



# Library Note

## Reports into Investigatory Powers 8 July 2015

Over the twelve months prior July 2015, a number of reports have been published into the use of investigatory powers by public agencies in the UK. Those reports include:

- David Anderson QC, the Government's Independent Reviewer of Terrorism Legislation, [A Question of Trust: Report of the Investigatory Powers Review](#), June 2015
- The Intelligence and Security Committee of Parliament, [Privacy and Security: A Modern and Transparent Legal Framework](#), March 2015
- The [Annual Report](#) of the Chief Surveillance Commissioner, September 2014
- The [Annual Report](#) of the Intelligence Services Commissioner, June 2015
- The [Report](#) by the Prime Minister's Special Envoy on Intelligence and Law Enforcement Data Sharing, Sir Nigel Sheinwald, June 2015

During a [House of Commons debate](#) on these reports on 25 June 2015, the Home Secretary, Theresa May, said that taken together they constitute a "substantial Independent Review" on the use of investigatory powers and the arrangements for their oversight. Although the reports differ in some of their conclusions, both the Government's Independent Reviewer of Terrorism Legislation and the Intelligence and Security Committee of Parliament have recommended for the overhaul of the current legislative framework for the use of investigatory powers and the replacement of legislation such as the Regulation of Investigatory Powers Act 2000.

The introduction of new legislation on communications data was a commitment in the [2015 Conservative Manifesto](#). The Manifesto also stated that in government the Conservatives would seek to "maintain the ability of the authorities to intercept the content of suspects' communications, while continuing to strengthen oversight of the use of these powers". The Government has committed to introducing a bill on investigatory powers in the early part of 2016. To this end, the Government [has stated](#) that a draft bill would be presented for pre-legislative scrutiny in the autumn of 2015.

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**Table of Contents**

- 1. Introduction ..... 1
- 2. Anderson Report: A Question of Trust..... 1
- 3. Intelligence and Security Committee Report: Privacy and Security—A Modern and  
Transparent Legal Framework..... 3
- 4. Annual Reports of the Intelligence Services Commissioner and the Chief Surveillance  
Commissioner..... 4
- 5. Report by the Prime Minister’s Special Envoy on Intelligence and Law Enforcement Data  
Sharing ..... 5
- 6. Response to the Anderson Report in Parliament..... 6
- 7. Response to the Anderson Report from Think Tanks and Pressure Groups ..... 9
- 8. Recent Press Comment on Investigatory Powers ..... 9
- 9. Further Reading..... 11



## 1. Introduction

Over the twelve months prior to July 2015, a number of reports have been published into the use of investigatory powers by public agencies in the UK, including by David Anderson QC, the Government's Independent Reviewer of Terrorism Legislation, and the Intelligence and Security Committee of Parliament.<sup>1</sup> During her opening speech in a House of Commons debate on reports on investigatory powers, the Home Secretary, Theresa May, said that taken together, the various reports published so far, as well as those Government commissioned reports that had still to be published, would constitute a "substantial Independent Review" on the use of investigatory powers and the arrangements for their oversight.<sup>2</sup>

This Note provides a summary of the findings and recommendation of these recent reports, focusing primarily on the report by David Anderson QC, the Government's Independent Reviewer of Terrorism Legislation. It also provides responses to the Anderson Report from MPs, campaign groups and the press, and a reading list of other relevant House of Lords Library and House of Commons Library publications. Of particular relevance to this debate is the House of Lords Library Note [Human Rights and Civil Liberties in the United Kingdom: 2 July 2015](#) which provides a summary of proposals for reform to the legal framework for the use of investigatory powers, in the context of the broader human rights and civil liberties agenda in the 2015 parliament.<sup>3</sup>

The majority of these reports into investigatory powers have been published following the Government's commitment to introducing a bill on investigatory powers early in 2016. The Government's stated intention is that the Bill would receive Royal Assent before the sunset clause in the Data Retention and Investigatory Powers Act 2014 comes into effect at the end of that year.<sup>4</sup> The previous parliament also saw opposition to the Draft Communications Data Bill, published by the then Government in June 2012, which failed to be introduced as a bill in the 2010–15 parliament.<sup>5</sup> Further information on the draft Bill and the conclusions of the Joint Committee on the Draft Communications Data Bill is provided in the House of Commons Library briefing, [Communications Data: The 2012 Draft Bill and Recent Developments](#).<sup>6</sup>

## 2. Anderson Report: A Question of Trust

David Anderson QC, the Government's Independent Reviewer of Terrorism Legislation, published the report of the Investigatory Powers Review, entitled [A Question of Trust](#), on 11 June 2015. Mr Anderson described the term "investigatory powers" as having both a broad and a narrow definition: the term could be understood to extend to the full range of investigatory powers, including direct surveillance such as installing bugging devices. However,

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<sup>1</sup> David Anderson QC, [A Question of Trust: Report of the Investigatory Powers Review](#), June 2015; and the Intelligence and Security Committee of Parliament (ISC), [Privacy and Security: A Modern and Transparent Legal Framework](#), March 2015.

<sup>2</sup> HC *Hansard*, 25 June 2015, [col 1081](#). At the time of writing, one of these reports referred to by the Home Secretary has yet to be published: the Royal United Services Institute for Defence and Security Studies' Independent Review on the Use of Internet Data for Surveillance Purposes, launched by the former Deputy Prime Minister, Nick Clegg, on 4 March 2014: RUSI, '[RUSI to Convene Independent Review on the Use of Internet Data for Surveillance Purposes](#)', 4 March 2014.

<sup>3</sup> House of Lords Library, [Human Rights and Civil Liberties in the United Kingdom: 2 July 2015](#), 26 June 2015, LLN 2015/016, pp 3–7 and 10–14.

<sup>4</sup> HC *Hansard*, 25 June 2015, [col 1084](#).

<sup>5</sup> HM Government, [Draft Communications Data Bill](#), June 2012, Cm 8359.

<sup>6</sup> House of Commons Library, [Communications Data: The 2012 Draft Bill and Recent Developments](#), 12 June 2015, SN06373.

given the terms of reference for his inquiry, for the purposes of the report he defined the term narrowly as referring to the use of communications data and interception.<sup>7</sup>

*A Question of Trust* is a wide-ranging report and includes a number of recommendations. Mr Anderson recommended the legal framework for the use of investigatory powers by public authorities should be overhauled. He characterised the current law as being fragmented, and often obscure to all but “a tiny band of initiates”.<sup>8</sup> Mr Anderson also argued that a new law on the use of investigatory powers should be drafted “from scratch” to replace the Regulation of Investigatory Powers Act 2000, and other connected legislation. In the statement issued to accompany the report, Mr Anderson stated that the investigatory powers available to public authorities must be shown to be necessary, clearly spelt out in law, be limited in such a way as to conform to standard of international rights, and be subject to appropriate safeguards.<sup>9</sup>

*A Question of Trust* also included the following recommendations, as summarised below:

- Warrants for the interception of communications should require judicial approval rather than the approval of the Secretary of State, as is currently the case. An exception would be made in cases where the warrant is required in the interests of national security, relating to UK defence or foreign policy. In such cases, the approval of the relevant Secretary of State would be required.<sup>10</sup>
- The power to require service providers to retain communications data for a period of time should continue to exist, as currently provided for under the Data Retention and Investigatory Powers Act 2014.<sup>11</sup>
- The capability of security and intelligence agencies to retain intercepted material in bulk should be maintained. However, strict additional safeguards would be required.<sup>12</sup>
- The three existing oversight commissioners—the Interception of Communications Commissioner’s Office, the Office of Surveillance Commissioners and the Intelligence Services Commissioner—should be merged into a single Independent Surveillance and Intelligence Commissioner.<sup>13</sup>
- The role and jurisdiction of the Investigatory Powers Tribunal should be expanded.<sup>14</sup>

Mr Anderson also stated that there were possible benefits to requiring communications service providers to retain records of users’ interactions with the internet—so called ‘weblogs’—as proposed in the Draft Communications Data Bill. However, he added that, if such proposals

<sup>7</sup> David Anderson QC, [A Question of Trust: Report of the Investigatory Powers Review](#), June 2015, p 19.

<sup>8</sup> *ibid*, p 8.

<sup>9</sup> Independent Reviewer of Terrorism Legislation, ‘[Statement by the Independent Reviewer of Terrorism Legislation on Publication of the Report of the Investigatory Powers Review](#)’, 11 June 2015.

<sup>10</sup> David Anderson QC, [A Question of Trust: Report of the Investigatory Powers Review](#), June 2015, p 6.

<sup>11</sup> *ibid*, p 4. The House of Commons Library Note *Interception of Communications* draws the distinction between “communication data” and “content”, with communication data usually used to refer to the information about a message, such as the sender and the recipient, as opposed to the actual content: House of Commons Library, [Debate Pack: Reports into Investigatory Powers—Thursday 25 June 2015](#), 19 June 2015, p 34.

<sup>12</sup> David Anderson QC, [A Question of Trust: Report of the Investigatory Powers Review](#), June 2015, p 5.

<sup>13</sup> *ibid*, p 7.

<sup>14</sup> *ibid*, p 8.

were to be brought forward, a detailed operational case would need to be made and a rigorous assessment of the implications of retaining such data would need to take place.<sup>15</sup>

One of the core themes identified throughout the report was that a key objective for the renewal of legislation concerning investigatory powers ought to be public trust in the use of these powers by government agencies. The *New York Times* reported that Mr Anderson said:

The threat that I see of not accepting my recommendations, or recommendations along these lines, [...] is that people become disenchanted with the whole business of intelligence gathering. They believe some of the wilder allegations that came out of the Snowden affair—I would say unfounded wild allegations that the state is reading into people’s emails the whole time when patently it isn’t.

If this sense of disillusionment and disenchantment is perpetuated and spreads further, [...] then I think both law enforcement and intelligence lose the public confidence that they actually need if they are going to do an effective job.<sup>16</sup>

### 3. Intelligence and Security Committee Report: Privacy and Security—A Modern and Transparent Legal Framework

In March 2015, the Intelligence and Security Committee of Parliament (ISC) published a report entitled [Privacy and Security: A Modern and Transparent Legal Framework](#). In this report, the ISC reached a similar conclusion to that of the Independent Reviewer of Terrorism Legislation in respect of the need for reform to the existing legal framework on the use of investigatory powers.<sup>17</sup> The ISC argued that the existing law had been developed in a piecemeal fashion and was unnecessarily complicated. Unlike the Anderson Report, however, the ISC recommended that warrants for the use of investigative powers should remain in the hands of the Secretary of State, rather than be given to the judiciary.<sup>18</sup>

In its investigation of how investigatory powers are currently used, the ISC concluded that the UK’s intelligence and security agencies—MI5, the Secret Intelligence Service (SIS) and Government Communications Headquarters (GCHQ)—had not sought to circumvent the law in its use surveillance techniques.<sup>19</sup> This included that they had conformed to the requirements of the Human Rights Act 1998.<sup>20</sup> In this respect, the ISC report’s conclusions echoed those of its previous inquiry into whether the UK’s intelligence agencies had acted illegally in the context of allegations made by the former United States defence contractor, Edward Snowden.<sup>21</sup>

*Privacy and Security: A Modern and Transparent Legal Framework* also includes the findings of the ISC’s investigation into the capability of GCHQ for the bulk interception of communications. The ISC stated that GCHQ did not have the capacity or the legal authority to read the emails of everyone in the UK, and that GCHQ’s bulk interception systems operated on only a “very

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<sup>15</sup> *ibid*, p 5.

<sup>16</sup> Stephen Castle, ‘[Government Report Urges Changes in British Surveillance Law](#)’, *New York Times*, 11 June 2015. Quoted by the Shadow Home Secretary, Yvette Cooper, during the debate on reports into investigatory powers in the House of Commons on 25 June 2015: HC *Hansard*, [col 1087](#).

<sup>17</sup> ISC, [Privacy and Security: A Modern and Transparent Legal Framework](#), March 2015, p 2.

<sup>18</sup> *ibid*, pp 73–81, ‘Chapter 9: Authorisations and Accountability’.

<sup>19</sup> *ibid*, p 2.

<sup>20</sup> *ibid*.

<sup>21</sup> ISC, [Statement on GCHQ’s Alleged Interception of Communications Under the US PRISM Programme](#), July 2013.

small percentage” of the internet communications.<sup>22</sup> Of the material collected, the ISC were satisfied that the targeted searches used by analysts ensured that only material “believed to be of the highest intelligence value” was examined.<sup>23</sup>

#### 4. Annual Reports of the Intelligence Services Commissioner and the Chief Surveillance Commissioner

Of the commissioners that have been established to provide oversight to the use of investigatory powers in the UK, both the Chief Surveillance Commissioner, Sir Christopher Rose, and the Intelligence Services Commissioner, Sir Mark Waller, have recently published annual reports.<sup>24</sup> In his statement following the publication of these two reports, the Prime Minister, David Cameron, has said that, while both reports identify some errors in the use of investigative powers by intelligence, security and law agencies, they both indicate that these agencies took seriously the need to comply with correct procedure.<sup>25</sup>

##### 2014 Annual Report of the Intelligence Services Commissioner

The role of the Intelligence Services Commissioner is set out in section 59 of the Regulation of Investigatory Powers Act 2000 (RIPA), and includes the auditing of authorisations used of police, intelligence and security agencies and the Ministry of Defence for intrusive powers, such as those set out in RIPA, the Intelligence Services Act 1994 and equivalent authorisations available to the Ministry of Defence.<sup>26</sup> The *Annual Report of the Intelligence Services Commissioner for 2014* concluded that agencies took compliance with the legal requirements for the use of the investigative powers seriously, and had taken proper consideration of the proportionality and justification of any intrusion into someone’s privacy.<sup>27</sup> On the retention of bulk personal data by GCHQ, the Intelligence Services Commissioner said that there was a strong system in place to ensure that the retention of data and access to that data by analysts was justified; that any intrusion into privacy is both necessary and proportional; and that any misuse of the access to bulk personal data was prevented.<sup>28</sup>

##### Annual Report of the Chief Surveillance Commissioner for the period 2013–14

The Chief Surveillance Commissioner, Sir Christopher Rose, is responsible for overseeing the use of covert surveillance powers by UK public authorities.<sup>29</sup> His annual report includes statistics provided by these public authorities on the use of different forms of covert surveillance.<sup>30</sup> Sir Christopher identified that, over the period from 2013 to 2014, there had been only a “relatively small” increase in the use of the surveillance powers by the law

<sup>22</sup> ISC, [Privacy and Security: A Modern and Transparent Legal Framework](#), March 2015, p 2.

<sup>23</sup> *ibid.*

<sup>24</sup> Chief Surveillance Commissioner, [Annual Report of the Chief Surveillance Commissioner to the Prime Minister and to Scottish Ministers for 2013 to 2014](#), 4 September 2014, HC 343 of session 2014–15; Intelligence Services Commissioner, [Annual Report of the Intelligence Services Commissioner for 2014](#), 25 June 2015, HC 225 of session 2015–16.

<sup>25</sup> HC Hansard, 25 June 2015, [cols 31–2WS](#).

<sup>26</sup> Intelligence Services Commissioner, [Annual Report of the Intelligence Services Commissioner for 2014](#), 25 June 2015, HC 225 of session 2015–16, pp 2–3.

<sup>27</sup> *ibid.*, p 56.

<sup>28</sup> *ibid.*, p 50.

<sup>29</sup> Office of the Surveillance Commissioner, ‘[Office of the Surveillance Commissioner](#)’, accessed 1 July 2015.

<sup>30</sup> Chief Surveillance Commissioner, [Annual Report of the Chief Surveillance Commissioner to the Prime Minister and to Scottish Ministers for 2013 to 2014](#), 4 September 2014, HC 343 of session 2014–15, pp 9–13.

enforcement agencies, and a “considerable decline in the authorisation of directed surveillance by the other public authorities”.<sup>31</sup>

## 5. Report by the Prime Minister’s Special Envoy on Intelligence and Law Enforcement Data Sharing

The Prime Minister, David Cameron, has stated that it is important that communications service providers play a part in ensuring that the right capabilities are available to law enforcement and security agencies to combat crime and terrorist activities.<sup>32</sup> In September 2014, the Prime Minister appointed to the role of the Prime Minister’s Special Envoy on Intelligence and Law Enforcement Data Sharing Sir Nigel Sheinwald, a former UK Ambassador to the United States.<sup>33</sup> As stated in the press release announcing the appointment, the role of the Special Envoy is to represent the Prime Minister to overseas companies, including those communications service providers, based in the United States, that have a dominate share of the UK market. The Special Envoy is also expected to lead in discussions with foreign governments, including the US Government, and “explore how new formal US/UK arrangements could improve data access for the UK agencies”.<sup>34</sup>

Sir Nigel Sheinwald has reportedly provided a report to the Prime Minister on his work, which has not been made publically available. A summary of the report was published in June 2015 which includes the recommendation that the UK should improve its treaty arrangement with the US in regards to crime prevention and sharing data.<sup>35</sup> The *Guardian* reported that it had seen a leaked version of the report, which it claimed recommended that the Prime Minister seek to establish a new international treaty to enable UK government agencies to have access to data held by US-based communications service providers.<sup>36</sup>

### Relations with Foreign Communications Service Provides: Anderson Report

The Anderson Report includes an analysis of the UK Government’s relationship with US-based communications service providers, and the perspective of these service providers regarding the UK’s investigative powers.<sup>37</sup> On the issue of encryption of information, for example, which would ostensibly prevent it from being accessible by government agencies, Mr Anderson stated that communications service providers were “united in their opposition to any system in which they could be required to hand even the US Government a key to encrypted material”.<sup>38</sup> He noted that overseas service providers did not necessarily accept in practice those elements of the Data Retention and Investigatory Powers Act 2014 that were intended to have extraterritorial affect.<sup>39</sup> He observed that “engagement with overseas companies [had] to date been entirely on a voluntary basis”.<sup>40</sup> Mr Anderson also stated that a number of US companies had indicated to him that they would be more favourable regarding compliance with warrants

<sup>31</sup> *ibid*, p 23.

<sup>32</sup> HC *Hansard*, 11 June 2015, [col 42WS](#).

<sup>33</sup> Cabinet Office, ‘[Sir Nigel Sheinwald Appointed Special Envoy on Intelligence and Law Enforcement Data Sharing](#)’, 19 September 2014.

<sup>34</sup> *ibid*.

<sup>35</sup> Sir Nigel Sheinwald, ‘[Summary of the Work of the Prime Minister’s Special Envoy on Intelligence and Law Enforcement Data Sharing](#)’, 25 June 2015.

<sup>36</sup> Alan Travis, ‘[Secret Report Urges Treaty Forcing US Web Firms’ Cooperation in Data Sharing](#)’, *Guardian*, 2 June 2015.

<sup>37</sup> David Anderson QC, [A Question of Trust: Report of the Investigatory Powers Review](#), June 2015, pp 203–13.

<sup>38</sup> *ibid*, pp 206–7.

<sup>39</sup> *ibid*.

<sup>40</sup> *ibid*.

from UK government agencies if these warrants had judicial authorisation, rather than authorisation from the Secretary of State.<sup>41</sup>

## 6. Response to the Anderson Report in Parliament

On 25 June 2015, the House of Commons held a debate on the recent reports into investigatory powers.<sup>42</sup> In her opening comments, the Home Secretary, Theresa May, said that the use of investigatory powers by the security and intelligence services was essential for national security and combating crime.<sup>43</sup> She observed that since 2010 the majority of MI5's "top-priority" UK counter-terrorism investigations had used "intercept capabilities".<sup>44</sup> The Home Secretary also stated that communications data was used in 95 percent of serious and organised crime investigations handled by the Crown Prosecution Service.<sup>45</sup> She also added that the Government would consult with those most directly affected by any changes to the law before taking a decision on what changes to implement:

As I have already said, the Government have not yet taken firm decisions on particular recommendations in David Anderson's report, or indeed on any of the other reports we will discuss today. There are many voices both inside and outside the House who have important views that need to be heard. We must consult with those, including the police, the security and intelligence agencies, law enforcement agencies, and the telecommunications companies, as they are most directly affected. We also need to hear what Members of this House have to say.<sup>46</sup>

However, the Home Secretary did outline the following basis on which the Government intended to proceed, saying that:

I am clear that, whatever legal and privacy framework we propose, it will need to be agile and capable of responding to urgent cases. It will need to be clear and accountable, to be capable of commanding public confidence, and to ensure that sensitive powers are available in a way that will stand the test of time.<sup>47</sup>

The Home Secretary went on to argue that the debate on the use of investigatory powers, and how oversight of these powers might best be provided, ought not to be seen as a binary choice between either security or privacy:

[...] security and privacy are not, as I said before, a zero-sum game. We can only enjoy our privacy if we have our security, just as we can only be free to live our lives as we wish, enjoy the many benefits that this country has to offer and go about our lives unimpeded and free from threats because security underpins our way of life.<sup>48</sup>

Speaking for the Opposition, the Shadow Home Secretary, Yvette Cooper, supported the recommendation of the Anderson Report that the current legal framework was opaque and

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<sup>41</sup> *ibid*, p 207.

<sup>42</sup> HC *Hansard*, 25 June 2015, [cols 1081–143](#).

<sup>43</sup> *ibid*, [col 1081](#).

<sup>44</sup> *ibid*, [cols 1081–2](#).

<sup>45</sup> *ibid*, [col 1085](#).

<sup>46</sup> *ibid*, [col 1084](#).

<sup>47</sup> *ibid*.

<sup>48</sup> *ibid*, [col 1085](#).

unsustainable.<sup>49</sup> She also supported the recommendation in the Anderson report for an overhaul of the current commissioner system and the creation of a new single commissioner.<sup>50</sup>

Ms Cooper argued that the role of the Home Secretary should not be as wide ranging as had been outlined in the Draft Communication Data Bill regarding the determination of which categories of data communications service providers should be required to retain.<sup>51</sup> Ms Cooper stated that her party had opposed the Draft Communication Data Bill on the grounds that it gave the Home Secretary too much power, citing the concerns of the Joint Committee on the draft bill that the powers outlined in clause 1 of the draft bill were too wide ranging.<sup>52</sup> Ms Cooper said that the Government ought to take note of the recommendation made in the Anderson Report to consult with law enforcement agencies and communications service providers to establish the operation case for the retention of weblogs. In response to a request from the Shadow Home Secretary for clarity on the position of the Government on the proposals in the Draft Communication Data Bill, Mrs May said that the Government's response to the Joint Committee had made clear that it accepted that the powers in the original draft bill were too far ranging.<sup>53</sup>

On the issue of whether there should be judicial authorisation for interception warrants, Ms Cooper also stated that she believed such authorisation should indeed be introduced into the process.<sup>54</sup> She said that she did not believe that judicial oversight would jeopardise the work of security agencies, citing the fact that judicial approval existed in the UK's partner countries in the so-called "Five-Eyes Agreement": United States, Canada, Australia, and New Zealand.<sup>55</sup> However, she also argued that any new system should also ensure that the Home Secretary retain his or her role in assessing the nature of threats to national security.<sup>56</sup>

The former Deputy Prime Minister, Nick Clegg (Liberal Democrat MP for Sheffield Hallam), stated that Mr Anderson's report showed that there was no operational case for the requirement in the Draft Communications Data Bill that UK network providers should store third-party data relating to services operated by companies based overseas.<sup>57</sup> He also argued that the operational case for communications service providers being required to store weblogs did not have an adequate evidence base.<sup>58</sup> He said that Mr Anderson had indicated in his report that he had been presented with no "detailed or unified case" in support of this new requirement.<sup>59</sup>

Mr Clegg welcomed the recommendation made in both the Anderson Report and the report by the Intelligence and Security Committee of Parliament that the new bill on investigatory

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<sup>49</sup> *ibid*, [col 1086](#).

<sup>50</sup> *ibid*, [col 1089](#).

<sup>51</sup> *ibid*, [col 1088](#).

<sup>52</sup> Joint Committee on the Draft Communications Data Bill, [Draft Communications Data Bill](#), 11 December 2012, HL Paper 79 of session 2012–13, p 3; Further information on the conclusions of the Joint Committee on the Draft Communications Data Bill is included in the House of Commons Library Note, [Communications Data: The 2012 Draft Bill and Recent Developments](#), 12 June 2015, SN06373, pp 11–13.

<sup>53</sup> HC *Hansard*, 25 June 2015, [col 1088](#).

<sup>54</sup> *ibid*, [col 1090](#).

<sup>55</sup> The "Five-Eyes Agreement" refers to the United Kingdom-United States of America (UKUSA) Agreement on intelligence sharing, dating back to 1946. The details of the origins of the UKUSA Agreement have been published by the National Archive: [Newly Released GCHQ Files: UKUSA Agreement](#), June 2010.

<sup>56</sup> HC *Hansard*, 25 June 2015, [col 1090](#).

<sup>57</sup> *ibid*, [col 1095](#).

<sup>58</sup> *ibid*.

<sup>59</sup> *ibid*, col 1096; David Anderson QC, [A Question of Trust: Report of the Investigatory Powers Review](#), June 2015, p 265, para 14.33, refers to the evidence base required for the retention of weblogs.

powers should be as comprehensive as possible.<sup>60</sup> As part of the process of pre-legislative scrutiny, he argued that the Government ought to undertake to avow “all undeclared surveillance capabilities and major programmes”, with the proviso that details of operations and specific investigatory techniques should remain undisclosed.<sup>61</sup>

The SNP spokesperson for Justice and Home Affairs, Joanna Cherry (MP for Edinburgh South West), said that her party supported the introduction of judicial oversight to interception warrants. She also cited the findings of the Anderson Report regarding the operational case for requiring network providers to collect and store third-party data, arguing these delivered a “serious blow” to the proposals put forward in the Draft Communications Data Bill.<sup>62</sup> However, Ms Cherry stated that the SNP were disappointed that the Anderson report recommended that the bulk collection of external communications should continue.<sup>63</sup>

### **The Prime Minister’s Statement following the 29 June 2015 Attack in Tunisia**

Subsequent to the debate in the House of Commons detailed above, a series of terrorist attacks took place in Europe and the Middle East.<sup>64</sup> These included the murder of British nationals in Port El Kantaoui near Sousse in Tunisia on 26 June 2015. At the time of the Prime Minister’s statement to the House of Commons on 29 June 2015, 18 British nationals had been reported as having been killed, the largest number of British fatalities in a terrorist attack since the London bombings of 7 July 2005.<sup>65</sup> On 2 July 2015, the Government issued a further statement confirming that the number of British nationals who had been killed had risen to 30.<sup>66</sup>

No new announcements concerning the Government’s plans for the introduction of new draft legislation on investigatory powers were made in the Prime Minister’s statement on the Tunisia attack. The Prime Minister stated that the attack was perpetrated by a radicalised university student, and that, while this individual was (at that time) believed to have been acting alone, he was thought to have been part of an ISIL-inspired network. On the role of intelligence agencies, the Prime Minister said that their work was a key part of the UK’s strategy to combat terrorism and that it was important to provide them with the tools necessary, including the ability to track online communications.<sup>67</sup> Mr Cameron also said that the UK would be looking to assist the Tunisian authorities to ensure that they are able to develop an “intelligence-led model of policing” similar to the UK.<sup>68</sup> At the time of writing, there have been no statements issued by the Government providing further information on those who were responsible of the attack and what role, if any, the intelligence agencies might have been able to play in preventing such an attack.

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<sup>60</sup> HC *Hansard*, 25 June 2015, [col 1097](#).

<sup>61</sup> *ibid.*

<sup>62</sup> *ibid.*, [col 1102](#).

<sup>63</sup> *ibid.*, [col 1103](#).

<sup>64</sup> On the same day, a decapitated body was found in a gas and chemicals factory in south-eastern France and, in Kuwait, 27 people were killed and more than 200 injured following the bombing of a Shia mosque in Kuwait City: BBC News, ‘[France, Kuwait and Tunisia Attacks: What We Know](#)’, 27 June 2015.

<sup>65</sup> HC *Hansard*, 29 June 2015, [cols 1173–6](#).

<sup>66</sup> Foreign and Commonwealth Office, ‘[Foreign Secretary Confirms 30 British Victims of Tunisia Attack](#)’, 2 July 2015.

<sup>67</sup> HC *Hansard*, 29 June 2015, [col 1173–4](#).

<sup>68</sup> *ibid.*, [col 1179](#).

## 7. Response to the Anderson Report from Think Tanks and Pressure Groups

Liberty and Amnesty International both welcomed the recommendation of the Independent Reviewer of Terrorism Legislation that there should be an overhaul of the law on investigatory powers in the UK.<sup>69</sup> Liberty also welcomed the recommendation that the new legal framework which would replace it ought to comply with international human rights standards, and that judicial authorisation should be required for interception warrants.

The Director of Liberty, Shami Chakrabarti, argued that the Anderson Report “could be the beginning of re-building public trust in surveillance conducted with respect for privacy, democracy and the law”.<sup>70</sup> However, Liberty stated its disappointment that, despite the report’s recommendations for additional safeguards, David Anderson had recommended that government agencies should be allowed to continue the bulk collection of external communications. Liberty argued that, although the Anderson Report provided six case studies as evidence in favour of the collection of external communications, the information provided in these examples was “vague and limited”.<sup>71</sup> It was therefore “impossible to assess whether the security outcomes could have been achieved by using the wealth of targeted and operation-led intrusive surveillance powers at the agencies’ disposal”.<sup>72</sup>

The Henry Jackson Society has stated its support for the recommendations made in the Anderson Report for the retention of the powers contained in the Data Retention and Investigatory Powers Act 2014, and that government agencies should have the ability to access communications data in bulk.<sup>73</sup> It supported the recommendation for the creation of an Independent Surveillance and Intelligence Commission, and the recommendation that the relationship between US communication service providers and governments should be improved. However, the Henry Jackson Society stated that it was “cautious” regarding the recommendation that interception warrants should have judicial authorisation.<sup>74</sup>

## 8. Recent Press Comment on Investigatory Powers

Alan Travis, the home affairs editor at the *Guardian*, wrote that the publication of the Anderson Report cleared the way for the continuation of bulk collection of personal communications data.<sup>75</sup> He also argued that the proposal from David Anderson that there should be judicial authorisation for intercept warrants was unlikely to succeed, given opposition from within the security agencies. Quoting the former Director of GCHQ, Sir David Omand, Alan Travis noted:

[...] the official position is likely to end up reflecting the view of Sir David Omand [...] who said on Thursday it would be “unconscionable for a judge to authorise a very

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<sup>69</sup> Liberty, “[“Undemocratic, Unnecessary and—in the Long Run—Intolerable”: Government Reviewer Condemns Britain’s Snooping Laws](#)”, 11 June 2015; and Amnesty International, “[David Anderson Report: “Radical Overhaul” of Surveillance Laws Needed](#)”, 11 June 2015.

<sup>70</sup> Liberty, “[“Undemocratic, Unnecessary and—in the Long Run—Intolerable”: Government Reviewer Condemns Britain’s Snooping Laws](#)”, 11 June 2015.

<sup>71</sup> *ibid.*

<sup>72</sup> *ibid.*

<sup>73</sup> Henry Jackson Society, “[HJS Welcomes Anderson Report’s Confirmation of Key Requirements](#)”, 11 June 2015

<sup>74</sup> *ibid.*

<sup>75</sup> Alan Travis, “[A Question of Trust? Anderson Report Lays Out Tests for Surveillance Laws](#)”, *Guardian*, 11 June 2015.

sensitive intelligence operation where the political risk, if it went wrong, fell on the Home Secretary, or overseas the Foreign Secretary, who would know nothing about it and wouldn't have approved it".<sup>76</sup>

The leading article in the *Times* on the day after the publication of the Anderson Report supported David Anderson's assessment that accessing bulk data had been important in the prevention of terrorist attacks.<sup>77</sup> The paper supported his recommendation on the need for clarity in drafting a new legislative framework, however, the *Times* argued against the granting of judicial oversight to the interception warrants:

It could prove dangerous if parliament enacts Mr Anderson's suggestion that a judge's approval is required for all interception warrants. That would be a substantial sapping of the authority of the Home Secretary. [...] Submitting every request to view metadata will slow down and impede investigations and weigh down courts. The Home Secretary has to be given more weight than Mr Anderson allows. Ultimately it is the minister who has to report to parliament on a counterterrorist operation. She must have the information needed to make a case. Democratic accountability must trump the possibility of infringing privacy.<sup>78</sup>

The legal commentator, Joshua Rozenberg, also writing in the *Guardian*, has said that drafting a new bill which fits the objective outlined by David Anderson to provide a clearer legislative framework for the use of investigatory powers would be demanding in the time scale currently proposed. Mr Rozenberg stated that "drafting a new bill from scratch in user-friendly, security-cleared language and to a strict parliamentary timetable, would be a huge undertaking".<sup>79</sup> On the system for the oversight of the use of investigatory powers, he added that current reporting system had disclosed some important information, such as the breach of the rules on accessing data revealed in the Intelligence Services Commissioner's June 2015 report.<sup>80</sup> He also wrote that the Intelligence Services Commissioner's report was able to indicate that there was, in broad terms, a high level of compliance within intelligence and security agencies concerning these rules on the retention and access of bulk personal datasets. However, Mr Rozenberg argued that it was necessary for such rules to be put on a statutory footing.<sup>81</sup>

Writing in the *Times*, the Public Law and Human Rights Barrister, Lord Pannick (Crossbench), has argued in favour of giving the judiciary oversight of these warrants.<sup>82</sup> In regards to the issue of parliamentary accountability, he argued that, given the need for secrecy in circumstances where the Home Secretary would be required access to the case for a warrant, his or her decisions could not be subject to proper political scrutiny. Lord Pannick argued that the public would have more confidence in these decisions if they were made by an independent judge.<sup>83</sup>

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<sup>76</sup> *ibid.*

<sup>77</sup> *Times* (£), '[Secret Society](#)', 12 June 2015.

<sup>78</sup> *ibid.*

<sup>79</sup> Joshua Rozenberg, '[Spies May Not Like the Anderson Plan—But Their World Needs A Revolution](#)', *Guardian*, 25 June 2015.

<sup>80</sup> Joshua Rozenberg, '[There's no Law to Prevent Intelligence Agencies Using Private Data. That Has To Change](#)', *Guardian*, 25 June 2015.

<sup>81</sup> *ibid.*

<sup>82</sup> Lord Pannick, '[David Pannick: Why Judges, Not Ministers, Should Authorise Interceptions](#)', *Times* (£), 18 June 2015.

<sup>83</sup> *ibid.*

The *Guardian* has reported comments from Sir Tim Berners-Lee, the creator of the World Wide Web, regarding the drafting of a new bill on investigatory powers.<sup>84</sup> Sir Tim argued that the perception that the UK had less strict controls over the bulk data collection techniques used by government agencies than the United States had meant that the UK had lost the “moral high ground”.<sup>85</sup> He said that new legislation needed to provide a greater level of assurance that the privacy of web users was to be protected:

[...] if Britain is going to establish a leadership situation, it’s going to need to say: ‘We have solid rules of privacy, which you as an individual can be assured of, and that you as a company can be assured of’.<sup>86</sup>

## 9. Further Reading

- House of Lords Library, [Human Rights and Civil Liberties in the United Kingdom: 2 July 2015](#), 26 June 2015, LLN 2015/016
- House of Commons Library, [Debate Pack: Reports into Investigatory Powers—Thursday 25 June 2015](#), 19 June 2015
- House of Commons Library, [Wilson Doctrine](#), 19 June 2015, SN04258
- House of Commons Library, [Communications Data: The 2012 Draft Bill and Recent Developments](#), 12 June 2015, SN06373
- Parliamentary Office of Science and Technology, [The Darknet and Online Anonymity](#), 9 March 2015, PN-488

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<sup>84</sup> Alex Hern, ‘[Tim Berners-Lee Urges Britain to Fight ‘Snooper’s Charter’; Inventor of World Wide Web also Advised Developing World to ‘Just Say No’ to Facebook’s Internet.Org Scheme](#)’, *Guardian*, 12 June 2015

<sup>85</sup> *ibid.*

<sup>86</sup> *ibid.*