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## **Repeal of Section 73 of the Copyright, Design and Patents Act**

**Department for Culture, Media and Sport**

**RPC rating: validated**

### **Description of proposal**

Section 73 of the Copyright, Design and Patents Act 1988 specifies that the re-transmission of public service broadcast (PSB) content via cable will not be considered to be an infringement of copyright, where the re-transmission takes place in an area where the services are also otherwise available (such as through a standard digital broadcast). The Department proposes to repeal Section 73.

The transmission and broadcast of PSB content is underpinned by 'must offer' and 'must carry' provisions. This means that PSBs must make their core content available ('must offer') to electronic communications networks and these networks 'must carry' that content. On this basis, the Department does not expect there to be any changes to the existing contractual relationship between PSBs and cable providers.

### **Impacts of proposal**

The IA does not provide any detailed information on the number of businesses affected. The Department's assessment, however, is that there are unlikely to be any direct costs or benefits to business due to the ongoing 'must offer' and 'must carry' provisions. As these provisions will remain in place, the Department does not expect the repeal of Section 73 to have any material effect on the contractual negotiations between PSBs and cable providers.

The RPC verifies the estimated equivalent annual net direct cost to business (EANDCB) of zero. This will be a qualifying regulatory provision that will score under the business impact target.

### **Quality of submission**

While the IA appears sufficient to support the validation of the EANDCB, there are a number of concerns and issues that the Department should address prior to publication.

### Stakeholder views

The RPC notes the intention of the Intellectual Property Office to undertake a separate consultation on transitional arrangements and of the Department to provide an enactment assessment if the consultation identifies any costs. The RPC expects that the subsequent IA will be submitted for scrutiny, even if no new costs are identified, to confirm that the zero EANDCB is still robust.

While the estimated EANDCB in the IA appears reasonable, the IA should explain how the assessment has been tested with stakeholders.

### Number of affected businesses

The IA currently states that, for cable providers, there is “*one big and a few very small local providers*”, but does not provide any information on the numbers. The IA should provide more information regarding the number of businesses affected.

### Rationale for intervention

The IA states, in several places, that the policy rationale for Section 73 ‘*has now passed*’, but does not justify this statement. The IA should also provide a concise assessment of the rationale for repealing Section 73. At present, the IA does not justify sufficiently the relationship between the statements that the Department expects:

- “*no impact of the repeal of s. 73 beyond removing an outdated and unnecessary piece of legislation*”; and
- the potential for “*the repeal of s. 73 would effectively create a new market between underlying rights holders and PSBs*”.

The previous consultation, albeit on a package that included the removal of “must offer” and “must carry” provisions, suggested that there could be additional costs to business as a result of the removal of Section 73; the IA should, therefore, do more to explain why these costs would no longer occur.

### **Departmental assessment**

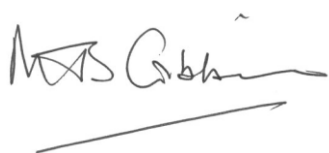
Classification	Qualifying regulatory provision (neutral)
Equivalent annual net cost to business (EANDCB)	Zero
Business net present value	Zero

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Net present value	Zero
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**RPC assessment**

Classification	Qualifying regulatory provision (neutral)
EANDCB – RPC validated <sup>1</sup>	Zero
Business Impact Target (BIT) Score <sup>1</sup>	Zero



**Michael Gibbons CBE**, Chairman

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<sup>1</sup> For reporting purposes, the RPC validates EANDCB and BIT score figures to the nearest £100,000.