

Title: Investigatory Powers Act: Oversight IA No: HO0269 Lead department or agency: Home Office Other departments or agencies: FCO, Cabinet Office, MOD, NIO, MOJ, MI5, GCHQ, SIS, NCA, MPS, PSNI, Police Scotland, HMRC, wider law enforcement, other public authorities	Impact Assessment (IA)		
	Date: 3 March 2017		
	Stage: Enactment		
	Source of intervention: Domestic		
	Type of measure: Primary legislation		
Contact for enquiries: public.enquiries@homeoffice.gsi.gov.uk			
Summary: Intervention and Options		RPC Opinion: Not Applicable	

Cost of Preferred (or more likely) Option

Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?	
-£61.5m	£0m	£0m	No	NA

What is the problem under consideration? Why is government intervention necessary?
The legislation that governs the use of investigatory powers by public authorities is spread over a number of statutes and is subject to varying safeguards, authorisation and oversight structures. It is essential for public confidence that there is no doubt over the role played by those authorising action and that safeguards are explicit and stringent. In the case of authorisation, the Act introduces judicial approval of warrantry for the most intrusive powers. In the case of oversight, there is the potential for confusion over the responsibilities of the current different bodies, and there is a need for greater technical expertise and co-ordination between them. All of this is potentially damaging to public trust in the public authorities that use investigatory powers to protect the public and our national security. The Investigatory Powers Act consolidates the existing Commissioners into a single independent oversight Commissioner, provide stronger and robust safeguards and accountability to the investigatory powers regime.

What are the policy objectives and the intended effects?
To provide a clear, transparent and accountable framework for the authorisation and oversight of the exercise of investigatory powers by law enforcement, armed forces, intelligence agencies and other public authorities. To provide Parliamentary and public confidence that investigatory powers are being used in a necessary and proportionate fashion, and that their exercise is robustly and independently scrutinised and

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)
Option 1: Do nothing. The current oversight model of the Surveillance Commissioners, Interception of Communications Commissioner and the Intelligence Services Commissioner is retained; no judicial approval of warrantry as part of the authorisation process.

Option 2: The Investigatory Powers Act creates a single Investigatory Powers Commissioner with responsibility for oversight of the use of investigatory powers by public authorities and a double-lock (Secretary of State authorisation with Judicial Commissioner approval) for the most intrusive powers.

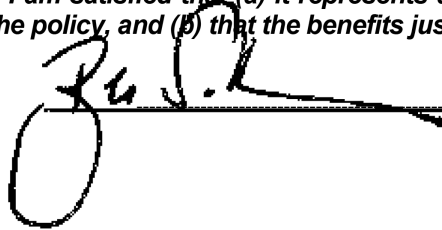
Option 3: Create a non-departmental public body, the Investigatory Powers Commission, to take responsibility for both the oversight of the use of investigatory powers by all public authorities and the Judicial Commissioner stage of the 'double-lock' authorisation process for the most intrusive powers.

Option 2 is the preferred option as it provides the most coherent and cost-effective option to address the policy objective.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: June - Dec 2022					
Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro No	< 20 No	Small No	Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: N/A		Non-traded: N/A		

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister

A handwritten signature in black ink, consisting of a large, stylized 'R' followed by a smaller 'L' and a horizontal line extending to the right.

Date: 20-4-17

Summary: Analysis & Evidence

Policy Option 1

Description: Do nothing

FULL ECONOMIC ASSESSMENT

Price Base Year 2016	PV Base Year 2016	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	High: 0	Best Estimate: N/A

COSTS (£m)	Total (Constant Price)	Transition Years	Average (excl. Transition)	Annual (Constant Price)	Total (Present Value)	Cost
Low	0		0		0	
High	0		0		0	
Best Estimate	0		0		0	

Description and scale of key monetised costs by 'main affected groups'

This option is the baseline and there are no additional costs or benefits associated with this option.

Other key non-monetised costs by 'main affected groups'

This option is the baseline and there are no additional costs or benefits associated with this option.

BENEFITS (£m)	Total (Constant Price)	Transition Years	Average (excl. Transition)	Annual (Constant Price)	Total (Present Value)	Benefit
Low	0		0		0	
High	0		0		0	
Best Estimate	0		0		0	

Description and scale of key monetised benefits by 'main affected groups'

This option is the baseline and there are no additional costs or benefits associated with this option.

Other key non-monetised benefits by 'main affected groups'

This option is the baseline and there are no additional costs or benefits associated with this option.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

The Government retains the oversight model that is in place; no changes to the warranty system are made. There is a risk that there is lost public and Parliamentary confidence due to the Government not responding to the recommendations of the three independent reviews.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	No	NA

Summary: Analysis & Evidence

Policy Option 2

Description Create a single Commissioner with responsibility for oversight of the use of investigatory powers by all public authorities and a double-lock model of Secretary of State and Judicial Commissioner authorisation

FULL ECONOMIC ASSESSMENT

Price Base Year 2016	PV Base Year 2016	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -57.7	High: -65.0	Best Estimate: -61.5

COSTS (£m)	Total (Constant Price)	Transition Years	Average (excl. Transition) (Constant Price)	Annual (Constant Price)	Total (Present Value)	Cost
Low	0.0	10	7.1		55.5	
High	2.0		7.7		62.6	
Best Estimate	1.3		7.4		60.4	

Description and scale of key monetised costs by 'main affected groups'

The estimated additional costs of £7.4m per annum (in constant prices) are the Government's assessment of the cost of staffing for the Investigatory Powers Commissioner's office and the new authorisation regime, and non-staff costs such as accommodation. These costs take into account the extra resources required for the increased workload of the agencies and other government departments in terms of new oversight arrangements.

Other key non-monetised costs by 'main affected groups'

There are additional non-monetised costs as staff in the new bodies take time to familiarise themselves with new structures and reporting arrangements.

BENEFITS (£m)	Total (Constant Price)	Transition Years	Average (excl. Transition) (Constant Price)	Annual (Constant Price)	Total (Present Value)	Benefit
Low	N/K	10	N/K		N/K	
High	N/K		N/K		N/K	
Best Estimate	N/K		N/K		N/K	

Description and scale of key monetised benefits by 'main affected groups'

No benefits have been quantified for this option.

Other key non-monetised benefits by 'main affected groups'

Increased public understanding of the oversight and accountability of investigatory powers. Public and Parliamentary trust and confidence in the rigour of Commissioner oversight and the way in which the use of investigatory powers is authorised. There are also likely to be efficiency savings from the merger of the existing oversight bodies, as shared resources and knowledge reduce duplication of effort.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
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Reform may fail to generate the expected increase in confidence amongst the public and Parliament and, the Investigatory Powers Commissioner may still be regarded as providing insufficient oversight. The extent of the increase in staff costs (and associated non-wage costs as well as resulting accommodation costs) will depend on the details of the proposal, which may change as the policy is further developed. The low and high estimates for the proposal reflect ranges for salary costs and working patterns to present this uncertainty.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	No	NA

Summary: Analysis & Evidence

Policy Option 3

Description: The establishment of an Investigatory Powers Commission in statute as a Non-Departmental Public Body.

FULL ECONOMIC ASSESSMENT

Price Base Year 2016	PV Base Year 2016	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -60.5	High: -67.9	Best Estimate: -64.4

COSTS (£m)	Total (Constant Price)	Transition Years	Average (excl. Transition) (Constant Price)	Annual (Constant Price)	Total (Present Value)	Cost
Low	0	10	7.4		60.5	
High	2.0		8.0		67.9	
Best Estimate	1.3		7.7		64.4	

Description and scale of key monetised costs by 'main affected groups'

The average additional cost is more than for policy option two. This is due to the additional costs that arise as a result of establishing a non-departmental public body related to the governance of such a body, e.g. providing corporate services usually supplied by a sponsoring Government Department and by the additional corporate requirements associated with creating a new public body e.g. the need to appoint non-executive directors.

Other key non-monetised costs by 'main affected groups'

None in addition to those set out in policy option two.

BENEFITS (£m)	Total (Constant Price)	Transition Years	Average (excl. Transition) (Constant Price)	Annual (Constant Price)	Total (Present Value)	Benefit
Low	N/K	10	N/K		N/K	
High	N/K		N/K		N/K	
Best Estimate	N/K		N/K		N/K	

Description and scale of key monetised benefits by 'main affected groups'

No benefits have been monetised for this option.

Other key non-monetised benefits by 'main affected groups'

This option would respond directly to the recommendation of the Joint Committee convened to scrutinise the draft Bill, and may have a presentational advantage of providing further independence for the body from the sponsoring Government department.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

Reform may fail to generate the expected increase in confidence in Parliament and the public. The extent of the increase in staff costs (above those in policy option two) will be subject to changes as the policy proposals develop in advance of implementation. The low and high estimates for the proposal reflect ranges for salary costs and working patterns to present this uncertainty.

BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	No	NA

Evidence Base

A. Strategic Overview

A.1 Background

The Data Retention and Investigatory Powers Act 2014 (DRIPA) was a piece of emergency legislation responding to a ruling by the Court of Justice of the EU (CJEU) that the EU Data Retention Directive was invalid. DRIPA provides for the UK's data retention regime but as a consequence of its expedited Parliamentary passage, was subject to a 31 December 2016 sunset clause. In addition, the Independent Reviewer of Terrorism Legislation, David Anderson QC, was commissioned to undertake a review of investigatory powers in order to inform future legislation.

Two other independent reviews took place in parallel with David Anderson's: the Intelligence and Security Committee of Parliament (ISC) reviewed the activities of the security and intelligence agencies in relation to the balance between privacy and security, and a panel established by the Royal United Services Institute (RUSI) considered the impact on civil liberties of Government surveillance. The ISC concluded their report in March 2015, and RUSI in July 2015. David Anderson's report, 'A Question of Trust' was published on 11 June 2015.

All of the reviews concluded that the legislative framework for investigatory powers needed to be updated and modernised to make clear the statutory basis for their use, and make the safeguards and oversight they were subject to clearer and more transparent. While the various reviews came to differing conclusions in how legislation might address any deficiencies in the current model of oversight and authorisation, they agreed that a new model was required to provide for greater public confidence.

A draft Bill was published on 4 November 2015 and was subject to pre-legislative scrutiny by a Joint Committee of Parliament established for that purpose. It was simultaneously subject to scrutiny by the ISC and the House of Commons Science and Technology Committee. A report by the Science and Technology Committee was published on 1 February, the ISC on 9 February and by the Joint Committee on 11 February. All of the reports concluded that the proposed 'double-lock' authorisation safeguard in the draft legislation should stand and welcomed the consolidation of the oversight of these powers.

A Bill that took into account the conclusions of pre-legislative scrutiny, was introduced on 1 March 2016. Further amendments were made to the Bill during its Parliamentary passage. It received Royal Assent on 29 November 2016.

A.2 Groups Affected

- Government Departments (Home Office, Foreign and Commonwealth Office, Ministry of Defence Northern Ireland Office, Ministry of Justice, HM Revenue and Customs)
- SIAs (Security Service, Secret Intelligence Service, GCHQ)
- LEAs (National Crime Agency, Police Scotland, PSNI, MPS, other police forces and law enforcement agencies)
- Public authorities with investigatory powers under the Act
- The public

A.3 Consultation

Within Government

All of the Government Departments affected by the legislation were consulted as part of the policy-development process.

Public Consultation

All operational partners, the Lord Chief Justice of England and Wales, the existing Commissioners and the Scottish Government officials were consulted on the policy-development process. Their feedback was incorporated into revised proposals.

B. Rationale

In order that the Government can protect its citizens, it must ensure that law enforcement, the armed forces, and the security and intelligence agencies have the powers that they need to protect national and public security, by preventing terrorism and tackling crime, including crimes such as online child sexual exploitation, cyber-crime and human-trafficking. Equally, the Government must uphold the protection of privacy, and ensure that the use of these powers is rigorously overseen, that they are only exercised when it is necessary and proportionate to do so, and are subject to clear and strong safeguards. It has a responsibility to ensure that the public authorities who can exercise these powers are held to account for their activities, that they are transparent and that there is public understanding that they are used only when necessary and proportionate and in accordance with the law.

The Government recognises that investigatory powers are by their nature intrusive and that their use must be sufficiently overseen, is subject to safeguards and controlled. The agencies and law enforcement are currently overseen by a tripartite structure of Commissioners:

The Intelligence Services Commissioner (ISComm)

The post is currently undertaken by a retired senior judge, Sir Mark Waller and he is responsible for overseeing the security and intelligence agencies' use of:

- Intrusive surveillance
- Property interference
- Covert Human Intelligence Source (CHIS) authorisations
- Directed surveillance
- Warrants under the Intelligence Services Act 1994
- Bulk personal data sets
- The Consolidated Guidance
- Other issues as directed by the Prime Minister.

The Commissioner also inspects government departments who are involved in the authorisation of the use of these powers, namely; the Home Office, the Foreign and Commonwealth Office, the Northern Ireland Office and the Ministry of Defence.

The Office of Surveillance Commissioners (OSC)

The role of Chief Commissioner is currently undertaken by Lord Judge and the office is responsible for overseeing law enforcement agencies and public authorities' use of:

- Intrusive surveillance
- Property interference
- CHIS authorisations
- Directed surveillance
- Protected electronic information

They also authorise law enforcement agencies and public authorities' use of:

- Intrusive surveillance
- Long term CHIS deployment
- Residential property interference

The Interception of Communications Commissioner (IOCCO)

The role of the Interception Commissioner is currently undertaken by Sir Stanley Burnton and his office is responsible for overseeing:

- Acquisition of communications data
- Lawful interception of communications under the Regulation of Investigatory Powers Act 2000
- Security and intelligence agencies' collection of bulk communications data under a direction issued under s.94 of the Telecommunications Act 1984
- The policy and practice of intercepting the communications of prisoners

The Commissioner is also responsible for inspecting government departments that are responsible for processing warrants related to these activities.

The existing safeguards and oversight of powers are robust but could be strengthened even further.

Currently Secretaries of State are responsible for authorising the use of a range of investigatory powers by issuing a warrant: this includes interception of communications by the police and other agencies and interference with property by the security and intelligence agencies. In doing so they consider whether the public authority is allowed to use the power, the proposed use of the investigatory power is for a lawful purpose (the interests of national security, the prevention and detection of serious crime or the

economic well-being of the UK so far as those interests are also relevant to national security) and is both necessary and proportionate before granting that authorisation. This includes assessing the degree of intrusion into the privacy of the subject of the warrant and of any third parties, and whether this is justified.

Scottish Ministers are currently responsible for authorising the use of investigatory powers by issuing a warrant where that warrant relates to the prevention or detection of serious crime in Scotland. In doing so, they apply the same tests as a Secretary of State.

A proportion of these warrants are then selected for retrospective review by an independent Commissioner who holds or has held high judicial office. The Commissioners report annually on their findings.

A small number of warrants which are urgent are authorised orally by a Secretary of State and signed by a senior official on their behalf. This ensures that interception and, in respect of the security and intelligence agencies, property interference can be authorised when a Secretary of State is not physically available to sign the warrant instrument, for example during evenings and weekends.

The policy will go toward answering the recommendations – set out below – made by David Anderson, the Royal United Services Institute and the ISC by providing a robust oversight regime that is clear and transparent but will maintain operational agility.

David Anderson had a number of recommendations in respect of authorisation and oversight, including that:

'22. Specific interception warrants, combined warrants, bulk interception warrants and bulk communications data warrants should be issued and renewed only on the authority of a Judicial Commissioner'

'30. When a specific interception warrant is sought for the purpose specified ...(national security) and that purpose relates to the defence of the UK and/or foreign policy of the Government, the Secretary of State should have the power to certify that the warrant is required in the interests of defence and/or foreign policy of the UK. In such cases, the Judicial Commissioner in determining whether to issue the warrant should be able to depart from that certificate only on the basis of the principles applicable in judicial review'

'82. The Interception of Communications Commissioner's Office (IOCCO), the Office of the Surveillance Commissioners (OSC) and the Intelligence Services Commissioner (ISCommr) (the current Commissioners) should be replaced by a new Independent Surveillance and Intelligence Commissioner (ISIC)'

'104. The Chief Commissioner should be a person of unquestioned professional distinction and independence, committed not only to leading the work of ISIC, but to accounting publicly and to Parliament for that work, and to building public awareness of ISIC and its role'

The Intelligence and Security Committee of Parliament recommended that:

'FF. In relation to the activities that we have considered thus far, those which are most intrusive are authorised by a Secretary of State. Some witnesses questioned whether Ministers had sufficient time and independence and suggested that the public had lost trust and confidence in elected politicians to make those decisions. The Committee recognises these concerns. However, one aspect which we found compelling is that Ministers are able to take into account the wider context of each warrant application and the risks involved, whereas judges can only decide whether a warrant application is legally compliant. This additional hurdle would be lost if responsibility were to be transferred to judges and may indeed result in more warrant applications being authorised.'

'GG. In addition, Ministers are democratically accountable for their decisions. It is therefore right that responsibility for authorising warrants for intrusive activities remains with them. It is Ministers, not judges, who should (and do) justify their decisions to the public. (We consider later the need for greater transparency: the more information the public and Parliament have, the more Ministers will be held to account.)'

'II. The Commissioners' responsibilities have increased as the Agencies' capabilities have developed. However, this has been piecemeal and as a result a number of these responsibilities are currently being carried out on a non-statutory basis. This is unsatisfactory and inappropriate (as the Commissioners themselves recognise). The Commissioners' non-statutory functions must be put on a clear statutory footing.'

'KK. While oversight systems in other countries include an Inspector General function, we note that Inspectors

General often provide more of an internal audit function, operating within the Agencies themselves. As such, the Committee does not accept the case for transferring to this system: it is important to maintain the external audit function that the Commissioners provide.'

'NN. We are reassured that the Human Rights Act 1998 acts as a constraint on all the Agencies' activities. However, this safeguard is not evident to the public since it is not set out explicitly in relation to each intrusive power. The interactions between the different pieces of legislation which relate to the statutory functions of the intelligence and security Agencies are absurdly complicated, and are not easy for the public to understand.'

'ZZ. In terms of the authorisation procedure, the following principles should apply:

- (a) The most intrusive activities must always be authorised by a Secretary of State.
- (b) When considering whether to authorise the activity, the Secretary of State must take into account, first, legal compliance and, if this is met, then the wider public interest.
- (c) All authorisations must include a summary of the expected collateral intrusion, including an estimate of the numbers of innocent people who may be impacted, and the extent to which the privacy of those innocent people will be intruded upon.
- (d) Any capability or operation which would result in significant collateral intrusion must be authorised by a Secretary of State.
- (e) All authorisations must be time limited (usually for no longer than six months).
- (f) Where an authorisation covers classes of activity conducted overseas, this must include the requirements for recording individual operations conducted under those authorisations, and the criteria for seeking separate Ministerial approval.
- (g) Where intelligence is sought from overseas partners, the same authorisation must be obtained as if the intrusive activity was undertaken by the UK Agency itself.
- (h) Where unsolicited material is received, the circumstances in which it may be temporarily held and assessed, and the arrangements for obtaining retrospective authority (or where authority is not given, destruction of the material) must be explicitly defined.'

The Royal United Services Institute recommended that:

Recommendation 10

'We recommend that the government adopts a composite approach to the authorisation of warrants, dependent on the purpose for which the warrant is sought and subsequent degree of ministerial input required. Our approach does not discriminate between whether it is law enforcement or an intelligence agency submitting the warrant.

1. Where a warrant (see points 1a, 1b and 2 in Recommendation 9) is sought for a purpose relating to the detection or prevention of serious and organised crime, the warrant should always be authorised by a judicial commissioner. Most police and other law-enforcement warrants would fall into this category. A copy of each warrant should be provided to the home secretary (so that the home secretary and officials can periodically examine trends in serious and organised crime, for example).

2. Where a warrant (see points 1a, 1b and 2 in Recommendation 9) is sought for purposes relating to national security (including counter-terrorism, support to military operations, diplomacy and foreign policy) and economic well-being, the warrant should be authorised by the secretary of state subject to judicial review by a judicial commissioner. The review should take place before implementation of the warrant. If there is a case of urgency the secretary of state should be able to direct that a warrant comes into force immediately, and the judicial commissioner should be notified straight away and the judicial review conducted within fourteen days.

The judicial commissioners in charge of the authorisation of warrants should not be part of a new National Intelligence and Surveillance Office nor should they be based in a government department, but alternative office facilities should be sought so that the commissioners are accessible but remain independent. To ensure no loss of operational efficiency, appropriately qualified judges would have to be available at all times throughout the year.'

Recommendation 17

'The Intelligence Services Commissioner, Interception of Communications Commissioner's Office, and the Office of Surveillance Commissioners should be replaced by a new single independent organisation: a National Intelligence and Surveillance Office (NISO). This organisation should be placed on a statutory footing and its independence guaranteed by statute.'

Recommendation 18

'A NISO should have an office based outside of the Whitehall departments, have a public profile and be led by a senior public official. The new organisation should be staffed by appropriate persons with technical, legal, investigative and other relevant expertise (for instance in privacy and civil liberties). The new organisation would have four main areas of responsibility:

- Inspection and audit
- Intelligence oversight
- Legal advice
- Public engagement.’

Recommendation 19

‘A NISO should provide support and assistance to the Investigatory Powers Tribunal and the judicial commissioners.’

The draft Bill was published on 4 November 2015 and was subject to detailed scrutiny by three Parliamentary Committees. They made a number of recommendations in relation to oversight, all of which the Government considered carefully. A number of their recommendations include:

‘The Judicial Commissioners or Commission should have the power to instigate investigations on their or its own initiative. This is vital in order to ensure effective and independent oversight. The current provisions in the draft Bill on the powers of the Judicial Commissioners do not make it clear that they have this power. We recommend that a power to initiate investigations should appear on the face of the Bill.’

‘We therefore recommend that the Judicial Commissioners be subject to the same dismissal and suspension procedures as those applicable to serving senior judges: removal from office following a resolution of both Houses of Parliament and suspension and other disciplinary measures exercised by the Lord Chief Justice and Lord Chancellor.’

We recommend that members of the intelligence services should be able to contact the Investigatory Powers Commissioner with concerns over the misuse of surveillance powers without being at risk of prosecution for breaching the Official Secrets Act. The Investigatory Powers Commissioner should then have discretion whether to exercise his or her power to initiate an inquiry into the allegations. We recognise that there may be wider concerns over the role of whistle-blowers in this area. This is a matter which requires consultation and therefore this is not the appropriate Bill in which those wider concerns should be taken forward.

The law in this area is complex and developing. Judicial Commissioners will have to make decisions without the benefit of adversarial argument. We agree with the Independent Reviewer of Terrorism that Judicial Commissioners must have access to both in-house legal expertise and, on request, security-cleared independent counsel to assist them in both the authorisation and oversight functions of their role.

The Science and Technology Committee also made recommendations on the draft Bill, including:

‘Internet businesses and their users require assurances that investigatory powers will be imposed proportionately, and that the judgement as to what is proportionate should at all times be open to reasonable challenge. The proposed Investigatory Powers legislation, to the extent that it consolidates and clarifies mostly existing provisions, is itself an important response to that requirement. The Government should continue to consult and explain fully the likely implications of the proposed legislation.’

The Intelligence and Security Committee made recommendations on the draft Bill including the following:

‘We recommend that an additional Part be included in the new legislation to provide universal privacy protections, not just those that apply to sensitive professions.’

‘The draft Bill allows for a five working day ‘grace period’ in circumstances where the Agencies consider that a warrant is required urgently: in these circumstances the Secretary of State may issue the warrant before the Judicial Commissioner has approved it. While we recognise the need for a procedure to handle urgent cases, five working days is unnecessarily long. The Committee recommends that the maximum period for which a warrant may be operational without judicial authorisation is two working days.’

A Bill was introduced into the House of Commons on 1 March 2016 and received Royal Assent on 29 November 2016.

C. Objectives

Our policy objectives for the Act are: to strengthen the oversight of the most intrusive investigatory powers, by requiring judicial approval as part of authorisation of the most intrusive powers; to ensure that the use of investigatory powers is necessary and proportionate and in full compliance with the law; to ensure that the authorisation regime is sufficiently operationally agile; to provide greater transparency and clarity to oversight structures; to provide reassurances that those who make use of investigatory powers will be held accountable to the public and Parliament; and to respond to the three independent reviews of investigatory powers and the three reports which concluded pre-legislative scrutiny of the draft Bill.

D. Options

Option 1 was to make no changes (do nothing).

This is the baseline option. The current tripartite model of Commissioners would remain and the Secretaries of State and the Commissioners would retain their current roles. In terms of meeting the objectives of the policy, this system does ensure effective legal oversight, particularly when combined with the work of the ISC, Investigatory Powers Tribunal and the Executive, which play an important role in scrutinising, reviewing and authorising the use of investigatory powers. However, a significant criticism levelled at this system is that it is opaque and that it is difficult to understand the split between the responsibilities of the Commissioners. As a consequence the Commissioners, on the whole, have a relatively low public profile and public understanding of their important work is minimal.

Given the public and media concerns around the use of investigatory powers and the findings of the Anderson review around the shortcomings of the current authorisation arrangements, maintaining the status quo would invite considerable criticism and risk further undermining public confidence in the current arrangements.

Option 2: The Investigatory Powers Act creates an Investigatory Powers Commissioner with responsibility for oversight of the use of investigatory powers by all public authorities, and introducing a 'double lock' model of Secretary of State authorisation and Judicial Commissioner approval for the most intrusive powers (in addition to the existing Commissioner authorisation for intrusive surveillance, long term CHIS deployment and residential property interference by law enforcement).

This option provides in statute for a single Commissioner, who will take over the function of three existing Commissioners' offices (IOCCO, OSC, and ISCom) currently provided for in legislation. Under this policy option, the Commissioner will be moved to accommodation outside of a main government department building.

Given the large remit of such a role, the Investigatory Powers Commissioner is to be supported by a team of commissioners, inspectors and administrative staff to cover the portfolio. In particular the office will be supported by technical and legal expertise which will enhance their ability to provide critical challenge to the work they are overseeing.

The policy also provides for a new two stage authorisation process in which a Secretary of State considers the necessity and proportionality of applications for interception warrants, bulk warrants and warrants authorising equipment interference by the security and intelligence agencies. If the Secretary of State decides to issue the warrant, a Judicial Commissioner will review the Secretary of State's decision to do so. Only once the Judicial Commissioner has approved the Secretary of State's decision can the warrant be issued. In urgent circumstances, a warrant may be issued without Judicial Commissioner approval, but a Judicial Commissioner must retrospectively review decision to issue the warrant.

This legislative model retains the role of the Secretary of State as accountable to Parliament but creates a much larger and stronger role for independent judicial scrutiny.

Option 3: the creation of a new public body, an Investigatory Powers Commission, with responsibility for oversight of all the investigatory powers by all public authorities and the authorisation of intrusive surveillance, long term CHIS deployment and residential property interference by law enforcement and a new 'double lock' model of Secretary of State authorisation with Judicial Commissioner approval for the most intrusive powers.

This policy option would respond to the recommendation by the Joint Committee, that:

'It is unclear to us why the Home Office chose to create a group of Judicial Commissioners rather than creating an Independent Intelligence and Surveillance Commission as recommended by David Anderson QC, a recommendation endorsed by the knowledgeable and experienced Interception of Communications Commissioner's Office. The benefits of having a senior independent judicial figure in the Investigatory Powers Commissioner would not be lost by putting the IPC at the head of a Commission. The evidence we have heard is that the work of the oversight body will be significantly enhanced by the creation of a Commission with a clear legal mandate. We recommend that such a Commission should become the oversight body in the Bill.'

This option would require the creation of a non-departmental public body (NDPB). This would not materially differ from the policy option to create the Investigatory Powers Commissioner: a senior judicial figure would still head the office, a team of Judicial Commissioners would perform the same functions, but this would place the office of the Investigatory Powers Commissioner on a statutory footing.

For a Commission to be set up, an Executive Board would need to be appointed to run the Commission. This would include a Chair, the Investigatory Powers Commissioner, a Chief Executive and at least three Non-Executive Directors. In addition the Commission would need to employ staff to perform the corporate functions such as HR, IT and procurement which would otherwise be supplied by a central government department. While this would not have any impact on the function and role of Commissioners, it would be accountable for its own budget and publish its own annual report and accounts.

It is stated Government policy that new NDPBs will only be set up as a last resort, when consideration of all other delivery mechanisms have been exhausted.

E. Appraisal (Costs and Benefits)

GENERAL ASSUMPTIONS & DATA

- The calculation of economic costs is in line with HM Treasury Green Book guidance, and includes discounting at 3.5%. The costs outlined below are also without allowing for inflation, value added tax and depreciation.
- The Intelligence Services Commissioner has an annual budget of £373,000. The Chief Surveillance Commissioner is supported by six Surveillance Commissioners, three assistant Surveillance Commissioners, eight inspectors and six administrative staff. His office has an annual budget of £1.7m. The Interception of Communications Commissioner is supported by a Chief Inspector, nine additional inspectors and two administrative staff. The budget for the office is £1,101,000 per annum. The current combined budget of the three Commissioners' is £3,174,000 per annum. In addition to this there is a significant cost to the security and intelligence agencies, law enforcement agencies and warrant granting government departments in supporting the Commissioners.
- The current authorisation and oversight processes cost £6.9m in 2014, which includes the cost of accommodation, staffing, and training, as well as costs for miscellaneous spend such as catering and office supplies. The Home Secretary or another Secretary of State will consider warrant applications as part of their wider responsibilities rather than as a separate cost, therefore this is not included in our above estimates.

- Given the public and media concerns around the use of investigatory powers and the findings of the various reviews around the shortcomings of the current authorisation and oversight arrangements, maintaining the status quo would invite considerable criticism and risk further undermining public confidence in the current arrangements.

The costs are based on the following assumptions:

- The Judicial Salaries Schedule from the Ministry of Justice has been used to estimate salary costs for positions to be filled by members of the Judiciary.
- For the remaining salaries, Home Office pay scales have been used to estimate the additional costs of creating a single commissioner and consolidating the existing oversight bodies. These account for non-wage costs such as pensions and National Insurance.
- Estimates of accommodation costs were provided by HO Property.
- Remaining costs such as travel, stationery, and conferences were provided by the secretariats of the relevant bodies, and used to make extrapolations.
- Estimates of the additional compliance/reporting costs to Government Departments as a result of this oversight regime were provided by the relevant bodies.
- A discount rate of 3.5% has been used, in accordance with HMT Green Book.
- The extent of the increase in staff costs (and associated non-wage costs as well as resulting accommodation costs) may change if the person appointed as Investigatory Powers Commissioner believes that a larger number of staff are necessary to perform their statutory functions. The low and high estimates for the proposal reflect ranges for salary costs and working patterns to present this uncertainty. The number of warrants/renewals may fluctuate outside of our assumptions of 10% year on year. If there is a significant increase, additional commissioners will be needed to cope with the demand, which will cause an increase in costs.
- The additional costs of compliance are based on estimates of the extra reporting required. The details of the proposal may change, which could affect the additional resource required in these bodies to comply with the new requirements.

OPTION 2 – Consolidate the existing Commissioners into a single office, with judicial authorisation of warrants

COSTS

Our best estimate of the additional costs of the new oversight and authorisation models over the ten year period is £61.5 million. A discount rate of 3.5% has been applied to this cost, in accordance with HMT Green Book guidance.

Table 1 – Summary of Estimated Costs for Option 2

Option 2, £m	Transition Cost	Average Annual Cost	Total Over 10 Years
Best Estimate (Constant)	1.3	7.4	74.8
Low (Constant)	0.0	7.1	70.5
High (Constant)	2.0	7.7	78.9
Best Estimate (Discounted)	1.3	6.0	61.5
Low (Discounted)	0.0	5.8	57.7
High (Discounted)	2.0	6.3	65.0

A further breakdown of these costs between oversight and authorisation is presented in the tables below:

Table 2 – Summary of Estimated Costs for a Single Judicial Commissioner with Responsibility for Oversight

Option 2 (Oversight), £m	Transition Cost	Average Annual Cost	Total Over 10 Years
Best Estimate (Constant)	1.3	5.8	59.5
Low (Constant)	0.0	5.6	55.7
High (Constant)	2.0	6.0	62.4
Best Estimate (Discounted)	1.3	4.8	49.3
Low (Discounted)	0.0	4.6	45.9
High (Discounted)	2.0	5.0	51.8

Table 3 – Summary of Estimated Costs for a Combined Authorisation Regime

Option 2 (Authorisation), £m	Transition Cost	Average Annual Cost	Total Over 10 Years
Best Estimate (Constant)	0.0	1.5	15.4
Low (Constant)	0.0	1.5	14.9
High (Constant)	0.0	1.6	16.4
Best Estimate (Discounted)	0.0	1.2	12.2
Low (Discounted)	0.0	1.2	11.8
High (Discounted)	0.0	1.3	13.2

The **oversight** costs cover an Investigatory Powers Commissioner at Lord Justice of Appeal level, with five commissioners ranging from Lord Justice of Appeal to High Court Judge. In addition to the judicial members the costs allow for a head of the oversight body at Senior Civil Service Payband 1, a Civil Service Grade 7 support and 20 Grade 7 inspectors, an office manager (Higher Executive Officer) and three admin and finance staff (Executive Officer). Other costs for oversight covered by these figures include those for changing accommodation – including the possible need to build a new STRAP accredited area; and the costs for technical support, conferences, travel and stationery.

For **authorisation**, the number of warrants and renewals in 2014 was used as the baseline to estimate the expected number of days required from Judicial Commissioners. It has been assumed that both renewals and warrants will increase by 10% year on year. Based on this analysis, it is estimated that 5 commissioners will be required under this new authorisation regime. The Judicial Commissioners will be paid a base salary, and a fixed payment per warrant/renewal they consider. They will also be given support staff; in terms of Civil Service Grades, we currently expect this to be 1x Higher Executive Officer (HEO), and 3x Executive Officers (EO). These costs also include the increase in compliance costs for agencies and other government departments as a result of the new requirements.

There may also be additional non-monetised costs, as staff in the new bodies take time to familiarise themselves with new structures and reporting arrangements.

BENEFITS

No monetary benefits have been quantified for this option. The non-monetary benefit of this option would be increased public confidence and understanding in the oversight system and greater public and Parliamentary trust in the authorisation and oversight regime.

This policy simplifies the current system to provide for greater public and Parliamentary understanding of the rigorous scrutiny and safeguarding role that the independent judiciary play in respect of investigatory powers. It will increase public and Parliamentary confidence in the necessity and proportionality of the regime and that independent confirmation of law enforcement, the agencies, and the armed forces acting in accordance with the law is provided for. Having one person ultimately responsible for oversight will help ensure consistent standards and practises between the users of investigatory powers and allow best practise to be shared. It will also enable one oversight body to have visibility of how investigatory

powers are being used across a single operation (regardless of which public authority was using the power).

Option two is the preferred option as it provides the most coherent and cost-effective option to address the policy objective.

Business Impact Target

Not applicable.

OPTION 3 – The creation of the Investigatory Powers Commission as a Non Departmental Public Body (NDPB) in legislation, to carry out the authorisation and oversight functions set out in policy option two.

COSTS

This option is expected to accrue costs above those set out in option two. These relate to:

- The appointment of a Chief Executive Officer
- The appointment of a board of non-executive officers
- The appointment of staff (who are not employed by the Civil Service)
- The appointment of corporate and other administrative staff required to service the body, and provide proper accounting for a separately held budget.

This would place additional burdens on the public purse in addition to those required for consolidating the existing oversight structure.

Table 1 – Summary of Estimated Costs for Option 3

Option 3, £m	Transition Cost	Average Annual Cost	Total Over 10 Years
Best Estimate (Constant)	1.3	7.7	78.3
Low (Constant)	0.0	7.4	73.9
High (Constant)	2.0	8.0	82.4
Best Estimate (Discounted)	1.3	6.3	64.4
Low (Discounted)	0.0	6.1	60.5
High (Discounted)	2.0	6.6	67.9

A further breakdown of these costs between oversight and authorisation is presented in the tables below

Table 2 – Summary of Estimated Costs for a Single Judicial Commissioner with Responsibility for Oversight plus NDPB

Option 3 (Oversight), £m	Transition Cost	Average Annual Cost	Total Over 10 Years
Best Estimate (Constant)	1.3	6.2	62.9
Low (Constant)	0.0	5.9	59.0
High (Constant)	2.0	6.4	65.9
Best Estimate (Discounted)	1.3	5.1	52.1
Low (Discounted)	0.0	4.9	48.7
High (Discounted)	2.0	5.3	54.7

Table 3 – Summary of Estimated Costs for a Combined Authorisation Regime

Option 3 (Authorisation), £m	Transition Cost	Average Annual Cost	Total Over 10 Years
Best Estimate (Constant)	0.0	1.5	15.4
Low (Constant)	0.0	1.5	14.9
High (Constant)	0.0	1.6	16.5
Best Estimate (Discounted)	0.0	1.2	12.2
Low (Discounted)	0.0	1.2	11.8
High (Discounted)	0.0	1.3	13.2

The additional costs of the NDPB are based on the following:

Non-executive Board members are paid an annual salary of £14,435 based on the average salary paid to Non-executive Directors of central government NDPBs;

- G7 Operations Manager
- Human Resources Manager at SEO
- IT Manager at SEO
- Corporate Services Administrator at HEO

The **oversight** costs cover an Investigatory Powers Commissioner at Lord Justice of Appeal level, with three commissioners ranging from Lord Justice of Appeal to High Court Judge. In addition to the judicial members the costs allow for a head of the oversight body at Senior Civil Service Payband 1, a Civil Service Grade 7 support and 20 Grade 7 inspectors, an office manager (Higher Executive Officer) and three admin and finance staff (Executive Officer). Other costs for oversight covered by these figures include those for changing accommodation – including the possible need to build a new STRAP accredited area; and the costs for technical support, conferences, travel and stationery.

For **authorisation**, the number of warrants and renewals in 2014 was used as the baseline to estimate the expected number of days required from Judicial Commissioners. It has been assumed that both renewals and warrants will increase by 10% year on year. Based on this analysis, it is estimated 5 Commissioners will be required to be working or on call at any one time under this new authorisation regime. These will be drawn from a wider pool of trained Judicial Commissioners. The Judicial Commissioners will be paid a base salary, and a fixed payment per warrant/renewal they consider. They will also be given support staff; in terms of Civil Service Grades, we currently expect this to be 1x Higher Executive Officer (HEO), and 3x Executive Officers (EO). These costs also include the increase in compliance costs for agencies and other government departments as a result of the new requirements.

BENEFITS

No monetary benefits have been quantified for this option. The non-monetary benefit of this option would be increased public confidence and understanding in the oversight system and greater public and Parliamentary trust in the authorisation and oversight regime. It would respond most directly to the recommendation made by David Anderson QC and by the Joint Committee and may improve public confidence in the statutory independence of such a body.

This policy would simplify the current system and provide for greater public and Parliamentary understanding of the rigorous scrutiny and safeguarding role that the independent judiciary play in respect of investigatory powers. It would increase public and Parliamentary confidence in the necessity and proportionality of the regime and that independent confirmation of law enforcement, the agencies, and the armed forces acting in compliance with the law is provided for. Having one organisation ultimately responsible for oversight would help ensure consistent standards and practises between the users of investigatory powers and allow best practise to be shared. It would also enable one oversight body to have visibility of how investigatory powers were being used across a single operation (regardless of which public authority was using the power).

Business Impact Target

Not applicable.

F. Risks

OPTION 2 – consolidation of the Commissioners, introducing judicial authorisation

It is possible that reform may not generate the expected increase in confidence amongst the public for the oversight of the various investigatory powers used by public authorities. There is a risk that this option is not seen as answering the letter of the recommendation made by David Anderson QC, and the Joint Committee scrutinising the Bill, to provide for the Commission – rather than the Commissioner – on the face of legislation.

The ‘double lock’ authorisation process may take longer to undertake and may impact on operational agility. We will try to mitigate this by ensuring Judicial Commissioners are readily available, but this will be necessarily more expensive to implement. The risk will also be mitigated by providing that, in an urgent case, a warrant may be issued without prior Judicial Commissioner approval. However, it will be subject to a review by a Judicial Commissioner within three working days and will be cease to have effect if the Commissioner does not approve the decision to issue the warrant.

OPTION 3 – creation of an NDPB Investigatory Powers Commission

It is possible that reform may not generate the expected increase in confidence amongst the public for the oversight of the various investigatory powers used by law enforcement/the agencies.

The ‘double lock’ authorisation process may take longer to undertake and may impact on operational agility. We will try to mitigate this by ensuring Judicial Commissioners are readily available, but this will be necessarily more expensive to implement. The risk will also be mitigated by providing that, in an urgent case, a warrant may be issued without prior Judicial Commissioner approval. However, it will be subject to a review by a Judicial Commissioner within three working days and will be cease to have effect if the Commissioner does not approve the decision to issue the warrant.

G. Enforcement

Not applicable.

H. Summary and Recommendations

The table below outlines the costs and benefits of the proposed changes.

Table H.1 Costs and Benefits		
Option	Costs	Benefits
2	£61.5m	£0
	Unquantified Costs N/A	Unquantified Benefits Increased public confidence and understanding in the oversight system and greater public and Parliamentary trust in the authorisation and oversight regime
3	£64.4m	£0
	Unquantified Costs N/A	Unquantified Benefits Increased public confidence and understanding in the oversight system and greater public and Parliamentary trust in the authorisation and oversight regime

Source: refer to costs and benefits section

Option two is the preferred option as it provides the most coherent and cost-effective option to address the policy objective, while delivering similar benefits.

I. Implementation

The Government will commence the provisions in the Investigatory Powers Act once full implementation plans have been considered and the associated public cost of establishing such a body has been approved by Parliament. Codes of Practice, which will include guidance on oversight and reporting requirements, were published alongside the draft Bill and will be revised and published for consultation shortly. A full consultation process with affected Government departments and stakeholders will form part of implementation.

J. Monitoring and Evaluation

The Investigatory Powers Commissioner will be obliged to report annually on the exercise of investigatory powers over which the Commissioner has oversight. The IPC will be advised on the impact of changing technology by the Technology Advisory Panel. The Intelligence and Security Committee of Parliament will continue to oversee the activities of the security and intelligence agencies, including their exercise of investigatory powers. And the Investigatory Powers Tribunal will provide a right of redress to any individual who believes they have been effected by the misuse of any of the powers in the Act. The effectiveness of the new regime will be monitored by post-legislative scrutiny in 2022.

K. Feedback

The Government has considered all of the recommendations of the three Parliamentary Committees and the public submissions made as part of the consultation process in responding with revised legislation. The Government continually considered and responded to feedback from interested stakeholders throughout the Bill's passage through Parliament and will continue to do so during the public consultation on Codes of Practice. Ongoing consultation with affected stakeholders will continue throughout implementation of the Act.

Impact Assessment Checklist

The impact assessment checklist provides a comprehensive list of specific impact tests and policy considerations (as of October 2015). Where an element of the checklist is relevant to the policy, the appropriate advice or guidance should be followed. Where an element of the checklist is not applied, consider whether the reasons for this decision should be recorded as part of the Impact Assessment and reference the relevant page number or annex in the checklist below.

The checklist should be used in addition to [HM Treasury's Green Book guidance](#) on appraisal and evaluation in central government.

Economic Impact Tests

Does your policy option/proposal consider...?	Yes/No (page)
<p>Business Impact Target The Small Business, Enterprise and Employment Act 2015 (s. 21-23) creates a requirement to assess the economic impacts of qualifying regulatory provisions on the activities of business and civil society organisations. [Better Regulation Framework Manual] or [Check with the Home Office Better Regulation Unit]</p>	No.
<p>Review clauses The Small Business, Enterprise and Employment Act 2015 (s. 28) creates a duty to include a review clause in secondary legislation containing regulations that impact business or civil society organisations. [Check with the Home Office Better Regulation Unit]</p>	No.
<p>Small and Micro-business Assessment (SaMBA) The SaMBA is a Better Regulation requirement intended to ensure that all new regulatory proposals are designed and implemented so as to mitigate disproportionate burdens. The SaMBA must be applied to all domestic measures that regulate business and civil society organisations, unless they qualify for the fast track. [Better Regulation Framework Manual] or [Check with the Home Office Better Regulation Unit]</p>	No.
<p>Clarity of legislation Introducing new legislation provides an opportunity to improve the clarity of existing legislation. Legislation with multiple amendments should be consolidated, and redundant legislation removed, where it is proportionate to do so.</p>	No.
<p>Primary Authority Any new Government legislation which is to be enforced by local authorities will need to demonstrate consideration for the inclusion of Primary Authority, and give a rationale for any exclusion, in order to obtain Cabinet Committee clearance. [Primary Authority: A Guide for Officials]</p>	No.
<p>New Burdens Doctrine The new burdens doctrine is part of a suite of measures to ensure Council Tax payers do not face excessive increases. It requires all Whitehall departments to justify why new duties, powers, targets and other bureaucratic burdens should be placed on local authorities, as well as how much these policies and initiatives will cost and where the money will come from to pay for them. [New burdens doctrine: guidance for government departments]</p>	No.
<p>Competition The Competition guidance provides an overview of when and how policymakers can consider the competition implications of their proposals, including understanding whether a detailed competition assessment is necessary. [Government In Markets Guidance]</p>	No.

Social Impact Tests

<p>New Criminal Offence Proposals Proposed new criminal offences will need to be agreed with the Ministry of Justice (MOJ) at an early stage. The Justice Impact Test (see below) should be completed for all such proposals and agreement reached with MOJ before writing to Home Affairs Committee (HAC) for clearance. Please allow 3-4 weeks for your proposals to be considered.</p>	No.
<p>Justice Impact Test The justice impact test is a mandatory specific impact test, as part of the impact assessment process that considers the impact of government policy and legislative proposals on the justice system. [Justice Impact Test Guidance]</p>	Yes.
<p>Statutory Equalities Duties The public sector equality duty requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity, and foster good relations in the course of developing policies and delivering services. [Equality Duty Toolkit]</p>	No.
<p>Privacy Impacts A Privacy Impact Assessment supports an assessment of the privacy risks to individuals in the collection, use and disclosure of information. [Privacy Impact Assessment Guidance] or [Contact the Corporate Security Information Assurance Team Helpline on 020 7035 4969]</p>	Yes.
<p>Family Test The objective of the test is to introduce a family perspective to the policy making process. It will ensure that policy makers recognise and make explicit the potential impacts on family relationships in the process of developing and agreeing new policy. [Family Test Guidance]</p>	No.
<p>Powers of Entry A Home Office-led gateway has been set up to consider proposals for new powers of entry, to prevent the creation of needless powers, reduce unnecessary intrusion into people's homes and to minimise disruption to businesses. [Powers of Entry Guidance]</p>	No.
<p>Health Impact Assessment of Government Policy The Health Impact Assessment is a means of developing better, evidenced-based policy by careful consideration of the impact on the health of the population. [Health Impact Assessment Guidance]</p>	No.

Environmental Impact Tests

<p>Environmental Impacts The purpose of the environmental impact guidance is to provide guidance and supporting material to enable departments to understand and quantify, where possible in monetary terms, the wider environmental consequences of their proposals. [Environmental Impact Assessment Guidance]</p>	No.
<p>Sustainable Development Impacts Guidance for policy officials to enable government departments to identify key sustainable development impacts of their policy options. <i>This test includes the Environmental Impact test cited above.</i> [Sustainable Development Impact Test]</p>	No.
<p>Rural Proofing Guidance for policy officials to ensure that the needs of rural people, communities and businesses are properly considered. [Rural Proofing Guidance]</p>	No.