

**EXPLANATORY MEMORANDUM TO
THE REMOVAL AND DISPOSAL OF VEHICLES (TRAFFIC OFFICERS) (ENGLAND)
REGULATIONS 2008**

2008 No. 2367

1. This explanatory memorandum has been prepared by Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Regulations permit uniformed traffic officers to remove, or require the removal of, vehicles that have become stationary in certain circumstances, from motorways (other than certain lengths of the M4 and M48) and trunk roads in England (“the strategic road network”) and from roads in the vicinity of, or land adjacent to, the strategic road network.

2.2 Traffic officers may require a vehicle to be moved or have it removed where it has broken down or been permitted to remain at rest and is causing an obstruction, is likely to cause danger to others or is in contravention of certain statutory restrictions or prohibitions. A traffic officer may also have a vehicle removed where it appears to have been abandoned.

2.3 Traffic officers in uniform are also permitted to remove vehicles that have become stationary in the circumstances set out above from other roads when directed to do so by the chief officer of police or the traffic authority for the road for the purpose of preventing an obstruction or danger to the strategic road network.

2.4 Traffic officers may also remove or arrange the removal of vehicles abandoned in the open air on land adjacent to the strategic road network. The owner of the land can object in writing to the removal of any such vehicle.

2.5 The regulations also make consequential amendments to sections 100-102 of the Road Traffic Regulation Act 1984 to make provision for vehicles removed by traffic officers.

2.6 Any abandoned vehicle removed by a traffic officer under these Regulations will be given into the safe custody of the Secretary of State. The Secretary of State would then take steps to find the owner of the vehicle and serve such owner with a notice to remove the vehicle from the Secretary of State’s custody.

2.7 Where the owner of the vehicle does not remove the vehicle from the Secretary of State’s custody within the period set out in the notice the Secretary of State may arrange for the disposal of such vehicle.

2.8 Where a vehicle has not been disposed of and a person pays the relevant charges and satisfies the Secretary of State that he is the owner of the vehicle, that person may remove the vehicle from the Secretary of State’s custody within the prescribed time.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 Section 99 of the Road Traffic Regulation Act 1984 (“the 1984 Act”) empowers the Secretary of State to make regulations for the removal of vehicles that are broken down, contravening any statutory prohibition or restriction, or are causing an obstruction and are likely to cause danger to other road users or are abandoned.

4.2 Sections 100-102 of the 1984 Act when amended by this instrument will allow traffic officers to deliver vehicles removed by them to the Secretary of State who will then arrange for their storage and if necessary, eventual disposal. The Secretary of State will also be able to recover prescribed charges for the removal, storage and disposal of such vehicles.

4.3 Section 134(2) of the Road Traffic Regulation Act 1984 requires the Secretary of State to consult with representative organisations as she sees fit prior to making regulations under the Act. The Department for Transport issued a consultation paper on 29 November 2007 for a 12-week consultation.

4.4 Part 1 of the Traffic Management Act 2004 makes provision for a new traffic officer service. Traffic officers may be designated by, or under an authority given by, the Secretary of State in England in accordance with section 2 and in addition to other duties assigned to them, they have the power to stop and direct traffic and to place temporary traffic signs.

4.5 Section 9 of the Traffic Management Act 2004 provides for the Secretary of State to make regulations under section 99 of the Road Traffic Regulation Act 1984 for the removal of vehicles by traffic officers and for amendments to be made to sections 100 to 102 to make provision for vehicles removed by traffic officers.

5. Territorial Extent and Application

5.1 This instrument applies to England only.

6. European Convention on Human Rights

The Parliamentary Under Secretary of State for Transport, Jim Fitzpatrick, has made the following statement regarding Human Rights:

“In my view the provisions of the Removal and Disposal of Vehicles (Traffic Officers) (England) Regulations 2008 are compatible with the Convention rights.”

7. Policy background

7.1 The Roles & Responsibilities Review (“the review”), carried out in 2002 / 03 by the Highways Agency and the Association of Chief Police Officers, concluded that certain responsibilities should be realigned to reflect respective organisational priorities.

7.2 As part of the realignment, traffic officers appointed by the Secretary of State, were introduced under the Traffic Management Act 2004. It was intended that traffic officers would deal with certain activities, including the removal of certain vehicles from roads for which the Secretary of State is the traffic authority.

7.3 One of the review’s recommendations was for traffic officers to deal with the removal of broken down and abandoned vehicles on the roads for which the Secretary of State is the traffic authority.

7.4 As a highway authority, the Secretary of State has a common law duty to prevent and remove obstructions. Section 333 of the Highways Act preserves that duty. Section 333 of the Highways Act 1980 is limited in that, in most cases, it only allows obstructions in live lanes to be taken to the hard shoulder. Dealing with broken down vehicles under this section of the Highways Act would provide little benefit. Broken down or abandoned vehicles on the hard shoulder would be deemed to be causing a danger to other road users and would have to be removed again by the Police under their removal powers.

7.5 The partial Impact Assessment concluded that the introduction of this instrument was the most appropriate course of action after considering three options:

- Option 1: Do Nothing – where the Police would continue to remove, store and dispose of vehicles;
- Option 2: The Highways Agency continue to remove or arrange the removal of obstructions (including vehicles) from live lanes on the Strategic Road Network to the nearest appropriate place; and
- Option 3: Introduce new legislation.

7.6 Options 1 and 2 were rejected on the basis that they do not offer long term benefits. Option 3 remains the Highways Agency’s only option as it allows traffic officers to require the removal and, where appropriate, remove vehicles. This option also allows the Secretary of State to store and dispose of abandoned vehicles.

7.7 The police will still retain their existing powers to remove vehicles on the road network, and will still have primacy over certain incidents on the network, including leading on serious incidents. The policy aims of these Regulations are largely similar to the Removal and Disposal of Vehicles Regulations 1986 (S.I. 1986/183) used by the police and both regulations make similar provision.

7.8 A consultation paper on the proposed draft regulations was issued in November 2007. Over 130 organisations were consulted, including representatives of the vehicle recovery industry, the road haulage industry, the insurance sector, the Police, and relevant Government departments or agencies. The documentation was also published on the Highways Agency website and was viewed by nearly 1100 people.

7.9 There were 35 replies to the consultation. The majority of respondents gave the proposals their support. Four respondents did not support traffic officers being given additional powers as described in the regulations, but this was not consistent across any stakeholder group and was exceeded by the 20 responses that expressed an opinion that the proposed changes are the right course of action. The remaining responses did not express any opinion on whether the responses were the right course of action or not.

8. Impact

8.1 An Impact Assessment is attached to this memorandum.

9. Contact

Jamie Hassall at the Highways Agency Tel: 01234 796036 or e-mail:
jamie.hassal@highways.gsi.gov.uk can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency: Highways Agency	Title: Impact Assessment of the removal and disposal of vehicles by Traffic Officers and the Secretary of State	
Stage: Final proposal	Version: Final	Date: 1 July 2008
Related Publications: [Partial RIA, consultation documents; draft legislation]		

Available to view or download at:

<http://www.highways.gov.uk>

Contact for enquiries: Kelly Luther

Telephone: 01234 796124

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

When vehicles break down (and are not recovered under a suitable private arrangement) or are abandoned on the strategic road network SRN Traffic Officers have to rely on the police using their powers, to ensure the vehicle is removed. This is no longer sustainable. An outcome of the 2002 /03 Highways Agency and ACPO's Roles and Responsibilities Review was that the Agency should be responsible for dealing with broken down and abandoned vehicles where there is no police interest. To ensure vehicles are dealt with effectively regulations are required to allow Traffic Officers to remove vehicles.

What are the policy objectives and the intended effects?

The aim of these Regulations is to provide Traffic Officers with powers to remove broken down and abandoned vehicles and the Secretary of State for Transport the power to store and dispose of abandoned vehicles. These Regulations will contribute to realising the aims of the Roles and Responsibilities Review, enabling the Highways Agency to carry out their network operator role and free up police time. The police will retain their existing powers to remove vehicles on the SRN, as they do elsewhere, and will still have primacy over certain incidents on the network (such as serious incidents).

What policy options have been considered? Please justify any preferred option.

The partial Regulatory Impact Assessment concluded that the introduction of new legislation was the most appropriate course of action after considering three options: 1. Do nothing; 2. The Highways Agency continuing to remove or arrange the removal of obstructions (including vehicles) from live lanes on the Strategic Road Network to the nearest appropriate place; and 3. Introduction of new legislation. (See evidence base). Option 3 remains the Highways Agency's preferred option as it allows Traffic Officers to require the removal and where appropriate, arrange for the removal of vehicles.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

A review will be undertaken 12-18 months after the Regulations have been introduced and at the OGC Gateway Review 5 (operations review & benefits realisation).

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

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) the benefits justify the costs.

Signed by the responsible Minister:

Jim Fitzpatrick.....**Date:** 4th September 2008

Summary: Analysis & Evidence

Policy Option: 3	Description: Introduction of new legislation for the removal and disposal of vehicles by Traffic Officers and the Secretary of State
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' These costs represent a proportion of procurement, contract management, change costs and the incremental operational costs incurred by the Highways Agency attributed to statutory removals ('facilitated recoveries' will be conducted under the same contract). (PV over 5 years)
	One-off (Transition) Yrs	
	£ 1.4 million 2	
	Average Annual Cost (excluding one-off)	
£ 0.6 million	Total Cost (PV)	£ 3.5 million
Other key non-monetised costs by 'main affected groups' N/A.		

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' Benefits to motorists of reduction in congestion due to quicker recovery times required as part of the new Highways Agency contract (representative proportion for statutory removals).
	One-off Yrs	
	£ 0	
	Average Annual Benefit (excluding one-off)	
£ 1.2 million	Total Benefit (PV)	£ 6.1 million
Other key non-monetised benefits by 'main affected groups' Greater HA autonomy, less reliance on police powers and better integration of vehicle recovery component into wider incident management should allow both the HA and the police to use resources more efficiently. Motorists - reduction in exposure time for broken down motorists due to quicker recovery.		

Key Assumptions/Sensitivities/Risks Costs for the contract are taken from estimates, informed by initial bids and equivalent current costs incurred by the police, and assume that 30% are due to statutory removals. As the service will be demand-led, actual costs will depend on number of removals as well as the charging mechanism that is yet to be determined.

Price Base Year 2008	Time Period Years 5	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £ 2.6 million
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What is the geographic coverage of the policy/option?		England		
On what date will the policy be implemented?		November 2008		
Which organisation(s) will enforce the policy?		Highways Agency		
What is the total annual cost of enforcement for these organisations?		£ 0		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		N/A		
What is the value of the proposed offsetting measure per year?		£ 0		
What is the value of changes in greenhouse gas emissions?		£ negligible		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	Micro £0	Small £0	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)

(Increase - Decrease)

Increase £ 0 Decrease £ 0 Net Impact £ 0

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

PREFERRED OPTION

The partial Regulatory Impact Assessment concluded that the introduction of new legislation was the most appropriate course of action, after considering three options:

1. Do nothing:

This option is unsuitable as it does not make any improvements to the current situation or help to achieve the benefits of the Roles and Responsibilities Review or help to free up police time.

2. The Highways Agency continuing to remove or arrange the removal of obstructions (including vehicles) from live lanes on the Strategic Road Network to the nearest appropriate place:

This option only offers a partial solution as it only allows the Traffic Officers to deal with vehicles in live lanes. This is a small proportion of the total number of vehicles that need to be removed from the SRN. This option also introduces double handling of those vehicles as the obstruction (i.e. vehicle) that has been removed to the nearest appropriate place will have to be removed again.

3. Introduction of new legislation:

This is the most suitable option as it enables Traffic Officers to require the removal and where appropriate remove vehicles. It also allows the Secretary of State to store and dispose of abandoned vehicles.

BACKGROUND

How vehicle recovery is currently undertaken

When a vehicle breaks down on the SRN, the owner / driver is able to call their own motoring / road rescue organisation or find an alternative suitable private arrangement. Patrolling Traffic Officers may provide safety advice to the owner / driver and check that a recovery is being undertaken. Traffic Officers are currently unable to do anything more than this. If the Traffic Officer establishes that the owner / driver is not undertaking a safe recovery or is refusing to remove their vehicle, contact is made with the police. The police would then use their powers to request removal and / or remove vehicles on the network.

At present abandoned vehicles are recorded by the Highways Agency or the police and in most cases the police request that local authorities dispose of abandoned vehicles. Traffic Officers have no power to remove abandoned vehicles.

Since the police have been asked to concentrate on other activities and Traffic Officers have been introduced to deal with tasks transferring from the police, the current arrangement is inefficient.

Roles and Responsibilities Review

In 2002/03 the Highways Agency and Association of Chief Police Officers (ACPO) conducted a review of each organisation's roles and responsibilities. The review concluded that certain responsibilities should be realigned to reflect respective organisational priorities.

The review recommended that the removal of broken down and abandoned vehicles should be the responsibility of the Highways Agency.

General duties of the Secretary of State as a highway authority

The Secretary of State is responsible for the strategic road network which includes motorways and major trunk roads (usually referred to as A roads) across England. A network map is available on the Highways Agency website: www.highways.gov.uk.

The Secretary of State has a statutory duty, as a highway authority under Section 130 of the Highways Act 1980, to protect the rights of the public to use and enjoy any highway for which they are responsible.

As a highway authority, the Secretary of State also has a common law duty to prevent and remove obstructions. Section 333 of the Highways Act 1980 preserves that duty and the right to remove an obstruction. The Secretary of State, as a consequence of these duties, has a responsibility to clear the highways of obstructions and allow the free flow of traffic. The Highways Act 1980 only allows obstructions to be taken to the nearest appropriate place (most likely the hard shoulder or layby), which is not always suitable.

The introduction of Traffic Officers

Following the roles and responsibilities review, the Traffic Management Act 2004 was introduced. Part 1 of this Act created Traffic Officers and enabled them to undertake certain traffic management activities. The Act provides Traffic Officers with statutory powers, similar to those held by the police to stop and direct traffic and to place and operate temporary traffic signs for the purposes of:

- maintaining or improving the movement of traffic;
- preventing or reducing congestion or disruption to the movement of traffic;
- avoiding danger to persons or other traffic; and
- preventing damage to anything near or on a road.

The powers given do not cover the removal and disposal of vehicles from the SRN. Currently, Traffic Officers rely on the police to remove such vehicles using their powers.

Current police removal and disposal powers

The police have statutory powers to remove and dispose of vehicles by virtue of Sections 99 to 102 of the Road Traffic Regulation Act 1984 and the Removal & Disposal of Vehicles Regulations 1986.

The new Regulations

At the time the Traffic Management Act 2004 was being developed it was envisaged that Traffic Officers and the Secretary of State would in future take operational responsibility for the removal and disposal of certain vehicles. As a result, Section 9 was included, which permits for regulations to be made under Section 99 of the Road Traffic Regulation Act 1984 for this purpose. In addition, consequential amendments can be made in relation to Sections 100 to 102 of the Road Traffic Regulation Act 1984, to enable the making of regulations which address the storage and disposal of abandoned vehicles that have been removed by Traffic Officers. This document addresses those intended regulations.

The police will retain their existing powers and the Regulations will not materially alter any existing regulations.

CONSULTATION

The Regulations have been developed by the Department for Transport and its Executive Agencies in close consultation with the Home Office, ACPO and recovery associations. The policy proposal was taken to public consultation in November 2007.

SECTORS AFFECTED

In the sections below, we outline the impact of the new Regulations on:

- the Secretary of State for Transport, the Highways Agency and Traffic Officers;
- the police;
- businesses;
- strategic road network users – businesses and the general public; and
- the environment.

What this means for the Secretary of State, the Highways Agency & Traffic Officers

The Highways Agency will need to secure additional capability to implement these Regulations. The main infrastructure is already in place with Traffic Officers patrolling the motorways. The Highways Agency will need to:

- develop further guidance and train Traffic Officers in the use of the new Regulations;
- procure a contract to support Traffic Officers and the Secretary of State for Transport in the removal, storage and disposal of vehicles; and
- set up and manage the new contract.

In addition to statutory removals, the Highways Agency will use this new contract to support road users who require assistance in making their own arrangements for vehicle recovery (facilitated recoveries). This means that only a proportion of the total set up and running costs for the new contract are due to the new Regulations. We have calculated these costs as proportional to the estimated number of statutory removals. Actual costs will depend on the charging mechanism used in the new contract.

Costs:

- The proportion of set-up costs for statutory removals is £1.4 million over two years from April 2008. This includes the procurement and project costs for making the operational change. These estimates were developed from discussions with the police who carry out similar contracts.
- Running costs for statutory removals are estimated to be £0.6 million per annum above the current baseline of equivalent costs under existing police contracts. The removals will be funded by the Highways Agency. The National Vehicle Recovery Manager (NVRM) will collect the statutory charges applicable from the vehicle owner or driver on behalf of the Secretary of State.

Benefits:

- Allowing the aims of the Roles and Responsibilities review to be realised i.e enabling the Highways Agency to carry out their network operator role and free up police time.
- Helping to ensure continued safety for road users.
- Efficient commissioning of vehicle recovery services (Highways Agency requests no longer having to go via the police).
- Better integration of vehicle recovery component into wider Highways Agency incident management family to enable innovation and partnership working.

What this means for the police

The police will retain their existing powers, but their operational involvement on the SRN will focus on vehicles that are of interest to them with respect to criminal activity and serious incidents. The Highways Agency is working with police colleagues to inform them about the changes that the Regulations will bring about.

Costs:

- There are no additional costs for the police as a result of these Regulations.

Benefits:

- Police resources will be released to focus on core activities such as managing criminal activity and the detection and enforcement of road traffic offences.

What this means for business sectors

The Regulations will not introduce any noticeable changes for the vast majority of businesses. The key change will be that, as well as the police, Traffic Officers will have the power to request and enforce a removal, and the Secretary of State will have the power to store and dispose of abandoned vehicles.

Only limited data is available, but to provide a better context for the changes that these Regulations will introduce: it is currently estimated that there are around 12,000 vehicles that are removed from motorways in England under statutory powers each year. It is also estimated that the police assist a further 28,000 motorists who are not able to make their own suitable arrangements for recovery and an additional 600,000 recoveries are arranged privately.

This means that only a small proportion of recoveries will be affected – those on the SRN not of interest to the police and where vehicle owners do not make their own suitable private arrangements.

The new Regulations themselves will not directly impact any business. The way in which the Highways Agency governs and operates statutory removals may have some impact on the areas of the vehicle recovery industry that carry out the affected removals.

The vehicle recovery industry

The way in which the police currently work with the vehicle recovery industry varies by police force; from contracts with vehicle recovery managers to individual arrangements with local vehicle recovery operators. These arrangements will remain in place as the police will retain their existing powers to remove vehicles on the SRN, as they do elsewhere, and will still have primacy over certain incidents on the network, leading on serious incidents.

The Highways Agency plans to procure a single NVRM that may in turn subcontract to local operators, to support the recovery and removal work that is transferred from the police.

The NVRM will be an organisation capable of large scale service and is expected to fund the bid costs through general overhead costs. There is no obligation on any company to bid for this contract and businesses may choose to bid on the basis of the commercial opportunity that the new contract offers. The small firms within the market – the Vehicle Recovery Operators – should not have any bid costs.

Other business sectors

Other business sectors will only be affected as users of the SRN, as outlined in the next section.

In summary, the new arrangements will not affect the overall vehicle recovery market size and impact only a proportion of the total market. Therefore, the new sourcing arrangements will not limit the overall market and will fully support competition.

Costs:

- Bidders for the new contract will incur one-off overhead costs through the procurement process. This cost is localised to the larger vehicle recovery managers and is offset against the potential profit if the bidder wins the contract. This has not been included in the key monetised cost section as this is a voluntary cost, should organisations choose to bid for the contract. This is not a cost imposed on businesses.

Benefits:

- The new contract will ensure consistent payment terms and standards.

What this means for Strategic Road Network users – businesses and the general public

The new Regulations will be no more stringent than existing legislation under which the police operate but the National Vehicle Recovery Manager will be expected to provide an increased service level to that which is currently provided in the industry at the moment.

The vast majority of vehicles that need to be removed from the SRN will continue to be dealt with through owners' suitable private arrangements and in some cases these will be facilitated by Traffic Officers and the Highways Agency's NVRM. Statutory powers will only be used as a last resort approach where suitable private arrangements for the given circumstances cannot be made.

The key difference will be that, instead of the police, Traffic Officers and the Secretary of State for Transport will deal with the removal and any subsequent storage and disposal of vehicles outside of police interest.

Equality & diversity

These Regulations will not have an adverse impact on any stakeholder group. Standards of service will remain as they are now or improve. Through the procurement process the Highways Agency is working with bidders to ensure quality and consistency of service provided to all customers, including consideration of equality relating to race, gender and disability. This has been informed by consultation with key stakeholders and learning from Traffic Officers.

Human Rights

Sections 3 and 4 of the Regulations set out the circumstances under which a traffic officer may require the removal of, or remove a vehicle. This will adhere to the Protection of Property within the Human Rights Act 1998.

Costs:

- There will be no additional costs for SRN users.

Benefits

- The Traffic Officer Service can provide a nationally consistent approach on the SRN, which is expected to improve customer service.
- In cases where removed vehicles are causing congestion, quicker recovery will improve journey time reliability.
- Reduction in exposure time for broken down motorists due to quicker recovery.

What this means for the environment

These Regulations may have a small positive impact on the environment through a reduction in vehicle emissions.

In cases where the removed vehicle is causing congestion and is cleared more quickly than under current arrangements, this will reduce the waiting time of other vehicles and the associated emissions.

Costs:

- N/A

Benefits:

- Slight reduction in vehicle emissions

FINANCIAL IMPACTS

The main impact of these Regulations is introducing Traffic Officers as an additional authority to carry out the removal of vehicles. As a result overall cost impacts are minimal. The costs set out on the analysis and evidence section are estimates.

One off costs

At the time of producing this Impact Assessment the Agency is undertaking a procurement process to procure a National Recovery Manager to carry out removals on behalf of the Agency. It is not possible to break down costs further than saying that £1.4m represents a proportion of the procurement, contract management, change costs and the incremental operational costs incurred that are attributed to statutory removals. These estimates were developed from discussions with the police who carry out similar contracts.

Average annual costs

The average annual cost of £0.6m represents the estimated cost of the National Vehicle Recovery Manager providing an increased service level to that which is currently provided in the industry at the moment. As the procurement process is not completed, detailed service levels are still to be agreed. However, they are likely to include a set of nationally consistent standards and Key Performance Indicators.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	No	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	No	No

Annexes

This document does not have any annexes.