

Telecommunications Security Bill 2020: telecoms security requirements

Department for Digital, Culture, Media and Sport

RPC rating: fit for purpose

Description of proposal

The Telecoms Security Bill (the Bill) is designed to strengthen the existing security duty on operators of public electronic communications networks and services with a new overarching security duty and sub-duties. The new measure would ensure that telecommunications providers apply appropriate and proportionate measures to prevent, remove or manage the risks to the security of networks and services. It is proposed that secondary legislation would enact detailed sub-duties and requirements, which will have accompanying impact assessments (IAs) where required. The Bill empowers the relevant Secretary of State to issue one or more codes of practice setting out detailed security measures for different groups of operators, which they can take to demonstrate compliance with their duties under the Bill and secondary legislation. Operators would be expected to demonstrate compliance with the security duty by complying with the codes of practice.

The Bill would also introduce new national security powers relating to high risk vendors, which are considered in a separate IA. This opinion does not address that IA, which has been opined on separately.

Impacts of proposal

The Department has explained that most of the Bill's impacts cannot be appraised accurately at this stage because there is significant uncertainty regarding the content of secondary legislation and the codes of practice. The Department has also cited "*...purdah restrictions around the general election and the more recent Covid-19 pressure on operator resourcing...*" as reasons for being unable to engage effectively with industry and stakeholders at this stage to obtain evidence to estimate these impacts.

However, the Department does not expect the new overarching security duty to have a significant impact on business, because any operator complying with the Communications Act 2003 is likely to be compliant with the overarching security

duty. The Department intends to issue more detailed IAs, including thorough descriptions of business impacts, at the consultation and implementation stages for the secondary legislation and the codes of practice.

The proposals would have an impact on the whole telecommunications sector, including providers of both public electronic communications networks and public electronic communications services. While all firms in the sector would be required to comply, the measures in the codes of practice will differentiate between the size of firms, with Tier 1 being the largest firms and Tier 3 being the smallest. The Department has been unable to quantify the overall costs to businesses resulting from the Bill, but it has estimated the familiarisation costs to businesses and the costs of enforcement.

The monetised costs of familiarisation for businesses are estimated at a one-off cost of £0.1-0.2 million per Tier 1 operator, of which there are between 10 and 20, and £1-2 million in total for all operators in other Tiers. The Department has also estimated oversight and enforcement costs for itself and Ofcom; at circa £30m-50m.

The expected benefits of the proposals include reducing security incidents, such as data breaches and cyber-attacks, and unlocking the potential uses of 5G infrastructure that require highly secure and reliable networks. The Department has not monetised these benefits because it would have had to make assumptions regarding the proportion of any increase in secure 5G usage attributable to the Bill. And did not have evidence to justify that assumption.

Quality of submission

The IA sets out clearly the rationale for the proposals at the primary legislation stage. The RPC recognises the uncertainty in assessing the costs and benefits of this policy due to the very unusual circumstances in recent months and therefore accepts the current IA as fit for purpose at this stage.

The RPC welcomes the comment by the Department that it does not expect the overarching security duty in the Bill alone to have a significant impact on business but greater quantification of cost estimation would have improved the current IA significantly. The RPC notes however the proposal to bring forward secondary legislation and the codes of practice, with further IAs. We strongly recommend that the Department consult with all stakeholders to obtain evidence to support any subsequent related IAs which must contain a considerably greater degree of quantification and monetisation than presented in the current IA.

Small and micro businesses assessment (SaMBA)

The Department has, for a final stage IA supporting primary legislation, provided a high-quality and detailed SaMBA. More than 4,500 small and micro business (SMBs) would fall within scope of the Bill. The Department has considered exempting SMBs, as it recognises that they will be affected disproportionately by some of the costs, such as familiarisation costs. The Department explains that exclusion is deemed to be inappropriate as customers of telecoms operators require appropriate levels of security to apply to their communications services, irrespective of the size of the company providing the communications network and/or services. As such, the Government propose to mitigate the impact of the Bill on SMBs by applying the tiered approach to the compliance standards in the codes of practice. The Department intends to undertake public consultation to determine which operators are in scope of each Tier. The RPC welcomes this consideration and considers the SaMBA to be sufficient at this stage.

Trade impacts

While the Department does not consider the proposals will have significant impact on trade, it has been unable to estimate the proportion of domestic versus foreign firms that might have a competitive advantage through already meeting the proposed new requirements. The IA recognises that the proposed legislation may have an impact on investment flows, depending on how businesses apply the codes of practice.

Competition impacts

The RPC commends the Department's comprehensive approach to considering the competition impact of the policy. The Department considers both horizontal and vertical competition effects and concludes that the Bill would not have a negative impact on competition in the sector. The RPC agrees with this assessment overall. The IA could, however, include more detail about whether the proposals would increase the level of sunk costs. This could have an impact on the ability of new entrants to the market.

Other areas for improvement

1. **Unquantified costs.** The Department could have improved the IA significantly by quantifying more of the costs, including the expected costs from complying with the duties which have already been decided upon, for example through increased procurement, administration, vendor, and data handling costs, amongst others. The RPC has received assurances from the Department that it will quantify fully those costs in the IA(s) accompanying related secondary legislation.

2. **Scale of business impacts.** While the Department has considered the number and size of firms affected by the Bill, it has been unable to detail the likely scale of impacts stemming from it as operators do not yet have implementation cost estimates. The Department should engage with operators of varying sizes (not just the largest operators) to help them estimate costs, so it can better identify and describe explicitly the scale of impacts in the IAs for secondary legislation.
3. **Familiarisation costs.** The Department has used the wage cost of IT specialists as a proxy for the familiarisation costs. The Department has assumed that a Tier 1 operator would require 200 work-hours for familiarisation, and other firms 100 work-hours. It could improve the IA by giving greater consideration of the types of workers involved. For example, some firms, particularly Tier 1 firms, may also incur familiarisation costs for a legal or compliance specialist or other specialist category of worker and senior management. The Department should also provide evidence for the assumption the number of hours firms will require to familiarise themselves with the policy.
4. **Enforcement costs.** While the Department has explained and quantified the costs of enforcement changes to itself and Ofcom, the IA would be improved through more detail on how the changes to the enforcement regime will impact businesses.
5. **Clarity and ease of reading.** The readability of the IA could be improved through the use of either of fewer acronyms or the inclusion of a comprehensive glossary. E.g. 'SA' is not immediately apparent as 'standalone', and FTTP and CNI are not explained.

Departmental assessment

Classification	Qualifying regulatory provision
Equivalent annual net direct cost to business (EANDCB)	Unquantified
Business net present value	Unquantified
Overall net present value	Unquantified

RPC assessment

Classification	Under the framework rules for the 2017-19 parliament: qualifying regulatory provision To be determined once the framework rules for the current parliament are set ¹ .
Small and micro business assessment	Sufficient

Regulatory Policy Committee

A committee member did not participate in the scrutiny of this case to avoid a conflict of interest

¹ The Government are yet to set the better regulation framework for the current parliament. This includes the setting of a business impact target (BIT), its scope and metric, and the appointment of an independent verification body. The RPC is, therefore, unable to confirm the BIT classification, or validate the estimated business impact figures, for any regulatory proposal at present.