

Title: Electronic Communications Code IA No: RPC Reference No: RPC-3329(1)-DCMS Lead department or agency: DCMS Other departments or agencies:	Impact Assessment (IA)			
	Date: 12/05/2016			
	Stage: Final			
	Source of intervention: Domestic			
	Type of measure: Primary legislation			
	Contact for enquiries: Kellie Hurst, 020 7211 6312, kellie.hurst@culture.gov.uk			
Summary: Intervention and Options				RPC Opinion: GREEN

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2014 prices)	One-In, Three-Out	Business Impact Target Status
£0.0m	£0.0m	£0.0m	In scope	Qualifying provision

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

The Electronic Communications Code regulates the relationships between landowners and network operators to support the rollout and maintenance of communication technology infrastructure. The current Code is widely agreed to be out of date with current technology and the evolution of the telecommunications market. It is also complex and lacks clarity on important issues, causing misunderstanding and difficulty in reaching agreements, which is compounded by an inefficient dispute resolution process. Most importantly, a revised Code is required to regulate the wayleave valuation market (the value of the right to maintain infrastructure on private land) to incentivise investment in the UK's telecommunications infrastructure.

What are the policy objectives and the intended effects?

The overarching policy objective is to reform the Code to make it fit-for-purpose as a framework that supports the rollout of modern communications technology. Reforming wayleave valuation will lower the cost of infrastructure rollout, incentivising investment and improving connectivity for businesses and consumers. This will be supported by adding clarity and certainty to all parts of the Code, ensuring the market can operate efficiently for all parties and that agreements can be more effectively facilitated, achieved and regulated.

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

Both the telecommunications industry and landowner stakeholders agree that the Code needs to be reformed in order to clarify the relationships between both parties. It should be noted that the operation of the Code in practice is largely based on consensual agreement between operators and landowners but the provisions of the Code inevitably influence and underpin these negotiations. Any move away from a regulatory underpinning would create greater levels of uncertainty and increase the current problems with a lack of clarity. Without reform, Government risks ignoring the concerns of industry about its ability to meet future consumer demand for mobile and broadband services. A revised Code will bring about greater certainty and clarity for the commercial relationships surrounding communications infrastructure and therefore support and improve the rollout and maintenance of communications networks for the public.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 06/2022						
Does implementation go beyond minimum EU requirements?			N/A			
Are any of these organisations in scope?			Micro 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 Minister : _____ **Dat e:** ED VAIZEY
17 May 2016

Summary: Analysis & Evidence

Policy Option 1

Description: Reformed Electronic Communications Code

FULL ECONOMIC ASSESSMENT

Price Base Year 2015	PV Base Year 2017	Time Period Years 20	Net Benefit (Present Value (PV)) (£m)		
			Low: 0.00	High: 0.00	Best Estimate: 0.00

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.0	75.0	1016.2
High	0.0	75.0	1016.2
Best Estimate	0.0	75.0	1016.2

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

The key monetised cost relates to the loss of rent for landowners and potential indirect impact on business rates as a result of the change in the wayleave valuation method. Independent economic analysis estimates that wayleave rates will fall by up to 40% which means landowners will see rents fall by £709m over a 20 year NPV period. Business rates may also fall indirectly as a result, potentially by up to £307m (20 yr NPV). These costs are balanced by gains to operators.

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

All other Code changes have been assessed qualitatively, largely in terms of how they will impact on the negotiating positions of parties making agreements. Overall the assessment suggests landowners will see their negotiating position weakened slightly, as part of an overall package to reduce barriers to infrastructure deployment. This may manifest itself as a further fall in rental value, although it is likely to be much smaller than the impact of wayleave valuation change.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0.0	75.0	1016.2
High	0.0	75.0	1016.2
Best Estimate	0.0	75.0	1016.2

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

The key monetised benefit relates to the reduction in the costs of rent and rates for telecommunications operators as a result of the change in the wayleave valuation method. This exactly balances the costs above with a £709m saving on rents and potentially up to £307m saving on rates (20 yr NPV). The EANCB is estimated at zero net cost as the rents are merely transferred between different types of business and the saving on rates is out of scope of EANCB.

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

Through lowering the cost of infrastructure deployment and incentivising investment the reform of wayleave valuation should lead to improved connectivity and wider economic benefits. Nordicity estimated that should the 40% fall in rents transfer to lower prices and higher take up of broadband services this could generate a positive GDP impact of £982m (15yr NPV, 2012 prices). The qualitative assessment of other Code measures suggests operators will benefit from a stronger negotiating position.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
The impact on the wayleave market has been estimated by an independent consultancy using industry data from across sectors. However, as the move to compulsory purchase principles is a major departure from current practice in the telecommunications market there is uncertainty as to how negotiations between operators and landowners will develop. This is also associated with the risk of an increase in legal disputes, although the staggered nature of contract renewals minimises the impact of this.		

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: 44.4	Benefits: 44.4	Net: 0.0	
			0.0

Introduction

Background

The Electronic Communications Code

The Electronic Communications Code (the Code) is the legislative framework that enables electronic communications network providers to construct electronic communications networks. It regulates the relationships between network providers and landowners. Since its original enactment in 1984, the Code has been criticised as lacking clarity and consistency with other legislation, making it difficult for landowners and network operators to reach agreements and resolve disputes. These fundamental problems have gained increasing significance over the last three decades, in which we have seen technological changes that could not have been imagined when the law was created. The telecommunications market has evolved at the same pace, but the Code has been largely unchanged. As a result, it simply no longer allows the telecommunications market to flourish in the ways we need it to.

Policy Background

In 2012, DCMS asked the Law Commission to carry out a review of the Code. The Law Commission subsequently published a report on 28 February 2013, which recommended reform of the Code, but also advised Government to conduct further consultation with stakeholders before proceeding. The Law Commission's full report and executive summary can be downloaded from the Law Commission website: <http://lawcommission.justice.gov.uk/areas/electronic-communication-code.htm>

DCMS subsequently conducted extensive additional consultation with stakeholders. The Government's consultation document can be downloaded from the Department for Culture Media and Sport's website: <https://www.gov.uk/government/consultations/consultation-on-reforming-the-electronic-communications-code> and a full government response to this document will be published in advance of the draft Bill. The Government also commissioned independent market research, including analysis of the impact of alternative wayleave regimes, which can be found at: <https://www.gov.uk/government/publications/modelling-the-economic-impacts-of-alternative-wayleave-regimes-the-nordicity-report>

Following analysis of its consultation and research findings, the Government submitted proposals for reform of the Code in February 2015. However, these prompted extensive further representations from stakeholders across the sector, and following consideration of the points raised, the decision was taken to defer progress pending further consultation and research.

DCMS has since carried out further consultation and commissioned additional independent economic analysis to inform policy decisions. This evidence has demonstrated that in some areas a more radical overhaul of the Code than that proposed by the Law Commission will unlock economic benefits. This is particularly the case in the area of land valuation, which forms the most significant change to the current Code.

Taking forward many of the Law Commission's recommendations will provide clarity to the market and help it to operate more efficiently, for example through more efficient dispute resolution processes. The changes which go beyond the Law Commission recommendations, in particular the change to land valuation, will incentivise investment in the UK's telecommunications infrastructure, improving connectivity and delivering benefits to businesses and consumers alike.

Reform of this area will not only help telecommunications network providers achieve the challenging coverage and connectivity targets they have agreed with the government, but will also stimulate continued growth in this increasingly significant area of the UK's economy.

These reforms present significant changes, but in formulating them, we have consulted extensively with all stakeholders, and carefully considered their representations and evidence, as well as the findings from independent research studies. Our proposals are intended to achieve a fair outcome for all: not only those stakeholders directly involved in the digital telecommunications market, but for every individual

who will benefit from the social and economic advantages that can be obtained through the sustained growth of our digital services and industry.

A summary of the proposed reforms is provided below.

Table 1: Summary of Changes

Changes are categorised according to the area of the Code that they will affect and the specific policy they are linked to.

Code Change Category and Policy Area	Summary of Proposed Change(s)
Payments for Rights Under the General Regime <ul style="list-style-type: none"> • Compulsory Purchase Valuation 	<ul style="list-style-type: none"> • To revise the basis of land valuation for the purpose of telecommunications wayleaves from market value to compulsory purchase principles.
Code Rights and the Regulated Relationships <ul style="list-style-type: none"> • Clarifying existing legislation 	<ul style="list-style-type: none"> • To clarify who Code Rights can be granted to and how / when they can be conferred
Ancillary Rights and Obligations <ul style="list-style-type: none"> • Assignment of Rights • Automatic rights to Upgrade and Share 	<ul style="list-style-type: none"> • To allow Code Operators to assign Code Rights (e.g. in the event of a merger or acquisition) • To allow automatic sharing and upgrading of equipment at no additional cost
Test for the Imposition of Code Rights <ul style="list-style-type: none"> • Strengthening the Access Principle 	<ul style="list-style-type: none"> • To amend the test permitting Code Rights to be imposed where they cannot be agreed so that both the public benefit test and the requirement to compensate the landowner are satisfied
Moving and Removing Electronic Communications Apparatus <ul style="list-style-type: none"> • Clarifying Existing Legislation 	<ul style="list-style-type: none"> • To clarify when specific provisions of the Code apply and its interaction with other legislation
Special Regimes <ul style="list-style-type: none"> • Clarifying Existing Legislation 	<ul style="list-style-type: none"> • To ensure consistency with wider Code changes
Further Rights and Obligations <ul style="list-style-type: none"> • Clarifying Existing Legislation 	<ul style="list-style-type: none"> • To extend the period in which owners and occupiers have the right to object to the installation of overhead lines • To provide Operators with the right to require the cutting back of vegetation that overhangs a highway and may interfere with apparatus.
Dispute Resolution and Procedural Issues <ul style="list-style-type: none"> • Faster Dispute Resolution • Faster interim access in case of disputes 	<ul style="list-style-type: none"> • To facilitate more cost effective and efficient resolution of disputes • To enable interim access to be granted pending dispute resolution in appropriate cases

Problems under Consideration:

What is wrong with the Code?

The current Code is considered to be complex, unclear and out of step with modern technology. It was judicially described as ‘one of the least coherent and thought through pieces of legislation on the statute book’. The original draft was based on several 19th and early 20th century statutes dealing with

telephone wayleaves, and although attempts have been made to update it for the modern technology - such as broadband, mobile internet and telephone, cable television and landlines - that all depend on the infrastructure covered in the Code, important points remain unclear. It is also difficult to discern the relationship of the 2003 Code with certain other legislation, such as the Land Registration Act 2002, which is particularly important as the Code regulates the relationships between landowners and communication providers.

There is also evidence that the current Code makes the roll-out of communications infrastructure more difficult through its lack of clarity for Code Operators (the telecommunications industry) and landowners on several important matters, including who is bound by the rights conferred on Code Operators, how the level of payment should be assessed and how the termination of those rights is to be regulated. Furthermore its dispute resolution process is considered less than effective.

The problems with the existing Code can be summarised under five main headings, which are set out below.

i) a lack of clarity and misunderstanding of the existing Code

The Law Commission found that the existing Code is complex and extremely difficult to understand'. It also found that it is difficult to discern the relationship of the 2003 Code with other elements of the law. As such, the Law Commission recommended that the new Code be drafted from a 'blank sheet of paper' to bring about clarity and certainty. The findings from our consultation with stakeholders, including responses from legal experts, have been consistent with the Law Commission's conclusions on this point.

ii) The Code is out of date with current technology and the evolution of the telecommunications infrastructure market

The telecommunications market and the evolution of technological advancement have changed dramatically since the original Code was drafted in 1984. Although it was extended in the Communications Act 2003 to encompass all electronic communications, not just telephony, the drafting of the legislation still requires updating to take into account the full breadth of the infrastructure which supports telephony, fixed and mobile internet, broadband (including fixed wireless) and cable television. The Law Commission recommended that a revised Code be drafted as 'technology neutral' in order to 'future proof' the legislation. This will ensure that a revised Code will remain relevant as technology develops.

As technology has changed rapidly, so too have the surrounding commercial relationships. The Law Commission found that even amendments made to the Code in 2003 did not anticipate the change in structure of the relationships between landowners and Code Operators, such as the development of the wholesale infrastructure provider sector or tripartite arrangements between a landowner, a number of Code Operators and a wholesale infrastructure provider. The Law Commission identified the need for a new Code to accommodate these important commercial relationships which support, and have increasingly come to underpin, the electronic communications industry.

The findings from our consultations and independent research have emphasised the significance of this point.

iii) There are problems with the wayleave valuation market and the ability of industry to maintain and upgrade infrastructure sites

Mobile operators cite high land and infrastructure rental costs as a key barrier to long term mobile coverage and technology investment. They also claim that the high costs to access their sites, in order to upgrade and maintain infrastructure, are a barrier to the rollout of new technologies and the security of network provision.

The Law Commission considered these issues in detail as part of its review and made a series of recommendations to address them: modify the system of valuing telecommunications wayleaves (the agreement whereby a landowner grants a licence to a communications operator for the right to install, access and maintain cables or other equipment on private land); streamline the judicial process for resolving disputes on the Code; clarify where a court can grant a Code Operator interim access to a site before resolving a dispute; and clarify the circumstances under which a Code Operator can upgrade and share equipment without bearing additional costs. Our proposed reforms are intended to address all these points.

However, while the Law Commission concluded that reform of the wayleave valuation system should be limited to the introduction of modifications that would reduce the possibility of ‘ransom pricing’ (whereby a landowner charges above market prices for a site), our subsequent consultation with stakeholders and independent market research has indicated that more radical reform is needed on this point. We are proposing the introduction of a valuation system based on compulsory purchase principles, which will mean the value of land for these purposes is assessed on the basis of its value to the landowner, rather than the network operator, a system analogous to that used for domestic utilities. We consider this more robust reform is necessary to reduce the cost to network operators of rolling out infrastructure.

iv) There is a need to clarify and regulate the roles and responsibilities of Code Operators and landowners, as well as the relationship between them

The Law Commission worked on the basis that the primary purpose of the Code is to regulate consensual relationships - given that most electronic communications equipment is sited on land pursuant to voluntary agreements between Code Operators and landowners. The primary work of the Code is therefore to generate appropriate legal consequences for regulating those agreements, and to provide a framework against which voluntary agreements can be reached.

The necessity of the Code is premised on ensuring the provision of a range of high quality telecommunications services to the UK public and businesses. Telecommunications has a significant and positive impact on individuals, businesses and the wider UK economy. The Code therefore ensures that telecommunications rollout and provision is not impeded by difficulties in erecting infrastructure or a lack of available land. The Code also protects telecommunications apparatus and ensures the sustainability of networks. This core purpose of the Code is not under dispute and the Law Commission did not recommend any changes to this.

Nevertheless, the Law Commission found that further clarity was required in the revised Code to enable it to regulate voluntary agreements between Code Operators and landowners and to set out the specific consequences and rights that arise automatically from an agreement regulated by the Code.

The Law Commission therefore set out a number of recommendations to clarify the rights attracting the protection of the revised Code, which can be imposed on landowners where Code Rights apply.

The Law Commission also made a series of recommendations to the communications regulator, Ofcom, to produce standard forms of agreement and codes of practice to bring about further clarity and certainty within these relationships where they are agreed on a voluntary basis. Responses from stakeholders to our consultation demonstrated widespread support for these recommendations, which we propose to take forwards.

v) There is a need to improve the dispute resolution process

The Law Commission Report noted the concerns of stakeholders regarding the dispute resolution procedure in the current Code, which stakeholders perceive as ineffective and inefficient.

In the current Code, disputes are dealt with by a range of bodies including the County Court, which is seen to lack the relevant specialist expertise for swift and effective dispute resolution. Costs are also an important factor in the dispute process - both the process of awarding them and the importance of minimising procedural delay.

The Law Commission set out a number of recommendations concerning dispute resolution. Firstly, it recommended that ‘the forum for almost all Code disputes should be the Lands Chamber of the Upper Tribunal.’ The Law Commission believes that this forum has the necessary specialist expertise to ensure effective dispute resolution.

In addition, the Law Commission has ‘gone further’ by recommending that in cases where all terms between site providers and Code Operators are agreed, except an agreement on price, Code Operators should be able to apply to get early interim access to sites.

More widely, in order to improve clarity and reduce the risk of disputes arising in the first place, the Law Commission also recommended introducing standard forms for giving notices on the part of landowners and operators and a Code of Practice for all parties. Our consultation findings support the Law Commission’s conclusions on these points.

Rationale for Intervention:

The Law Commission's report, submissions from stakeholders on all sides - including surveyors, lawyers, industry representatives and landowners - and the market research we have commissioned clearly demonstrate the need to reform the Code. This can only be done by amending Schedule 2 to the Telecommunications Act (as amended by the Communications Act 2003).

The Law Commission recommended a revised Code that sets out the legal position of Code Operators and landowners in clear terms, and provides an efficient forum for dispute resolution. Both the telecommunications industry and landowner stakeholders agree that the Code needs to be reformed to clarify the relationship between both parties.

The revised Code needs to strike a balance between enabling Code Operators to rollout and maintain their telecommunications services, and the property rights of landowners. The successful relationship between these two parties ensures the provision of a range of high quality telecommunications services across the UK.

The overall objective is therefore to reform the Code to make it fit for purpose as a framework that supports the rollout of modern communications technology.

Policy Proposal and Intended Effects:

Each of the proposed reforms summarised at Table 1 is intended to tackle one or more of the five problems identified in the existing Code. These problems are:

1. A lack of clarity and misunderstanding of the existing Code
2. The Code is out of date with current technology and the evolution of the telecommunications infrastructure market
3. There are problems with the wayleave valuation market and the ability of industry to maintain and upgrade infrastructure sites
4. There is a need to clarify and regulate the roles and responsibilities of the Code Operators and landowners as well as the relationships between them
5. There is a need to improve the dispute resolution process.

The wide remit of the existing Code, and the associated range of recommendations from the Law Commission, and the broader reforms we are proposing, means that many of the recommendations could impact on several - or even all - of the above categories.

Evidence and Analysis

Methodology:

This section of the impact assessment provides an assessment of the likely benefits and costs that will accrue to different groups in society as a result of implementing the government's proposals for a reformed Code.

Before proceeding to present an analysis of these benefits and costs, it is important to be clear about the methodological basis for appraisal. This needs to take account of structure of analysis, proportionality and technical parameters.

Structure of Analysis and Proportionality

The Evidence and Analysis section is divided according to the category of change that is being proposed: it follows the structure and categories set out in Table 1 above.

The central and most significant change proposed is the method of wayleave valuation which is presented under the category entitled *Payment for Rights under the General Regime*. As stated in the introduction, changing the wayleave valuation system to compulsory purchase principles will significantly reduce the cost to network operators of rolling out telecommunications infrastructure. This will mean a reduction in average wayleave payments from operators to landowners. As such, this change to the

Code is expected to have by far the most significant economic impact. The other changes, whilst injecting clarity, certainty and capacity for 21st century telecommunications equipment, will complement the change to wayleave valuation, which primarily aims to reduce the barriers to further infrastructure investment.

Therefore, in the interests of proportionality the quantitative analysis informing this impact assessment is largely focused on the changes to wayleave valuation. To inform the development of a robust policy in this critical area, DCMS commissioned a specialist telecommunications consultancy, Nordicity, in 2013 to quantitatively assess the impact of implementing a range of alternative changes to the existing wayleave valuation system. There are two primary reasons for the need to commission this research: firstly, DCMS does not have the specialist expertise to assess the impact of intricate changes to a legal code governing interactions in a technologically and commercially complex industry; and secondly, DCMS do not have access to reliable data with sufficient scope and depth to make quantitative assessments of impact. The study forms a reliable piece of research which provides specific quantitative estimates of the changes to rental payments that would result from a change in wayleave valuation system.

Following the consultation in 2015 DCMS commissioned an additional piece of analysis from a separate independent telecommunications consultancy, Analysys Mason (published alongside this impact assessment). This project involved working with network providers, wholesale infrastructure providers and landowners to produce a detailed breakdown of the flows of payments for land and services between the three parties. They also provided updated and disaggregated estimates of the impact of changes to the wayleave valuation system (building on the Nordicity paper) and more detail on how other specific changes would impact on the market.

As a result of these two independent studies DCMS has a comprehensive, robust and up-to-date evidence base upon which to estimate the quantitative impacts of changes to wayleave valuation. For all other areas there is a considerable evidence base that has been pulled together from consultation responses and the independent research but little in the way of quantitative estimates. However, given that the other changes are smaller in nature, and largely intended to remove uncertainty, provide clarity and collectively **support** the change to wayleave valuation in reducing the barriers to further infrastructure roll-out, commissioning separate research to quantitatively assess their impact would be disproportionate. As a result, we feel that a qualitative assessment of the impact from negotiating position and economic standpoints is suitable and proportionate for this impact assessment.

For all of the change categories there is an associated qualitative assessment to understand the impact on the three main types of stakeholder: industry, landowners and consumers. For the industry and landowner sections, economic impact and the influence on the strength of each stakeholder's relative negotiating position will be assessed. Consumers will only have their economic position assessed through the price or provision of telecommunications services. At the end of the analysis for each category of changes, a colour coded summary table will highlight either a positive impact - whereby the cell will be filled green, or a negative impact - when it will be filled red.

Overall, by combining the quantitative analysis of wayleave changes produced by Nordicity and Analysys Mason with the qualitative assessments for the other clause changes, we have provided a proportionate analysis given the nature of the changes to the Electronic Communications Code proposed. Indeed, this position is justified further by the fact that this is a Zero Net Cost proposal. A previous final stage version of this impact assessment was rated green by the Regulatory Policy Committee in October 2014¹. Since that period the Department has conducted a further round of stakeholder and public consultation, and commissioned further independent research to better understand the impact of the policy changes. The current impact assessment therefore has a stronger evidence base than previously, when it had already been considered fit for purpose.

Presentation of 'Do Nothing' and Technical Issues:

¹ RPC Opinion Reference RPC14-DCMS-2218 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/396152/2014-10-30-RPC14-DCMS-2218_Electronic_Communications_Code_1_.pdf

There are a number of presentational and technical points that apply across different policy options. The 'Do Nothing' option represents the status quo, and therefore does not have any benefits or costs associated with it from an appraisal perspective. All monetised impacts are presented in present value terms unless otherwise stated, discounted at the Green Book determined rate of 3.50% per annum. All prices and monetised impacts are presented in 2015 prices unless otherwise stated.

Analysis of Impacts

1) Payments for Rights under the General Regime - Analysis of Impacts

The most notable change to the Code in terms of expected impact is a change in the method of wayleave valuation to compulsory purchase principles. A wayleave is an agreement whereby a landowner grants a communications operator the right to install, access and maintain cables or other equipment on private land. This is generally in return for a rental payment and it is the size of this rental payment which will be impacted by the change in valuation method.

The existing Code was established as a tool to impose compulsory access to land. The Code provides two forms of payment for access to land: compensation (for loss, damage) and consideration (an additional payment for the use of the land, a "rent").

The change in methodology relates to how consideration is assessed. The Code, as interpreted to date by the Courts provides that the payment of consideration must be assessed at market value. A new definition of market value is set out in the revised Code. Rights for access must be valued based on the premise that the land will be used to host telecoms apparatus regardless of what current use or value of the land/property is (e.g. agricultural, rooftop). It is the payment of consideration and the way that it is assessed that has led to the high costs of infrastructure rollout for telecoms when compared to utilities like water and electricity.

The Law Commission considered the basis for valuation as part of their Review published in 2013. The Commission initially suggested in their Consultation (2012) that the Code should retain the right to consideration for the use of land, but should adopt compulsory purchase principles to limit the price that would be paid. However, following extensive consultation they concluded that the market was functioning, and as such the Commission only recommended limited changes primarily to tackle the issue of "ransom rents" (isolated instances of very high rents).

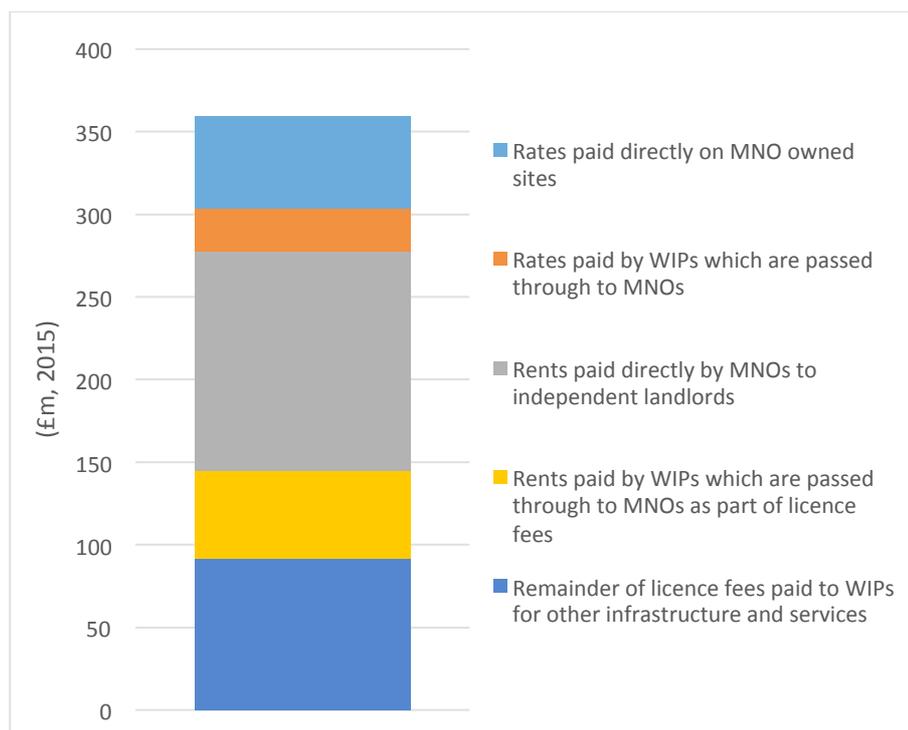
Following detailed consultation and consideration of the evidence DCMS consider that it is right that Landowners should continue to receive fair payment for the use of their land and that this should be in addition to compensation for any damage or loss of value. However, the nature of digital communications has changed significantly since the Code was established in 1984 (as part of the Telecommunications Act). Given the priority that this Government attaches to digital communications and investment, and the ever more vital role this plays in economic growth, productivity and social interaction, we consider that a more radical reform is appropriate that will limit the value of consideration to rates that are more relevant to modern infrastructure rollout.

The Current Market for Wayleaves

To inform the analysis of the impact of policy changes DCMS commissioned Analysys Mason, a specialist independent telecommunications consultancy, to provide a detailed breakdown of the flows of payments for land and services between network providers, wholesale infrastructure providers and landowners in the mobile telecommunications sector. This showed that there are currently around 33,000 rent attracting sites across the UK which make up mobile telecommunications networks. Of these 10,700 are operated by Wholesale Infrastructure Providers (WIPs), who typically pay for the rental of land as well as providing on-site infrastructure (e.g. a mast), power, maintenance services, etc. in exchange for a licence fee paid by the Mobile Network Operator (MNO). This licence fee effectively includes the payment for rental of the land, alongside payment for other infrastructure and services. The remaining sites are owned by the MNOs themselves with an estimated 18,200 greenfield sites and 4,000 rooftop sites. For these sites the MNOs will usually pay rent directly to the independent landowner.

Analysys Mason estimate that MNOs currently pay £359m annually for rents, licences and associated business rates², as set out in Figure 1 below.

Figure 1 – MNO Spend on Rent, Licences and Rates (£m, 2015)



It should be noted that these underlying figures on the current market, which are used to calculate costs and benefits below, only cover mobile telecommunications networks, whereas the changes to wayleave valuation will impact on both mobile and fixed (i.e. fibre and copper cable) networks. Although we expect benefits from the change in valuation for both mobile and fixed telecommunications networks providers those benefits are expected to be greater and more certain for mobile. There is no definitive source on the total value of all telecommunications wayleaves but in 2012 the Central Association of Agricultural Valuers (CAAV) estimated that wayleave payments totalled £250m for mobile sites and £50m for all other private land access, indicating that mobile networks make up over 80% of the market. In addition, the proposed changes to wayleave valuation will not be applied retrospectively, meaning the impact will only be felt when contracts are renewed. However, consultation responses indicated that fixed network wayleaves tend to be longer with many granted in perpetuity, meaning any impacts will take longer to be realised, if at all in some circumstances. Therefore, by providing detailed and robust analysis of impacts on mobile telecommunications networks the majority of impacts have been quantified, with impacts on fixed networks considered qualitatively alongside these.

Impact on Wayleave Costs

In 2013 DCMS commissioned a separate independent analysis by Nordicity, also a specialist telecommunications consultancy, to quantitatively assess the impact of implementing a range of alternative changes to the existing wayleave valuation system³. Nordicity assessed three potential wayleave valuation regimes:

- One based on market values, but with safeguards to prevent “ransom pricing” whereby owners of unique plots of land or buildings can extract very high rents because there is no alternative provider (“The Law Commission Recommendation”).
- One based on compulsory purchase principles with outcomes similar to those experienced by energy network providers (“The Energy Regime”). This is closest of the options to the valuation system in the new Code.

² Mobile communications infrastructure sites are subject to business rates paid to local authorities. These are closely related to the rental value of the site so any change to rental values will have an associated impact on business rates paid.

³ “Modelling the Economic Impacts of Alternative Wayleave Regimes”, Nordicity, 2013

<https://www.gov.uk/government/publications/modelling-the-economic-impacts-of-alternative-wayleave-regimes-the-nordicity-report>

- One based on compulsory purchase principles with outcomes similar to those experienced by water network providers (“The Water Regime”).

Using submissions to the Law Commission’s initial consultation, industry data from across different markets and academic literature Nordicity produced estimates of the expected change in wayleave cost from these three regimes, as set out in Table 2 below.

Table 2 – Nordicity Estimates of Change in Wayleave Cost from Different Wayleave Valuation Regimes

Wayleave Valuation Regime	Expected Change in Wayleave Cost
Law Commission Recommendation	-10%
Energy Regime	-40%
Water Regime	-62%

Nordicity highlight in their study that the value of wayleaves observed under the compulsory purchase regimes which inform these estimates are not as low as might be expected for regimes which only guarantee payment of compensation and not consideration. This reflects the fact that network providers will generally want to maintain good relationships with landowners and avoid legal disputes, so they will choose to pay an element of consideration.

The vast majority of telecommunications wayleaves are negotiated voluntarily between network providers and landowners and we would expect this to continue to be the case under the new valuation system as all sides wish to avoid costly legal disputes. However, the change to a compulsory purchase principle valuation system changes the negotiating positions of the two sides as if an agreement cannot be made then a court will impose a far lower wayleave settlement. This strengthens the negotiating position of the network provider and enables them to agree a lower rental fee for their wayleave, as shown by the estimates of 40% to 62% lower rents in wayleave markets underpinned by compulsory purchase principles.

It is difficult to precisely predict the result of negotiations between telecommunications network providers and landowners under the new valuation regime. It is highly likely that telecommunications network providers will choose to pay an element of consideration in the same way that energy and water networks appear to. As this method of wayleave valuation is also a substantial departure from current practice for telecommunications wayleaves (as opposed to water and energy markets where it is accepted practice) it is possible they will choose to pay a higher rate of consideration to maintain relationships that they have built up over many years. However, our best estimate, based on Nordicity’s findings, is to expect wayleave values to reach an equilibrium at up to 40% lower than current rates.

Impact on Payment of Rents, Licence Fees and Rates

Figure 1 above set out how MNOs currently spend £359m annually on rents, licence fees and rates. A 40% decrease in wayleave values would lead to a substantial decrease in this expenditure, not just through a fall in the rents paid to landlords by MNOs and WIPs, but potentially through an indirect impact on the associated business rates. The exact indirect impact on business rates is not possible to estimate precisely at this point but has been modelled as proportional to rent paid for the purposes of this impact assessment. Table 3 below sets out the expected changes to MNO costs that would ultimately be expected from such a 40% decrease.

Table 3 – Expected Changes to MNO Costs from a 40% Reduction in Wayleave Value (£m, 2015 prices)

	Before	After	Change
1. Rates paid directly on MNO owned sites	56	34	-22
2. Rates paid by WIPs which are passed through to MNOs	26	15	-10
3. Rents paid directly by MNOs to independent landlords	133	80	-53

4. Rents paid by WIPs which are passed through to MNOs as part of licence fees	54	32	-21
5. Remainder of licence fees paid to WIPs for other infrastructure and services	92	92	0
6. Total	359	252	-107

Note that lines 4 and 5 sum to the total cost of WIP licence fees for MNOs. It is assumed any rental savings made by WIPs (reflected in line 4) will be passed on to MNOs in the form of lower overall licence fees. There is no guarantee that this would happen, however, in a competitive market it would be expected that such an additional margin would be competed away and passed on to the buyer of the service (the MNO) through lower fees. Line 5, which represents payments for infrastructure and services provided by WIPs, is unaffected by the change to wayleave valuation so remains at the same level.

The changes to wayleave valuation will not be applied retrospectively, which means that existing contracts will continue to pay the current agreed rental value until they expire and need to be renegotiated. For the 22,200 sites which MNOs currently rent directly from independent landlords Analysys Mason estimate that the average lease length is around 10 years and the renewal dates for these are fairly evenly distributed. Therefore, for the purposes of modelling when impacts will be achieved we have estimated 2,220 leases are renewed each year, that the rental value of these leases is evenly distributed, and that the entire site portfolio will be renewed by the end of a 10 year period. Analysys Mason suggest that WIPs tend to have longer lease agreements with landlords and that any savings would take longer to feed through into licence fees anyway. Therefore, for the 10,700 sites which WIPs rent we have taken a 20 year average lease length and spread the impacts in the same way as for MNO sites.

As a result of profiling the impacts in this way the cost savings to MNOs and WIPs are relatively small in Year 1 at £6.4m of rent. However, they steadily increase over time to reach £74.4m of rent by Year 20. Given the long term nature of these contracts, and the enduring physical infrastructure that they are used to support, we have used a 20 year appraisal period to assess these impacts, generating a **Net Present Value benefit to MNOs and WIPs of £1.02bn (2015 prices)**, which comprises £709m lower rent and potentially up to £307m lower business rates. As explained earlier, these savings only cover mobile telecommunication network providers and therefore underestimate the total benefits as fixed providers will also experience cost savings to some degree.

Business Impact and EANCB

Any rental savings achieved by MNOs and WIPs will be exactly balanced by a loss of income to landowners. The majority of landowners impacted are businesses themselves, ranging from owners of urban buildings with a rooftop aerial to rural farms with a tall mast. However, there will be some landowners who are households or public sector organisations and in these cases any reduction in rent paid by network providers will constitute an overall net benefit to business. In its previous impact assessment DCMS provided an estimate that a very small proportion of wayleave payments were made to households (£0.5m out of £300m). However, given the lack of evidence to support this assertion we have chosen to treat this proportion of wayleaves as small but unknown in this impact assessment. It is likely that the proportion of landowners impacted who are public sector organisations is substantially larger than those that are households. However, there is no centrally held information on this and given again a lack of evidence on the proportion of wayleaves agreed with public sector landlords it is not possible to estimate how big this impact would be. Therefore, our estimate of overall impact on business from changes to rental flows is net zero, with a £709m benefit to network providers and a £709m cost to landlords (20 year NPVs, 2015 prices).

The second element of the saving to MNOs and WIPs is generated by a potential indirect impact on business rates payable on sites which may fall as their rental values fall. This is an indirect reduction in costs paid by MNOs and WIPs and therefore creates an indirect saving to business, estimated at up to £307m (20 year NPV, 2015 prices). However, this impact is indirect and for the purposes of scoring the Equivalent Annual Net Cost to Business (EANCB) the Better Regulation Framework states that all impacts should be calculated on a gross (pre-tax) basis. As the change in business rates is a tax impact it is therefore excluded from the overall EANCB calculation. Therefore the overall EANCB of the change in wayleave valuation is **zero net cost**.

Wider and Long Term Impacts

The analysis above quantifies the direct impact of the change in wayleave valuation on the distribution of rents in the market. However, the ultimate objective of this change is to encourage greater investment in electronic communications infrastructure, improving connectivity and bringing wider economic benefits. This should be achieved partly by lowering the cost of investing in new marginal sites, making expanding networks more attractive, and partly through lowering the cost base of running existing sites, freeing up more money for investment. In a competitive market such as the UK mobile market it would be expected that such cost savings should either lead to increased investment to improve the product offered (e.g. through offering better coverage), or to lower prices to consumers. In the short run, the redistribution of rents is largely a zero sum game, but in the medium term this measure has the potential to deliver far greater overall benefits for business and consumers.

As part of Nordicity’s study into different wayleave regimes they estimated how a fall in wayleave costs could translate into lower electronic communications infrastructure costs, lower consumer prices, and an increase in GDP. They found that wayleaves form a relatively small proportion of the total costs of installing and operating electronic telecommunications networks, meaning that even potentially large reductions in them would result in relatively small reductions in total costs. However, these costs are greater proportionally for mobile networks, where based on a 15 year NPV a 40% fall in wayleave costs would lead to a 3.6% fall in total costs of installing and operating a typical mast. Nordicity translate this into a potential 0.7% fall in consumer prices, leading to a higher take up in broadband services (including high speed mobile data services). Ultimately, through greater penetration of broadband services and higher average speeds they estimate this could generate a GDP impact of £982m in 15 year NPV terms (2012 prices)⁴. These benefits are presented here in summary as an illustration of what could ultimately be achieved through lower wayleave costs, rather than as a central estimate of a predicted impact.

Risks

The key risk associated with a change in wayleave valuation relates to the potential disruption to the market for available sites. If landowners decide that it is no longer lucrative to offer land it is likely to lead to withdrawal of available land from the market. This risk was highlighted by the Law Commission in their report and in both the Nordicity report and Analysys Mason research. If this happens network providers will have little choice but to go through the courts to secure access to sites, which will increase costs and delays (although the new Code does speed up the dispute resolution process to partly counteract this).

However, as explained above, network providers are generally reluctant to be drawn into legal dispute and are likely to pay above the minimum level of rent required, as has been observed in other sectors. Equally, where a landowner has set aside land or property for infrastructure use, there are likely to be limited alternatives available to earn high income from that site. Potential alternatives for greenfield sites could be utility providers, or simply expanding its existing use e.g. agriculture. As such it is possible that a landowner may decide that even though revenue will be reduced under the revised basis of valuation, when compared to the alternatives it may well still be worth initiating or renewing an operator agreement. Therefore, although there may be a transitional period where negotiations are more difficult there should eventually be a new equilibrium reached in the market. Given that the total stock of contracts will take 10 to 20 years to reach renewal and renegotiation this will also avoid such a transition period impacting on the whole market all at once.

Qualitative Summary of Impacts

	Operators	Landowners	Consumers
Negotiating Position	Strengthened	Weakened	

⁴ Full calculations for this impact are set out in “Modelling the Economic Impacts of Alternative Wayleave Regimes”, Nordicity, 2013 <https://www.gov.uk/government/publications/modelling-the-economic-impacts-of-alternative-wayleave-regimes-the-nordicity-report> GDP impacts are derived from empirical studies which show how increases in GDP penetration and average speed lead to higher rates of GDP growth

Economic Impact	Positive	Negative	Positive
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2) Code Rights and the Regulated Relationships - Analysis of Impacts

The changes to the code considered in this section are intended to form the framework for the other more substantial changes described. The Government proposes keeping most provisions of the current Code, but with a series of minor amendments that will clarify existing practice and the relationship with other areas of property law. These amendments include:

- Allowing rights to be granted to wholesale providers as well as service operators;
- That existing rights do not become Code Rights if an operator is later granted Code Operator status;
- That rights need to be conferred in writing; and
- That Code Rights can only be conferred on a Code Operator.

Impacts and Summary

The proposed changes are central elements and definitions of the revised Code, but alone are not expected to have an economic impact significant enough to be counted as such in the summary table below. The proposed recommendation to allow rights to be granted to wholesale providers will ensure consistency in the application of the Code, reflecting the importance of the wholesale business to the wider telecommunications market and provide increased certainty for Code Operators.

More widely, the Law Commission recommended that in the revised Code, property rights of electronic communications apparatus should not change by virtue of the property being attached to land. This will strengthen the legal (as opposed to the negotiating) position of Operators to some extent, as the ownership of important, and costly, infrastructure will remain with the Operator.

Qualitative Summary of Impacts

	Operators	Landowners	Consumers
Negotiating Position	Neutral	Neutral	
Economic Impact	Neutral	Neutral	Neutral

3) Ancillary Rights and Obligations - Analysis of Impacts

Under the current regime, if Code Operators change, the new Operator must renegotiate the wayleave with the landowner. This takes time and resources, and has the potential to involve costs, if landowners charge for the transfer of Code Rights. The Law Commission recommendations on this point seek to enable both the assigning of Code Rights to other Operators and to facilitate the sharing and upgrading of equipment.

The ability for Operators to assign Code Rights will mean that services will not be affected in the event of a merger or acquisition. The Law Commission proposed that Code Operators should not have to pay to assign rights, but also that Operators should inform landowners in writing of any such arrangements they make. Furthermore, after Code Rights have been agreed, the original Code Operator should not be liable for any breaches of the agreement. The Government's reforms will give effect to these recommendations.

The final change in this category, is the new right for Code Operators to share and upgrade apparatus at no cost, provided this does not have an adverse impact (burden or visual) on the landowner. This is intended to give greater freedom and reduce costs to Operators to maintain and upgrade equipment.

Impact on Operators

The changes proposed in this category of the Code will be of benefit to telecommunications operators when mergers and acquisitions take place. The new regime not only allows Code Operators to assign Code Rights to other business entities, it also prevents landowners from being able to charge Code Operators to assign rights to another entity. In order to allow these changes to function effectively and fairly, the new regime also stipulates that once Code Rights have been assigned to another entity, the original Code Operator should not be liable for any breaches of the agreement.

Although it is not possible to quantify the potential benefit to Operators given that industry has not released details of wayleave negotiations, we can qualitatively assess that these changes will strengthen the negotiating position of Operators and potentially reduce costs when a transfer of Code Rights is necessary.

In an ever-changing technological environment, there is a continuous need to upgrade and renew the infrastructure and apparatus on sites. Moreover opportunities may exist for operators to share apparatus to reduce costs, which has increasingly been observed in the mobile market in recent years. Analysys Mason estimate that mobile network operators will carry out nearly 50,000 upgrades to sites over the period 2016 to 2020, largely as part of the current 4G rollout. Although that rollout will largely be complete by the end of that period, the next wave of technical innovation to deliver 5G services will likely follow soon after, creating another round of upgrades across all sites. Around 30% of sites currently require some form of consent for an upgrade to take place, often requiring a payment of additional rent. Many of these upgrades will involve some degree of visual impact, and therefore will not benefit from this particular change to the Code. However, there are instances when changes might involve, for example, an upgrade of fibre cables or other internal changes to apparatus. Given the scale of the total number of upgrades carried out by MNOs there will at least be some that can take advantage of the new right when not imposing any adverse impact (burden or visual) on the landowner.

As a result, this change should strengthen the negotiating position of operators and be of economic benefit if revenues can be raised and / or costs lowered through the upgrading and sharing of apparatus. Moreover, the increased clarity of this area of the Code should contribute to a greater level of certainty for Operators when making investment decisions, thereby helping to facilitate, in conjunction with other clause changes, a greater level of infrastructure investment from Operators.

Impact on Landowners

Although the extent to which landowners extract higher rents by requiring wayleave renegotiations when Code Operators wish to transfer rights or upgrade / share apparatus is unknown, there can be little doubt that their negotiating position will be slightly weakened by these changes. Indeed, because of this, the opportunities to extract higher rents in such situations will also be reduced, which is likely to lead to reduced revenues overall over time.

Impact on Consumers

The changes in this category have the potential to reduce costs for Operators and ease the rollout of upgrades to the network. Although it is difficult to say whether any cost savings might be passed on to consumers, it is likely that faster and more efficient rollout of upgrades will enable consumers to access new and improved services earlier than they would otherwise (for example, through the rollout of 5G services). Therefore, these measures are likely to have a positive impact on consumers.

Qualitative Summary of Impacts

	Operators	Landowners	Consumers
Negotiating Position	Strengthened	Weakened	
Economic Impact	Positive	Negative	Positive

4) The Test for the Imposition of Code Rights - Analysis of Impacts

Where Code Rights cannot be agreed between parties, the current Code makes provision for them to be imposed by the court if the landowner can be compensated for the loss **or** where the landowners loss is outweighed by the public benefit. The Law Commission were concerned that, under existing provisions, consent can be dispensed with if a landowner can be compensated with money. To address this, they recommended revision of the test conditions, so that Code Rights can only be imposed if the landowner can be compensated for the loss **and** their loss is outweighed by the public benefit. The respective impacts are likely to be as follows:

Impact on Operators

This change will weaken the negotiating position of Operators to an extent. However, it is worth noting that this will be partially mitigated by the fact that service provision **and** choice are considered in the public benefit valuation, rather than just one or the other. This increases the likelihood of Operators passing the public benefit test if one proves necessary.

Given that there have only been a handful of cases over the last decade where Code Rights have had to be imposed, the changes in this category are very unlikely to have an economic impact for industry as a whole in terms of higher wayleave rates or access to optimal sites. However, in individual cases, the increased certainty in this area of the Code should speed up the bureaucratic process and may therefore reduce legal costs.

Impact on Landowners:

Following on from the previous paragraph, if a landowner wishes to resist the imposition of Code Rights, then the additional hurdle Operators now have to face, in the form of the public benefit test, would strengthen their negotiating position relative to industry. As with industry, there is not expected to be a positive or negative economic impact for landowners from this set of changes. More than anything, they provide clarity where there was previously uncertainty, which should reduce the level of bureaucracy.

Impact on Consumers

It is theoretically possible that the addition of the public benefit test could reduce the incidence of Code Right impositions. This could therefore reduce the supply of land, which could in turn drive up wayleave rates and the cost of telecommunication services. However, given the very small number of impositions over the last decade, it is highly unlikely that prices, and therefore consumers, would be affected. The economic impact of this category of changes is therefore assessed to be neutral. There is no evidence to suggest otherwise.

Qualitative Summary of Impacts

	Operators	Landowners	Consumers
Negotiating Position	Weakened	Strengthened	
Economic Impact	Neutral	Neutral	Neutral

5. Moving and Removing Electronic Communications Apparatus - Analysis of Impacts

The provision for moving and removing apparatus under the current Code is contained in paragraphs 20 and 21. However, the interaction between these two paragraphs is unclear. Paragraph 20 deals with alteration, defined to include moving, removal and replacement, while paragraph 21 applies where someone is entitled to have apparatus removed. Furthermore, the interaction between the current Code and the Landlord and Tenant Act 1954 is unclear, meaning that parties are often in a position where they can pick and choose the provisions which best suit their purposes. This leads to a lack of certainty for both landowners and Code Operators. The Government's proposed reforms on this point aim to provide a coherent approach to the moving and removing of apparatus, and to clarify the Code's relationship with

the Landlord and Tenant Act. The changes essentially remove paragraph 20, providing clear guidance on which aspects of legislation apply and when. The respective impacts are likely to be as follows:

Impact on Operators

The purpose of this category of changes to the Code is to provide clarity. The primary economic impact of the changes will be the reduced risk of dispute and associated costs. If the number of disputes is lower, so should the use of courts, tribunals or arbitrators. Although it has not been possible to obtain data confirming the current number of cases brought before courts, tribunals or arbitrators – due to lack of clarity in this area – given the interactions that we have had with stakeholders, it is reasonable to assume that dispute costs will be lowered. This should be of some economic benefit to Operators, although not of great significance.

According to the Law Commission, under the current Code, the onus is on the landowner to take proceedings to have apparatus removed. However, landowners often do not have clarity as to the circumstances in which the Code Rights will be brought to an end and the apparatus removed. As a result, the current Code does not encourage Code Operators to resolve the situation definitively (either by obtaining fresh Code Rights or by removing the apparatus) and enables them to take advantage of the uncertainty and lack of resolution to remain on land indefinitely, thereby avoiding wayleave payments for a period of time. Although we do not have any data to give an indication as to how common this practice is or how much Operators gain from it, by clarifying the Code, it is likely any economic benefit they were deriving will no longer be possible. Unfortunately, without monetised data, it is difficult to assess whether the economic benefit derived from lower dispute costs outweighs the cost from not being able to avoid wayleave payments. However, in terms of negotiating position, Operators will be in a weakened position because they will no longer be able to leverage the uncertainty to their advantage.

Impact on Landowners

As with Operators, landowners also stand to benefit economically from the increased clarity of the Code through a reduction in the number of disputes and the associated costs. Moreover, if Operators can no longer take advantage of uncertainty to avoid wayleave payments for a period of time, then landowners might also benefit in terms of increased revenue. Therefore, overall, the changes in this category should clearly be of benefit to landowners, although unfortunately, the data does not exist to provide a monetised assessment. When it comes to negotiating position, landowners should expect their relative position to be strengthened in light of the changes, because Operators can no longer use uncertainty to strengthen their negotiating position. Indeed, in contrast to the current situation, if an Operator does not issue a counter notice to the landowner’s notice of their intention to bring Code Rights to an end, the landowner can remove the equipment when the Code Rights expire.

Impact on Consumers

There are not expected to be any impacts for consumers, given that there is no evidence to suggest consumer choice, service provision or service costs would be affected by the changes in this category.

Qualitative Summary of Impacts

	Operators	Landowners	Consumers
Negotiating Position	Weakened	Strengthened	
Economic Impact	Slight Positive	Positive	Neutral

6. Special Regimes - Analysis of Impacts

Special Regimes for Code purposes differ from the General Regime either because of the involvement of a particular form of land (for example, a railway line) or a particular party (for example, the Crown Estate). For the most part, elements relating to Special Regimes will replicate the existing Code, with any

changes being to areas that have previously caused difficulties or are seldom used and therefore unnecessary.

The only changes that will have some impact from a negotiating balance perspective are when Special Regimes provisions cease to apply to land because of a change in its use. In such instances, Code Rights already granted shall continue to apply to a Code Operator in respect of apparatus already installed there until they are brought to an end by a notice served on the Code Operator by the landowner or person with control of the land, giving at least 12 months notice of the ending of the rights.

Impacts and Summary

Although the changes below are not expected to have an economic impact significant enough to be counted as such in the summary table below, they do provide increased certainty for Operators in the few instances where land which is used wholly or mainly as, or in connection with, “a railway, canal or tramway” (linear obstacles) will cease to be so. In such situations, Code Operators are no longer legally vulnerable to demands by landowners for the immediate removal of apparatus. Indeed, with a 12 months notice period, Operators can now make alternative arrangements without the risk of disruption to service provision. However, it is worth noting that such scenarios are relatively uncommon and are therefore unlikely to be of any significance economically speaking. In summary, Operators will have their negotiating position strengthened, whereas landowners will have their negotiating position weakened by the changes. Consumers are not expected to be affected in any way, given the peripheral nature of the changes.

Qualitative Summary of Impacts

	Operators	Landowners	Consumers
Negotiating Position	Strengthened	Weakened	
Economic Impact	Neutral	Neutral	Neutral

7. Further Rights and Obligations - Analysis of Impacts

Changes in this category relate to Operator rights to install overhead lines across third party land. Under current arrangements, owners and occupiers of affected land have three months to object. The Government’s reform proposal will retain the right to install overhead lines across third party land, but extend the period in which owners and occupiers have the right to object to one year from installation. The proposal also stipulates that notices should be affixed to telecommunications equipment giving details of the right to object and that Operators should be granted the right to require the cutting back of vegetation that overhangs a highway and may interfere with apparatus. In particular, the changes proposed in this category are designed to align the rights of landowners and occupiers of adjacent land with those of landowners. As such, the associated impacts are not expected to be significant.

Impact on Operators

By extending the right of landowners to object to overhead lines crossing their lines from three to twelve months, there is the potential for an increase in objections from third party landowners, since they will have a greater period of time in which to object. This could lead to increased costs associated with dispute resolution and a potential loss in revenue if Operators are unable to operate infrastructure due to a higher number of successful objections. However, it is not expected such instances will be very common.

Naturally this change represents a weakening in the negotiating position of Operators relative to landowners. The proposed change to the Code requiring Operators to affix notices to infrastructure detailing how objections can be made will also involve a cost to Operators, although likely to be minor in scale. There is likely to be some economic benefit to Operators from not having to pay for the cutting back of vegetation when hanging over a highway and interfering with signals. However, given that the

clause change does not include vegetation across **all** land, and just highways, the benefit is expected to be very small and unlikely to outweigh the aforementioned costs.

Impact on Landowners

Third party landowners with overhead lines crossing their land will benefit from having a longer period to object. This will be counted as a strengthening of landowners’ negotiating position, although strictly speaking, third party landowners are not in the same category as landowners who engage in wayleave negotiations and grant Code Rights on Operators. Their negotiating position should also be strengthened through the fixing of notices to infrastructures providing details on how to object. However, this specific clause change can only be considered a strengthening of negotiating position in so far as landowners will now be aware of their right to object, rather than there being an expansion of the **grounds** on which they can object. In terms of economic impact, owners of highways will now have to cut back vegetation that disrupts the signal of apparatus. However, as stated above, this only applies to owners of highways, the vast majority of which are publicly owned, and therefore cannot be considered as a cost to business. In any case, the additional cost of this responsibility is likely to be minor.

Impact on Consumers

There are not expected to be any significant costs or benefits to consumers from the changes, given the very minor economic benefit to Operators from not having to cut back vegetation on highways. Extending landowners right of objection from three months to twelve creates a slight possibility that the rollout of infrastructure could be delayed in a small number of instances, and therefore impact consumers if they do not get access to services as quickly as they might otherwise have been able to. However, such an eventuality is not expected to be very common, nor is the impact likely to be significant given the likelihood of there being other firms with the infrastructure to provide the access required.

Qualitative Summary of Impacts

	Operators	Landowners	Consumers
Negotiating Position	Weakened	Strengthened	
Economic Impact	Slight Negative	Slight Negative	Neutral

8. Dispute Resolution and Procedural Issues - Analysis of Impacts

Under the existing Code, disputes are settled in either: the County Court (installation against landowners wishes; granting of temporary Code Rights; altering and removing apparatus); the Lands Chamber of the Upper Tribunal (compensation) or through arbitration (installation; emergency works; crossing a linear obstacle). Stakeholders argue that is confusing and can lead to different aspects of complex cases being resolved in different ways. Landowners and Code Operators agree that County Courts are ill-equipped to deal with Code disputes, highlighting the disproportionate costs involved, the length of time it takes for decisions to be obtained and the lack of expertise in dealing with Code issues.

To improve this situation the Law Commission proposed an entirely new system of dispute resolution which involves shifting dispute resolution to the Upper Chamber of the Lands Tribunal. However, disputes over linear obstacles will still be solved through arbitration. The Government’s proposed reforms will give effect to these recommendations, and include an additional measure that will allow the Tribunal to grant interim access for a Code Operator to begin the installation of apparatus on land before Code Rights have been formally agreed, or imposed by the Tribunal. The possibility of interim access should help reduce delay in cases where the only issue in dispute is the price (and price, in turn, should be more readily resolved under the clearer definition of market value set out under the Payments for Rights section of this impact assessment). In order to improve clarity and reduce the risk of disputes arising, this proposal also introduces standard forms for giving notices on the part of landowners and Operators.

Impact on Operators

Operators stand to benefit from lower costs through the shifting of dispute resolution from County Courts to the Lands Chamber of the Upper Tribunal. Neither the Ministry of Justice nor stakeholders have been able to provide data detailing the average number or cost of cases brought before dispute resolution bodies per year. However, stakeholders did provide some anecdotal evidence to demonstrate the expense of using County Courts to settle disputes: one stakeholder noted that combined legal costs for a £2,340 rent dispute totalled £53,000. It appears that the time it takes for County Courts to settle disputes is a contributing factor to their high cost. Consultation responses noted that there is currently a lack of certainty around timing and cited instances where cases took over a year to resolve. Despite not being able to monetise the expected benefit to Operators from this change to the Code, we can safely conclude that it will be of economic benefit and can be counted as such.

As stated in the introduction to this section, changes will also be inserted into this section of the Code to allow interim rights to be awarded to Operators prior to dispute settlement, if the only issue is price. This has the potential to be of economic benefit to Operators if it means being able to speed up network deployment and provide services to customers during periods when previously they would not have been able to do so. Once again, a quantitative estimate of this impact is not possible, given the uncertainty surrounding the variables. In terms of negotiating position, it is accepted that the position of Operators will be strengthened by their new ability to have interim rights awarded prior to valuation.

Impact on Landowners

Although landowners stand to gain from the anticipated reduction in dispute resolution costs, they have raised concerns about their weakened negotiating position due to interim access being awarded prior to evaluation. Indeed, there is a risk that landowners might experience a loss of income if Operators drag out negotiations in light of them having access to the land to provide a service to their customers. However, such a risk is merely hypothetical at this point, and certainly cannot be quantified. Whether such an eventuality could outweigh the cost savings from moving dispute resolution to the Upper Tribunal will depend on a range of variables that we cannot currently predict values for. That said, in light of the reduction in dispute costs being more certain than the possibility of interim rights being taken advantage of by Operators, we will count the economic impact of this category of changes as being beneficial to landowners. It is our conclusion that the negotiating position of landowners will be weakened though.

Impact on Consumers

It is not expected that consumers will benefit from any lowering in service costs as a result of the cost savings to Operators. However, it is possible that consumers might benefit from Operators having quicker access to land, through the provision of interim rights, to fix faults and disruptions to service, or upgrade apparatus. Indeed, this may bring benefits to consumers who may otherwise lose revenue through a lack of access to telecommunications services. Although this benefit is likely to be small, we feel it should still be counted as a benefit overall.

	Operators	Landowners	Consumers
Negotiating Position	Strengthened	Weakened	
Economic Impact	Positive	Positive	Positive

Analysis of Impacts: Small and Micro Business Assessment (SaMBA)

Policy position on small and micro businesses:

Telecommunications networks are by their very nature universal, and necessarily so given the need for all members of the public to be able to take advantage of modern technologies such as broadband and mobile phone coverage. The Government’s proposal reduces the barriers to achieving this through the changes to the Code outlined above. The most significant change in this respect is the change to the wayleave valuation regime which will significantly reduce the cost of land rental generally, and eliminate

the issue of ransom payments. Given that a proportion of the land affected by these changes is likely to be owned by small businesses (i.e. farming enterprises) or third sector organisations, it has not been possible to exclude them from the Government proposal. If small and micro businesses were excluded, and the Code changes only applied to larger businesses, the policy would not achieve its aim of facilitating the growth of a universal telecommunications network for all households in the UK. For the network to be universal, all land has to be subject to the Government proposal so that rental costs and a lack of clarity in the Code are not barriers to the building of infrastructure.

Impact on small and micro businesses:

As stated above, it is likely that some small and micro businesses or third sector organisations will be affected by the proposed change in land valuation. This is because some sites are located in rural areas on land owned by small farming enterprises or in urban areas on shop fronts and church steeples. However, a complete catalogue of wayleave payments is not publicly available. Moreover, it is not possible to match maps of telecommunications networks with the economic classification of land owners. Consequently, it is not possible to know the identity, let alone the nature, of the organisations in receipt of wayleave payments. For this reason, it has not proved possible to estimate how small and medium sized businesses will be affected.

Analysis of Impacts: Impact on Reducing Regulation – One-In-Three-Out and Business Impact Target Status

The Government's proposal is considered in scope of One-In-Three-Out and a qualifying provision under the Business Impact Target. Although many of the proposed changes to the Code provide clarity and are therefore less burdensome and less likely to result in disputes between stakeholders, at the core of the proposal is the change to the wayleave valuation regime which essentially moves valuation away from market value principles. As such, the measure has been classed as regulatory, as confirmed in the RPC's opinion on the previous version of this impact assessment⁵.

However, despite the proposal being regulatory in nature it generates benefits to business and therefore should be counted as Zero Net Cost. This is because although the measure largely influences a transfer of rents between two groups of businesses (Operators and landowners), there are some landowners who are either public organisations or households. Therefore, the portion of rents lost by households and public organisations that are gained by Operators will be a benefit to business. In addition, there is a potential indirect benefit to business through an associated reduction in business rates paid on property which is not counted in the EANCB as it is a tax related impact. This position as a regulatory measure with zero net cost was also confirmed in the RPC's opinion on the previous version of this impact assessment.

Overall Summary of Impacts:

This impact assessment has focused on the change to the valuation of wayleaves as this is the central part of the Government's proposal. As stated previously, because this change will have the greatest economic impact, we commissioned two separate specialist independent research pieces by Nordicity and Analysys Mason to ascertain what the impacts will be. Using their findings, we have been able to calculate a 20 year NPV benefit to telecommunications network providers of £1.02bn with a balancing cost of £709m from lower rents and potentially up to £307m through an indirect impact on business rates. Overall the EANCB of the measure is zero as the impact on rates is not included in the EANCB and it has not been possible to accurately estimate a proportion of rents that accrue to non-business entities.

Although the change to the wayleave valuation regime is the most economically impactful component of the proposal and has therefore been the focus of this impact assessment, the other components are still important when it comes to ensuring the new version of the Code is technology neutral, provides greater clarity and certainty, and recognises the variety of stakeholders now operating in the market. Indeed, collectively, they complement the change to the wayleave valuation regime by increasing clarity and

⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/396152/2014-10-30-RPC14-DCMS-2218_Electronic_Communications_Code__1_.pdf

ensuring the Code is fit for the modern telecommunications landscape. As a result, we have considered the impact of these Code changes in a proportionate manner, taking into account the data constraints which we have inherited. This has manifested itself into a qualitative impact assessment which is summarised as follows:

The qualitative assessment has considered the impact of the other Code changes beside wayleaves from the perspective of negotiating position and economic impact. Overall, it is evident from Tables 4 and 5, that from both perspectives, Operators benefit relative to landowners. Given that one of the primary aims of the Government proposal is to reduce the barriers to infrastructure investment, this outcome is expected. If the Code changes weakened the negotiating position of Operators on balance, thereby increasing the costs of infrastructure, the provision of telecommunications services would not increase and the Government would not achieve its aims.

The impacts benefit Operators more than landowners, because they are the focus of the Government proposal. Indeed, because the benefits should manifest themselves in the form of an increase in infrastructure roll-out at the margins through a reduction in infrastructure costs, consumers stand to benefit from greater telecommunications service provision at potentially lower prices. In the long run in a competitive market it would be expected that consumers would actually claim the majority of benefits. This expectation is borne out in Table 5 which shows that the overall impact on consumers should be positive.

Table 4 - Summary of the impacts to the negotiating positions of Operators and landowners:

Category	Operators	Landowners
Wayleaves	Strengthened	Weakened
Regulated Relationships	Neutral	Neutral
Ancillary Rights	Strengthened	Weakened
Imposition of Code Rights	Weakened	Strengthened
Moving and Removing	Weakened	Strengthened
Dispute Resolution	Strengthened	Weakened
Further Rights	Weakened	Strengthened
Special Regimes	Strengthened	Weakened
Overall	Strengthened	Weakened

Table 5 - Summary of the economic impacts to Operators, landowners and consumers:

Category	Operators	Landowners	Consumers
Wayleaves	Positive	Negative	Positive
Regulated Relationships	Neutral	Neutral	Neutral
Ancillary Rights	Slight Positive	Slight Negative	Positive
Imposition of Code Rights	Neutral	Neutral	Neutral
Moving and Removing	Slight Positive	Positive	Neutral

Dispute Resolution	Positive	Positive	Positive
Further Rights	Slight Negative	Slight Negative	Neutral
Special Regimes	Neutral	Neutral	Neutral
Overall	Positive	Negative	Positive

Conclusion:

This impact assessment has focused on the valuation of wayleaves. The effective and accurate valuation of wayleaves is a central part of the Code – both its existing formulation and the revised version – and has the greatest economic impact of the legislation. This definition affects the financial interests of both Code Operators and landowners, and Government will work to ensure that the revised Code provides better and clearer guidance.

More widely since the Code was last amended in 2003, the telecommunications market landscape has changed considerably – including the quantity, type and variety of stakeholders that are now operating in the market. There is a clear need for a revised Code to reflect these changes, and to ensure that new forms of relationships that have arisen since the enacting of the original Code can be regulated.

In addition, the central and wider technology found within the market has evolved dramatically not only since the original Code as set out in 1984 but also since 2003. In order to ensure that the Code has continued relevance, and can best support stakeholders, the revised Code will be technology-neutral – thereby supporting the market rather than any particular technology.

The Law Commission and stakeholders from all sectors recognise the necessity of the Code, and the importance of developing a Code that has greater clarity, and reflects these new requirements and developments. In addition, an effective Code is required to ensure the provision of a range of high quality telecommunications services across the UK, which has associated benefits for the economy as a whole.