

Title:

Investigatory Powers Bill: Oversight
IA No: HO0200

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

Impact Assessment (IA)

Date: 4 November 2015

Stage: Consultation

Source of intervention: Domestic

Type of measure: Primary legislation

Contact for enquiries:

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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?	
£59.9m	£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 law enforcement, armed forces and security and intelligence agencies 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 safeguards are seen to be explicit and stringent. In the case of oversight, there is the potential for confusion over the responsibilities of the 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 agencies. The Investigatory Powers Bill will consolidate the existing Commissioners into a single independent oversight body, provide stronger and robust safeguards and accountability to the investigatory powers regime, and introduce judicial approval of warranting.

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 and the security and intelligence agencies. To provide Parliamentary and public confidence that investigatory powers are being used in a necessary and proportionate fashion, and that their exercise is robustly scrutinised and overseen.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option one: do nothing. The current oversight model of the Surveillance Commissioner, Interception of Communications Commissioner and Intelligence Services Commissioner is retained; no judicial review of warranting as part of the authorisation process. Option two: Create a single judicial Commissioner with responsibility for oversight of the use of investigatory powers by all public authorities and a double-lock, Secretary of State and judicial Commissioner authorisation. Option 3: The reorganisation of existing Commissioner portfolios to create a simplified system of oversight. Creation of an individual Commissioner for oversight of each public authority that uses investigatory powers, no changes to the authorisation regime.

Option two 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: December 2021

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

Date:

3/11/15

Summary: Analysis & Evidence

Policy Option 1

Description: Do nothing

FULL ECONOMIC ASSESSMENT

Price Base Year 2015	PV Base Year 2015	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	High: 0	Best Estimate: N/A

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

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 Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	N/A	N/A	N/A

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.		

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: N/A	Benefits: N/A	Net: N/A		
			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 2015	PV Base Year 2015	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -55.0	High: -62.1	Best Estimate: -59.9

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.0	7.0	55.0
High	2.0	7.6	62.1
Best Estimate	1.3	7.3	59.9

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

The estimated additional costs of £9.4m per annum (in constant prices) are the Government's assessment of the cost of staffing for the 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 reporting 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 Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/K	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
Reform may fail to generate the expected increase in confidence amongst the public/Parliament/media; the Commissioner may still be regarded as having 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 OIOO?	Measure qualifies as
Costs: N/A Benefits: N/A Net: N/A	No	NA

Summary: Analysis & Evidence

Policy Option 3

Description: The reorganisation of existing Commissioner portfolios to create a simplified system of oversight. Creation of an individual Commissioner for oversight of each public authority that uses investigatory powers, no changes to the authorisation regime.

FULL ECONOMIC ASSESSMENT

Price Base Year 2015	PV Base Year 2015	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/K	High: N/K	Best Estimate: N/K

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/K		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 costs by 'main affected groups'

There may be minimal costs associated with rearranging the remit of each Commissioner, and hence ensuring they have sufficient resources. The movement of the Commissioners to new accommodation may also incur additional costs, but these are not expected to be significant.

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

Establishing a Commissioner for each of the bodies who are able to use investigatory powers would be inefficient to implement due to the overlapping commissioner functions, and would create duplication of effort in the system.

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

The proposal may simplify the remit of the Commissioners, reducing overlap of function and making it easier for the public to understand the different roles.

Key assumptions/sensitivities/risk	Discount rate (%)	3.5
It is expected that alterations to the authorisation regime and consolidation of the Commissioners, will increase coherency and public confidence, and therefore provide benefits.		

BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: N/A	Benefits: N/A	Net: N/A	No	NA

Evidence Base

A. Problem under consideration

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 sunsetted to 31 December 2016. 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 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. All of the reviews confirmed that law enforcement, armed forces and security and intelligence agencies, do not seek to circumvent the law but seek to rigorously comply with it. 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.

B. Rationale for intervention

In order that the Government can protect its citizens, it must ensure that law enforcement 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 exercised when it is necessary and proportionate to do so, and subject to clear and strong safeguards. It has a responsibility to ensure that the agencies who can exercise these powers can be held to account for their activities, that they are transparent and that there is public understanding that they are undertaken only when necessary and proportionate and in accordance with the law. While the independent review of the Intelligence and Security Committee of Parliament and David Anderson upheld that the security and intelligence agencies do not seek to circumvent the law, the transparency of UK oversight of investigatory powers has been in some doubt.

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

The Intelligence Services Commissioner (ISComm)

The post is currently undertaken by 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 or agent) authorisations
- Directed surveillance
- 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 Commissioner and his office are responsible for overseeing:

- Acquisition of communications data
- Lawful interception of communications under the Regulation of Investigatory Powers Act (2000)
- Security and Intelligence Agencies' use of s.94 Telecommunications Act
- 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 adequate but could be strengthened and made more apparent.

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 Service (MI5). In doing so they consider whether the proposed use of the investigatory power is for a lawful purpose (national security, investigation of serious crime or economic well-being of the UK where it relates 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.

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

A small number of warrants which are deemed to be "urgent" are authorised verbally by Secretary of State and signed by a Senior Official on their behalf. This ensures that interception can be authorised when a Secretary of State is not physically available to sign documents, 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 Intelligence and Security Committee by providing a robust oversight regime that is clear, 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.'

C. Policy Objective

Our objective is to:

- Strengthen the oversight of agency use of the most intrusive investigatory powers, by requiring judicial approval as part of authorisation;
- Ensure that the use of investigatory powers is necessary and proportionate and in full compliance with the law;
- 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.

D. Options

Three options have been considered for legislation. As with all our options, the basic assumption is that the Government must retain some form of oversight and authorisation of the investigatory powers regime. The costs of complying with new reporting arrangements are included in this impact assessment.

Option one: Do Nothing

This is the baseline option. The current tripartite model of Commissioners would remain and the Secretaries of State would retain their role of authorisation. In terms of meeting the objectives of the policy, the current system does ensure effective legal oversight, particularly when combined with the work of the Intelligence and Security Committee of Parliament and the Executive, both of which play an important role in reviewing and authorising the use of investigatory powers. However, a significant criticism levelled at the current 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 two: create a single Investigatory Powers Commissioner with responsibility for oversight of the use of investigatory powers by all public authorities, and a hybrid model of Secretary of State and Judicial Commissioner authorisation

This option would provide in statute for a single Commissioner, who would take over the function of all three existing Commissioners (IOCCO, OSC, and IsCom) currently provided for in legislation. Under this policy option, the Commissioner would be moved to accommodation outside of a main departmental building of government.

Given the large remit of such a role, the single Investigatory Powers Commissioner would 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 would enhance their ability to provide critical challenge to the work they are overseeing.

The policy would also provide for a two stage authorisation process in which Secretaries of State first review the application for a warrant to assess its necessity and proportionality and issue a warrant, and then a judicial commissioner approves the warrant, having assessed whether a lawful and reasonable decision has been taken. It is only after a judicial commissioner has approved a warrant will it come in to effect. 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 three: the re-organisation of existing Commissioner portfolios to create a simplified system of oversight. Creation of an individual Commissioner for oversight of each public authority that uses investigatory powers. No changes to the authorisation regime.

This policy option would re-arrange how oversight is divided among the Commissioners, giving responsibility to each Commissioner either for a specific body who can use investigatory powers (i.e. one for security and intelligence agencies and armed forces, and one for law enforcement agencies and public authorities), or for a specific power.

Providing for an altered legislative framework whereby there are specific commissioners for each of the bodies who are able to exercise the various investigatory powers may increase public confidence that there is a single clear "watchdog" for their separate activities. However, this approach could potentially allow inconsistencies and different practises to emerge between security and intelligence agencies' and armed forces' use of and law enforcement use of intrusive powers. It could also lead to an artificial distinction between the two and best practice might not be shared - though provision could be made to enforce this and collaboration between

the Commissioners. It would be inefficient to implement due to the overlapping commissioner functions and would create duplication in the system.

Alternatively, the legislative framework could provide for statutory oversight divided by investigatory power, e.g. a single Commissioner with statutory oversight of all equipment interference regardless of whether it was undertaken by law enforcement, security and intelligence agencies and the armed forces; a single Commissioner with oversight of the exercise of interception and communications data provisions and a single Commissioner with statutory oversight of human related (e.g. CHIS and surveillance) activity. This legislative framework would need to provide for sensible and coherent structures in the statutory functions of the Commissioners but there still may be public misunderstanding as to the distinction between the different Offices.

E. Costs and Benefits

The legislation would replace the existing statutory basis for oversight and authorisation, with three areas of associated cost:

- The additional costs associated with altering the authorisation and warrant process to provide for the hybrid model of judicial and Secretary of State authorisation;
- The additional costs of providing for the new Commissioner body, such as accommodation and staffing.
- The additional compliance costs to Government Departments of the new arrangements resulting from the amended oversight regime.

The impact assessment does not consider the impact of alterations made to the Investigatory Powers Tribunal, which is contained within a separate impact assessment.

GENERAL ASSUMPTIONS AND 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. Specific assumptions are detailed under each option.

GROUPS AFFECTED

- Government Departments (**Home Office, Foreign and Commonwealth Office, Ministry of Defence, Northern Ireland Office, Ministry of Justice**)
- SIAs (**Security Service, Secret Intelligence Service, GCHQ**)
- LEAs (**National Crime Agency, the Police, HM Revenue and Customs**)
- The public

Option one: Do nothing

COSTS

This is the baseline option, there are no additional costs.

The Intelligence Services Commissioner has an annual budget of £373,000. The Surveillance Commissioner is supported by six Judicial Commissioners, three assistant Judicial 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 process 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 one of their Cabinet colleagues 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 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.

BENEFITS

This is the baseline option; there are no additional monetary or non-monetary benefits of this policy.

Option two: create a single Investigatory Powers 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

COSTS

Our best estimate of the additional costs of the new oversight and authorisation models over the ten year period is **£59.9 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	7.3	74.0
Low (Constant)	0.0	7.0	69.7
High (Constant)	2.0	7.6	78.1
Best Estimate (Discounted)	1.3	5.9	59.9
Low (Discounted)	0.0	5.5	55.0
High (Discounted)	2.0	6.0	62.1

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	59.0
Low (Constant)	0.0	5.5	55.1
High (Constant)	2.0	6.0	61.9
Best Estimate (Discounted)	1.3	4.7	47.8
Low (Discounted)	0.0	4.4	43.9
High (Discounted)	2.0	4.8	49.7

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	15.1
Low (Constant)	0.0	1.5	14.6
High (Constant)	0.0	1.6	16.2
Best Estimate (Discounted)	0.0	1.2	12.1
Low (Discounted)	0.0	1.1	11.1
High (Discounted)	0.0	1.2	12.4

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 that 4 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.

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 three 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.

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 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 absolute necessity and proportionality of the regime and that independent confirmation of law enforcement, the agencies, and the armed forces acting in complete compliance with the law is provided for. Having one person ultimately responsible 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 whether it was law enforcement agencies or intelligence agencies that were using the power).

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

Option three: The reorganisation of existing Commissioner portfolios to create a simplified system of oversight. Creation of an individual Commissioner for oversight of each public authority that uses investigatory powers. No changes to the authorisation regime

COSTS

This option is expected to have minimal additional monetary costs beyond the current regime. It may result in lack of public confidence and understanding of the oversight and authorisation regime.

BENEFITS

No monetary benefits have been quantified for this option. Reorganising the portfolios of the separate Commissioners could reduce overlap and redundancy in some ways, but introduce them in others.

In terms of non-monetary benefits, it may help to clarify the oversight system in the minds of the public, which should increase their trust in it. If each Commissioner were responsible for a

specific body that can use investigatory powers, their ability to judge necessity and proportionality would improve, as they would have oversight of all surveillance techniques.

F. Risks

- 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.
- 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 to other Government Departments/the agencies 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.
- Another potential risk of this system is that the two stage process is longer to undertake and may impact on operational efficiency. We will try to mitigate this by ensuring judicial commissioners are readily available, but this will be necessarily more expensive to implement. In the case of a warrant that is deemed to be urgent, this warrant will come in to effect after it has been deemed necessary and proportionate by a Secretary of State. However, it will be subject to a review by a judicial commissioner and will be quashed if the commissioner does not approve it.
- 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.

G. Implementation

The Government will Introduce a Bill following any revisions necessary after pre-legislative scrutiny, in the New Year. The Bill will need to be enacted by 31 December 2016, by which point the Data Retention and Investigatory Powers Act will fall away.

The creation of a large public body is a complex process and full implementation plans will be considered after the introduction of the primary legislation.

H. Monitoring and Evaluation

The proposed legislation will be scrutinised by a Joint Committee of Parliament, before being Introduced in the early New Year. 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 unlawfully surveilled.

I. Feedback

The Government will consider carefully the recommendations of the Joint Committee before bringing forward revised proposals for Introduction. Public consultation will form part of the pre-legislative scrutiny process.