The 'Wilson Doctrine'

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The convention that MPs' communications should not be intercepted by police or security services is known as the 'Wilson Doctrine'. It is named after the former Prime Minister Harold Wilson who established the rule in 1966. According to the *Times* on 18 November 1966, some MPs were concerned that the security services were tapping their telephones. In November 1966, in response to a number of parliamentary questions, Harold Wilson made a statement in the House of Commons saying that MPs phones would not be tapped.

More recently, successive Interception of Communications Commissioners have recommended that the forty year convention which has banned the interception of MPs' communications should be lifted, on the grounds that legislation governing interception has been introduced since 1966. Subsequent Prime Ministers have confirmed that the ban remains in place.

Concerns over possible breaches of the Wilson doctrine have been voiced on a number of occasions in recent years: following Sadiq Khan's meetings with a constituent at Woodhill Prison in 2005/6, Damian Green's arrest and the subsequent search of his offices in November 2008, following revelations of the National Security Agency's surveillance activities in 2013, and after it was revealed in 2014 that conversations between MPs and prisoners were recorded from 2006-12.

There are indications that metadata – the 'who, when, where and how' of a communication – is currently not covered by the Wilson doctrine. Francis Maude, Cabinet Office Minister, agreed to review the policy in March 2014 but no changes have been made to date. Caroline Lucas and Baroness Jones of Moulsecoomb claim that collection of metadata is in breach of the Wilson doctrine and parliamentary privilege. They have brought forward legal proceedings against the Government.

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1 Introduction

The Wilson doctrine requires that there should be no interception of MPs' communications. Introduced in 1966, the doctrine has been upheld in the decades since, and there have been several pieces of legislation to regulate both the interception of communications and the use of surveillance as part of criminal and other investigations by a range of public bodies.

2 Historical background

During the Cold War, the Government believed that communists from the Soviet Union had infiltrated British trade unions to generate political unrest. Information on these activities was not normally disclosed. However, on 20 June 1966, in a statement on the seamen's strike, the then Prime Minister Harold Wilson suggested that outside influences were preventing a settlement of the strike:

> It has been apparent for some time – and I do not say this without having good reasons for saying it – that since the Court of Inquiry's Report a few individuals have brought pressure to bear on a select few on the Executive Council of the National Union of Seamen, who in turn have been able to dominate the majority of that otherwise sturdy union.
>
> It is difficult for us to appreciate the pressures which are being put on men I know to be realistic and reasonable, not only in their executive capacity but in the highly organised strike committees in individual ports, by this tightly knit group of politically motivated men who, as the last General Election showed, utterly failed to secure acceptance of their strength of the seamen's case.[1]

Many people at the time believed that this information must have come from the security services. Austin Morgan's biography of Harold Wilson suggests that Harold Wilson's source was MI5.[2]

During a debate on the renewal of the emergency regulations (in operation because of the seamen's strike) Harold Wilson responded to comments in the press about his suggestion that communists were active in the National Union of Seamen.[3]

> I have had to think a great deal about this in recent weeks, and my statement of eight days ago was not made without a great deal of anxious consideration. Some of us, owing to the position we hold, have not only an equal right to take any action within our power to ensure that these activities are known and understood for what they are, but we have a duty to exercise that right.[4]

There was growing concern amongst MPs that their phones were being tapped. According to a *Times* article on 18 November 1966, Harold Wilson answered four questions on telephone tapping. Two were on whether MPs' phones had been tapped, one asked how many warrants had been issued authorising tapping, and one asked whether this remained under the Home Secretary's sole authority.[5]

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1 HC Deb 20 June 1966 c 42-43
2 Austin Morgan, *Harold Wilson,* Pluto Press, 1992, p288
3 "Mr Wilson accuses communists" *The Times* 21 June 1966
4 HC Deb 28 June 1966 c 1614
5 "Prime Minister's directive against tapping M.P.s' telephones" *The Times* 18 November 1966

3 The Wilson doctrine

The former Prime Minister Harold Wilson set out the doctrine named after him in response to questions about telephone tapping. He stated that there was no tapping of MPs telephones:

> The House will know that since the publication of the Report of the "Committee of the Privy Councillors" appointed to inquire into the Interception of Communications in 1957, it has been the established practice not to give information on this subject.
>
> Nevertheless, on this occasion and exceptionally because these Questions on the Order Paper may be thought to touch the rights and privileges of this House, I feel it right to inform the House that there is no tapping of the telephones of hon. Members, nor has there been since this Government came into office.[6]

He also gave a commitment that any change in policy would be subject to a statement in the House:

> With my right hon. Friends I reviewed the practice when we came to office and decided on balance – and the arguments were very fine – that the balance should be tipped the other way and 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 of policy, I would, at such a moment as seemed compatible with the security of the country, on my own initiative make a statement in the House about it.[7]

An article in the *Independent* in 2005 gave some further background:

> The history of how the Wilson Doctrine came into existence helps to explain why senior MPs and constitutional experts are so concerned at its imminent demise.
>
> In late 1966, in the midst of the Cold War, Wilson had been forced on to the defensive after his extraordinary attack on the organisers of a seamen's strike, among whom was a young John Prescott. Challenged to justify his claim that the union was being manipulated by a "tightly knit group of politically motivated men", Wilson hinted at intelligence supplied by MI5. It caused an uproar, and MPs demanded to know whether their phones were being tapped. On 17 November Wilson appeared in the Commons to give a statement that has been endorsed by every subsequent Prime Minister - until now. Wilson said there "should be no tapping whatsoever" of MPs' phones and that if it was considered necessary to change the policy, the Commons would be told.
>
> Wilson said that he understood the "seriousness" of concerns, "particularly if tapping comes to be developed in this country on the scale on which it has developed in other countries". He could have little conception about the "scale" of interception technology 40 years on, nor how much the state could know about the lives of its citizens.[8]

Successive governments have upheld the policy as stated in 1966. In October 1997, the then Prime Minister Tony Blair described this policy in response to a Parliamentary Question:

> **Mr. Winnick:** To ask the Prime Minister if it is Government policy that interception of telephones of hon. Members by the Security Service requires his authorisation; and if he will make a statement.

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6 HC Deb 17 November 1966 c635

7 HC Deb 17 November 1966 c639

8 "The politics of paranoia", *Independent,* 17 January 2005

> **The Prime Minister:** This Government's policy on the interception of telephones of Members of Parliament remains as stated in 1966 by the then Prime Minister, the Lord Wilson of Rievaulx, and as applied by successive Governments since. In answer to questions on 17 November 1966, Lord Wilson said that he had given instructions that there was to be no tapping of the telephones of Members of Parliament and that, if there were a development which required such a change of policy, he would at such moment as seemed compatible with the security of the country, on his own initiative, make a statement in the House about it.[9]

In 2001 this was again confirmed, and it was noted that the Wilson doctrine also extended to the House of Lords:

> **Norman Baker:** To ask the Prime Minister (1) in respect of the allegations made by Lord Ahmed of telephone tapping, for what reason his spokesman departed from the normal policy of neither confirming nor denying; and if he will make a statement;
>
> (2) if it is his policy that in respect of Members of the House of *(a)* Commons and *(b)* Lords, no authorisation will be given for the interception of communications; and if he will make a statement.
>
> **The Prime Minister:** As I informed the House on 30 October 1997, *Official Report*, column 861, Government policy remains as stated in 1966 by the then Prime Minister, the Lord Wilson of Rievaulx. In answer to questions on 17 November 1966, Lord Wilson said that he had given instructions that there was to be no tapping of the telephones of Members of the House of Commons and that if there were a development which required a change of policy, he would at such moment as seemed compatible with the security of the country, on his own initiative, make a statement in the House about it. The then Parliamentary Under-Secretary of State for the Home Department, Lord Bassam, confirmed on 27 September 2000 that this policy extended to Members of the House of Lords.
>
> With this long-standing exception in relation to Members of Parliament, it remains the normal policy of the Government neither to confirm nor deny allegations in respect of interception matters.[10]

Responsibility for the monitoring of telephone tapping lies with the Interception of Communications Commissioner, originally under the provisions of the *Interception of Communications Act 1985* and now under the terms of the *Regulation of Investigatory Powers Act 2000 (RIPA)*.[11] The regulatory framework is briefly described in section 7 of the Library Standard Note 6934, *The Data Retention and Investigatory Powers Bill*[12] and in more detail in Library Standard Note 6332, *Interception of Communications*.[13]

Tony Blair made a statement on 15 December 2005 on the advice given by the then Interception of Communications Commissioner, Sir Swinton Thomas, on the interception of MP's communications. The advice was unpublished.

> **The Prime Minister (Mr. Tony Blair):** The Government have received advice from the Interception of Communications Commissioner, Sir Swinton Thomas, on the possible implications for the Wilson Doctrine of the regulatory framework for the interception of communications, under the Regulation of Investigatory Powers Act 2000.

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9 HC Deb 30 October 1997 c186w
10 HC Deb 19 December 2001 c367w
11 *Annual report of the Interception of Communications Commissioner 2005-06*, HC 315 2006-07, p1
12 Last updated 18 July 2014
13 Last updated May 2012

> The Government are considering that advice. I shall inform Parliament of the outcome at the earliest opportunity.[14]

Tony Blair made a further statement on 30 March 2006:

> It was Sir Swinton's advice, taking into account the new and robust regulatory framework governing interception and the changed circumstances since 1966, that the Wilson Doctrine should not be sustained.
>
> I have considered Sir Swinton's advice very seriously, together with concerns expressed in this House in response to my written ministerial statement on 15 December. I have decided that the Wilson Doctrine should be maintained.[15]

An article in the *Guardian* provided some background to the statement:

> **Ban on MP phone taps to stay**
>
> Mr Blair revealed last December that the ban was under review after a recommendation from Sir Swinton who was concerned about the possible implications of the Regulation of Investigatory Powers Act 2000.
>
> This updated existing laws and set in place new legal procedures governing the interception of communications carried on both public and private telecommunications systems.
>
> The move reportedly led to rows in cabinet, with Mr Blair said to favour lifting the prohibition but facing stiff opposition from some colleagues, including the defence secretary, John Reid.
>
> It also sparked bitter opposition from a number of MPs. Labour's Colin Challen tabled a motion calling for the Commons to be able to debate the matter and have the final say.
>
> The Speaker, Michael Martin, also expressed serious concern about the proposal.[16]

The issue was raised again by the then Interception of Communications Commissioner in his annual report for 2005-2006.[17] Sir Swinton Thomas said:

> It is fundamental to the Constitution of this country that no-one is above the law or is seen to be above the law. But in this instance, MPs and Peers are anything but equal with the rest of the citizens of this country and are above the law.

He also said:

> In my view the Doctrine flies in the face of our Constitution and is wrong. I do not think that it provides MPs with additional protection. I think in fact that it is damaging to them.[18]
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> To the best of my knowledge, there is no other country in the world that provides the privilege to its elected representatives and Peers to be immune from having their

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14 HC Deb 15 December 2005 c151WS
15 HC Deb 30 March 2006 cc95-6WS
16 "Ban on MP phone tap to stay", *Guardian*, 30 March 2006
17 *Annual report of the Interception of Communications Commissioner 2005-06*, HC 315 2006-07, pp 12-14
18 *Ibid* para 57

> communications lawfully intercepted with the accompanying advantage that they may be immune from criminal investigation and prosecution.[19]

The Commissioner argued that the situation had changed substantially since 1966, with legislation that required a warrant signed by the Secretary of State, and oversight from an independent commissioner. Moreover, interception was an important tool in the investigation of serious crime:

> Some MPs may fear that the situation now is the same as it was in 1966 when it was at least theoretically possible for the Executive to intercept communications for its own purpose but it is not, for the following reasons –
>
> i. For there to be interception, there must be a Warrant in place, signed by the Secretary of State authorising the interception.
>
> ii. The grounds for doing so are very limited by Section 5(3) of the Act. They are essentially National Security (including terrorism) and the prevention or detection of serious crime.
>
> iii. There is oversight by the Commissioner to prevent wrongful use, and I have made it clear that the Commissioner would personally ensure that there was no improper interception of the communications of any public figure.
>
> iv. It is important to appreciate that in reality it is impossible to achieve the interception of a telephone conversation by a Government Agency without a Warrant and the safeguards attached to it. So those who support the retention of this particular privilege have nothing to fear unless they are engaging in terrorism or serious crime.
>
> v. The interception of communications is the most important investigative tool in the investigation of serious crime, such as fraud, drug smuggling, the downloading of child pornography, sexual offences with minors and perjury. Of course, I do not think that Members of Parliament are engaging in serious crime and terrorism. Indeed I have the greatest respect for our democratic institutions. However to maintain that no MP or Peer ever has or ever will engage in serious crime is absurd.
>
> vi. Nonetheless it is clear to me that a number of Ministers and many MPs from the Speaker of the House of Commons downwards, who I have spoken to on this subject, are determined to maintain this privileged status.[20]

The Rt. Hon. Sir Paul Kennedy was appointed Interception of Communications Commissioner on 11 April 2006. In his Annual Report for 2006, published on 28 January 2008, Sir Paul supported the views of his predecessor:

I have not in this report referred to the Wilson Doctrine but I adopt without qualification what was said about it by Sir Swinton Thomas last year. In times like these it seems to me to be totally indefensible.[21]In 2009, Gordon Brown reaffirmed that the Wilson doctrine was still in place:

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19 *Ibid* para 55

20 *Annual report of the Interception of Communications Commissioner 2005-06*, HC 315 2006-07, para 51

21 *Report of the Interception of Communications Commissioner for 2006*, 28 January 2008, HC 252

David Davis: To ask the Prime Minister whether any hon. Member has been subject to (a) official surveillance and (b) interception of communications in the last two years. [288592]

The Prime Minister: The Wilson doctrine continues to apply to all forms of surveillance and interception that are subject to authorisation by Secretary of State warrant.[22]

The current Government's position was confirmed in 2013:

Lord Strasburger: To ask Her Majesty's Government whether the Wilson Doctrine on the interception of MPs' telephone calls still applies; whether it covers internet-based communications; and whether it applies to members of the House of Lords.[HL1217]

Lord Wallace of Saltaire: Though it has been the longstanding practice for successive Governments not to comment on surveillance or interception operations. I can confirm that the Wilson Doctrine still applies, and applies to both Houses I refer the noble Lord to the then Prime Minister Tony Blair's written answer to Norman Baker MP on the terms of the Wilson Doctrine on 19 December 2001, Official Report, column 367W. and his subsequent confirmation that it continues to apply on 30 March 2006, Official Report. columns 95 and 96WS. His earlier written reply to a question by Norman Baker on 4 December 1997, Official Report, column 321W, made it clear that the Wilson Doctrine applied to telephone interception and to the use of electronic surveillance by any of the three security and intelligence agencies. This is still the position.[23]

4 Prison surveillance

4.1 Alleged events at Woodhill prison

On 3 February 2008, the *Sunday Times* reported allegations that conversations between Sadiq Khan MP and a constituent at Woodhill Prison had been secretly recorded during 2005 and 2006:

The bugging operation recorded conversations with his constituent, Babar Ahmad, who is facing deportation to the United States under new extradition laws. Khan has been a friend of Ahmad since childhood and has been a prominent campaigner against his extradition. He met the home secretary to discuss the case and handed over a petition of 18,000 signatures calling for Ahmad's release.

The US government has accused Ahmad of running a website that raised funds for Taliban and Chechen terrorists in the late 1990s. He faces no charges in Britain but is wanted in the United States because his website was registered there.

Khan made two visits to Ahmad in 2005 and 2006 while he was on remand at Woodhill prison in Milton Keynes. Both meetings were secretly recorded. Ahmad's family say he arranged the meetings because he was no longer free to go Khan's constituency office in Tooting, south London, and wanted to see his MP.

Knowing that Khan was coming, the anti-terrorist squad requested the bugging.

Senior officers had already granted authorisation to bug Ahmad's guests before Khan first visited. The officers had previously recorded family members who were leading the campaign to free him.

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22 HC Deb 21 July 2009 c1166W
23 HL Deb 3 July 2013 WA238

> The meetings took place in the main visitors' hall where each inmate is allocated an identical wooden table. Underneath the tables is a solid wood partition that separates prisoners from their visitors.[24]

The then Justice Secretary, Jack Straw, made a statement in the House on 4 February 2008. He announced an inquiry into the matter to be conducted within two weeks by Sir Christopher Rose, the Chief Surveillance Commissioner:

> I can now announce to the House that, with the agreement of my right hon. Friend the Home Secretary, the chief surveillance commissioner, Sir Christopher Rose, has agreed to conduct an inquiry with the following terms of reference:
>
> "To investigate the circumstances relating to the visits to Babar Ahmad at HMP Woodhill by Sadiq Khan MP in May 2005 and June 2006, to establish whether the visits were subject to any form of surveillance and if so by whose authority and with whose knowledge, and to report his findings to the Prime Minister, the Home Secretary and to me as the Justice Secretary." [25]

Sir Christopher Rose published his report on 21 February 2008. The Commissioner confirmed that the visits were subject to surveillance but were not covered by the Wilson doctrine. He highlighted that current legislation did not preclude surveillance of MPs:

> The legislation does not exempt Members of Parliament or anyone else from liability to covert surveillance if the circumstances warrant it. My views are not sought on the legislation or on the 1966 Wilson Doctrine which relates to the tapping of MPs' telephones and which, as the present Prime Minister said in his written Parliamentary answer on 12th September 2007, applies to all forms of interception subject to authorisation by Secretary of State warrant. The surveillance which I am investigating does not appear to me to be within the Wilson Doctrine, because it does not give rise to interception as defined by the legislation, nor would it require authorisation by the Secretary of State.[26]

The then Home Secretary reiterated this point in her statement to the House on 21 February 2008:

> This is in line with the Government's stated position on the doctrine. As the facts set out in Sir Christopher's report make clear, it is not relevant in this case.[27]

The Chief Surveillance Commissioner added a 'coda' to his report drawing attention to the potential for confusion about the Wilson doctrine and its application to surveillance operations, and suggested that clarification would be helpful:

> There is manifest scope for confusion in the minds of officers of public authorities and MPs as to the correct inter-relationship between the Wilson Doctrine and the legislation. It is obvious, but worth saying, that law enforcement agencies are expected to enforce and obey the law. In addition to law enforcement agencies, there are many hundreds of other public authorities empowered by the legislation to carry out directed surveillance. In the light of my findings and the different circumstances with regard to terrorism and covert surveillance capacity which prevail now, in comparison to 1966, I believe that clarification of this inter-relationship would be welcomed by everyone.

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[24] "Police bugged Muslim MP" *Sunday Times* 03 February 2008, p1
[25] HC Deb 04 February 2008 c661
[26] *Report on two visits by Sadiq Khan MP to Babar Ahmed at HM Prison Woodhill*, Cm 7336 February 2008
[27] HC Deb 21 February 2008 c536

The then Home Secretary undertook to review the Code of Practice on surveillance, in order to include conversations between Members and constituents within the definition of "confidential information":

> I referred earlier to the Wilson doctrine. Although that does not apply in this case, Sir Christopher does suggest that there is some scope for confusion as to the correct interrelationship between the Wilson doctrine and the legislation. The Government do not propose to amend the Wilson doctrine, but accept that current codes of practice do not fully clarify the extent to which reviewing officers and authorising officers should pay special attention to conversations involving or potentially involving a Member of Parliament. I am therefore announcing today that the Government will review the statutory codes of practice, and in particular that we intend to clarify that, as regards covert surveillance, conversations between Members of Parliament doing their constituency business and their constituents should be considered as "confidential information", and treated in the same way as other confidential information, such as conversations between a person and their lawyer or minister of religion. That will more clearly give such conversations additional protection.[28]

The revised Code of Practice on surveillance, published in 2010, describes confidential personal information as:

> information held in confidence relating to the physical or mental health or spiritual counselling concerning an individual (whether living or dead) who can be identified from it. Such information, which can include both oral and written communications, is held in confidence if it is held subject to an express or implied undertaking to hold it in confidence or it is subject to a restriction on disclosure or an obligation of confidentiality contained in existing legislation.[29]

Under the code of practice, confidential information of this kind should be treated as 'legally privileged'. The *Regulation of Investigatory Powers Act 2000* provides no special protection for legally privileged information. The Home Office code of practice on covert surveillance and property interference notes, however, that "a substantial proportion of the communications between a lawyer and his client(s) may be subject to legal privilege" and that such information is particularly sensitive, and may engage Article 6 of the ECHR (right to a fair trial), and Article 8 (right to privacy).[30]

4.2 Recording of prisoner's telephone calls – 2006-2012

On 11 November 2014, Chris Grayling, Secretary of State for Justice, announced to the House that telephone calls between prisoners and their MPs may have been recorded and, in some cases, listened to by prison staff. It was confirmed that such routine monitoring is not covered by the Wilson doctrine.

Mr Grayling stated that the issue stretched back to 2006 and was likely to have been resolved in 2012 as a result of changes to the system. Before 2012, prisoners could call any number that had not been barred from their account. To stop legal calls and calls with MPs being recorded, prisoners had to advise staff which numbers were confidential. Changes to this system were made in 2012:

> In 2012, this Government implemented greater control over those whom prisoners were allowed to contact, limiting them to specifically identified phone numbers. As part

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28 HC Deb 21 February 2008 c538
29 Home Office, *Covert surveillance and property interference, revised Code of Practice*, 2010, Para 4.28
30 Home Office, *Covert surveillance and property interference, revised Code of Practice*, 2010

> of that process, prisoners supply the legal and otherwise confidential telephone numbers that they wish to contact. Prison staff are then required to carry out checks that the number is indeed a genuine number that should not be recorded or monitored, so that confidentiality is respected but not abused.[31]

Chris Grayling highlighted the number of MPs affected and how the surveillance came about:

> From the initial investigation, NOMS has identified 32 current Members of this House whose calls, or those of their offices, appear to have been both recorded and listened to. For 18 of these MPs, it appears that the prisoner did not list the number as confidential and therefore the action was not taken to prevent recording. As these calls were not marked as confidential, some would also have been subject to the random listening that is completed on all non-confidential calls.
>
> In a further 15 cases, Members appear to have been identified correctly on the system as MPs, but due to a potential failure in the administrative process the required action was not taken by prison staff, so the calls were recorded and appear to have been listened to. One Member falls under both categories.[32]

The number of ex-MPs affected is not yet known.

In response to the announcement, the Shadow Justice Secretary, Sadiq Khan, brought up the issue of the Wilson doctrine. He asked:

> Does this issue in any way contravene the Wilson doctrine on intercepting the telephone calls of MPs?[33]

The Justice Secretary responded:

> The Wilson doctrine applies to intercept activity, so the routine monitoring of calls of this kind, while not within the prison rules, is not covered by the Wilson doctrine.[34]

5 Damian Green

On 27 November 2008, Damian Green, the then shadow Immigration Minister, was arrested by the Metropolitan Police. This was reportedly "on suspicion of conspiring to commit misconduct in a public office and aiding and abetting, counselling or procuring misconduct in a public office".[35] The arrest came after information was passed to Mr Green by a civil servant in the Home Office.

During the course of the investigation, Mr Green's home and offices in his constituency and in Westminster were searched. The affair brought up questions about both parliamentary privilege and the Wilson doctrine.

During a statement on 4 December 2008, Jacqui Smith, the then Home Secretary, confirmed the Wilson doctrine had not been breached in this instance:

> **Andrew Mackinlay (Thurrock) (Lab):** A little while ago I had a hand in getting the Prime Minister to reaffirm the Wilson doctrine, and he extended it to modern electronic surveillance. On the face of it, it would appear that the Wilson doctrine has been abrogated by the police in this case. Clearly, the e-mails of the hon. Member for

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31 HC Deb 11 November 2014 c1314
32 HC Deb 11 November 2014 c1315
33 HC Deb 11 November 2014 c1317
34 *Ibid*
35 "Q&A: Damian Green affair", *The Guardian*, 1 December 2008

> Ashford (Damian Green) were looked at. I venture to suggest that he was listened in to, and that there has been access to all our e-mails. Can the Home Secretary tell us whether the Wilson doctrine has been abrogated? Will she place in the Library the reply that she sends to the letter that I sent her two days ago on that specific point?
>
> **Jacqui Smith:** I am sorry my hon. Friend has not received the reply to the letter, which I sent him yesterday and in which I made it clear that the Wilson doctrine as outlined by the Prime Minister has not been abrogated.[36]

A question from Richard Benyon led the Speaker to assess the issue of email interception further:

> **Mr. Richard Benyon (Newbury) (Con):** …Can you confirm that the House of Commons server is covered by the Wilson doctrine, and that it cannot be accessed by the police or any other authorities to access our e-mails in order to investigate circumstances that we lawfully as Back Benchers and Members of this House have taken up on behalf of our constituents and others?
>
> **Mr. Speaker:** As the Chairman of the House of Commons Commission, I have a serious responsibility to look after the computer system that we all use, including myself. I will look into this matter, rather than give an off-the-cuff answer from the Chair.[37]

The Speaker later responded:

> **Mr. Speaker:** I undertook to look into the matter of the Wilson doctrine and access to the House of Commons server, which was raised by the hon. Member for Newbury (Mr. Benyon) on 4 December. The Parliamentary Information and Communications Technology service takes the security of its systems very seriously, and is grateful for the support that the Joint Committee on Security, the Administration Committee and the Commission give in that respect. PICT would not allow any third party to access the parliamentary network without proper authority. In the Commons, such access previously required the approval of the Serjeant at Arms. Following my statement on 3 December, if PICT receives any requests to allow access in future, it will also seek confirmation that a warrant exists and that I have approved such access under the procedure laid down and the protocol issued yesterday.
>
> With regard to the incident involving the hon. Member for Ashford (Damian Green), no access was given to data held on the server, as PICT was not instructed to do so by the Serjeant at Arms. No access will be given unless a warrant exists and I approve such access.[38]

6 The NSA files and metadata

In June 2013, details of surveillance activities carried out by the US's National Security Agency (NSA) were revealed to *The Guardian* by former NSA contractor Edward Snowden. Over several months, the newspaper published information from the leak.

6.1 Prism

Information about the NSA's Prism programme was first published on 7 June 2013. Through the programme, the NSA can access information about internet communications from users of US-based internet companies such as Google.

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36 HC Deb 4 December 2008 c142
37 HC Deb 4 December 2008 c152
38 HC Deb 9 December 2008 c407

> The National Security Agency has obtained direct access to the systems of Google, Facebook, Apple and other US internet giants, according to a top secret document obtained by the Guardian.
>
> The NSA access is part of a previously undisclosed program called Prism, which allows officials to collect material including search history, the content of emails, file transfers and live chats, the document says.[39]

In the same month, the newspaper also revealed that GCHQ (Government Communications Headquarters) had access to Prism:

> The documents show that GCHQ, based in Cheltenham, has had access to the system since at least June 2010, and generated 197 intelligence reports from it last year.
>
> The US-run programme, called Prism, would appear to allow GCHQ to circumvent the formal legal process required to seek personal material such as emails, photos and videos from an internet company based outside the UK.[40]

The issue of surveillance of MPs and members of the House of Lords under Prism was raised in the House of Commons in November 2013:

> **Mr David Davis:** To ask the Secretary of State for the Home Department whether the Wilson Doctrine on the interception of the telephone calls and electronic messages of hon. Members still applies; and whether the security agencies restrict co-operation with their American counterparts to prevent them applying such electronic surveillance to hon. Members and Members of the House of Lords. [173474]
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> **James Brokenshire:** *[holding answer 1 November 2013]:* I can confirm that the Wilson Doctrine continues to apply. I refer my right hon. Friend to the answer given by my noble Friend Lord Wallace of Saltaire to the noble Lord Strasburger on 3 July 2013, *Official Report*, column WA238. I am obviously not able to comment on the activities of foreign Governments. Regarding GCHQ's alleged interception of communications under the US PRISM programme, the Intelligence and Security Committee of Parliament has concluded that GCHQ has not circumvented UK law or attempted to do so.[41]

According to the Intelligence and Security Committee of Parliament, GCHQ did not breach the Wilson doctrine by using the NSA's Prism programme. In their July 2013 special report, the Committee wrote:

> Further, in each case where GCHQ sought information from the US, a warrant for interception, signed by a Minister, was already in place, in accordance with the legal safeguards contained in the Regulation of Investigatory Powers Act 2000.[42]

6.2 Tempora and metadata

Edward Snowden's files also revealed GCHQ's ability to collect metadata from communications channels across the world:

> One key innovation has been GCHQ's ability to tap into and store huge volumes of data drawn from fibre-optic cables for up to 30 days so that it can be sifted and

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39 "NSA Prism program taps in to user data of Apple, Google and others", *The Guardian*, 7 June 2013

40 "UK gathering secret intelligence via covert NSA operation", *The Guardian*, 7 June 2013

41 HC Deb 5 November 2013 c116W

42 Intelligence and Security Committee of Parliament, *Statement on GCHQ's Alleged Interception of Communications under the US PRISM Programme*, July 2013

> analysed. That operation, codenamed Tempora, has been running for some 18 months.[43]

Metadata is general information that reveals the 'who, when, where and how' of a communication, but not its specific content.

The question of whether the Wilson doctrine applies to metadata was raised by David Davis in a parliamentary question in March 2014. He indicated that another MP had been told that the Wilson doctrine did not apply to metadata:

> **Mr Davis:** The Wilson doctrine is a convention whereby Government agencies do not intercept communications with Members of Parliament without explicit approval from the Prime Minister. In a letter to my hon. Friend the Member for Enfield North (Nick de Bois) in 2012, the Minister told him that the Wilson doctrine did not apply to metadata, thereby exposing whistleblowers to risks from which parliamentary privilege should protect them. Will he review this policy, discuss it with the Prime Minister and report to the House?
>
> **Mr Maude:** I absolutely understand the point that my right hon. Friend makes and I will undertake to look at this with my right hon. Friends the Home Secretary and the Prime Minister.[44]

The Guardian stated in July that there had been no further clarification on this issue.[45]

Legal challenges

Legal proceedings to determine whether Tempora surveillance on MPs and members of the House of Lords is unlawful are currently underway. Caroline Lucas and Baroness Jones of Moulsecoomb claim that interception of their communications by GCHQ is in breach of the Wilson doctrine and parliamentary privilege.[46] The public hearing of the Investigatory Powers Tribunal began in July 2014, but was reportedly adjourned until October.[47]

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43 "GCHQ taps fibre-optic cables for secret access to world's communications", *The Guardian*, 21 June 2013

44 HC Deb 12 March 2014 c306

45 "Are spies flouting the 'Wilson doctrine' and bugging MPs?", *The Guardian*, 14 July 2014

46 The Green Party, 'Green Party parliamentarians challenge GCHQ over controversial Tempora Programme', 2 July 2014

47 "Top-secret court to weigh ban on MI5 and GCHQ spying on MPs in public", *The Guardian*, 1 July 2014