



Home Office

# Consultation on establishing a UK Privacy and Civil Liberties Board

December 2014

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# Home Secretary Foreword

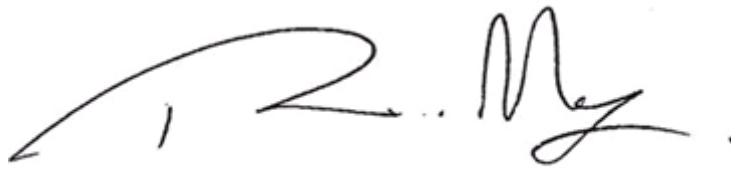
It is right and proper that legislation which necessarily provides for powers which may, in some instances, go above and beyond those available under ordinary criminal law, is subject to effective scrutiny and independent oversight. This has been effectively done in respect of counter-terrorism legislation for some 35 years by the Independent Reviewer of Terrorism Legislation. David Anderson QC, the incumbent Independent Reviewer, provides independent scrutiny of our counter-terrorism legislation and his findings are important in informing both parliamentary debate and the general public.

However, we recognise that as the legislative landscape has developed in recent years, it is important that we keep these arrangements under review to ensure we are getting the balance right.

The Counter Terrorism and Security Bill 2014 includes a new power to establish a statutory Privacy and Civil Liberties Board. This Board will support the role of the Independent Reviewer of Terrorism Legislation, by providing him with extra capability to carry out his role. It will offer a breadth of experience and be able to provide assistance, advice and undertake particular duties on behalf of the Independent Reviewer to support him in reviewing UK counter-terrorism legislation. It will further assist him in delivering a number of core objectives which include providing evidence to Parliamentary committees, and carrying out particular inquiries into the impact of certain issues or legislation relating to the prevention of terrorism. The Independent Reviewer will chair the Board.

The Privacy and Civil Liberties Board delivers on a commitment made by this Government during the passage of the Data Retention and Investigatory Powers Bill (which received Royal Assent on 17 July), to provide further assurance to the public about the current counter-terrorism arrangements, including ensuring that legislation and policies have due regard for civil liberty and privacy concerns in the face of the threat to the UK.

Clearly this is an important area and any changes to existing arrangements must be carefully considered. This consultation therefore invites comments on the proposals and provides an opportunity for all interested parties to feed in thoughts and comments on matters relating to the organisation of the Board, to ensure that it can fully achieve its intended aim.

A handwritten signature in black ink, appearing to read 'Theresa May', with a large, sweeping flourish at the beginning.

**The Rt Hon Theresa May MP  
December 2014**

# About this consultation

## Scope of consultation

Topic of Consultation	Oversight mechanism for review of UK counter-terrorism legislation.
Scope of Consultation	Consideration is being given through this consultation to the oversight mechanism for counter-terrorism legislation and related powers linked to the prevention and suppression of terrorism.
Geographical Scope	The Government welcomes views from individuals and organisations across the United Kingdom in this consultation. The subject of this consultation relates to issues and legislation that are both devolved and non-devolved in Scotland and Northern Ireland.
Getting to this stage	<p>The Government announced on 10 July that a Board (Privacy and Civil Liberties Board) would be established to consider the balance between the threat and civil liberties concerns in the UK where they are affected by policies, procedures and legislation relating to the prevention of terrorism.</p> <p>The Counter-Terrorism and Security Bill, introduced in Parliament on 26 November provides an order-making power for the Secretary of State to establish a Board for this purpose. This consultation invites comments on the key aspects of the proposal.</p>
Impact Assessment	A draft Impact Assessment is published alongside this consultation document.

## Basic Information

To	This consultation is open to the public.
Duration	This consultation will be open for a 6 week period, closing on 30 January 2015.
Enquiries	<a href="mailto:PCLBconsultationresponses@homeoffice.x.gsi.gov.uk">PCLBconsultationresponses@homeoffice.x.gsi.gov.uk</a>

<p>How to respond</p>	<p>Information on how to respond to this consultation can be found on <a href="http://www.gov.uk">www.gov.uk</a> at:</p> <p><a href="http://www.gov.uk/government/organisations/home-office">www.gov.uk/government/organisations/home-office</a></p> <p>Responses can be submitted online through <a href="http://www.gov.uk">www.gov.uk</a> or by post by sending responses to:</p> <p>PCLB Consultation  Home Office  CT Legislation and Investigatory Powers Unit  5<sup>th</sup> Floor PEEL Building  2 Marsham Street  London, SW1P 4DF</p>
<p>Additional ways to become involved</p>	<p>Please contact the Home Office (as above) if you require information in any other format, such as Braille, large font or audio.</p>
<p>After the consultation</p>	<p>Responses will be analysed and a 'response to consultation' document will be published.</p> <p>Please indicate if you would not be prepared for your response to be published in full or in part.</p>

# 1. Introduction

1.1 We know that the threat from terrorism remains high<sup>1</sup>. This threat is constantly evolving and it is essential that our counter-terrorism response is kept under review, and keeps pace, to ensure the police and security services have the powers they need to tackle all new and existing threats, whether international or home grown.

1.2 This inevitably leads to Government having to make difficult choices, including amongst other things, how to bring about legislation in support of national security objectives while making sure this does not come at the expense of fundamental civil liberties.

1.3 Ensuring our counter-terrorism legislation is fair, effective and proportionate is an important part of CONTEST<sup>2</sup>, the UK's counter-terrorism strategy, and the role of the Independent Reviewer of Terrorism Legislation has been an essential part of this to date.

1.4 Notable and significant changes that have been brought about in part by the careful scrutiny of the Independent Reviewer include those made following the Government's 2011 review of Counter Terrorism and Security Powers<sup>3</sup>. These included, amongst others, changes to UK terrorism stop and search powers and pre charge detention powers. In addition, recent changes introduced in the Justice and Security Act<sup>4</sup>, which received Royal Assent in April 2013, extended the remit of the Intelligence and Security Committee of Parliament, strengthening its oversight of the security and intelligence agencies and clarifying its independence, and are a clear indication of this Government's commitment to ensuring robust independent scrutiny and full accountability on some of our most intrusive powers.

1.5 The proposed Privacy and Civil Liberties Board will support fully the statutory role of the Independent Reviewer of Terrorism Legislation and will expand the capacity and breadth of experience available in our oversight arrangements for UK counter-terrorism laws and powers.

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<sup>1</sup> [www.gov.uk/government/publications/contest-annual-report-2013](http://www.gov.uk/government/publications/contest-annual-report-2013)

<sup>2</sup> [www.gov.uk/government/publications/counter-terrorism-strategy-contest](http://www.gov.uk/government/publications/counter-terrorism-strategy-contest)

<sup>3</sup> [www.gov.uk/government/publications/counter-terrorism-and-security-powers](http://www.gov.uk/government/publications/counter-terrorism-and-security-powers)

<sup>4</sup> [www.legislation.gov.uk/ukpga/2013/18/contents/enacted/data.htm](http://www.legislation.gov.uk/ukpga/2013/18/contents/enacted/data.htm)

## 2. Existing relevant legislation and the role of the Independent Reviewer of Terrorism Legislation (IRTL)

2.1 The role of the Independent Reviewer of Terrorism Legislation (IRTL) is set out in section 36 of the Terrorism Act 2006. The Independent Reviewer is appointed by the Home Secretary. However, this role has existed in various guises long before the role was placed on a statutory footing in 2005. This role originated with a commission in the late 1970s by the then Home Secretary for Lord Shackleton to provide independent review of the (then annually renewed) temporary legislation, the Prevention of Terrorism (Temporary Provisions) Acts of 1974 and 1976, which provided the statutory framework for counter terrorism powers at that time. A useful history of the role of the Independent Reviewer can be found on David Anderson QC's website<sup>5</sup>.

2.2 David Anderson QC replaced Lord Carlile of Berriew QC as the Independent Reviewer on 21st February 2011 and was reappointed for a further three year term in February this year<sup>6</sup>.

2.3 Currently, the role of Independent Reviewer is a combination of three statutory roles – namely, those provided for under the Terrorism Acts (2000 and 2006), the Terrorist Asset Freezing etc. Act 2010 and the Terrorism Prevention and Investigation Measures Act 2011. While it would be possible for each of these roles to be held by different individuals, in practice the posts are held by one individual. The Independent Reviewer therefore has three main statutory functions.

- **Terrorism Act 2000 and Part 1 of the Terrorism Act 2006, Part 1** - Tasked under sections 126 and 36 respectively with reviewing the operation of these statutes
- **Terrorist Asset-Freezing etc. Act 2010** - Tasked under section 31 with reviewing the operation of Part 1 of the Act.
- **Terrorism Prevention and Investigation Measures Act 2011** – Tasked under section 20 with reviewing the operation of the 2005 Act, which provides for individuals to be made subject to a TPIM Order (replacing Control Orders under the Prevention of Terrorism Act 2005).

2.4 The Independent Reviewer plays an important role in informing the public and the political debate. While this is done primarily through the publication of annual reports on each of the Acts covered by his statutory role, there are a number of other ways in which David Anderson QC seeks to inform and communicate about his role. These include: by maintaining an informative and accessible public website, commentary to the media (and use of social media), providing evidence to Parliament, giving lectures to the public and professional audiences, and through wide stakeholder engagement.

2.5 In addition to his statutory functions, the Independent Reviewer may on his own initiative or at the request of the Secretary of State conduct reviews and produce reports on specific issues. Such '*ad hoc*' or snapshot reports that have been laid before Parliament include:

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<sup>5</sup> David Anderson QC: *What Does a Terror Watchdog Do?* Published 18<sup>th</sup> July 2014. Available at: <https://terrorismlegislationreviewer.independent.gov.uk/what-does-a-terror-watchdog-do/>

<sup>6</sup> The current Independent Reviewer of Terrorism Legislation's term expires on 21 February 2017.

- Report on the Definition of Terrorism (June 2007)
- Operation Pathway Report (October 2009)
- Operation Gird Report (May 2011)

2.6 David Anderson QC is currently leading two reviews beyond those required under his core statutory remit. These include an ongoing review of the policy of Deportation with Assurances, and a statutory review of the operation and regulation of investigatory powers (the Investigatory Powers Review), provided for in section 7 of the Data Retention and Investigatory Powers Act (DRIPA) 2014. The outcome of this review will report to the Prime Minister by 1 May 2015 and will be laid before Parliament.

## What the reviewer does not do

2.7 Intelligence activity is rightly overseen by a greater number of bodies than many other areas of Government business. The Independent Reviewer role fully complements these arrangements but his role differs in a number of respects and he cannot investigate and provide redress in respect of particular incidents. Independent senior judges in the form of the Intelligence Services Commissioner and Interception of Communications Commissioner are responsible for checking that the conduct of the intelligence agencies is lawful. Beyond this, the Courts provide an independent avenue for anyone who wishes to complain about intelligence activity, notably through the Investigatory Powers Tribunal (IPT). The IPT is made up of senior members of the judiciary and the legal profession and has full powers to investigate and decide any case which relates to the use of a power held by a public body under the Regulation of Investigatory Powers Act (RIPA) 2000. This includes intelligence and law enforcement agencies. The Intelligence agencies are also scrutinised by the Intelligence and Security Committee of Parliament which was strengthened to increase its remit and powers by the Justice and Security Act 2013. The Committee can take evidence from the agencies retrospectively examining their activity and operations.

2.8 The operation of statutes other than those listed above (at 2.3) fall outside the Independent Reviewer's remit. For example, the Independent Reviewer is not currently required to report on the operation of the Counter-Terrorism Act 2008 or the Anti-Terrorism Crime and Security Act 2001. Therefore, while some aspects of counter-terrorism legislation are subject to detailed review on an annual basis, others are not subject to review at all, an issue which has been highlighted by David Anderson QC in his 2014 annual 'Report on the operation of the Terrorism Acts in 2013' and previously recommended by his predecessor, Lord Carlile of Berriew QC.



## 3. The case for reform

3.1 The role of the Independent Reviewer of Terrorism Legislation has, as described in David Anderson QC's most recent annual report<sup>7</sup> *"for over 35 years influenced policy and the operation of the laws within their remit, both directly (by formal or informal recommendations) or via parliamentary or court processes"*. This degree of scrutiny is vital in an area of the law which provides for powers which may go beyond those available under ordinary criminal law and where the balance between safeguarding our National Security and ensuring civil liberties are not unjustly compromised must be carefully achieved.

3.2 However, the Independent Reviewer has suggested that there is a need for reform of the role. Chapter 11 of David Anderson QC's Report on the Operation of the Terrorism Acts in 2013<sup>8</sup> explores this in more detail but broadly identifies three key problems:

- i) Significant parts of the law as it relates to counter-terrorism are going unreviewed;
- ii) The remaining powers must be reviewed to an inflexible annual schedule;
- iii) The Independent Reviewer is currently operating at the limit of his capacity.

3.3 David Anderson QC makes two substantive recommendations<sup>9</sup>, that follow:

1. That the current system (fixed annual review of four statutes, with the remainder left unreviewed save in the event of a one-off request) to be replaced by a more flexible arrangement whereby the Reviewer or reviewing body, having consulted the relevant Ministers and Parliamentary committees, sets out an annual work programme which will allow him to cover those aspects of the law relating to terrorism that he considers most in need of review.
2. That consideration should be given to making express statutory provision for:
  - a) Access to classified information;
  - b) Information gathering powers;
  - c) The exclusion of sensitive information from reports; and
  - d) The time limit within which the report must be laid before Parliament.

3.4 While David Anderson QC suggests that the functions of the Independent Reviewer continue to be best served by an individual operating on a part time basis (with additional support), he acknowledges that *"a board, if properly constituted, could bring advantages"*<sup>10</sup>. This consultation invites comments on options for addressing these concerns, specifically on how a Board could be established to provide the necessary support and flexibility to the oversight arrangements for counter-terrorism legislation.

3.5 It will be important to ensure that in making any changes to the oversight arrangements for counter-terrorism legislation, the key elements of the Independent Reviewer role, which have been so successful to date, are reflected and incorporated into the new approach.

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<sup>7</sup> David Anderson QC *Report on the Operation of the Terrorism Acts in 2013* (at 11.3). Report available at: [www.gov.uk/government/publications/terrorism-acts-in-2013](http://www.gov.uk/government/publications/terrorism-acts-in-2013)

<sup>8</sup> *Ibid*, at 11.23 – 11.25

<sup>9</sup> *Ibid*, at 11.28 and 11.34

<sup>10</sup> *Ibid*, at 11.8

## 4. Proposal for reform

4.1 The credibility, visibility and transparency of any individual or body entrusted to review counter-terrorism laws is essential to deliver against the key purpose of that oversight role, that is to reassure the public on the proportionality and necessity of these, sometimes exceptional, powers and to inform the wider debate.

4.2 With particular reference to the existing oversight arrangements for counter terrorism laws, David Anderson QC considers this matter in his most recent annual report and has suggested that the Independent Reviewer should continue to be an individual operating on a part time basis, albeit with additional support<sup>11</sup>. David Anderson offers a number of points in support of that view.

4.3 While the increased demand for review of particular aspects of counter-terrorism legislation and powers could potentially be addressed by providing the current Independent Reviewer with additional dedicated support, the case for which is set out in David Anderson QC's recent annual report<sup>12</sup>, it may also be an opportunity to consider ways of drawing on a wider range of expertise and perspectives, on a more formalised basis.

4.4 The Government committed during the passage of the Data Retention and Investigatory Powers Act 2014 to establish a board that would provide further assurance to the public about the current counter-terrorism arrangements, including ensuring that legislation and policies have due regard for civil liberty and privacy concerns in the face of the threat to the UK.

4.5 The Counter Terrorism and Security Bill 2014, which was introduced before Parliament on 26 November provides the Secretary of State with a power to establish the Privacy and Civil Liberties Board, a statutory Board of individuals who could provide support and advice to the Independent Reviewer in discharging his statutory duties and in undertaking any reviews or inquiries into other aspects of counter-terrorism legislation and policy which impact on privacy and civil liberties issues. This Board would be chaired by the Independent Reviewer

4.6 The power allows for the detail of the Board to be set out in secondary legislation (subject to the approval of both Houses of Parliament). We therefore invite views through this consultation on:

***how the creation of an independent Privacy and Civil Liberties Board, which would support the Independent Reviewer of Terrorism Legislation, and could be tasked by the Reviewer to provide specific advice to him or to undertake reviews of particular areas, could add value to the oversight arrangements for counter-terrorism laws and powers, and how this could be achieved.***

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<sup>11</sup> Ibid, at 11.6

<sup>12</sup> Ibid, at 11.32

# 5. What would the Privacy and Civil Liberties Board Do?

5.1 There are a number of essential features and requirements of any individual or body tasked with overseeing the effectiveness of UK counter-terrorism laws. The Privacy and Civil Liberties Board would support the Independent Reviewer to deliver against the following core objectives:

- Review the operation of the key counter-terrorism Acts, including that they are sufficient to meet the threat and adequately take account of privacy and civil liberty concerns.
- Advise the Government on whether it considers government policy and its development, including new legislation, relating to the prevention of terrorism is sufficient to meet the threat and adequately takes account of privacy and civil liberty concerns.
- Provide public assurance that the current arrangements ensure that the implementation of legislation and policies relating to the prevention of terrorism have sufficient regard to their impact on privacy and civil liberties as well as to the threat.
- Carry out particular inquiries into the impact of particular issues or legislation relating to the prevention of terrorism, including at the direction of relevant Ministers.
- Provide evidence to Parliamentary Committees and seek to inform public debate where possible.
- Report regularly on its findings.

5.2 For oversight to be effective it relies on the co-operation of a wide range of stakeholders, both within and external to government. In the context of review of counter-terrorism laws, this includes full co-operation from those tasked with exercising the powers which fall to be reviewed. Successive Independent Reviewers have enjoyed a substantial degree of access to sensitive documents and discussions and have operated on a flexible basis. However, we recognise that this is not guaranteed by statutory provision but rather is achieved by everyone concerned taking a sensible and collaborative approach.

5.3 Whichever form oversight takes, whether it is by way of an individual Independent Reviewer or a review body (or both), it is important that there is clarity about what the function and purpose of that oversight is and about the powers conferred on the reviewer.

5.4 In taking forward any reforms to the review arrangements in this area, including by establishing a Privacy and Civil Liberties Board to support the work of the Independent Reviewer, careful consideration must be given to the essential elements that would be key to ensure the Board could operate successfully.

5.5 The specific powers and functions of the Independent Reviewer of Terrorism Legislation are not currently set out in detail in statute<sup>13</sup>. On more than one occasion David Anderson has acknowledged that the flexible and pragmatic approach that is taken to ensuring that the Independent Reviewer is briefed and provided with access to sensitive material has worked well and allowed him to build strong relationships with law enforcement and other agencies<sup>14</sup>. Whether a similarly flexible approach could operate successfully in respect of a Board is less clear and we invite thoughts and comments on these matters.

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<sup>13</sup> Provisions governing the statutory remit of the Independent Reviewer of Terrorism Legislation contained at s.36 Terrorism Act 2006, section 31 Terrorist Asset-Freezing etc. Act 2010 and section 20 Terrorism Prevention and Investigation Measures Act 2011. Available at: [www.legislation.gov.uk](http://www.legislation.gov.uk)

<sup>14</sup> Report on the Operation of the Terrorism Acts in 2013, at 11.33.

## 6. International Comparators

### Privacy and Civil Liberties Oversight Board (PCLOB) - USA

6.1 The United States established the Privacy and Civil Liberties Oversight Board (PCLOB) in 2007 under the Implementing Recommendations of the 9/11 Commission Act<sup>15</sup>. As set out in the executive summary of their most recent report<sup>16</sup>, the two primary purposes of the Board are:

- i) To analyse and review actions the executive branch takes to protect the nation from terrorism, ensuring that the need for such actions is balanced with the need to protect civil liberties; and
- ii) To ensure that liberty concerns are appropriately considered in the development and implementation of laws, regulations, and policies related to protect the nation against terrorism.

6.2 The Board is made up of four part-time members and a full-time chair person. With the Board's membership confirmed by the Senate in August 2012, the Board has since published three bi-annual reports<sup>17</sup>, as required by its enabling legislation. All of the reports have been presented to the President and Congress.

6.3 While there will inevitably be differences between UK requirements and the US position, PCLOB provides a useful model in considering an alternative approach to oversight arrangements for counter-terrorism legislation and powers.

### Independent National Security Legislation Monitor (INSLM) - Australia

6.4 The role and functions of the Independent National Security Legislation Monitor (INSLM) are set out in detail in the Independent National Security Legislation Monitor Act 2010<sup>18</sup>. This role has arguably greater parallels with the UK role of the Independent Reviewer, in that the role is held by a single reviewer, details of appointment, powers, and reporting requirements are prescribed in much greater detail than the equivalent provisions of UK law. The INSLM also has a broader statutory remit and is responsible for oversight of both counter-terrorism and national security legislation, which differs from UK law where other national security legislation will come under the separate purview of, for example the Intelligence and Security Committee. David Anderson QC, points to the INSLM Act 2010 as a useful recent example of how review of this kind can be set out in law.

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<sup>15</sup> Pub. L. 110-53 § 801(a).

<sup>16</sup> Privacy and Civil Liberties Oversight Board *Semi-Annual Report (September 2013-March 2014)*, published 23<sup>rd</sup> July 2014.

Available at: [www.pclob.gov/library/Semi\\_Annual\\_Report-jul2014.pdf](http://www.pclob.gov/library/Semi_Annual_Report-jul2014.pdf)

<sup>17</sup> Available at [www.pclob.gov/documents](http://www.pclob.gov/documents)

<sup>18</sup> INSLM Act 2010. Available at: [www.comlaw.gov.au/details/c2012c00120](http://www.comlaw.gov.au/details/c2012c00120)

# 7. Consultation

## Remit and Functions of Review

7.1 The Terrorism Act 2000 is the UK's core piece of counter-terrorism legislation. It brought together and amended previous temporary legislation and in doing so it established a body of permanent terrorism law which was aimed at both domestic and international terrorism. However, this Act has been supplemented by further legislation over recent years, in response to a number of factors. These include: the shift from domestic (Northern Ireland-related) to international terrorism; changes in the level and nature of the terrorism risk (requiring powers which provide for intervention at an earlier stage); changes in the nature of the threat (for example, increasingly complex investigations involving more overseas links and greater use of technology) which require different powers; developments in technology (for example, requiring powers to deal with new forms of communication and encryption); and legal judgments.

7.2 As this framework of legislation has developed, there has been an increasing need to ensure that new powers are subject to sufficient independent oversight, which has led to an expansion of the Independent Reviewer of Terrorism Legislation's role, both in terms of statutory responsibilities (see powers under TFA 2010 and TPIMS Act 2011) and requests for the Independent Reviewer to carry out specific ad hoc reviews of individual areas.

### Question 1

To what extent do you agree or disagree that independent oversight enhances the fairness and effectiveness of counter-terrorism legislation and powers?

- Strongly agree
- Tend to agree
- Neither agree nor disagree
- Tend to disagree
- Strongly disagree
- Don't know

**Please give reasons for your answer.**

### Question 2

Do you support the proposal to establish a statutory Privacy and Civil Liberties Board, which would support the role of the Independent Reviewer of Terrorism Legislation?

- Yes
- No
- Don't know

**Please give reasons for your answer.**

### Question 3

To what extent do you consider that a Privacy and Civil Liberties Board would add value to the oversight arrangements for counter-terrorism legislation and related powers?

- Strongly agree
- Tend to agree
- Neither agree nor disagree
- Tend to disagree
- Strongly disagree
- Don't know

**Please give reasons for your answer.**

### Question 4

What, in your view, are the likely benefits of creating a Privacy and Civil Liberties Board?

**Please give reasons for your answer.**

### Question 5

Do you agree that the principles / objectives set out above at 5.1 of this consultation paper fully encompass the key elements required for effective oversight of UK counter-terrorism laws and powers?

- Yes
- No
- Don't know

**Please give reasons for your answer.**

## The Oversight Mechanism

7.3 This section specifically invites comments on the proposal to establish a Privacy and Civil Liberties Board, which would support the Independent Reviewer of Terrorism Legislation.

### i) Membership

7.4 Membership of the Board, both in terms of number and background of its members, are important considerations.

7.5 David Anderson QC has suggested in his most recent report that “*continued participation in professional life*”<sup>19</sup> is a valuable part of ensuring the genuine independence of any reviewer or oversight role. This also has the advantage of ensuring that a wider range of suitably skilled and high calibre individuals may be able to commit to a role on a Board such as this.

#### Question 6

What do you think would be the optimum number of members for the Privacy and Civil Liberties Board?

**Please give reasons for your answer.**

#### Question 7

Do you consider that there are any pre-requisites in terms of background or qualifications (for example, legal background) for appointment to a Board of the kind envisaged?

Yes

No

Don't know

**Please give reasons for your answer.**

#### Question 8

Who would you consider the most appropriate individual to appoint people to the Board?

**Please give reasons for your answer.**

## ii) Work Programme

7.6 One of the key considerations in reviewing the existing oversight arrangements for counter terrorism legislation is to ensure that there are no gaps in oversight of key legislation and powers and that those areas of counter-terrorism laws which require review are subject to an appropriate review process.

7.7 The Independent Reviewer of Terrorism Legislation is required by statute to review four counter-terrorism related Acts of Parliament (the Terrorism Act 2000, Part One of the Terrorism Act 2006, the Terrorist Asset-Freezing etc Act 2010 and the Terrorism Prevention and

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<sup>19</sup> Report on the Operation of the Terrorism Acts in 2013, at 11.6



Investigation Measures Act 2011). While this means that the main counter-terrorism laws and powers are subject to regular, annual review, it does mean that some areas of the law are not subject to any formal review. The Government will give further consideration to these matters in light of this consultation and the ongoing consideration of those provisions which give effect to the Privacy and Civil Liberties Board, currently before Parliament in the Counter-Terrorism and Security Bill.

7.8 David Anderson QC points to Australian legislation, the Independent National Security Legislation Monitor Act 2010, as a helpful point of reference to how review of similar laws can be set out in law<sup>20</sup>. This Act, which enshrines in law the remit, function and powers of the Independent Reviewer's Australian counterpart runs to 32 sections but is explicit on precisely how the role is to operate. David Anderson notes in his recent report<sup>21</sup> that the provision in the INSLM Act 2010 enabling the Monitor to review *'any other law to the extent that it relates to counter-terrorism [and national security] legislation; and to consider whether such legislation contains appropriate safeguards, is proportionate and remains necessary'*<sup>22</sup>, adds a degree of flexibility to the legislation.

### Question 9

Do you think these Acts (at 7.7) are the right areas of counter-terrorism law to be subject to independent review?

Yes

No

Don't know

**Please give reasons for your answer.**

### Question 10

Are there, in your view, other areas of counter-terrorism laws which should be subject to independent review or oversight?

**Please give reasons for your answer.**

<sup>20</sup> David Anderson QC: *Review Reviewed – Review*, Published 16<sup>th</sup> July 2014. Available at: <https://terrorismlegislationreviewer.independent.gov.uk/whirligig>

<sup>21</sup> Report on the Operation of the Terrorism Acts in 2013, at 11.30.

<sup>22</sup> INSLM Act 2010, section 6(1). Available at: [www.comlaw.gov.au/details/c2012c00120](http://www.comlaw.gov.au/details/c2012c00120)

### Question 11

To what extent do you agree or disagree that an annual programme of work setting out what the Board will report on (in addition to any statutory requirements of the Independent Reviewer), would ensure a sufficiently flexible approach?

- Strongly agree
- Tend to agree
- Neither agree nor disagree
- Tend to disagree
- Strongly disagree
- Don't know

**Please give reasons for your answer.**

### Question 12

Under such an arrangement, who, in your view, should be responsible for determining the work programme for review of counter-terrorism laws and powers?

**Please give reasons for your answer.**

## iii) Other issues

### Question 13

Are there any others views or comments that you would like to add in relation to the proposal set out in this consultation document that were not covered by the other questions in this consultation?

**Please give reasons for your answer.**

# 8. Information about you

## Confidentiality and disclaimer

The following questions ask for some information about you. The purpose of these questions is to provide some context about your consultation response and enable us to assess the impact of the proposals on different groups of people. By providing this information you are giving your consent for us to process and use this information in accordance with the Data Protection Act 1998.

Company name or organisation (if applicable):

Please indicate whether you are responding to this consultation as an individual, or officially on behalf of an organisation:

- Individual
- Officially on behalf of an organisation

If you are responding on behalf of an organisation, please select one of the following options that best describes you or the professional interest you represent.

Devolved administration  
Central government  
Government agency  
Criminal justice agency  
Local authority  
Faith group  
Interest group  
Think tank  
Professional body  
Other

*If you have selected 'Other' please give further details below:*