HOUSE OF LORDS

In Focus

Interception of Communications: The Wilson Doctrine

Background

On 17 November 1966, in response to various questions from MPs over whether their telephone communications were being intercepted, the then Prime Minister, Harold Wilson, made a statement in the House of Commons on the subject of telephone tapping. Mr Wilson stated:

> With my Right Hon. Friends, I reviewed the practice when we came to office and decided […] that I should give this instruction that there was to be no tapping of the telephones of Members of Parliament. That was our decision and that is our policy. But if there was any development of a kind which required a change in the general policy, I would, at such moment as seemed compatible with the security of the country, on my own initiative make a statement in the House about it.
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> (HC *Hansard*, 17 November 1966, col 639)

On 22 November 1966, the Lord Privy Seal, the Earl of Longford, confirmed that this statement extended to Members of the House of Lords.

Since that time, many governments have stated that they continue to abide by the Wilson Doctrine, as the statement became known. In response to a question for written answer in November 1997, the then Prime Minister, Tony Blair, extended the doctrine beyond telephone communications, stating that it "applies in relation to the use of electronic surveillance by the Security Service as well as to telephone interception" (HC *Hansard*, 17 November 1997, cols 17–18W). On 15 July 2014, responding to a question on the Wilson Doctrine during a debate about the Data Retention and Investigatory Powers Bill (2014–15), the Home Secretary, Theresa May, stated that:

> Obviously, the Wilson doctrine applies to parliamentarians. It does not absolutely exclude the use of these powers against parliamentarians, but it sets certain requirements for those powers to be used in relation to a parliamentarian. It is not the case that parliamentarians are excluded and nobody else in the country is, but there is a certain set of rules and protocols that have to be met if there is a requirement to use any of these powers against a parliamentarian.
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> (HC *Hansard*, 15 July 2014, col 713)

Investigatory Powers Tribunal Case

On 14 October 2015, the Investigatory Powers Tribunal delivered a judgment in a case on the interception of parliamentarians' communications. The case was brought by the Green Party politicians Caroline Lucas MP and Baroness Jones of Moulsecoomb, and by the former MP George Galloway, following allegations by the former employee of the US National Security Agency, Edward Snowden, that

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the UK Government was undertaking mass surveillance of internet data. The claimants argued that there was a strong likelihood that MPs' communications would be captured as part of this surveillance, and that this would be unlawful as it would be in breach of the Wilson Doctrine.

The issues to be decided on by the Tribunal were summarised in the judgment as follows:

i) What does the Wilson Doctrine mean?
ii) What is its continuing effect in respect of parliamentary communications?
iii) What status does it (or its continuing effect) have in English law?
iv) Does the system relating to interception of parliamentary communications comply with Articles 8/10 of the European Convention on Human Rights?

The Tribunal concluded that: the Wilson Doctrine applies to targeted, but not incidental, interception of parliamentarians' communications; as originally proclaimed, the Wilson Doctrine allows for a "change in the general policy" at any time, "without any publication at any time in the foreseeable future" of this change; the Wilson Doctrine has no legal effect; and the current regime for the interception of parliamentarians' communications is in accordance with the law. The Tribunal also noted that "in practice the Agencies must comply with the Draft [Interception of Communications Code of Practice] Code and with their own Guidance", both of which are cited in the judgment, and which provide additional protection with respect to the interception of parliamentarians' communications.

Debate in the House of Commons, 19 October 2015

On 19 October 2015, an emergency debate called by the Shadow Leader of the House of Commons, Chris Bryant, on the Wilson Doctrine was held in the House of Commons. Several issues were raised and returned to by different Members, including: the meaning of the doctrine and whether or not it is currently in force; the question of who should authorise the interception of MPs' communications; the possibility of protection for MPs' communications to be written into statute; and the position of the communications of members of the devolved assemblies and the European Parliament. During the following exchange, the Home Secretary again stated her view that the Wilson Doctrine remained valid:

> **Mr Peter Bone** (Wellingborough) (Con): […] When I heard what the Home Secretary said, my conclusion was that over the years a number of Prime Ministers have authorised the interception of Members' telephone calls and decided that it was not in the national interest to reveal that, which would keep it completely within the Wilson doctrine. Am I right in thinking that?
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> **The Secretary of State for the Home Department (Mrs Theresa May)**: We never speak about whether a particular interception has taken place; indeed, there is a RIPA requirement in relation to that. Lord Wilson said that if there was a change and it was not compatible with national security to bring that change to the House, then it would not be brought to the House, but if it was compatible with national security to bring it to the House, then it would be. The Wilson doctrine set out by Lord Wilson of Rievaulx has remained in place, and the Investigatory Powers Tribunal identified it as remaining in place.
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> (HC *Hansard*, 19 October 2015, col 702)

More information is available in *Wilson Doctrine* (House of Commons Library, SN04258, 16 October 2015)