

# Proper scrutiny must not be set aside in Britain's response to the attacks in Paris

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By Democratic Audit UK

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*The shocking events in Paris have jolted Western governments into action, with the UK's Conservative government seeking to increase and enhance security measures to prevent a similar occurrence happening in Britain. Part of their approach has been to announce the forthcoming introduction of new laws to assist the security services surveillance powers – a move which **Andrew Defty** argues should not be taken lightly. He also suggests that legislation which does not receive considerable scrutiny is unlikely to improve and enhance national security.*



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In times of crisis, particularly when issues of national security are at stake, it is customary for Parliament to defer to the Executive. There can be very good reasons for this, if a situation is fast moving and requires a quick and decisive response, or if the government is in possession of intelligence of a threat which it does not feel able to share with parliament. However, such occasions are rare and there are also very good reasons to argue that it is at times of crisis or national emergency that Parliament should more closely scrutinise the powers of the Executive. Such scrutiny should aim to ensure that governments do not seek to take advantage of circumstances to force through measures which have previously been rejected, or to ensure that special measures introduced to deal with particular circumstances do not remain on the statute books in perpetuity.

It is, therefore, vital that Parliament is not marginalised in the government's response to the recent terrorist attacks in Paris or in the development of a strategy for dealing with the wider threat of international terrorism. The attacks in Paris coincide with an ongoing debate about the powers of the intelligence and security agencies in the UK. The [draft Investigatory Powers Bill](#), which was published a little over a week ago, provides for controversial new surveillance powers including the bulk retention of communications data, something which had previously been rejected by Parliament.

The government [has recognised](#) the complex and controversial nature of the Investigatory Powers Bill and has

allowed for a long period of pre-legislative scrutiny. The draft Bill will be subject to scrutiny by a Joint Committee of Parliament, the [Intelligence and Security Committee](#) has said that it will also look at the Bill and other parliamentary committees may well take an interest. The government has also invited comments from industry, academia and civil liberties groups. In a [rare intervention](#), the Director-General of MI5 has also called for a mature debate on surveillance powers. While there is clearly some element of perception management in all of this, it is nevertheless, a welcome opportunity for substantive debate about intelligence agency powers, and is [in marked contrast to previous legislation](#) relating to the intelligence and security agencies which was subject to relatively scant parliamentary scrutiny and generally made it onto the statute books unchanged.

The attacks in Paris have not changed the debate about surveillance in the UK but they have intensified it and they may well have foreshortened it. The immediate response of some to the Paris attacks has been to suggest that the case for the Investigatory Powers Bill has now been made and that detailed scrutiny should be curtailed. On Friday's edition of the BBC's *Newsnight*, while the attacks were still going on, Nadhim Zahawi, Conservative member of the foreign affairs select committee used the attacks to justify the Investigatory Powers Bill, asserting that it was necessary to 'help our police and intelligence agencies to track those people electronically'.

On Sunday, [Lord Carlile](#), formerly the Government's independent reviewer of terrorism legislation, asserted that the Bill gave the intelligence agencies all the powers they now need to fight terrorism and asserted that 'I and other politicians want this Bill to be expedited, so that rather than becoming law by the end of 2016, which is the plan, it should become law as soon as possible.' The Prime Minister also suggested that scrutiny might be foreshortened when he told the *Today* programme on Monday morning that 'we should look at the timetable' for the Bill. The government's decision on Tuesday to bring forward [an announcement](#) of further resources for the intelligence and security agencies, a decision which had clearly been made before the attacks in Paris, have further added to the sense of urgency around the Bill.

Such statements have raised obvious and understandable concerns that the attacks in Paris will be used as a pretext to '[fast-track](#)' legislation through Parliament without proper scrutiny. As [others have observed](#), good legislation is rarely made in haste, nor, one might add, as an immediate response to individual events. Britain's recent experience with anti-terrorism legislation is an object lesson of the problems associated with such an approach. Between 2001 and 2010, Labour introduced a raft of anti-terrorist legislation in response to terrorist attacks (9/11, 7/7) or, more often than not, in response to court rulings that elements of previous legislation (detention without trial, control orders, asset-freezing) were unlawful.

The coalition government's attempts to bring forward legislation on the collection and retention of communications data were similarly faltering. It is important to remember that the draft Investigatory Powers Bill is not a response to the terrorist threat from ISIS, or any other group, but rather to a series of legal challenges and inquiries which have cast doubt on the legality of the intelligence agencies' surveillance activities and the effectiveness of the current regulatory framework under which they operate. Earlier this year the European Court of Justice ruled that elements of the Data Retention and Investigatory Powers Act, which the Investigatory Powers Bill will replace, were incompatible with EU law. The [Investigatory Powers Tribunal](#) also ruled that bulk communications data collection had been unlawful and that the communications of civil liberties groups including Amnesty International had been unlawfully intercepted. There has also been considerable debate about whether the communications of some groups including lawyers, journalists and MPs, which have variously been presumed to be privileged should be subject to further protections. The current reviewer of anti-terrorism legislation, David Anderson, described the current arrangements for interception of communications as '[undemocratic, unnecessary and – in the long run – intolerable.](#)'

Legislation which is not subject to substantive, detailed and sustained scrutiny is unlikely to enhance national security. It is vitally important not only that the intelligence agencies have the powers they need to combat the terrorist threat but also that they operate within a sound legal framework. Failure to provide such a framework will undermine the work of the agencies and lead to the unwelcome distraction of further legal challenges. The

government's initial proposal to consult widely on the draft Investigatory Powers Bill was a good one. It is hard to avoid the conclusion that in responding to the attacks in Paris some, including perhaps the Prime Minister, have been swayed by Churchill's maxim to 'never let a good crisis go to waste'. However, relying on a sense of urgency in order to get measures onto the statute books will not make for good law and does a disservice to the intelligence agencies and those they are tasked to defend.

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