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Abstract

The establishment of the Intelligence and Security Committee (ISC) in 1994 was a significant step forward in intelligence agency accountability in the UK. The ISC for the first time allowed parliamentarians access to intelligence agency staff and records. However, as a committee of parliamentarians, but not a parliamentary committee, the ISC was a constitutional anomaly, appointed by and reporting to the Prime Minister. In 2013, *the Justice and Security Act* provided the most significant reform of the ISC since it was established. The ISC was reconstituted as a committee of parliament, with enhanced powers and an expanded mandate. This was followed by further changes to the way in which the committee operates, including allowing it to take evidence in public. Drawing on interviews with current and former ISC members and detailed examination of committee business, this paper examines the impact of recent reforms on the operation of the ISC.

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Coming in from the cold: bringing the Intelligence and Security Committee into Parliament

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The establishment of the Intelligence and Security Committee (ISC) in 1994 was a significant step forward in intelligence agency accountability in the UK. The ISC for the first time allowed parliamentarians who were not members of the government, access to intelligence agency staff and records. The committee was comprised of nine parliamentarians from both Houses of Parliament. Its mandate, which mirrored that of a parliamentary select committee, was to examine the 'administration, policy and expenditure' of the three intelligence and security agencies. The committee set its own programme of work, and although it met entirely in secret, was required to produce an annual report of its work which, following the redaction of sensitive material was laid before parliament. The committee was also permitted to conduct other inquiries into issues of its own choosing, which were also in most cases published.

However, the ISC was something of a constitutional anomaly. Although it was a committee of parliamentarians, it was not a parliamentary committee. It was appointed by and reported to the Prime Minister, met in secure premises away from the parliamentary estate and was staffed by officials from the Cabinet Office, rather than parliamentary staff. The committee's mode of operation, meeting entirely in secret and submitting reports for approval by the Prime Minister before publication, was also markedly different to parliamentary committees. The ISC's anomalous status prompted sustained demands for reform to bring the ISC more into line with other parliamentary committees. A series of modest reforms were implemented in the final years of the 2005 Labour government including changes to the way in which members were appointed to the committee. More substantive reform followed the 2010 general election when, under the chairmanship of Sir Malcolm Rifkind, the ISC began to adopt a more public profile. In 2013, *the Justice and Security Act* included the most significant reform of the committee since it was established in 1994. The ISC was reconstituted as a committee of parliament, given enhanced powers to access information and its mandate was expanded to encompass the wider intelligence community. The legislation was followed by further changes to the way in which the committee operated, including for the first time, taking evidence in public.

This paper provides an overview of recent reforms of the Intelligence and Security Committee and examines the impact of these reforms on the way in which the committee operates. It begins with a brief overview of the history and recent developments in intelligence accountability, which seeks to put recent reforms in intelligence accountability in the UK into a broader international context by identifying some overarching drivers behind intelligence oversight reform. This is followed by an account of reforms of the ISC, focusing in particular on the changes introduced by the *Justice and Security Act 2013*, and other developments since the passage of the Act. The final section analyses the impact of the recent reforms on the ISC focusing on changes to the way in which the committee operates. The article's principal focus is the committee itself, changes to the way in which it operates and to some extent its relationship with parliament. Any conclusions about what impact these changes have had on the intelligence and security agencies is largely speculative.

Conducting research on the ISC is challenging in two important respects. Despite recent reforms although the committee publishes reports, which are occasionally debated in parliament, it continues to meet and take evidence almost entirely in secret. It is not, therefore, possible to observe scrutiny taking place. Moreover, because the principal subject of the ISC's scrutiny, the intelligence and security agencies operate entirely in secret, it is also not possible to examine the impact of its work. Despite these limitations, the ISC is a statutory committee which means that it's

establishment and reform are encompassed in legislation and have been subject to considerable parliamentary debate. In addition, detailed examination of the committee's published output coupled with interviews with those who have served on the committee, can offer an insight into its work, if not the details of its subject. This article draws on a series of interviews with fifteen ISC members and a small number of interviews with senior officials from the Cabinet Office and the Foreign and Commonwealth Office, including individuals involved in preparing the 2013 *Justice and Security Act*. The interviews included MPs and Peers who had served on the ISC between 1994 and 2015. Several were interviewed more than once, both before and after the reform of the committee in 2013, allowing for some reflection on the impact of reforms. All interviews were conducted on a confidential basis and care has been taken to ensure that individuals can be identified in the text.

Intelligence oversight reform

Some form of legislative oversight of intelligence agencies has become the norm in most democratic states and there is now a significant literature on the emergence of intelligence service accountability around the globe (Born, Johnson and Leigh, 2005; Born and Caparini, 2007; Goldman and Rascoff, 2016). The near universal acceptance of the need for democratic oversight does not, however, mark the end of a process of intelligence accountability. In many states, following a period of establishment and then consolidation, intelligence oversight mechanisms have begun to evolve as oversight committees have sought extra powers and developed new roles.

The progress of intelligence service accountability has been a slow, and relatively recent, development. With few exceptions, in most states the establishment of legislative intelligence oversight of intelligence took place some time, in some cases a considerable period of time, after the creation of intelligence agencies. The first wave of intelligence accountability is often dated to the Congressional investigations in the United States in the mid-1970s, which led to the establishment of permanent congressional intelligence oversight committees. During the 1980s and 1990s, some form of legislative oversight of intelligence was established throughout most of western Europe and North America. A further wave of accountability followed the democratisation of states in Eastern Europe, South Africa and parts of Latin America (Leigh, 2005). Recent years have seen the sporadic democratisation of intelligence agencies in Asia (Gill & Wilson, 2013). Although there is considerable variation in the form and operation of intelligence oversight bodies, some form of legislative oversight has become the norm in most democratic states. As Gill and Phythian observe, 'the idea of Parliament itself providing the core of oversight structures, if not the only one, is more or less universal' (Gill & Phythian, 2006, p.158).

The near universal acceptance of the need for democratic oversight of intelligence has not, however, marked the end of point of intelligence service accountability. In many states, intelligence oversight mechanisms have evolved since they were first established. There are a number of explanations for this new wave of intelligence accountability. In many cases legislative intelligence oversight committees were established as special committees with unique but relatively modest powers. It is perhaps understandable that once such mechanisms bedded in, oversight bodies would begin to stretch their mandate and seek extra powers. At the same time while intelligence agencies were perhaps initially reluctant to share information with external bodies, and parliamentary committees in particular, as a relationship of trust has built up between intelligence agencies and those responsible for overseeing them, the agencies have become more willing to cooperate, and more accepting of in-depth scrutiny. Indeed, it may be the case that where the relationship between intelligence agencies and oversight bodies is particularly close, agencies have begun to see the value of oversight bodies as advocates as well as scrutineers.

The normalisation of relations between intelligence agencies and oversight bodies has also, to some extent, seen a movement away from the view that legislative scrutiny of intelligence is special, or somehow different, from the scrutiny of other policy areas. This has led to pressure to place intelligence oversight committees on the same footing as other legislative bodies. Oversight of intelligence in the US began in an ad hoc sub-committee of the Senate Armed Services Committee and has evolved into two standing Congressional committees. When the Labour Government proposed changes to the ISC in 2007 these were designed to 'to bring the way in which it is appointed, operates and reports *as far as possible* into line with that of other select committees'. While in Canada disquiet about the anomalous status of the external Security Intelligence Review Committee recently led to the establishment, for the first time, of a legislative intelligence oversight committee (Bochel, Defty & Kirkpatrick, 2014).

Reform of the UK Intelligence and Security Committee

In February 1994 during the second reading of the Intelligence Services Bill which established the Intelligence and Security Committee, the Foreign Secretary, Douglas Hurd, described the ISC a 'unique and special' committee which would have a 'unique and special job' (Hansard, 22 February 1994, col.164; Bochel, Defty & Kirkpatrick, 2015). Hurd's statement reflected the nervousness with which the government and the intelligence agencies had embraced parliamentary scrutiny of intelligence. Prior to this, the UK intelligence and security agencies, insofar as they were accountable at all, were overseen by government Ministers. According to the official history of MI5, 'the traditional British view of intelligence was thus that parliament must entirely abdicate its powers in this field to the executive' (Andrew, 2009, p.753) Although Ministers offered direction and signed warrants to sanction the use of interception powers, scrutiny of the activities of the agencies was often light-touch. The arms-length approach to Ministerial oversight was perhaps best encapsulated by the former Labour Prime Minister, Lord Callaghan, during the passage of the Intelligence Services Bill when he observed that 'the relationship between Ministers and the secret services should be familiar but not intimate' (Hansard, 9 December 1993 col. 1041; Bochel, Defty & Kirkpatrick, 2014, p.39).

While the 1994 legislation provided a regulatory framework which, for the first time, involved parliament in the scrutiny of the intelligence and security agencies, the limited role of the ISC and in particular the decision to create a committee which was different to other parliamentary committees provided a mandate for those seeking further reform. Consequently, proposals for reform of the ISC actually predated the formal establishment of the committee itself. During the passage of the Intelligence Services Bill, members on both sides of the House of Commons were critical of the proposals for the new ISC. The Conservative MP, Richard Shephard, described the ISC as a 'neutered committee' (Hansard, 22 February 1994, col.226), while the Labour MP, Allan Rogers, who would go on to serve on the first committee, argued that 'the idea that some form of parliamentary accountability is being introduced is a nonsense' (Hansard, 22 February 1994, col.234). Labour tabled a number of unsuccessful amendments which would have reconstituted the ISC as something more akin to a parliamentary select committee, with the select committee power to call for 'people and papers' and reporting to parliament rather than the Prime Minister (Bochel, Defty & Kirkpatrick, 2014).

Pressure for reform of the ISC continued following the establishment of the committee. Although there was widespread acceptance that the creation of the ISC represented a significant improvement on the previous arrangements, there was considerable pressure from within Parliament, and occasionally from within the ISC itself, to reform the status and operation of the committee. When annual House of Commons debates on the work of the ISC began in 1998, the first

debate was dominated by discussion of the status of the committee and the potential for reform. Subsequent annual debates followed a similar pattern. A number of parliamentary select committees also addressed the anomalous status of the ISC. In 1999, the Home Affairs Committee argued that the ISC 'should be replaced by a parliamentary select committee or committees'. Although it conceded that there might need to be some adaptations to the way in which select committees operate, 'the key feature must be that the scrutiny committee should be more clearly seen to be independent of the executive' (HAC, 1999). Questions about parliamentary oversight resurfaced in response to the government's use of intelligence in making the case for war in Iraq, and the subsequent involvement of the intelligence agencies in prosecuting the war on terror. Several select committees argued that the government was using the existence of the ISC to prevent parliament from examining intelligence issues, and that if the agencies were to be properly accountable to parliament, the ISC must therefore be reconstituted as a parliamentary committee. Most notably, in response to the government's refusal to allow it access to intelligence on the decision to go to war in Iraq, the Foreign Affairs Committee recommended the reconstitution of the ISC as a House of Commons select committee (FAC, 2004). The Joint Committee on Human Rights was similarly frustrated by an inability to speak to intelligence agency staff as part of its investigation into allegations of UK complicity in torture, and concluded that the government should 'establish the ISC as a proper parliamentary committee, with an independent secretariat' (JCHR, 2009).

The ISC itself was generally dismissive of proposals for reform, asserting that they had an exclusive role in overseeing the agencies and any change to the status of the committee was likely to damage the delicate relationship it had built up with the intelligence agencies. There is, however, some evidence of dissenting voices within the committee itself. In one little-known example, in 1998 Labour member of the ISC, Dale Campbell-Savours, wrote to the Prime Minister, Tony Blair, to urge him to consider reconstituting the ISC as a committee of parliament. Campbell-Savours revealed that discussion over the format of oversight had 'ragged within the committee'. Campbell-Savours conceded that most members of the committee were opposed to any change in its status, noting that '[t]he majority view is that the relationship between the Committee and the Prime Minister is more important than the relationship between the Committee and Parliament'. Nevertheless, he argued, a 'small minority of us believe that there are structural problems within the UK oversight system and our agenda is a change in the relationship between the Committee and Parliament.' Campbell-Savours had consulted the Clerk of the House of Commons on the possibility of reconstituting the ISC as a select committee and provided a detailed summary of the arguments for reform.¹

Although the Prime Minister dismissed the changes proposed by Campbell-Savours, ISC reform continued to surface periodically on the backbenches until the 2006-7 parliamentary session when statements by senior frontbenchers on both sides of the House suggested that the issue had risen up the political agenda. In the Commons debate on the ISC's 2006 annual report, the Shadow Home Secretary, David Davis, announced that Conservative policy was now that the ISC should 'evolve towards being a Select Committee of this House, rather than an appointed Committee of the Prime Minister' (*Hansard*, 11 July 2006, col.1314). Whilst Labour Ministers were more circumspect, shortly after becoming Prime Minister, Gordon Brown announced a series of measures ostensibly designed to enhance the power of Parliament in a Green Paper entitled, *The Governance of Britain*, these included changes to the scrutiny of intelligence:

¹ I am grateful to Lord Campbell-Savours for showing me a copy of this correspondence.

As the security agencies themselves recognise, greater accountability to Parliament can strengthen still further public support for the work that they do. So, while ensuring necessary safeguards that respect confidentiality and security, we will now consult on whether and how the Intelligence and Security Committee can be appointed by, and report to, Parliament. And we will start now with hearings, held in public wherever possible; a strengthened capacity for investigations; reports subject to more parliamentary debate; and greater transparency over appointments to the Committee. (*Hansard* – Commons, 3 July 2007, col.817)

The *Governance of Britain* Green Paper marked a potentially significant development in the evolution of the ISC, but stopped short of reconstituting the ISC as a parliamentary committee. Whilst acknowledging that the ISC was ‘senior and well-qualified’ and had acted ‘independently and assiduously’ to scrutinise the intelligence and security agencies, the Government for the first time conceded that the public and wider parliamentary perception of the committee’s independence was often somewhat at variance with this view, observing in particular that because the ISC’s reports, ‘are prepared under separate arrangements and the Committee meets only in private, some argue that the process is insufficiently transparent.’ As a result, a number of changes were proposed to the way in which the ISC operated. These included greater transparency over appointments to the committee, allowing ISC debates in the House of Commons to be led by the Chair of the Committee rather than a government Minister, the introduction of ISC debates in the House of Lords, and strengthening the Secretariat of the Committee including through the appointment of an independent investigator. The Government also for the first time acknowledged the ‘overlapping agenda between the work of the Home Affairs Committee, the Foreign Affairs Select Committee and the ISC with all three touching on issues relating to counter-terrorism and security’, and promised to consult the Chair of the ISC on ‘how to maximise the effectiveness of the Committee’s scrutiny role, including on the Committee’s relationship to Parliament and to relevant select committees, under the existing legislation’ (Ministry of Justice, 2007).

The ISC, which responded to these proposals in private to the Prime Minister, welcomed most of them and some changes were made, although others were quietly ignored. The process of making appointments to the Committee was changed to introduce a system similar to that for select committees, whereby Parliament, through the Committee of Selection, would nominate members of the Committee to the Prime Minister who would then make appointments in consultation with Opposition leaders. The proposals for ISC debates to be led by the Chair of the Committee, and for the introduction of ISC debates in the House of Lords were also implemented. However, proposals for some evidence sessions to be held in public, and also to enhance the committee’s investigatory capacity, while welcomed by the Committee were not instituted at that time. Interestingly, the Committee appeared to ignore entirely the Government’s suggestion that it might explore opportunities to work more closely with the select committees.

Moreover, in responding to the Green Paper, it is apparent that the ISC made some suggestions of their own. The Committee made a case for recognition of the broader remit of the ISC’s work which ‘in practice’ had developed some way beyond what was defined in legislation, asserting that ‘it remains essential that this Committee has oversight of the wider intelligence community’ (ISC, 2009). More bizarrely the Committee recommended that there should be a change to the host department for the ISC. This had not featured in the Green Paper and was not something which the Committee had suggested in the past. An ISC report later explained that the intelligence work of the Cabinet Office had grown considerably in recent years, and that ‘we now find ourselves sitting in a department that has a significant role in the British intelligence community’. However, while the

location of the ISC within the Cabinet Office had long led to suggestions that the Committee was too close to the agencies, these had not emerged 'over the last six months' as the Committee later claimed. Moreover, it is not clear how relocating the Committee to another Government department, rather than making it accountable to Parliament, which the Committee then opposed, would serve to assuage concerns about the Committee's independence (ISC, 2010). The Government dismissed the suggestion not least because of the problems involved in making another Secretary of State responsible for oversight of the intelligence agencies. In interviews former Ministers and officials have suggested that the proposal was the result of something of a breakdown of cooperation between the Cabinet Office and the Chair of the ISC, and that the Government was happy to side-line the issue until after the general election.

The 2013 *Justice and Security Act* represented the most significant reform of intelligence oversight in the UK since the creation of the ISC in 1994. Introduced by the Conservative-Liberal Democrat coalition government, the *Justice and Security Act* was a substantial piece of legislation which sought primarily to limit the power of the courts in cases involving intelligence and national security. The government sought to balance this limit on judicial scrutiny by combining it with proposals to strengthen parliamentary oversight, by reconstituting the ISC as a committee of parliament and enhancing its powers.

Under the legislation the ISC was to be reconstituted as a committee of parliament, appointed by and reporting to Parliament, something which critics of the committee had long demanded. The legislation also expanded the ISC's mandate beyond the three intelligence and security agencies to include, 'such other activities of Her Majesty's Government in relation to intelligence and security matters' and also to include scrutiny of operations, although the mechanics of this arrangement were to be set out in a later memorandum of understanding between the Prime Minister and the ISC. The legislation also included significant safeguards to prevent the ISC becoming too independent. Although members were to be appointed by Parliament, nominations would first be made by the Prime Minister. Similarly reports, which were now to be made to Parliament, were still submitted first to the Prime Minister, and subject to redactions, before being laid before Parliament. The committee also retained the right to report exclusively to the Prime Minister.

The proposals for reform of the ISC were remarkable not least because, since 1994 reform of the committee, and in particular its reconstitution as a committee of parliament, had been resisted by successive governments and crucially by the committee itself. The proposed reforms had not been included in the 2010 general election manifestos of either of the coalition partners and as recently as March 2010, the then Chair of the ISC, Kim Howells had dismissed as 'gesture politics' a suggestion that the status of the committee could be altered so that it became 'a Select Committee but one with very special rules both as regards the way in which its members are appointed and the way in which it operates' (*Hansard*, 18 March 2010, col.994).

The driving force behind reform of the ISC was the committee's new chair, Malcolm Rifkind. Prior to taking up the post Rifkind had argued that the fact that the ISC was not a parliamentary committee 'adds to the impression that it is the creature of the Prime Minister' (*Hansard*, 18 March 2010, col.994). Rifkind took up this theme in a speech delivered shortly after taking over as Chair of the committee, in which he argued that the ISC should evolve and that in doing so it was not sufficient for it to be 'entirely independent in law and in the eyes of its own members' it must also be 'perceived to be fully independent, both by Parliament and the public' (Rifkind, 2010). The means by which this was to be achieved were set out in the first report of the new committee which recommended that the ISC become a committee of Parliament, with a wider remit and increased powers to request information and greater resources to carry out investigations (ISC, 2011).

While Rifkind clearly had a desire to enhance the status of the ISC, the government had other reasons for supporting reform at this time (Rifkind, 2014). Following a recent court case involving the former British inmate of Guantanamo Bay, Binyam Mohammed, in which US intelligence documents had been released by the court, the government were keen to bring forward legislation to control the handling of intelligence material by the courts. It is not clear when proposals for reform of the ISC were linked to reform of the courts' handling of intelligence. A senior Cabinet Office official interviewed for this research claimed that the emergence of Rifkind's proposals for reform of the ISC and the government's desire to restore control over the use of intelligence in the courts was a 'happy confluence,' but did concede that in the eyes of the Government the two proposals were clearly linked. The regulatory framework for the intelligence and security agencies was described as 'a system of moving parts' where changes in one part of the system, in this case a limitation on the power of the courts had to be balanced by enhancing oversight elsewhere, in this case by increasing the power of the ISC. While Rifkind had a genuine desire to lead a more powerful and credible ISC, limiting the power of the courts was 'the big prize for the Government and the agencies'.

The details of the ISC's new role were fleshed out in a subsequent Memorandum of Understanding between the committee and the Prime Minister. This provided details of the ISC's expanded institutional focus, an explanation of how the committee would oversee operational matters and also some changes to the way in which the committee would operate which had not been included in the legislation. The MoU listed the additional activities and agencies which the committee would now oversee. These included strategic intelligence activities undertaken by Defence Intelligence; offensive cyber operations undertaken by the MoD and by the now-defunct Office of Cyber Security and Information Assurance in the Cabinet Office; the activities of the National Security Adviser and Secretariat; the Joint Intelligence Organisation and the Home Office's Office for Security and Counter-Terrorism. It also made provision, for the first time, for the ISC to hold open evidence sessions, something which had previously been strongly resisted by the committee. While noting that the nature of the ISC's work meant that 'the majority of sessions will continue to be held in private', it stated that subject to 'adequate safeguards' to protect those taking part and the information imparted 'HMG and the ISC are committed to enabling occasional evidence sessions in public on matters agreed by both parties' (ISC, 2014).

Perhaps the most significant change introduced by the *Justice and Security Act* related to the ISC's new mandate to scrutinise the operational aspects of the work of the intelligence and security agencies. While the ISC had, arguably, exercised some operational oversight in the past, this had been on a limited and *ad hoc* basis (Lander, 2001; Gill, 2007; Phythian, 2007). The legislation, for the first time, provided the ISC with a statutory duty to examine operations of the intelligence and security agencies. How this would work in practice was the subject of considerable debate and the ISC's mandate in this area is bound by a number of important caveats. The ISC Chair, Malcolm Rifkind, made clear that the committee did not want to be briefed in advance of intelligence operations, in the manner of US Congressional oversight committees. According to Rifkind unless the committee was given the right to veto operations, which they did not want, it might be assumed to have provided approval for operations over which it had no control. This, Rifkind argued, would be 'responsibility without power, which is even worse than power without responsibility' (Rifkind, 2016, p.428). As a result, it was decided that the ISC's operational remit would be strictly retrospective. The legislation stated that the ISC will only consider operational matters in certain circumstances: firstly, 'where the ISC and the Prime Minister are satisfied that the matter is not part of any ongoing intelligence or security operation'; if the matter is of 'significant national interest'; where the Prime

Minister has asked the ISC to consider the matter; or when operational details have been provided voluntarily to the committee by the agencies (ISC, 2014).

The Memorandum of Understanding went further in seeking to explain what might constitute an ongoing intelligence operation. It noted that 'operational activity of the Agencies and Departments can vary greatly in scope, type and magnitude and in some cases it may not be clear when a particular operation has ended', and also that operations 'might be separated in time but linked in objective'. Ultimately it concluded decisions about whether an operation was ongoing, 'will be a matter of judgement for the Prime Minister and the ISC' (ISC, 2014, p.14). These decisions would be based on the principles that the ISC's work should not 'jeopardise the success of an operation or compromise the safety and security of those involved' or 'unduly impede the operational effectiveness' of the agencies (ISC, 2014, p.13). The MoU also sought to define 'significant national interest'. This, it stated, would be if operational activity:

...raises issues of wider significance or raises serious questions relating to Agency or Departmental conduct, competence, resourcing and policy in the operational context, including in situations where there is, or is likely to be, significant parliamentary or public interest in relation to such issues or questions (ISC, 2014).

Significantly, however, while the legislation expanded the ISC's remit in this area, its capacity for independent action is significantly limited. The legislation and the MoU place considerable power in the hands of the Prime Minister to act as an arbiter of parliamentary scrutiny in this area. It is up to the Prime Minister to decide whether the conditions for operational oversight have been met, 'the final decision' ultimately rests with the Prime Minister, 'in conjunction with the ISC'. Moreover, while the ISC may not embark on the scrutiny of operations without the Prime Minister's approval, the Prime Minister may, 'at his discretion, consider it appropriate to invite the ISC to consider an operational matter which falls outside the "retrospective" and "significant national interest" criteria.' (ISC, 2014, p.14).

The impact of ISC reform

It is perhaps a little early to arrive at any firm conclusions about the impact of recent reforms to the ISC. Although the *Justice and Security Act* came into force in 2013, the committee's agenda for the remainder of that parliament was already largely set, with ongoing inquiries into the murder of Fusilier Lee Rigby and an inquiry into the broader questions of privacy and security raised by the Snowden revelations. The first committee to be formally established under the new arrangements was only appointed following the 2015 general election. Moreover, two general elections in quick succession, in 2015 and 2017, have significantly disrupted the work of the ISC in this period (Defty, 2015; 2017a; 2017b). Nevertheless, some conclusions can be drawn about the changing status of the committee, and the exercise of its new mandate.

The *Justice and Security Act* reconstituted the ISC as a committee of Parliament. The committee promptly rebadged itself as the Intelligence and Security Committee of Parliament and since 2013 its reports have been published as House of Commons papers rather than Command Papers. However, the committee remains something of an anomaly and in a number of respects little has changed. The ISC has yet to transfer fully to Parliament. It still meets at secure premises in Victoria rather than on the parliamentary estate and is still staffed by officials seconded from the Cabinet Office, rather than parliamentary clerks. Even the committee's website is not provided by parliamentary IT services.

The process for appointing members of the committee has changed, but this too appears to have had little impact. ISC members are now appointed by Parliament. In practice this means that

Parliament is asked to approve a list of nominations drafted by the Prime Minister in consultation with opposition leaders. It remains to be seen whether Parliament will exercise its apparent power to challenge the Prime Minister's nominations, but this perhaps seems unlikely. When a new committee was appointed following the 2015 general election, an attempt by the veteran Labour MP, David Winnick, to force parliament to undertake elections for membership of the ISC, in line with the select committees, was unsuccessful (*Hansard*, 9 September 2015, col.510). Moreover, there has been little apparent change in the kind of MPs appointed to the committee. Since the ISC was established in 1994 there has been a tendency to appoint members who have had previous ministerial experience particularly in departments with links to the intelligence agencies, such as the Home Office, the Foreign Office and the Ministry of Defence. In total thirty-one of the forty-nine members of the ISC since 1994 have previously held Ministerial office. This has led to criticisms that members may be too close to the agencies and are perhaps too prone to endorse the views of those they are responsible for scrutinising (Bochel, Defty & Kirkpatrick, 2014). Yet when the first committee was appointed under the new arrangements in 2015, the complexion of the committee looked little different than previous committees, and included former Ministers from the Foreign and Commonwealth Office, the Home Office and the Department for International Development, a former Private Secretary to the Queen and the former Attorney General, Dominic Grieve, who became its Chair. Grieve is the sixth former Cabinet Minister to chair the ISC, only one chair of the committee has not previously sat in the Cabinet.

Moreover, another result of the particular process for appointing members of the ISC is that it has taken much longer to appoint members of the ISC than other parliamentary committees. In 2015, a new ISC was not established until early September, four months after the general election and six months after the last meeting of the committee. The long delay in appointing a new committee in 2015 prompted the Chair of the committee, Dominic Grieve, to make a direct appeal to party leaders prior to the 2017 general election to 'prioritise the appointment' of a new committee following the election (ISC, 2017a). Yet the ISC was, once again, one of the last parliamentary committees to be established following the 2017 general election and was not reconstituted until November 2017, more than five months after the election (Defty, 2017c).

The reasons for this long delay are not clear. In 2017 chairs of select committees were elected in July and the remaining members, when parliament returned from the summer recess, in September. The ISC, however, was not established until November. One possible explanation is the delay in appointing the House of Commons Committee of Selection which is responsible for tabling a motion on the floor of the House, setting out the Prime Minister's list of nominations. The Committee of Selection was not appointed until 12th September, shortly before Parliament went into recess for the party conference season. This does not, however, explain why it took another two months to appoint the ISC. Another possible explanation is that there was some disagreement between the party leaders over who should be nominated to sit on the committee. Some reports suggested that the nominations made by the Labour leader, Jeremy Corbyn, did not meet with the Prime Minister's approval (Merrill, 2017), while others have suggested that the Prime Minister was seeking to prevent Dominic Grieve from retaking his position as Chair of the committee. Whatever the new powers now exercised by the ISC, it cannot utilise those powers if it does not exist. It is, therefore, deeply unsatisfactory that for almost twelve months in the last three years, Britain has been without a legislative intelligence oversight body.

Recent reforms were also designed to enhance the public profile of the ISC, including with the innovation of allowing the committee to hold evidence sessions in public. The results of this process have also been somewhat mixed. Malcolm Rifkind and his successor, Dominic Grieve, have been

somewhat more prominent than previous ISC chairs, in terms of speaking about the committee's work and issuing public statements in response to emerging stories or public concerns, such as the Snowden revelations. The ISC also held its first public evidence session shortly after the passage of the *Justice and Security Act*, publicly cross-examining intelligence agency heads in November 2013 (ISC, 2013a). The questioning was not particularly challenging and did little to dispel the suspicion that the committee's scrutiny of the agencies was not particularly robust. Nevertheless, this was a potentially significant development in intelligence oversight in the UK. This was followed by the committee's first public call for evidence as part of its *Privacy and Security* inquiry (ISC, 2013b) and a further series of public evidence sessions with academics, privacy campaigners and government Ministers, which were more in line with typical select committee witness sessions.

However, despite these developments the ISC has also, in some respects, become less visible in recent years. Annual parliamentary debates on the work of the committee which were introduced in 1998 have fallen into abeyance. There has not been a House of Commons debate on the ISC since 2011, while there have only been two annual debates in the House of Lords, the most recent in 2010. The practice of holding evidence sessions in public has also not been repeated since 2014. Given the nature of its work, public sessions are always likely to be a minor part of the ISC's evidence gathering procedures. Nevertheless, the current Chair seems less convinced than his predecessor about the value of open sessions. A public call for evidence as part of the committee's detainee inquiry has not been followed by further public sessions, and written submissions have not been published. There were no public sessions in the last, albeit truncated, parliament and there no plans to hold more at the present time.

Recent events have also had an impact on the ISC's output. The committee has a statutory duty to produce an annual report on its work. There was, however, no annual report for 2014 - 2015, the first time in the committee's history that this has happened. Moreover, the most recent annual report covering 2016 - 2017, which was due to be published in the spring of 2017, was delayed by the general election (ISC, 2017c). The committee also rushed out its report on the UK involvement in lethal drone strikes in Syria in order to ensure it was published before the general election. However, in order to facilitate this, the committee decided to forego the usual process of negotiating with the government over the publication of sensitive material, with the result that the published report was much more heavily redacted than is usually the case (ISC, 2017b). The scale of the ISC's published output has also declined in recent year. Following the 2013 reforms a decision was made within the committee to reduce the length of its annual reports in order to allow a greater focus on the committee's more substantive inquiries. The first two annual reports in the 2010 parliament were very long at 282 and 250 paragraphs, while the second two ran to just 52 and 17 paragraphs. In the same period the committee produced substantive reports on the murder of Fusilier Lee Rigby (191 paragraphs), and privacy and security (149 paragraphs). However, in the 2015 parliament the ISC produced only three reports all of which were very short when compared to the committee's previous output: one annual report (20 paragraphs) and two special reports, on the *Investigatory Powers Bill* (13 paragraphs) and the UK's involvement in lethal drone strikes (31 paragraphs). While it is perhaps a little unfair to focus solely on the length of the ISC's output. As the committee meets and takes evidence almost entirely in secret, and its work is no longer debated in Parliament, its published output represents the only opportunity to scrutinise its work.

Finally, and perhaps most worryingly, there is some evidence that the committee is becoming marginalised by the government. The delay in appointing a new committee after the last two elections clearly suggests that the establishment of the ISC is not a priority for the government. The government has also become increasingly slow to respond to ISC reports. The Memorandum of

Understanding published in 2014 stated that 'HMG will aim to respond substantively to any report by the ISC within 60 days' (ISC, 2014). Yet the government has not published a response to the last three ISC annual reports and has yet to respond to the committee's report on UK involvement in lethal drone strikes in Syria, which was published in April 2017.

The ISC's inquiry into lethal drone strikes in Syria was also the first opportunity for the ISC, under its new powers, to undertake an investigation into an operational aspect of the work of the intelligence agencies. The drone inquiry, which was begun under David Cameron and completed under the current Prime Minister, examined the threat to the UK posed by individuals targeted by drone strikes and the decision-making which led to their targeting, focusing in particular on the case of Reyaad Khan who was killed by UK forces. Although the inquiry was initiated by the committee, it was explicitly sanctioned by the Prime Minister, who asked the ISC to undertake an investigation and set out the parameters of the inquiry. The drone strikes inquiry revealed the limitations of the committee's mandate to examine operational matters. Although the committee was provided with detailed evidence of the threat posed by Khan, their request to view the submissions made to Ministers about that threat were denied. This is a highly unusual position for the ISC. It is only the second time that the ISC has had a direct request for material denied, and the only time this has happened in an inquiry which the government has sanctioned in advance. It is not clear why the committee's request was denied, although it seems that the decision was made by the Prime Minister on the basis of a more rigid definition of ISC's remit than was agreed with her predecessor. Whatever the reason, the committee's stark conclusion was that its capacity to carry out its core function has been diminished. The committee's report on the matter concluded with the following depressing observation:

Oversight and scrutiny depend on primary evidence: without sight of the actual documents provided to Ministers we cannot ourselves be sure – nor offer an assurance to Parliament or the public – that we have indeed been given the full facts surrounding the authorisation process for the lethal strike against Reyaad Khan (ISC, 2017b).

Conclusions

The Intelligence and Security Committee (ISC) was established in 1994 to provide, for the first time, oversight by parliamentarians of the British intelligence and security agencies. Although modelled on the select committees, the ISC was not a parliamentary committee, but was appointed by, and reported to, the Prime Minister. Successive governments and crucially the ISC itself consistently resisted calls for substantive reform of the committee until circumstances in 2013 provided a mutually beneficial opportunity for the government and the committee. Reforms included in the *Justice and Security Act 2013*, reconstituted the ISC as a parliamentary committee, and provided it with a new and expanded mandate. This was followed by further changes to the way in which the committee operates and a significant increase in resources. The 2013 reforms represented a potentially significant step forward in intelligence agency accountability in the UK. At the same time the ISC remains in a number of respects what Douglas Hurd referred to in 1994 as, 'a unique and special committee... with a unique and special role'. The committee has yet to fully transition into a parliamentary committee and remains in a number of areas significantly under the control of the executive. Appointments to the committee, although subject to parliamentary approval, remain largely in the hands of the Prime Minister. There is little evidence of any change in the kind of parliamentarians selected to serve on the committee. The committee's new mandate to oversee operations is bound by a number of restrictions, which on its first application have frustrated the committee. Although the committee under Dominic Grieve has been prepared to push back against the lack of cooperation from the government in some areas, it is not clear what if anything, the

committee can do about this, and there are further signs that the government is marginalising the ISC. Moreover, it remains to be seen whether the opening up of the committee through parliamentary debates, open evidence sessions and a more public profile will continue to be applied under the current committee, but there are worrying signs that the visibility of the ISC is in decline.

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