 Regulatory Policy Committee		Opinion	
Impact Assessment (IA)		Electronic Communications Code Reform	
Lead Department/Agency		Department for Culture, Media and Sports	
Stage		Final	
IA number		DCMS075	
Origin		Domestic	
Expected date of implementation		15 October 2015 (SNR 10)	
Date submitted to RPC		23 September 2014	
RPC Opinion date and reference		30 October 2014	RPC14-DCMS-2218
Departmental Assessment			
One-in, Two-out status		Zero Net Cost	
Estimate of the Equivalent Annual Net Cost to Business (EANCB)		N/A	
RPC Overall Assessment		GREEN	
RPC comments			
<p>The IA is fit for purpose. The Department’s IA is based on limited data but the assessment of impacts appears to be proportionate. On the basis of the evidence available, the RPC can confirm the estimated equivalent saving to business of £0.02 million each year. The proposal revises the existing Electronic Communications Code, particularly by determining the standard for wayleave valuation. As a regulatory measure that is beneficial to business, it scores as ‘Zero Net Cost’ in terms of the ‘One-in, Two-out’ account.</p>			
Background (extracts from IA)			
What is the problem under consideration? Why is government intervention necessary?			
<p>“The Electronic Communications Code regulates the legal relationships between landowners and network operators to support the rollout and maintenance of communication technology infrastructure. The current Code is widely agreed to be in need of reform and government intervention is required to develop a Code that is fit-for-purpose. In 2013, the Law Commission completed a detailed consultation and set out recommendations to Government for a revised Code.</p>			
<p>“The current Code is complex and lacks clarity on important issues, causing misunderstanding and associated difficulty in reaching agreements. The Code is also out of date with current technology and the evolution of the telecommunications market, which has evolved considerably since the initial legislation was enacted. Thirdly, a revised Code is required to regulate problems with the wayleave valuation market (the value of the right to maintain infrastructure on private land) and the ability of industry to maintain and upgrade infrastructure sites. There is also a need to clarify and regulate the roles and responsibilities of operators and landowners, as well as the relationship between them. Finally, the dispute resolution process under the current Code is seen by stakeholders to be</p>			

ineffective and requiring improvement.”

What are the policy objectives and the intended effects?

“The overarching policy objective of this work is to reform the Code to make it fit-for-purpose as a framework that supports the rollout of modern communications technology. By implementing the Law Commission’s recommendations, we seek to strike a balance between the contrasting interests of Code operators and landowners, and also the interests of the public who require access to a rapidly evolving communications service. Broadband and mobile networks contribute significantly to UK economic growth and their success is premised on infrastructure provision. Reforming the Code to work better for landowners and network operators will ensure that the agreements that enable this infrastructure can be more effectively facilitated, achieved and regulated.”

Comments on the robustness of the OITO assessment

The IA says that this is a regulatory proposal that is net beneficial to business (an ‘IN’ with ‘Zero Net Cost’). The proposal requires the use of the RICS Red Book as the standard for wayleave valuation. This restricts the options for wayleave valuation, to reduce the risk of ‘ransom pricing’. The RPC, therefore, confirms the measure as regulatory. The Department’s OITO assessment is consistent with the current Better Regulation Framework Manual (paragraph 1.9.12) and, based on the evidence presented, provides a reasonable assessment of the likely impacts.

Comments on the robustness of the Small & Micro Business Assessment (SaMBA)

The proposals increase the scope of regulation on business. A SaMBA is, therefore, required.

The SaMBA is sufficient. Wayleave payments are transfers from network operators to landowners, some of whom might be small agricultural businesses. The Department cannot provide estimates for the number of small businesses currently in receipt of wayleave payments because of lack of data. However, the Department provides a fuller description of the impacts on small businesses than that provided in the consultation stage IA. The Department argues that excluding small businesses is not appropriate because it would undermine the policy aims. Exempting small businesses from having to use the RICS Red Book as the standard for wayleave valuation would fail to remove the possibility of ransom pricing and, therefore, delay rollout of communication technology infrastructure.

Quality of the analysis and evidence presented in the IA

When a telecommunications company or other utility seeks to pass over, on or under privately owned land, it must obtain a right to do so from the land owner. These rights or arrangements are called wayleaves. The Electronic Communications Code (ECC) enables this. However, it is no longer fit for purpose.

The Department proposes to change the current Code. The proposed changes are in response to the Law Commission's recommendations, which followed a full consultation with stakeholders. The changes fall into two broad categories:

- a change in the method for wayleave valuation. The Law Commission's proposal is that this should be based on valuation principles laid down in the Royal Institution of Chartered Surveyors (RICS) Red Book;
- other changes to clarify the Code and improve the dispute resolution process.

Assessment of Costs and Benefits

Wayleave payments. The IA explains that the majority of wayleave payments are lease payments made to landowners by network operators or wholesale site providers. The Department estimates that such payments were £300 million in 2012. The Department expects these payments to fall by 10% as a result of the proposal for wayleave valuation. This is based on independent research by Nordicity, a specialist research consultancy. This will be a benefit to network operators, matched by reduced incomes for the landowners concerned. Only in the very small number of cases, where a landowner is a private individual, is there a net benefit to business. On the basis of the evidence available, the RPC can confirm the estimated equivalent saving to business of £0.02 million each year.

Other changes to the Code. These changes clarify the rights and responsibilities of operators and landowners. The result is either an income transfer between landowners and network operators or a positive result for both because of reduced costs associated with disputes. The Department has only provided a qualitative assessment of the changes related to disputes because of a lack of data. Given that the changes are intended to support the main wayleave payments reform, for which the costs and benefits are quantified, the Department's analysis is proportionate.

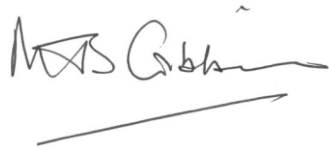
Wider Economic Impacts

The Department's IA also includes some analysis of the potential wider economic impacts of the proposal. Although not affecting the equivalent annual net cost to business, the Committee has a couple of comments on this.

The IA suggests that the Department has spent a considerable amount of time and effort identifying benefits of the proposals to the wider economy. These benefits are mainly greater broadband penetration and connection speeds and the consequent economic gains. However, the Department has not estimated the resulting NPV. The Department could improve the IA by providing an estimate of the NPV, or, if this is not possible, explaining why it cannot provide the NPV.

In the section 'impact on consumer prices' (pages 13-14), the analysis as presented is unclear. The Department should explain more clearly how it and Nordicity arrived at their estimate for the increase in broadband provision. It is not obvious that the change in the consumer price associated with the increase of broadband subscribers (paragraph 36) has been correctly calculated.

Signed

A handwritten signature in black ink, appearing to read "Michael Gibbons", with a long horizontal flourish extending to the right.

Michael Gibbons, Chairman