

Investigatory Powers Bill IAs

Home Office

RPC rating: **fit for purpose**

The IAs is now fit for purpose as a result of the department's response to the RPC's initial review. As first submitted, the IAs were not fit for purpose.

Description of proposal

The department proposes to legislate to update and modernise the use of investigatory powers. This will clarify the existing legal framework in respect of the acquisition, retention and examination of communications data and information. In doing so, the proposals will consolidate previous parts and sections of Acts into a single transparent and clear piece of legislation. It will also provide new powers covering the acquisition and retention of internet connection records, and increases the oversight of the use of investigatory powers. The department has provided separate IAs covering specific elements of the policy such as acquisition and interception of communications data and equipment interference. However, as these IAs all relate to the Investigatory Powers Bill, the RPC has considered all the policy proposals in a single opinion.

Impacts of proposal

The department explains that business will continue to incur costs from the consolidated communications data obligations when required to comply with lawful requests for data. The department further explains that business will incur additional costs of £187 million discounted over the 10 year appraisal period in dealing with new requests covering the retention and filtering of internet connection records (page 10 of the Communications Data IA). The Home Office maintains a policy of reimbursing 100% of the reasonable costs incurred by business in complying with communications data retention requirements under current legislation; this will continue to apply to existing and new capabilities and requests under the Bill. As such, the net direct impact on businesses asked to comply with communications data requirements is zero. The RPC has previously allowed compensation payments to be used to offset (up to a maximum of 100%) direct costs to business of new regulation, providing the compensation is specific to the proposal (e.g. MOD regulations on reservists).

The department has identified significant unmonetised benefits resulting from the proposal. The measures will allow the authorities to maintain their capability to acquire data to fight terrorism and crime.

In line with the Small Business, Enterprise and Employment Act the proposal will not be considered a regulatory provision as businesses affected will be acting on behalf of public authority in carrying out these activities.

Quality of submission

As initially submitted, the RPC did not consider the IAs fit for purpose as they did not provide sufficient detail concerning the costs to all business and the reimbursement of such costs by the public sector. Following the RPC's initial review, the department has now provided the RPC with a sufficient explanation on these points. The department has also provided further analysis to support the estimated cost to business from the communications data proposals and confirmed that business will be 100 % reimbursed for the cost of obtaining and retaining the relevant communications data. This is in line with existing legislation and will be continued under the Investigatory Powers bill for both existing and new capabilities. The department has further confirmed through its stakeholder engagement that the reimbursement system is supported by business.

The IAs concentrate on the direct impact on businesses of complying with specific requests for data and equipment access and retention. Compensation will cover the incremental costs, including the direct costs of setting up the capacity to comply with such requests. The IA does not identify or seek to quantify other costs such as indirect costs to businesses potentially subject to such requests (e.g. business reputation costs of measures to circumvent encryption that prevents providers from gaining access to communications contents) or costs to businesses that currently use their services including businesses from hardware producers to app providers. The RPC accepts that these costs are uncertain and that quantification may not be proportionate, but the utility of the IAs is limited by such omissions. Indirect effects on other parts of the business in the supply chain or on others (including new players) involved in the sector are not addressed.

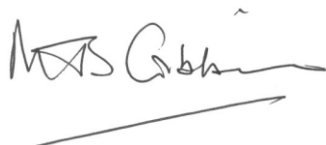
Departmental assessment

Classification	Not a regulatory provision
Equivalent annual net cost to business (EANCB)	£0 million

Business net present value	£0 million
Societal net present value	-£247.5 million (benefits not monetised)

RPC assessment

Classification	Not a regulatory provision
EANCB – RPC validated ¹	Zero for reporting purposes
Business Impact Target (BIT) Score ¹	£0 million
RPC rating (of initial submission)	Not fit for purpose



Michael Gibbons CBE, Chairman

¹ For reporting purposes, the RPC validates EANCB and BIT score figures to the nearest £100,000.