

Title: Codes of Conduct IA No: BIS0313 Lead department or agency: IPO Other departments or agencies:	Impact Assessment (IA)			
	Date: 21/05/12			
	Stage: Final			
	Source of intervention: Domestic			
	Type of measure: Primary legislation			
Contact for enquiries: Nadia Vally nadia.vally@ipo.gov.uk				
Summary: Intervention and Options			RPC Opinion: Amber	

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?
-£2.75m	-£2.75m	£0.29m	Yes IN

What is the problem under consideration? Why is government intervention necessary?

Collecting societies are monopolies which collect close to £1bn p.a. on behalf of rights-holders, yet their functions are unregulated. The Hargreaves Review found evidence of inefficiencies, opaque financial reporting, and behaviours that reduce consumer welfare. Intervention is needed to reduce inefficiencies and deadweight costs, and to create a more transparent system for users and members of collecting societies. Other recommendations accepted by the Government following the Hargreaves Review could result in additional powers for collecting societies with the aim of realising additional economic and cultural benefits; the Government is not willing to implement such changes without intervention to ensure minimum standards.

What are the policy objectives and the intended effects?

To improve the efficiency, governance and accountability of collecting societies to benefit members, licensees and potential licensees, and to enable the introduction of extended collective licensing (see associated IA)

Collecting societies in some sectors are already the subject of complaints surrounding their monopoly power. Codes of conduct are intended to help reduce these complaints, and to make it possible to use the collecting society model to enable greater market efficiencies, while providing reassurance to rights holders and users.

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

- Option 0 - Do nothing.
- Option 1 - Rely on self-regulation alone.
- Option 2 - Make provision for collecting societies to self-regulate using codes of conduct that adhere to minimum standards set by government. Alongside this prepare proposals for a backstop power to put in place statutory codes where collecting societies fail to put in place effective codes within a set timescale, or fail to adhere to such code.

Option 2 is preferred as it achieves policy objectives in a relatively short time frame and allows for extended collective licensing to be introduced. The backstop power is needed to ensure compliance.

Will the policy be reviewed? It Codes will be reviewed. If applicable, set review date: 04/2020					
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 Yes	Small Yes	Medium Yes	Large Yes
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 SELECT SIGNATORY: _____ Date: _____

Summary: Analysis & Evidence

Policy Option 2

Description: Self regulation with a backstop power to regulate

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -£2.48m	High: -£3.03m	Best Estimate -£2.75m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)	
Low	£0.30m	1	£0.25m	£2.5m
High	£0.37m		£0.31m	£3.0m
Best Estimate	£0.34m		£0.28m	£2.8m

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

There will be costs to collecting societies in terms of both set up costs and annual running costs. A number of collecting societies have provided estimates of these and we have calculated that they are on average 0.003% of their total collections. Therefore estimating the maximum set up costs for the 15 collecting societies could be £0.34m and the annual running costs £0.28m. A 10% sensitivity analysis has been carried out on these estimates. It is possible that these costs may be passed on to their members and licensees

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

There may be additional costs for collecting societies in terms of financial penalties in the event that a collecting society has breached a statutory code. In addition the Government would need to bear the one-off cost of designing and implementing statutory backstop power but it is not possible to quantify these costs at present as they would be dependent on the level of compliance.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low		1	
High			
Best Estimate			

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

It has not been possible to monetise the benefits due to lack of available data, we have commissioned research from BOP Consulting which has provided evidence on the potential qualitative benefits, in addition to that provided in the consultation responses.

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

Enhanced transparency is likely to generate efficiencies for members and licensees who would also benefit from clearer information and access to a dispute resolution mechanism. Collecting societies and Government expected to benefit from a reduction in the resources required to deal with complaints. Implementation of Extended Collective Licensing and associated benefits would be facilitated.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5%
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We have assumed that the setup and running costs provided by the collecting societies are accurate and are a suitable representation to allow us to extrapolate across all 15 collecting societies. A 10% sensitivity analysis has been carried out on the figures. We assume that levels of compliance with voluntary codes of conduct are likely to be good, and that collecting societies will bear any costs of penalties imposed in the event of non-compliance with a statutory code.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:	In scope of OIOO?	Measure qualifies as
Costs: 0.3	Yes	IN
Benefits: 0		
Net: -0.3		

Evidence Base (for summary sheets)

Background

Collecting societies in the UK are privately run commercial entities that license the rights of their members, the copyright owners. Individual collecting societies can vary in size and scale: of the 15ⁱ or so operating in the UK, we believe there are some small businesses and one micro business.

On joining a collecting society, the copyright owner gives it a mandate to administer their rights. Their copyright works are then added to the licensing repertoire of the collecting society. The collecting society then licenses the rights of its members and collects licence fees from users of copyrighted works. It charges an administration fee for these services which is deducted from the total licence fee. The balance is distributed to its membership as royalty payments for the use of their works.

Like Hargreaves, the Government recognises that collecting societies perform a valuable function in licensing, reducing transaction costs by enabling “many to many” licensing. Both users and creators of the copyright licensing system save time and money by being able to use the central clearing house system that collecting societies provide. The alternative would be to approach each other on an individual basis; this can be both time-consuming and expensive.

The problem under consideration

Collecting societies in the UK tend to be monopoly suppliers of licences for their respective sectors. This is market efficient: it enables many-to-many licensing which significantly reduces transaction costs for licensees and rights-holders by allowing them to manage their rights or use of rights through a single organisation. Thus, it would not make sense to break up the monopolies. Collections in the UK amount to around £1 billionⁱⁱ per annum across the various sectors. These collections are supported in law, but collecting society functions are not specifically regulated by the government. The UK stands out as only one of three jurisdictions within the EU that does not regulate the functions of its collecting societies, whether through *ab initio* licensing, ongoing supervision, or a combination of the two.

Hargreaves expressed two significant concerns regarding the current system. Firstly, he contended that individual collecting societies appeared to be the cause of some avoidable deadweight losses and inefficiencies. He argued that the wide range of cost margins (illustrated in the table below) and remuneration of directors (in some cases over £500,000 per annum)ⁱⁱⁱ tended to point to inefficiencies. As a comparator with other non-profit organisations, research from CharityFacts indicates that UK charities typically spend between 5-13% of income on administrative costs^{iv}.

Society	Total collections (millions)	Paid to members (millions)	Cost-income ratio (estimates based on published figures)
NLA ^v	£ 26.7	£ 20.9	21.7%
DACS ^{vi}	£ 9.4	£ 7.6	19.1%
PPL ^{vii}	£ 111.4	£ 91.5	17.9%
ACS ^{viii}	-	£ 0.4	15.0%
PRS-MCPS ^{ix}	£ 646.0	£ 574.0	11.1%
CLA ^x	£ 62.7	£ 57.0	9.1%
BECS ^{xi}	£ 8.4	£ 7.7	8.3%
Directors UK ^{xii}	£ 8.4	£ 7.8	7.6%
ERA ^{xiii}	£ 7.7	£ 7.2	6.5%
ALCS ^{xiv}	£ 25.2	£ 24.0	4.8%
PLS ^{xv}	£ 27.1	£ 26.1	3.7%
MPLC ^{xvi}	£ 0.7	not audited	-
Total	£ 933.7	£ 824.2	11.3%

While in many business sectors this variation could represent a number of factors (such as a high value-added by those societies with a higher cost-income ratio) this argument appears less tenable in the case of collecting societies, which generally operate as monopoly providers and exist with the primary purpose of transferring collected fees to their members at minimal cost. It is notable that the Artist's Collecting Society (ACS), a small competitor society to DACS, claims on its website that by providing artists with a choice of collecting society, ACS ensures the rate of commission charged on the collection of the Artist Resale Right remains competitive^{xvii} (implying that cost inefficiencies were present in the previous situation of monopoly provision – a situation which persists in many sectors owing to the economies of scale inherent in the market).

Some collecting societies in their responses to the consultation suggested that the wide range of cost margins do not mean that some collecting societies are less efficient than others. Rather, they suggest that the roles of collecting societies differ according to the sector they operate in, the number of members, and the type and number of rights they manage - among other factors. These variations may require different methods of operation and have different costs associated with them. For example, the Newspaper Licensing Agency point out that, *“The reason why the NLA’s costs appear to be high is that with the support of its members and shareholders, it has invested in the technology to enable access to content and enable future licensing evolution (a Digital Content and Copyright Exchange).”*^{xviii} PPL sum up the position by suggesting that *“It is wrong to define and assess a single collective licensing model”*^{xix}.

In addition, Hargreaves suggested that there is relative uncertainty amongst many licensees and some members about how collecting societies operate and this is compounded by instances of opaque financial reporting. Accessing detailed financial accounts of some collecting societies has proven to be difficult and has, in some cases, required “investigative accounting”^{xx}. Hargreaves commented that information on earnings, distributions, costs and cost-income ratios are not reported in uniform format, making it difficult for government to have a clear overview of an economically significant activity. Again, it should be noted that several collecting societies emphasise the differences in their business models in their consultation responses, and on this basis have argued against the imposition of uniform reporting requirements.

Hargreaves' second concern revolved around the assertion that the presence of unregulated monopoly suppliers can have harmful effects in some sectors, especially on small and micro firms. Some collecting societies have been critical of this characterisation of monopoly supply (and the characterisation of themselves as monopolies). They point out that collecting societies are voluntary mechanisms which are the result of a set of choices made by rightsholders and licensees. The Design and Artists Copyright Society (DACS) capture this point in their submission, "*The 'monopoly' may arise because competition while valued as an ideological outcome, is not valued as a practical outcome for players in the market.*"^{xi} Other responses argued that collecting societies also operated in some competitive markets, and mentioned alternative licensing solutions available to users.

Countering this argument, some licensees have commented that the repertoire licensed by the majority of collecting societies contains many of the works which they wish to use. This means that in effect licensees have little option but to deal with collecting societies. There is often only one collecting society per right. This means that they appear to be de facto monopolies. Yet, as copyright licensing takes place on a business to business basis, licensees do not enjoy the protections that would be afforded to consumers who deal with monopolies in other sectors (e.g. utility companies).¹

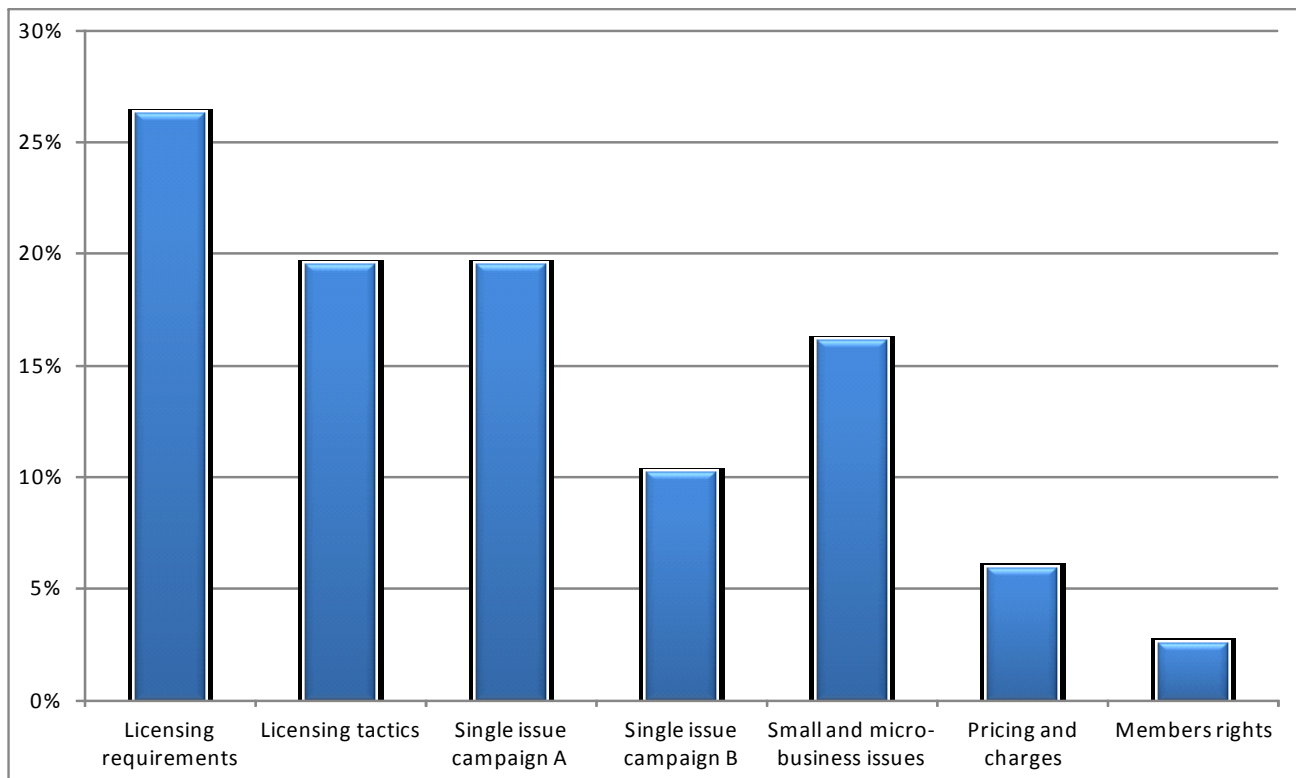
It does appear to be the case that collecting societies tend towards a monopolistic model. The concern is whether this results in harmful effects. One indicator of harmful effects is the prevalence of complaints about collecting societies received by government ministers. The Government is also contacted by trade associations and representative bodies which object to the manner in which some collecting societies license and the impact that this has on their members. Their main objection is what they report as the inflexibility of collecting societies and their failure to take into account the resource constraints and difficulties faced by small business. The issue of copyright licensing also featured very highly in the red tape challenge launched by the Government in 2010 which sought to reduce the regulatory burden on business.

Between October 2010 and December 2011 the Minister for Intellectual Property received over 100 complaints regarding collecting societies from MP's; the majority of these forwarded complaints from small and micro businesses and sole traders. The Government continues to receive complaints at a similar rate in 2012.

The chart below illustrates the nature of the complaints received by ministers.

Chart 1 – Comparison of the issues raised in ministerial correspondence received between October 2010 and December 2011

¹ Some collecting societies have, in their responses to the consultation, criticised the comparison made with utility companies arguing the decision to buy a licence is a commercial one



The most common theme relates to the licensing requirements of collecting societies. Businesses complain that there is no apparent appreciation by some collecting societies of the administrative burdens associated with holding multiple licences and also complain of a lack of information about which licences are required. Heavy handed and aggressive licensing tactics are also a common theme of the complaints: licensees have said in multiple pieces of correspondence to Government that this can put duress on them to buy a licence, even when they are uncertain that it is needed but do not have the means to access legal resource.

This perceived duress can be heightened where licensees are under the impression that a collecting society is a government agency or acting with the sanction of government. In one case, the Government has on two occasions had to ask a collecting society to withdraw marketing literature that gives licensees the impression that its collection process is sanctioned by government. In another, the Government has had to ask a collecting society to refrain from referring licensees to a government helpline for corroboration of a licensing method used by it.

Pricing, which is dealt with by the Copyright Tribunal, does not feature as a major theme: only 5% of the complaints analysed referred to the cost of licences. There is some evidence that collecting societies may be taking advantage of their monopoly position by charging too much. For example, in a recent decision (*Phonographic Performance Limited vs. the British Hospitality Association and the British Retail Consortium*) The Copyright Tribunal ordered that PPL should significantly reduce the charges for playing background music in pubs, bars restaurants and hotels^{xxii}. Licensees in the hospitality sector estimate that this judgement has resulted in the payment of refunds of around £20 million^{xxiii}. While the price of the licences offered by collecting societies is outside the scope of the proposed codes of conduct, the proposals should enhance transparency so that there is greater clarity about how the price of a licence is determined for licensees and how royalty payments for members are arrived at.

Some licensees have pointed out in their submissions that in some instances it is not clear why a particular licence is required or how the money paid is distributed to collecting society members. It is claimed that this lack of transparency leads to a sense of confusion for businesses who often seek clarification by writing to the government. This lack of transparency

was highlighted in a joint submission to the consultation a number of representative bodies² involved in the licensed and hospitality sectors, *“We believe that collecting societies should operate more transparently.....This would allow those who pay money to collecting societies for licences.....to see how the collection and distribution of monies works.”*^{xxiv}

Concerns have also been expressed by some members of collecting societies about the current governance arrangements of some collecting societies, claiming that some members have very little input into how a collecting society conducts its operations. Both the National Union of Journalists and the Creators Rights Alliance in their submissions mention that, *“It would seem sensible to incorporate into the code(s) provisions for demonstrating that collecting societies are democratically controlled by their members”* .^{xxv}

Rationale for Intervention

The Government does not currently have any specific regulatory powers to intervene in the conduct of a collecting society or its collection methods. Consequently, it has had to adopt a policy of working with collecting societies where there are problems and encouraging them to implement change voluntarily. The pace of progress has been relatively slow, although this approach has yielded some results.

So far, two collecting societies have introduced “codes of conduct”: PRS in 2009 and PPL in January 2012. While these developments are a step in the right direction and there is some evidence that they have led to a reduction in complaints, the codes adopted by PRS and PPL are better described as service level agreements rather than fully fledged codes of conduct: they would not meet the existing OFT standards for codes of conduct.^{xxvi}

In parallel with these developments, the collecting society members of the British Copyright Council (BCC) have produced a set of principles to be included in individual voluntary codes of conduct for collecting society members. However, they do not contain any provisions for sanctions where collecting societies breach their voluntary codes. The Government commissioned research for BOP consulting which examined whether the Australian code has helped to improve their services and improve customer satisfaction. The report also looked at the other models for regulating collecting societies across Europe. One of the findings of the research was that the Australian code of conduct was heavily criticised for being entirely voluntary and having unenforceable minimum standards.

In light of the recommendation in the Hargreaves Review of IP and Growth which stated that “Collecting societies should be required by law to adopt codes of practice, approved by the IPO and the UK competition authorities”^{xxvii} the Government is therefore considering options for more formal intervention in order to address the problem under consideration as discussed above.

The case for intervention is given added impetus by the fact that related recommendations within the Hargreaves Review (including the establishment of extended collective licensing) would, if implemented, have the effect of increasing the scope and scale of the activities of some collecting societies. If these changes were implemented in the absence of reform of the collecting societies system, the risk is that the current problems would be replicated on a wider scale. The Government takes the view that reform is essential to ensure the protection of the absent rights holders that a collecting society would act for if it were running an extended collective licensing scheme.

² The licensing bodies are the Association of Licensed Multiple Retailers, the British Beer and Pub Association, the British Hospitality Association, the Bar, Entertainment and Dance Association, British Holiday and Home Parks Association and the Scottish Licensed Trade Association

The Government would be unwilling to introduce extended collective licensing without these protections. This would mean that all the benefits of extended collective licensing (see separate IA BIS1054) would be lost.

Policy objective

The overarching objective for Government intervention is to enhance governance and transparency in an economically significant sector. This would ensure that there are protections in place for both licensees and members of collecting societies. There would be an increase in transparency which would provide members and licensees with greater certainty. We anticipate that this would have a knock-on effect on costs by reducing the resources required for businesses to transact with the relevant collecting society. It would also allow Government to provide a better overview of the sector.

Collecting society transactions in some sectors generate a disproportionate number of complaints from small and micro businesses, with associated costs to all parties involved. Government takes the position that reform of the operation of collecting societies could improve the relationship between such bodies and their licensees, as measured by a reduction in complaints to Government, and through feedback from trade associations and collecting societies.

Enhanced governance and transparency would focus collecting societies on their obligations to their members as well as to licensees. Government anticipates that could result in a more efficient collecting societies sector which delivers improved revenue streams for rights-holders, evidenced by reductions in the average cost-income ratio (from the baseline provided by Hargreaves).

Timely policy intervention at a UK level would create an opportunity to effectively influence policy-making at the European level, supporting the Government's wider objective to "Support EU copyright reforms that will lead to increased growth and economic benefits, including progress on cross-border licensing, orphan works, common standards for collecting societies and further flexibilities in the EU copyright framework that enable greater adaptability to new technologies"^{xxviii}.

In the context of the European Commission looking at harmonised standards of governance and transparency for collecting societies, early reform would provide UK collecting societies with the opportunity to become role models for the rest of Europe. Hargreaves concluded that the UK has the potential to become a leader in European licensing- with all the implications that this has for growth and the economy- but that it could only do so by becoming a leader in good practice by its collecting societies.

Description of options considered (including do nothing);

Option 0 - Do nothing.

This would allow the functions of UK collecting societies to remain unregulated with the costs, described above, that this has for collecting society members and businesses seeking to use copyright works.

The Government has decided not to pursue this option as in the absence of codes of conduct, members and licensees would be reliant on existing protections and complaints methods (where these exist) to resolve any issues they encounter in their transactions with collecting societies. In their responses to the consultation the majority of licensees have pointed out that under the current system there is often limited opportunity for businesses to seek redress from collecting societies if they feel they have been poorly treated. This lack of an effective system

of redress is reflected in the volume of correspondence from MPs and members of the public to Government.

Furthermore members of some collecting societies often feel they lack information especially regarding the costs incurred through administrative charges. Some members have requested more detailed information regarding the sources of royalties distributed to them and the amount deducted in charges. This issue will be addressed by provisions within the codes of conduct and without these the problem will continue.

In the absence of any firm regulation, the Government would be unwilling to proceed with extended collective licensing, as there would not be adequate protection for the rights of absent rights holders. This would mean that the benefits of ECL would be lost (see separate Impact Assessment.)

Option 1 - Self regulation alone. Collecting societies will be allowed to regulate themselves with no government intervention.

This would allow the collecting societies to develop their own codes of conduct based on minimum standards set by themselves. Collecting societies would also be responsible for enforcing adherence to them. The benefits would be potential cost savings to collecting societies in the short term such as a lighter administrative burden.

The Government has decided not to pursue this option as any benefits would only be realised if collecting societies elect to introduce a code of conduct. The majority of responses received from collecting society licensees support the Government's position which is that the voluntary codes of conduct need to be supported by effective methods of enforcement. The Federation of Small Businesses in their submission point out, *"There is little point for collecting society codes being purely voluntary because collecting societies are monopolies. Therefore statutory backstop and enforcement is essential."*^{xix}

As noted earlier in this document, Government has been working with collecting societies to encourage them to introduce such codes for a number of years. While there was initially very limited success with only one collecting society (PRS) adopting a code of practice in 2009, PPL have subsequently followed suit in January 2012. Underpinning this progress are the collecting society members of the British Copyright Council, who have agreed a set of principles to be incorporated into voluntary codes of conduct.

However, while the BCC principles are similar in many respects to the minimum standards outlined in the consultation document, they do not contain any provisions for sanctions where collecting societies breach their voluntary codes. We consider enforceable penalties and sanctions essential to guaranteeing the benefits of a code of conduct, and therefore consider the self-regulatory option to carry a significant risk. This is supported by research the Government commissioned from BOP consulting which is due to be published shortly. The research found that the Australian code was heavily criticised for being voluntary and having unenforceable minimum standards. It also found that the Australian code had not substantially changed collecting society behaviour where this was deficient.

As for Option 0, the Government would not be willing to proceed with extended collective licensing on the basis of self-regulation alone, which would provide insufficient assurance that absent right-holders' interests were protected.

Costs and benefits of preferred option (including administrative burden);

Option 2: Self regulation with a backstop power to regulate.

This is the Government's preferred option which is supported by the majority of licensees and their representative bodies in their responses to the consultation. Collecting societies will be given full opportunity to put in place voluntary codes of conduct to regulate themselves, but

these codes will need to comply with minimum standards set by Government to ensure that there are consistent and sufficient standards across the sector. The Government consulted on minimum standards as part of the copyright consultation. In parallel, the Government intends to prepare proposals to take a backstop power, to regulate those collecting societies which fail by a set date to put in place codes of conduct that comply with the minimum standards (or that fail to adhere to codes that have been put in place). The power will allow the Government to put in place statutory codes of conduct for collecting societies falling into these two categories.

The BOP research found that within the EU (notably in Germany and France) there are robust regulations which go beyond a code of conduct. There is a move in some EU countries towards stricter regulation. The Government believes that collecting societies should be given the opportunity to introduce voluntary codes of conduct in the first instance but with a statutory backstop. The collecting society sector have also warned that restrictive statutory regulation would damage their commercial viability, especially their ability to licence on a flexible basis to meet the challenges of emerging technologies.

The benefit of this approach is that it allows collecting societies the opportunity to self regulate and keep costs to a minimum. However, having a backstop legal power will also guarantee that there will be consistent standards across the sector. This will be good for consumers, businesses and collecting societies themselves.

Collecting Societies

Costs: Collecting Societies would be responsible for the initial costs of establishing a code of conduct and would be subsequently responsible for managing their compliance with this code in such cases (for example, this could include the costs of an ombudsman appointment, funding for an independent code reviewer, and costs relating to new transparency and reporting requirements). So far, two collecting societies have introduced “codes of conduct”: PRS in 2009 and PPL in January 2012. Others who are members of the British Copyright Council (BCC) have committed to put in place a voluntary code of conduct based on principles similar to the minimum standards outlined in the Government consultation by November 2012. While the BCC principles are similar in many respects to the minimum standards outlined in the consultation document, they do not contain any provisions for sanctions where collecting societies breach their voluntary codes. PRS for Music reported their costs in relation to the set up of the ombudsman component of their code were £30,000, followed by a running cost of £10,000 p.a. (in addition to a small cost per case referred to the ombudsman).

We assumed in the IA published alongside the consultation document, taking a cautious approach that the set-up costs for the remaining collecting societies would be of a similar order. However in their responses to the consultation collecting societies including PRS for Music have stated that this assumption may not be accurate. This is because PRS for Music is the largest collecting society both in terms of revenue and members. It has been pointed out, therefore, that a cost range aligned to the turnover and size of collecting societies is more likely. Following the consultation, we have approached a selection of collecting societies who are committed to introduce a voluntary code of conduct to ask them to share estimates of their expected costs in relation this measure. The collecting societies in the table represent a cross section in terms of size and the nature of the rights they manage.

	Estimated Set-up costs	Estimated Running costs (p.a.)	Collecting Society Total collections ³	Costs as a % of total collections
PRS⁴	£0.250m	£0.200m	£ 646.0m	0.03%

³ Data taken from table on page5

CLA⁵	N/K	£0.010m	£ 62.7m	0.02%
ALCS⁶	£0.007m	£0.005m	£ 25.2m	0.02%

Internal costs in relation to other aspects of the code are likely to vary with the size of the society, and are consequently difficult to quantify. PRS for Music have stated that the ongoing cost of the code is approximately £200,000 per year. This cost includes activities in support of the code such as staff training, management intervention, marketing costs and process improvement. The Government however does not expect that these estimates should all be attributed to the introduction of a code of conduct, as the majority of collecting societies have already told us on a number of occasions that they are already adhering to the level of standards that a code would require. Therefore a proportion of these costs could be attributed to the day to day running of the collecting society rather than the code of conduct.

However as a conservative approach we have assumed using the information provided above that the set up costs and annual running costs are likely to be in the region of 0.002% - 0.004% of the collecting societies income and therefore as a best estimate we have estimated that the set up and running costs are 0.003% of the total collections where the information has not been provided for each collecting society.

Society	Total collections (millions)	Set-up costs (millions)	Running costs (p.a.) (millions)
NLA ^{xxx}	£ 26.7	£0.008	£0.008
DACS ^{xxxix}	£ 9.4	£0.003	£0.003
PPL ^{xxxii}	£ 111.4	£0.03	£0.03
ACS ^{xxxiii}	-	0	0
PRS-MCPS ^{xxxiv}	£ 646.0	£0.25	£0.2
CLA ^{xxxv}	£ 62.7	£0.02	£0.01
BECS ^{xxxvi}	£ 8.4	£0.003	£0.003
Directors UK ^{xxxvii}	£ 8.4	£0.003	£0.003
ERA ^{xxxviii}	£ 7.7	£0.002	£0.002
ALCS ^{xxxix}	£ 25.2	£0.007	£0.005
PLS ^{xi}	£ 27.1	£0.008	£0.008
MPLC ^{xli}	£ 0.7	£0.0002	£0.0002
Total	£ 933.7	£0.34	£0.28

Therefore we consider that the maximum set up costs for collecting societies could be £0.34m and the annual running costs £0.28m. As discussed above we believe that a proportion of these costs should be attributed to the day to day running costs of the collecting society rather than a code of conduct but do not have any further information to be able to determine what proportion. While we recognise that the costs associated with codes will also be affected by the particular business models of different collecting societies, we believe that the table above provides the best available indication of average costs.

In the consultation impact assessment we suggested that there may be scope for collecting societies to reduce administrative burdens by adopting joint codes of conduct and shared

⁴ Set up and running costs based on information contained within PRS consultation response P 21

⁵ Set up costs not yet available, running costs are most recent estimate

⁶ Most recent estimate of set up and running costs

compliance procedures^{xliii}. The proposal was supported by the majority of responses from collecting societies, their members and licensees due to the reduction in costs this is likely to bring for all collecting societies. The BCC submission to the consultation points out that collecting societies are already taking this approach in relation to their current voluntary code proposals, through making use of a single ombudsman service and agreeing to appoint a single code reviewer. We understand that the figures in the table above include the costs of a shared ombudsman.

Benefits: The Government believe that these costs would be offset by increased efficiencies within collecting societies as a result of the introduction of codes, as consequent improvements in transparency and governance could act to reduce any current deadweight losses and inefficiencies within the system. This should consequently lead to increased revenues and opportunities for growth as rights-holders and licensees become more willing to deal with particular societies, and if collecting societies with codes in place were subsequently authorised to operate Extended Collective Licensing schemes. However, it has not proved possible to quantify these benefits, owing to a lack of available data (no further data was supplied in response to our consultation and we do not consider it to be proportionate to collect more data above the research the Government has already commissioned). We also expect that the introduction of codes would lead to a reduction in complaints – where a version of such a “code” has been introduced, we have been informed by the collecting society (PRS for Music) that Stage 2 complaints⁷ were reduced by 68% a year after introduction. A reduction in complaints and queries from licensees would itself be likely to produce some efficiencies for collecting societies (although this impact will vary according to the number of such complaints/queries currently received).

Furthermore, the Government’s objective is that work to introduce codes in the domestic market would place the UK in the lead in relation to future efforts to harmonise standards for collecting societies across the EU. In this scenario, UK collecting societies would benefit from increased standards of governance and transparency among those European societies with whom they had reciprocal agreements and other arrangements. For example, increased transparency would enable them to make such agreements with an enhanced evidence base; they would have access to distribution policies which would enable to see how their members’ income is calculated and returned to them. Ultimately, they would be able to deal with collecting societies that have the same or similar levels of governance, transparency, financial reporting and accounting all of which will be set at an acceptable minimum level. We believe that improved transparency should assist UK collecting societies in maximising benefits from these reciprocal relationships. In addition, insofar as UK collecting societies are seen as efficient and transparent, they should be in a strong position to benefit from any moves towards cross-border licensing at an EU level. We are not able to monetise this benefit at present as the Draft Directive on Collective Rights Management has not been published by the European Commission; the precise nature of changes at the EU level are therefore unknown at this stage

Collecting Society Members and Licensees:

Costs: The consultation impact assessment assumed that there would be no identified costs for members or licensees. However, this has been challenged by both users and collecting societies in their responses to the consultation and during the consultation events. Collecting societies have pointed out that that any increase in costs in relation to the adoption and ongoing costs of codes are likely to be reflected in reduced royalty payments for members.

⁷ This category can, broadly speaking, be categorised as serious complaints and includes those that are a second complaint about the same issue, complaints from MPs, solicitors or government bodies and press related complaints

Users have expressed concern that associated costs could result in an increase in licence fees. However in order to avoid double counting these costs have been discussed in the section above.

These views have been expressed particularly in relation to the possible use of financial penalties in the event of non-compliance with a statutory code. It is our intention that any penalties should be borne within the collecting societies themselves for example from within their administrative budgets. The Government would not expect financial penalties (if these were used) to be passed on to members or licensees, and anticipates that any penalty scheme would be designed to mitigate this risk.

Benefits: Many collecting society members are small and micro-businesses, as are licensees. Both groups will benefit from improved information regarding their dealings with collecting societies, and will be able to enter into contracts and negotiations on the basis of this improved knowledge, helping them for example to identify quickly the rights managed by collecting societies and to purchase the licences most appropriate to their needs. In submissions licensees also expressed interest in the processes used by collecting societies to determine the cost of a licence and clarity about the rights that are included in the costs. Some collecting society members have indicated that they favour enhanced transparency through the adoption of codes: their submissions indicate that they believe they will benefit from increased clarity about how their rights are valued and how their royalties are allocated. Our expectation in the consultation stage IA was that, based on existing experience in the case of PRS For Music (discussed earlier), the introduction of codes would reduce the level of complaints from users by significant levels, with the inference that users are benefiting from an improved service. Where complaints did occur, users would be able to refer to the Code, and would benefit from improved information regarding how their complaints would be dealt with (including the potential referral to an Ombudsman).

The Government has commissioned research from BOP Consulting on the effectiveness of codes in reducing complaints. The research found no evidence that a reduction in complaints resulted from the introduction of a code of conduct in the Australian case where a voluntary code operates.

However the research found that the primary benefit of the Australian's voluntary code's introduction appears to be that it has caused collecting societies:

to try conscientiously to respond to requests from members and licensees

to better explain distribution policy

to explain and publicise their functions.

In addition, societies have established or improved complaints and dispute resolution procedures. The report is clear that a *statutory* code is "more likely to achieve the aims of improving transparency, accountability, governance and dispute resolution".

This argument is supported by the fact that many respondents to the consultation asserted a belief that they would benefit from improved complaints procedures as there will be a clear route to air their concerns, and escalate complaints through a defined system if required. We would expect that this will help reduce the costs involved in seeking further information or redress, or complaining to the government.

It has not been possible to monetise these benefits as there is a lack of available data and we do not consider it to be possible or proportionate to do so.

Government

Costs: Government would need to bear the one-off cost of designing and implementing legislation in relation to a statutory backstop power, and would consequently need to bear the cost of any enforcement that was necessary. It is not possible to quantify costs at present as they would be dependent on the level of compliance. The main costs of enforcement would

occur after a collecting society is found to be in breach of their code of conduct by the independent Code Reviewer and they are made subject to a statutory code of conduct. The costs associated with this process would be the staff resources from the IPO required to provide advice to the Secretary of State regarding whether to accept or reject the Code Reviewer's recommendation, and /or whether to impose penalties in the event of a breach of a statutory code. There may be further costs if a decision to impose a statutory code or a penalty is challenged through the courts.

If there is a high level of compliance with voluntary codes of conduct, the associated costs will be low as there will be few or no occasions where the statutory code will be activated. If the level of compliance is low the costs to Government would consequently increase. Given that collecting societies have indicated during the consultation both that a) they support the principles of a voluntary code of conduct, and that, b) they wish to avoid statutory regulation and the threat of penalties we believe that the level of compliance with voluntary codes should be high.

Benefits: In the consultation stage, it was expected that the volume of complaints received by Government would subsequently reduce. This assumption was based on existing experience which saw a reduction of over 90% in one case since 2009. However this was also accompanied by wider changes encompassing cultural and organisational changes including a significant amount of staff training. If similar reductions were repeated across the collective rights management sector, Government would expect to benefit from a reduction in Civil Service resources required to respond to such complaints (with similar benefits at a local level, e.g. for Trading Standards offices and other bodies who may receive complaints). Research commissioned by the Government from BOP Consulting could not conclude that the level of complaints to Government and other bodies reduced as a result of the introduction of a code of conduct, as this was outside the scope of their research.

Exemption for micro-businesses: The Government recognises that the imposition of a statutory code could impose particular burdens on collecting societies which qualify as micro-businesses, and we have identified one current UK collecting society which we believe would meet the criteria. We therefore propose, in line with the current Government moratorium on new domestic regulation for micro-businesses and start-ups, that any collecting society which meets the definition of a micro-business (taking into account any relationships with partner enterprises including other collecting societies) should be **exempted** from the scope of the backstop power to impose a code of conduct. The Government will however encourage any such businesses to adopt proportionate forms of self-regulation to ensure that they operate in a transparent manner. The costs listed above assume that all collecting societies adopt comparable procedures.

There may additionally be scope for collecting societies to reduce administrative burdens by adopting joint codes of conduct and shared compliance procedures. Within the BCC-led voluntary scheme, collecting societies have sought to reduce the administrative burden of codes through making use of a single ombudsman service and agreeing to appoint a single code reviewer.

Summary and preferred option with description of implementation plan.

Option 2: Self regulation with a backstop power to regulate

Hargreaves recommended that collecting societies be required to adopt codes of conduct approved by the IPO and the UK competition authorities to ensure that they operate in a way that is consistent with the further development of efficient, open markets. The Government partially accepted this recommendation, and in the Government Response (published on 3 August 2011) stated that it would consult on the introduction of voluntary codes of conduct based on minimum standards set by Government. The consultation also included proposals for a backstop power to allow for a statutory code of conduct to be put in place where evidence is

produced which shows that a collecting society has failed to introduce or adhere to a voluntary code.

The Government will, during the course of 2012, publish guidelines which collecting societies would be expected to use to produce codes of conduct. The Government has consulted with collecting societies on the implementation of codes. In parallel, the Government will prepare proposals for a backstop power that will allow it to impose a statutory code to be put in place for a collecting society that evidence shows has failed to introduce or adhere to a voluntary code incorporating the minimum standards (with a proposed exemption for micro-businesses).

Risks and assumptions

We have assumed that the setup and running costs provided by the collecting societies are accurate and are a suitable representation to allow us to extrapolate across all collecting societies. A 10% sensitivity analysis has been carried out on the figures. We also assume that there is a low risk of extensive non-compliance with codes of conduct on the basis that collecting societies have indicated their support for the principles of codes, and that they wish to avoid any potential penalties associated with statutory codes. In the event that there was extensive non-compliance, any associated costs to Government would consequently increase (and some of the benefits associated with codes would be lost in the short-term until statutory codes were imposed).

In the event that a statutory code was put in place for a collecting society, there is a risk that it may seek to pass on any potential financial penalties for non-compliance to its members or licensees. This would transfer the cost of said penalties to these groups. The Government would intend to design any penalty scheme in a manner which mitigated such a transfer; therefore we assume a low risk.

Direct costs and benefits to business calculations (following OIOO methodology)

By introducing statutory minimum standards to collecting societies operations, new regulation is clearly being imposed upon business; therefore this is defined as an IN. However, it should be noted both that:

- a) The preferred option is in the first instance self-regulatory; the proposed statutory mechanism would only be used in the event that self-regulation had not resulted in the adoption of adequate minimum standards.
- b) Some preparatory work has already been undertaken (under the auspices of the British Copyright Council) towards the adoption of voluntary codes. Government is therefore optimistic that, against the context of a statutory backstop, industry will reach a successful outcome via self-regulation.

Despite the fact that it has not been possible or proportionate to fully monetise the costs and benefits of introducing the preferred option, the Government believes based on independent research and responses to its consultations that the benefits of introducing a code with a statutory backstop would outweigh the costs and so should be seen as a positive measure.

Evaluation

A full evaluation strategy and Post Implementation Review is being developed for the introduction of the Hargreaves recommendations. The Post Implementation Review will detail the benefits associated with the introduction of the copyright reforms and will include input from external stakeholders. The plan will also set out how and when the benefits will be measured, which will depend on the type of benefit, as some benefits will be measured by applications and

take-up that can be measured from the first year of operation, whereas others will depend on information that will take several years. The evaluation strategy will set out the activities that will be undertaken in order to evaluate the policy, drawing on management information collected through the copyright system, as well as research that is commissioned in order to measure the benefits.

The main source of data available for evaluation will be collated using industry figures. These statistics, alongside other management information on the operation of the system will be used by Government to assess the impact of the copyright reforms, including assessing whether benefits have been achieved and how policy or operations can be developed to realise benefits more effectively.

ⁱ Source: Garnett, K, Davies, G and Harbottle, G, *Copinger and Skone James on Copyright*, 16th Edition. pp. 1830-1847. Maxwell Sweet, London, 2011. Because the UK does not directly regulate collecting societies, Government does not have a means of ascertaining the exact number in operation at any one time.

ⁱⁱ Source Hargreaves, I, Digital Opportunity: A Review of Intellectual Property and Growth Supporting document EE p.19

ⁱⁱⁱ Source: Intellectual Property Office, "Supporting document EE: Economic Impact of Recommendations", p. 19, accessed 05/10/11 at <http://www.ipo.gov.uk/ipreview-doc-ee.pdf>

^{iv} Source: http://www.charityfacts.org/charity_facts/charity_costs/index.html

^v Sourced from accounts, company number 3003569

^{vi} Sourced from report, company: http://www.dacs.org.uk/pdfs/K214_DACS_FinReport2009.pdf, p.6

^{vii} Source report, company <http://www.ppluk.com/en/About-Us/Annual-reports/> and <http://content.yudu.com/Library/A1o1ey/PPLStatutoryAccounts/resources/index.htm?referrerUrl=>, PPL were ordered to repay some licensees by the Copyright tribunal for over-charging, and put £18.1m aside in its accounts, with the note that "You will only be entitled to a refund if you make a claim to PPL for repayment" see <http://www.ppluk.com/en/music-users/copyright-tribunal-refunds/>. If this is excluded, they collected £111m and had a cost/income ratio of 16.2 per cent. We could not reconcile the PPL figure with the 14.6% cost to income ratio cited in the annual accounts for 2009. Counting revenue after the public performance refund (£111.4m) and distributable income (£91.5m) gives a cost-income ratio of 17.9%. And the ratio was 15.4% when counting the distributed income and refund (£91.5m + £18.1m = £109.6m) as a percentage of total collections (£129.6m).

PPL notes in its account that it excludes the pension costs from its cost-to-income ratio, but as this income is not repaid to artists but rather a cost of running PPL we consider it non-distributed income, just as other collecting societies do.

^{viii} Source accounts, company number 5856314. Calculated on the basis of ACS's income in 2008-09, based on the 15 per cent fee that ACS charges, as the amount collected is not disclosed in the annual accounts.

^{ix} Source, accounts, company number 00134396 & 00199120

^x Source report, company: http://www.cla.co.uk/data/corporate_material/annual_review.pdf, p.13

^{xi} Source report, company: http://www.equitycollecting.org.uk/downloads/newsitems/BECS_AnnualReport_2010.pdf, p.1 & p.15, the total is based on distributing £7.76m and earning £700,000 for administrative functions.

^{xii} Source accounts, company number: 2685120

^{xiii} Source accounts, company number: 2423219

^{xiv} Source report, company: <http://www.alcs.co.uk/CMSPages/GetFile.aspx?nodeguid=3a1b2df3-3602-4514-b2e3-59554bd512c8>, p. 11

^{xv} Source report, company: http://www.pls.org.uk/about/plsnewsletters/Pages/PLS%20Annual%20Report%202010_web.pdf, p. 8

^{xvi} Source accounts, company: 2790268

^{xvii} <http://artistscollectingsociety.org/dealers/>

^{xviii} Source NLA submission to copyright consultation p. 6

^{xix} Source: PPL submission to copyright consultation, p. 18

^{xx} Source: Intellectual Property Office, "Supporting document EE: Economic Impact of Recommendations", p. 18, accessed 05/10/11 at <http://www.ipso.gov.uk/ipreview-doc-ee.pdf>

^{xxi} Source DACS submission to the copyright consultation p. 26

^{xxii} CT 91/05, 92/05, 93/05, 9 November 2009; <http://www.ipso.gov.uk/minuteoforder-2009-11-09.pdf>

^{xxiii} Source: **The British Beer & Pub Association, Association of Licensed Multiple Retailers, British Beer & Pub Association, British Hospitality Association, NOCTIS**; joint written evidence to the Parliamentary Select Committee for Business, Innovation and Skills, accessed at <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmbis/writev/1498/m11.htm>

^{xxiv} Source: The Association of Licensed Multiple Retailers, the British Beer and Pub Association, the British Hospitality Association, the Bar, Entertainment and Dance Association, British Holiday and Home Parks Association and the Scottish Licensed Trade Association submission to the copyright consultation p. 3-4

^{xxv} Source: national Union of Journalists submission to the copyright consultation p. 23 and The Creators Rights Alliance submission to the copyright consultation p. 25

^{xxvi} http://www.oft.gov.uk/shared_of/Approvedcodesofpractice/oft390.pdf

^{xxvii} Source: Hargreaves, I, "Digital Opportunity: A Review of Intellectual Property and Growth", p. 37, accessed at <http://www.ipso.gov.uk/ipreview-finalreport.pdf>

^{xxviii} Source: Intellectual Property Office, "The UK's International Strategy for Intellectual Property", p. 2, accessed at <http://www.ipso.gov.uk/ipresponse-international.pdf>

^{xxix} Source: Federation of Small Business response to consultation p. 4

^{xxx} Sourced from accounts, company number 3003569

^{xxxi} Sourced from report, company: http://www.dacs.org.uk/pdfs/K214_DACs_FinReport2009.pdf, p.6

^{xxxii} Source report, company <http://www.ppluk.com/en/About-Us/Annual-reports/> and <http://content.yudu.com/Library/A1o1ey/PPLStatutoryAccounts/resources/index.htm?referrerUrl=>, PPL were ordered to repay some licensees by the Copyright tribunal for over-charging, and put £18.1m aside in its accounts, with the note that "You will only be entitled to a refund if you make a claim to PPL for repayment" see <http://www.ppluk.com/en/music-users/copyright-tribunal-refunds/>. If this is excluded, they collected £111m and had a cost/income ratio of 16.2 per cent. We could not reconcile the PPL figure with the 14.6% cost to income ratio cited in the annual accounts for 2009. Counting revenue after the public performance refund (£111.4m) and distributable income (£91.5m) gives a cost-income ratio of 17.9%. And the ratio was 15.4% when counting the distributed income and refund (£91.5m + £18.1m = £109.6m) as a percentage of total collections (£129.6m).

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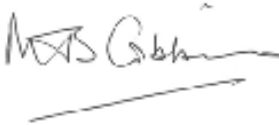
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- ^{xl} Source report, company:
http://www.pls.org.uk/about/plsnewsletters/Pages/PLS%20Annual%20Report%202010_web.pdf, p.8
- ^{xli} Source accounts, company: 2790268
- ^{xlii} Source: British Copyright Council submission to the consultation p. 11

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 Regulatory Policy Committee	OPINION	
Impact Assessment (IA)	Codes of Conduct	
Lead Department/Agency	Department for Business, Innovation and Skills	
Stage	Final	
Origin	Domestic	
Date submitted to RPC	31/05/2012	
RPC Opinion date and reference	21/06/2012	RPC11-BIS-1141(2)
Overall Assessment	AMBER	
<p>The IA is fit for purpose. However, the IA should explain more clearly the time period and origin of the data on the total collections and income paid to members by different collecting societies.</p>		
<p>Identification of costs and benefits, and the impacts on small firms, public and third sector organisations, individuals and community groups and reflection of these in the choice of options</p> <p><i>Cost-income ratio.</i> The IA presents figures for “the total collections” and income “paid to members” to demonstrate the cost-income ratio (page 4). This data shows a wide variation in the levels of costs of collecting societies which, the IA argues, is evidence of existing inefficiencies in this area. Although the IA shows in the endnotes the sources of all the reports from which the data for each individual collecting society is taken, it is not immediately apparent what years this data is taken from and whether these numbers remain stable over time. The IA should clearly state which year the numbers refer. In addition, the IA could benefit from presenting a range of different years data to show whether this pattern is consistent over time.</p>		
<p>Have the necessary burden reductions required by One-in, One-out been identified and are they robust?</p> <p>The IA says the proposal is a regulatory measure with a net direct cost to business (an “IN”) with an Equivalent Annual Net Cost to Business (EANCB) of £0.29m. This is consistent with the current One-in, One-out Methodology and provides a reasonable assessment of the likely impacts.</p>		
Signed		Michael Gibbons, Chairman

