to, and impartially assist, advise and carry out the lawful policies of the duly constituted Administrations.
  10. Civil servants should not without authority disclose official information which has been communicated in confidence within the Administration, or received in confidence from others. Nothing in the Code should be taken as overriding existing statutory or common law obligations to keep confidential, or to disclose, certain information. They should not seek to frustrate or influence the policies, decisions or actions of Ministers, Assembly Secretaries or the National Assembly as a body by the unauthorised, improper or premature disclosure outside the Administration of any information to which they have had access as civil servants.
  11. Where a civil servant believes he or she is being required to act in a way which:
    - is illegal, improper, or unethical;
    - is in breach of constitutional convention or a professional code;
    - may involve possible maladministration; or
    - is otherwise inconsistent with this Code;

he or she should report the matter in accordance with procedures laid down in the appropriate guidance or rules of conduct for their department or Administration. A civil servant should also report to the appropriate authorities evidence of criminal or unlawful activity by others and may also report in accordance with the relevant procedures if he or she becomes aware of other breaches of this Code or is required to act in a way which, for him or her, raises a fundamental issue of conscience.

12. Where a civil servant has reported a matter covered in paragraph 11 in accordance with the relevant procedures and believes that the response does not represent a reasonable response to the grounds of his or her concern, he or she may report the matter in writing to the Office of the Civil Service Commissioners, 3rd Floor, 35 Great Smith Street, London SW1P 3BQ. Tel: 020 7276 2613. e-mail: [ocsc@civilservicecommissioners.gov.uk](mailto:ocsc@civilservicecommissioners.gov.uk) [opens new window]
13. Civil servants should not seek to frustrate the policies, decisions or actions of the Administrations by declining to take, or abstaining from, action which flows from decisions by Ministers, Assembly Secretaries or the National Assembly as a body. Where a matter cannot be resolved by the procedures set out in paragraphs 11 and 12 above, on a basis which the civil servant concerned is able to accept, he or she should either carry out his or her instructions, or resign from the Civil Service. Civil servants should continue to observe their duties of confidentiality after they have left Crown employment.

### Footnotes

1. In the rest of this Code, we use the term Administration to mean Her Majesty's Government of the United Kingdom, the Scottish Executive or the National Assembly for Wales as appropriate.
2. In the rest of this Code, the term Parliament should be read, as appropriate, to include the Parliament of the United Kingdom and the Scottish Parliament.
3. In the rest of this Code, Ministers encompasses members of Her Majesty's Government or of the Scottish Executive.

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Copies of the Civil Service Code are available online at [www.cabinet-office.gov.uk/central/1999/cscode.htm](http://www.cabinet-office.gov.uk/central/1999/cscode.htm)

## APPENDIX 2

### **Further memorandum submitted by the Foreign and Commonwealth Office**

#### **GUIDANCE TO POSTS**

*Letter to the Parliamentary Relations and Devolution Department, Foreign and Commonwealth Office, from the Clerk of the Committee, 3 March 2003*

In recommendation "ff" of its Report on the FCO Annual Report 2002[3], the Foreign Affairs Committee asked the Government to issue detailed guidance to its diplomats on how they should respond to requests from ministers that they should draft letters of support for companies seeking contracts abroad, when those companies are declared donors to a British political party.

In your letter to me of 18 October 2002 (published at page Ev 91 of the Report) you stated that the existing general guidelines from London provide a framework, that where there are grounds for concern or areas of uncertainty, only consultation with London can establish what would be appropriate, and that Ministers had therefore concluded that additional guidance would not materially help Posts. You enclosed with your letter a copy of Sir Michael Jay's telegram of 18 February 2002, and an extract from BTI Guidelines dated December 1999. In its response to the Report[4], the Government reaffirmed that "Guidance exists to cover situations where [civil servants] are asked to act in a way that is, or which they believe may be, inconsistent with their duty of impartiality." It is not clear from the response exactly which "guidance" is being referred to at that point.

The Committee wishes to receive copies of all guidance issued to members of the diplomatic service which may be relevant to the question of how they should respond to requests from ministers that they should draft letters of support for companies seeking contracts abroad, when those companies are declared donors to a British political party. The Committee also wishes to receive a fuller explanation of why Ministers decided not to issue specific guidance on how to deal with such circumstances, when previous statements to the Committee had suggested that such guidance would be issued.

*Clerk of the Committee*

March 2003

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*Letter to the Clerk of the Committee from the Parliamentary Relations and Devolution Department, Foreign and Commonwealth Office, 25 March 2003*

Thank you for your letter of 3 March seeking further information in response to recommendation "ff" of the Committee's Report on the FCO Annual Report 2002. This related to guidance to diplomats on how they should respond to requests from Ministers to draft letters of support for companies seeking contracts abroad, when those companies are declared donors to a British political party.



The Committee asked to receive copies of all guidance issued to members of the Diplomatic Service that may be relevant to this question. The Committee has already received a copy of the telegram issued by Michael Jay on 18 February 2002 and the relevant extract from the BTI guidelines. Further material relates to guidance on the general duties, responsibilities, values and standards of Civil Servants and members of the Diplomatic Service. I attach relevant extracts from the Diplomatic Service Code and Regulations. These include guidance on action where an individual is asked to act in a way which they believe is inconsistent with their duty of impartiality.

The Committee also wished to receive a fuller explanation of why Ministers decided not to issue specific guidance on this matter. Consideration was given to whether further guidance would be helpful in clarifying the circumstances in which support should be offered to companies. The conclusion was that it would not. In an increasingly complex trade and investment environment whether there is a benefit to the UK from lending diplomatic support to a particular company, is a matter of judgement. In most cases the question of whether there is sufficient benefit to the UK will be self-evident and no further guidance is necessary. In a small number of cases at the margins, the issue will be less clear-cut, but the view was taken that it would be difficult to produce useful guidance to cover the very varied nature of such cases. That the existing material was in the form of "guidelines" rather than "rules" is itself indicative of the need for a flexible approach. Michael Jay's telegram of 18 February reminded Heads of Posts of the importance of consultation with London where appropriate. Against this background it was decided that no change should be made to the existing guidance.

Parliamentary Relations & Devolution Department,

Foreign and Commonwealth Office

*March 2003*

#### EXTRACT FROM DIPLOMATIC SERVICE REGULATIONS

##### *General Principles of Conduct*

6.1 You are expected at all times to respect the law of the land. Against that background the following general principles govern your conduct as a member of the Diplomatic Service:

- (a) you must give your individual allegiance to the State on all occasions when the State has a claim on your services;
- (b) you must not subordinate your duty to your private interests, not put yourself in a position where your duty and your private interests conflict;
- (c) you must not use your official position to further your private interests, nor act so as to create a reasonable suspicion that you have done so;
- (d) you must not engage in heavy gambling or speculation;
- (e) you must not engage in private financial transactions in connection with any matter on which members of the Diplomatic Service might be suspected of having access to information which could be turned to private gain;

- (f) you must not engage in any occupation or undertaking which might conflict with the interests of the Diplomatic Service or be inconsistent with your position as a member of the Service;
- (g) you must not fall short of the professional standard expected of members of the Diplomatic Service or act in a way which might bring discredit upon the Service;
- (h) your behaviour, action or inaction must not significantly disrupt or damage the performance or reputation of the Diplomatic Service.

6.2 Special rules governing particular activities are contained in individual Regulations. However, it is not possible to cover in every activity and in circumstances not specifically covered you should use discretion in accordance with the above principles, and in accordance with the guidance contained in the Diplomatic Service Code of Ethics (Annex A to these Regulations), seeking advice from your superior officer or from PPU [Personnel Policy Unit] if you are in doubt.

6.3 Where you believe you are being required to act in a way which is illegal, improper, unethical, in breach of constitutional convention or a professional code, which may involve possible maladministration, or which is otherwise inconsistent with the Diplomatic Service Code of Ethics you may consult in confidence a member of a Selection Board, who will then take the matter up on your behalf. If the problem cannot be resolved you may take the matter up with the Chief Clerk (now Director-General Corporate Affairs) and you also have the right, in the last resort, to have the matter referred to the Permanent Under Secretary/ Head of the Diplomatic Service, through the Chief Clerk. [Emphasis added]

6.4 If after following the above procedure you are not content with the response you have received you may raise the matter with the Diplomatic Service Appeal Board (see DSR 20).

## Annex A

### DIPLOMATIC SERVICE CODE OF ETHICS

This Code of Ethics offers guidance on the constitutional framework within which all members of the Diplomatic Service work and the values and standards, which they are expected, uphold. Specific rules and principles of conduct, which reflect the standards of this Code, are laid down in Diplomatic Service regulations.

1. The constitutional and practical role of the Diplomatic Service is, with integrity, honesty, impartiality and objectivity, to assist the duly constituted Government, of whatever political complexion, in formulating policies of the Government, carrying out decisions of the Government and in administering public services for which the Government is responsible.
2. Members of the Diplomatic Service are servants of the Crown. Constitutionally, the Crown acts on the advice of Ministers and, subject to the provisions of this Code, Members of the Diplomatic Service owe their loyalty to the duly constituted Government.

3. This Code should be seen in the context of the duties and responsibilities of Ministers set out in Questions of Procedure for Ministers which include:

- accountability to Parliament;
- the duty to give Parliament and the public as full information as possible about the policies, decisions and actions for the Government, and not to deceive or knowingly mislead Parliament and the public;
- the duty not to use public resources for party political purposes, to uphold the political impartiality of the Diplomatic Service, and not to ask Members of the Diplomatic Service to act in any way which would conflict with the Diplomatic Service Code;
- the duty to give fair consideration and due weight to informed and impartial advice from Members of the Diplomatic Service, as well as to other considerations and advice, in reaching decisions; and
- the duty to comply with the law, including international law and treaty obligations, and to uphold the administration of justice;

together with the duty to familiarise themselves with the contents of this Code.

4. Members of the Diplomatic Service should serve the duly constituted Government in accordance with the principles set out in this Code and recognising:

- the accountability of Members of the Diplomatic Service to the Minister, as the case may be, the office holder in charge of their department;
- the duty of all public officers to discharge public functions reasonably according to the law;
- the duty to comply with the law, including international law and treaty obligations, and to uphold the administration of justice; and
- ethical standards governing particular professions.

5. Members of the Diplomatic Service should conduct themselves with integrity, impartiality and honesty. They should give honest and impartial advice to Ministers, without fear or favour, and make all information relevant to a decision available to Ministers. They should not deceive or knowingly mislead Ministers, Parliament or the public.

6. Members of the Diplomatic Service should endeavour to deal with the affairs of the public sympathetically, efficiently, promptly and without bias or maladministration.

7. Members of the Diplomatic Service should endeavour to ensure the proper, effective and efficient use of public money.

8. Members of the Diplomatic Service should not misuse their official position or information acquired in the course of their official duties to further their private interests or those of others. They should not receive benefits of any kind from a third party which might reasonably be seen to compromise their personal judgement or integrity.

9. Members of the Diplomatic Service should conduct themselves in such a way as to deserve and retain the confidence of Ministers and to be able to establish the same relationship with those whom they may be required to serve in some future

Administration. They should comply with restrictions on their political activities. The conduct of Members of the Diplomatic Service should be such that Ministers and potential future Ministers can be sure that confidence can be freely given, and that the Diplomatic Service will conscientiously fulfil its duties and obligations to, and impartially assist, advise and carry out the policies of the duly constituted Government.

10. Members of the Diplomatic Service should not without authority disclose official information which has been communicated in confidence within Government, or received in confidence from others. Nothing in the Code should be taken overriding existing statutory or common law obligations to keep confidential, or to disclose, certain information. They should not seek to frustrate or influence the policies, decisions or actions of Government by unauthorised, improper or premature disclosure outside the Government of any information to which they have had access as Member of the Diplomatic Service.

11. Where a Member of the Diplomatic Service believes he or she is being required to act in a way which;

- is illegal, improper, or unethical;
- is in breach of constitutional convention or a professional code;
- may involve possible maladministration; or
- is otherwise inconstant with the Code;

he or she should report the matter in accordance with the procedure laid down in departmental guidance or rules of conduct. A member of the Diplomatic Service should also report to the appropriate authorities evidence of criminal or unlawful activity by others and may also report in accordance with departmental procedures if he or she becomes aware of other breaches of this Code or is required to act in a way which, for him or her, raises a fundamental issue of conscience.

12. Where a Member of the Diplomatic Service has reported a matter covered in paragraph 11 in accordance with procedures laid down in departmental guidance or rules of conduct and believes that the response does not represent a reasonable response to the grounds of his or her concern, he or she may report the matter in writing to the Diplomatic Service Appeal Board.

13. Members of the Diplomatic Service should not seek to frustrate the policies, decisions or actions of Government by declining to take, or abstaining from, action which flows from Ministerial decisions. Where a matter cannot be resolved by the procedures set out in paragraphs 11 or 12 above, on a basis which the Member of the Diplomatic Service concerned is able to accept, he or she should either carry out his or her instructions, or resign from the Diplomatic Service. Members of the Diplomatic Service should continue to observe their duties of confidentiality after they have left Crown employment.

Foreign and Commonwealth Office

February 1996

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3 Twelfth Report from the Foreign Affairs Committee, Session 2001-02, Foreign and Commonwealth Office Annual Report 2002, HC 826. [Back](#)

4 Government Response to the Twelfth Report of the Foreign Affairs Committee, Session 2001-02, Foreign and Commonwealth Office Annual Report 2002, CM 5712. [Back](#)

The Diplomatic Code of Ethics is available :

<http://www.publications.parliament.uk/pa/cm200203/cmselect/cmfaff/859/859we06.htm>

### APPENDIX 3

The rules on the Staff Counsellor for the Security and Intelligence Services were set out in 1987:

The role of staff counsellor was established in 1987:

#### Security and Intelligence Services

Mr. Whitney asked the Prime Minister what proposals she has for the appointment of a staff counsellor for the security and intelligence services; and if she will make a statement.

The Prime Minister: In the debate which followed my announcement of the Government's acceptance of the Security Commission's recommendations in their report on the case of Michael John Bettaney, I undertook to consider a suggestion that there would be advantage in designating someone, not himself a member of the security service, to whom a member of the security service could turn if he or she had anxieties relating to the work of the service.

The House will wish to know that Sir Philip Woodfield, KCB, CBE, has been appointed as a staff counsellor for the security and intelligence services. He will be available to be consulted by any member of the security and intelligence services who has anxieties relating to the work of his or her service which it has not been possible to allay through the ordinary processes of management-staff relations. He will have access to all relevant documents and to any level of management in each service. He will be able to make recommendations to the head of the service concerned. He will also have access to the Secretary of the Cabinet if he wishes and will have the right to make recommendations to him. He will report as appropriate to the heads of the services and will report not less frequently than once a year to me and to my right hon. Friends the Foreign and Commonwealth Secretary and the Home Secretary as appropriate on his activities and on the working of the system.

(HC Deb 2 November 1987, c508W)

## APPENDIX 4

### Summary of procedures

#### **Civil Service** (including GCHQ)

Duty to comply with the law, including international law and treaty obligations, and to uphold the administration of justice.

If they believe that they are being required to act in a way which is illegal, improper, or unethical, or in a way that raises fundamental issues of conscience, they should report the matter in accordance with the rules or guidance of their particular department. The superior should then report to the Secretary of State for that particular department. If Civil Servants are not happy with the result, they can report the matter to the Civil Service Commissioners.

#### **Diplomatic Service**

Members of the Diplomatic Service have a duty to comply with the law, including international law and treaty obligations, and to uphold the administration of justice.

Members of the Diplomatic Service should follow the internal channels to report their concerns. If they are unhappy with the result they can report the matter to the Civil Service Commissioners (The Diplomatic Service (Amendment) Order in Council 2004).

#### **Security and Intelligence Service**

Members of the Security and Intelligence Service should raise concerns with the specially appointed staff counsellor.