



Department for
Digital, Culture,
Media & Sport

Implementing the European Electronic Communications Code

Consultation

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Department for Digital, Culture, Media and Sport

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Foreword from Minister for Digital & Creative Industries



Electronic communications underpin much of our daily lives. It is becoming hard to remember a time when we did not rely on digital connectivity to connect with friends, apply for jobs and make everyday purchases. Consumers expect the digital infrastructure and electronic communications services that provide this connectivity to keep up with demand and new

technologies, and for regulation to support a competitive choice of services.

A modern and effective regulatory framework is a key component of a functioning UK electronic communications market. A strong UK market is important; electronic communications are an essential part of economic growth and UK competitiveness, contributing £32.6bn to the UK economy in 2017¹. The Government recognises how critical electronic communications are to the future of the economy. Last year, the Future Telecoms Infrastructure Review set out the Government's objectives for the sector, including ambitious new targets for deployment of full fibre and 5G networks². Updating the UK's regulatory framework is a key part of our national strategy to create the conditions to secure the investment to meet these targets.

The European Electronic Communications Code Directive (EECC) updates the regulatory framework to reflect evolving technologies and developments in the way people communicate. The EECC introduces a renewed focus on increasing regulatory stability, promoting investment in fibre networks, making efficient use of spectrum for 5G and facilitating consumer engagement. We anticipate an EU-exit implementation period until 31 December 2020, which means the UK is obliged to transpose EU directives. It is therefore important that we implement the EECC into UK law by 21 December 2020, in order to further the roll-out of full fibre and 5G networks in this country.

We value your opinion. Please read this document and answer the questions asked so that our implementation of the EECC into UK law is as well-informed as possible.

Margot James

Minister for Digital and Creative Industries

¹ DCMS (2019), DCMS Sectors Economic Estimates 2017 (provisional): Regional Gross Value Added (GVA). Available online at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/780605/DCMS_Sectors_Economic_Estimates_2017_Regional_GVA.pdf

² Link

Note on EU Exit

The terms of the UK's withdrawal from the EU are currently ongoing. However, we expect that there will be a post-Exit implementation period until at least 31 December 2020. During that period, the UK remains subject to the rights and obligations of EU membership; this includes the full transposition of EU directives in domestic law.

The EECC will be transposed by secondary legislation under the anticipated EU (Withdrawal Agreement) Act 2019.

At the end of the implementation period, the body of UK law will be amended to correct deficiencies arising from EU Exit. At that point, further legislation will be needed to remove any provisions that are inoperable or redundant given that the UK will no longer have any EU rights and obligations in respect of telecoms. This consultation only concerns the transposition of the EECC; we are not currently inviting responses relating to any changes in law after the end of the implementation period.



Introduction

Consultation objective

This consultation document sets out the Government's proposed approach to implementation of the European Electronic Communications Code Directive (referred to as the EECC) and seeks stakeholders' views.

The full EECC can be found [here](#)³. The EECC was published in the Official Journal of the EU on 17 December 2018, and Member States have until 21 December 2020 to implement the provisions in domestic law. We anticipate that the UK must adhere to this transposition deadline under the terms of any future EU Withdrawal Agreement.

The EECC is a revision of the current EU regulatory framework for electronic communications. Many of the provisions already exist in UK law. This document describes the most significant changes that are needed to implement the parts of the EECC not already contained in domestic legislation, but it does not reference the more minor changes we will need to make. Where more substantive material changes are required for implementation, we have set out those changes, including preferred options for implementation where appropriate. Note that an assessment of the impacts of the different implementation options on the UK economy and businesses has been published alongside this consultation document.

We look forward to receiving your comments and responses to our questions, which are summarised on page 48, by Tuesday 10 September 2019.

Overview of the EECC

The EU's regulatory framework for electronic communications underpins the regulation of the UK's telecoms sector. The core objectives of the regulatory framework are to:

- drive investment in very high capacity networks and services through sustainable competition,
- support efficient and effective use of radio spectrum frequencies,
- maintain the security of networks and services, and
- provide a high level of consumer protection.

³ Official Journal of the European Union, Volume 61 (December 2018), available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2018:321:FULL&from=EN>

The framework also sets out the objectives and functions of the 'national regulatory authority' (NRA) - the UK's NRA is Ofcom.

The existing EU Framework was agreed in 2002 and revised in 2009. Much of the Framework was transposed through the Communications Act 2003 and the Wireless Telegraphy Act 2006, which will both be amended to incorporate the changes made by the EECC. The EU regulatory framework consisted of five Directives:

- [the Framework Directive \(2002/21/EC\)](#)⁴;
- [the Access Directive \(2002/19/EC\)](#)⁵;
- [the Authorisation Directive \(2002/20/EC\)](#)⁶;
- [the Universal Service Directive \(2002/22/EC\)](#)⁷; and
- [the ePrivacy Directive \(2002/58/EC\)](#)⁸.

The EECC recast and consolidated these Directives (with the exception of the ePrivacy Directive, which now sits separately from the telecoms framework). The EECC broadly aligns with the principles of the four Directives but makes changes to accommodate new technologies and consumer behaviour. The EECC recasts objectives and regulatory tools of the current framework to place a stronger emphasis on incentivising investment in very high-capacity broadband networks; promoting more efficient spectrum management to support 5G rollout; and ensuring effective consumer protection and engagement. The EECC also widens the definition of electronic communications service, by bringing number-independent interpersonal communication services (NIICS) - including internet phone and messaging services - into scope for the first time of some elements of telecoms regulation.

The regulatory framework also includes the new [Regulation establishing the Body of European Regulators for Electronic Communications \(BEREC\) \(Regulation \(EU\) 2018/1971\)](#)⁹, which was enacted alongside the EECC and replaced the [2009 BEREC Regulation \(1211/2009/EC\)](#)¹⁰. The

⁴ Official Journal of the European Union, Volume 45 (April 2002), available at <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32002L0021>

⁵ Official Journal of the European Union, Volume 45 (April 2002), available at <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32002L0019>

⁶ Official Journal of the European Union, Volume 45 (April 2002), available at <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32002L0020>

⁷ Official Journal of the European Union, Volume 45 (April 2002), available at <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32002L0022>

⁸ Official Journal of the European Union, Volume 45 (July 2002), available at <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32002L0058>

⁹ Official Journal of the European Union, Volume 61 (December 2018), available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2018.321.01.0001.01.ENG

¹⁰ Official Journal of the European Union, Volume 52 (December 2009), available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32009R1211>

national regulatory authorities of all the EU Member States are members of BEREC, which advises the EU institutions on consistent application of electronic communications regulation across the EU. As it is directly applicable in Member States' domestic law, this consultation does not address the BEREC Regulation. However, it is important to note that the UK will continue to be subject to the Regulation for the duration of the Implementation Period.

General approach to implementing the EECC

Implementation of the EECC is mandatory and, for the most part, we have no discretion over whether to implement. The powers and duties in the EECC take a number of different forms, and they may appear as a discretionary power for, or an obligation on the Government, NRA or another competent authority.

A competent authority is a person or organisation that has the capacity and legally delegated authority to perform the functions assigned to it. In many places, for example spectrum policy, the EECC updates the current framework to give Member States the flexibility of assigning certain functions to an authority other than the NRA.

The Government's guidance on transposition of EU directives into UK law can be found in full [here](#)¹¹. In accordance with this guidance, the Government is approaching implementation of the EECC with the following three objectives:

1. meeting the minimum requirements of the Directive;
2. minimising additional costs to business; and
3. ensuring updates to the UK regulatory framework contribute to the Government's digital connectivity ambitions where there is discretion and sufficient justification to do so.

The Government proposes to implement the EECC with as little impact as possible on businesses, whilst ensuring that they and consumers can make the most of the opportunities the EECC provides. In light of this, it is the Government's policy to adopt a 'copy out' approach to the transposition of EU directives wherever possible and appropriate. This can be done in domestic legislation by cross-reference to the EECC or by using the language of the EECC with modifications only where necessary in order to ensure consistency with the minimum requirements of the directive. In practice, many of the articles in the EECC do not lend themselves to 'copy out' implementation because they are minor and technical updates to existing

¹¹ HM Government (February 2018), TRANSPOSITION GUIDANCE How to implement European Directives effectively, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/682752/eu-transposition-guidance.pdf

provisions. In some circumstances, it is possible to retain the status quo and make no changes to UK legislation. Where implementation is required, whilst a transposition option that implements the minimum requirements of the directive into UK legislation is standard practice, the Government may use an alternative approach to the transposition of certain provisions in a way that is tailored to UK markets. This approach would be taken where there is sufficient justification and evidence for doing so; for example, where it would contribute to the Government's objectives for digital connectivity, as set out the FTIR and draft SSP, and summarised in the next chapter. This document explores those options and will inform our final transposition choices. Where there are options available to us in implementation, this document details the provision, sets out our options and seeks your views. Those provisions fall within the following categories of article:

- access and investment incentives;
- radio spectrum;
- consumer protection; and
- universal service obligations

Questions for consultation are set out under the relevant sub-headings in boxes. There are a number of elements in the EECC on which we are not seeking views. As an example, this includes Article 113, which requires Member States to mandate the installation of digital radio connectivity in all new car vehicles. We will implement this requirement as part of the transposition of the EECC. In the longer term, we will consider extending this requirement to commercial vehicles and to mandate for the installation of digital connectivity in all domestic radios. Other articles that are likely to have a discernible effect on businesses or consumers are also referenced in this document for your information.

A small number of EECC provisions concern matters that are partly or wholly outside the remit or responsibility of the Department for Digital, Culture, Media and Sport. With regard to article 57 of the EECC ('Deployment and operation of small-area wireless access points'), we are currently working with the planning departments within Government and the Devolved Administrations to identify the most efficient way of implementing the provision.

Additionally, implementation of Article 110 ('Public warning system') will involve input from a number of organisations that have responsibility for warning and informing the public. The article sets out that, by June 2022, when public warnings are transmitted in the event of imminent or developing major emergencies and disasters, those warnings must be transmitted by mobile

networks. The Cabinet Office is conducting a review to establish whether there is a case for such a national mobile warning alert scheme, in addition to the systems already in place¹².

¹² The Civil Contingencies Act 2004 already places a duty on Responders to maintain arrangements to warn the public, and to provide information and advice if an emergency is likely to occur or has occurred. This duty is discharged through a range of channels including telephony services, social and broadcast media platforms – one example being flood warnings, which are issued over a range of channels.

Government's ambitions for digital connectivity

The UK played an active part in EEC negotiations, and we are satisfied that the directive supports our ambitions to improve connectivity. Implementation of the EEC will make a key contribution to the Government's targets and recommendations in a number of ways, in particular by creating a more stable regulatory framework that incentivises competitive network investment. Implementation of the spectrum provisions will also support 5G deployment by facilitating the release of additional spectrum and supporting spectrum sharing, and may also support the extension of mobile coverage in rural areas. The end-user rights provisions will strengthen existing consumer protections, including during the switchover process from copper to full fibre networks.

Fixed networks

In July 2018, the Government published ambitious new objectives for digital connectivity in the Future Telecoms Infrastructure Review (FTIR)¹³. The FTIR sets out the market and policy conditions needed to ensure that the UK reaches its connectivity objectives of 15 million premises connected to full-fibre by 2025 with nationwide coverage by 2033, and the majority of the population to have 5G coverage by 2027. The Government's ambition is to be a world leader in 5G technology.

The FTIR's analysis concluded that the most effective way to realise these ambitions is through encouraging market competition and commercial investment where-ever possible, and intervening only where necessary to address competition concerns, market failures and safeguard consumer interests. The FTIR estimated that, under the right conditions, commercial deployment of gigabit-capable networks is possible in the large majority of the UK. In order to promote commercial investment in these networks, the FTIR suggested that we need to:

- make the cost of deploying networks as low as possible;
- encourage stable and long-term regulation that incentivises competitive network investment and resolves uncertainties where necessary;
- adopt an 'outside-in' approach, whereby government support for deployment ensures that gigabit-capable connectivity in the hardest-to-reach areas of the UK (the c.10% of premises in which there is not likely to be any commercial investment) is achieved at the same time as in areas that can support commercial deployment;

¹³ DCMS (2018). Future Telecoms Infrastructure Review, available online at: <https://www.gov.uk/government/publications/future-telecoms-infrastructure-review>

- facilitate switch-over from legacy copper to full fibre networks; and
- remove obstacles to greater convergence between fixed and mobile networks.

Mobile networks

The Government wants the UK to have high quality mobile coverage where people live, work and travel. We are committed to extending geographic mobile coverage to 95% of the UK, as well as providing a mobile signal on all major roads. While there have been significant improvements in coverage overall, coverage levels are poorer in rural areas (in some cases significantly poorer), and some transport modes like road also face particular challenges.

Alongside improving 4G coverage to meet existing mobile demand, the Government wants the UK to be a world leader in 5G, and for the majority of the population to have 5G coverage by 2027. 5G is expected to deliver faster and better mobile broadband services to customers and businesses, and to enable new services for industry sectors, including manufacturing, logistics and immersive technologies.

5G creates an opportunity for market expansion - in the type of wireless services available and in the number of providers of networks and services. The Government's view is that there would be strategic advantages in a model that maintains the benefits of network competition between mobile network operators, while enabling new solutions to connectivity challenges, including in-building coverage, rural coverage and industrial applications.

The Government has identified four strategic priorities to help create the conditions for a competitive mobile market that supports investment and innovation in 5G:

- making it easier and cheaper to deploy mobile infrastructure, including the implementation of the wide-ranging Electronic Communications Code (ECC) on site access, and consideration of further planning reforms in relation to England;
- supporting the growth of infrastructure models (including 'neutral host' wholesale providers) that promote competition and investment in network densification and extension to rural areas;
- funding new 5G use-cases through the Government's £200 million 5G Testbeds and Trials Programme; and
- promoting new 5G services from existing and new players, through the release of additional spectrum and more flexible, shared spectrum models.

The FTIR noted specific provisions in the EECC that would directly contribute to the delivery of the Government's connectivity targets. For example, provisions in the EECC will improve

regulatory stability by reducing the frequency of market reviews and could improve transparency and facilitate investment in parts of the country that, while commercially viable for at least one operator, may not benefit from investment due to 'hold-up' problems. In the FTIR the Government committed to keep planning regulation under review to further support deployment of digital infrastructure. As announced on 12 June 2019, the Government will consult on proposals to simplify planning processes in England to support the rollout of 5G and further improve mobile coverage in rural areas.

The Government's draft Statement of Strategic Priorities (SSP) for telecoms, spectrum and postal services¹⁴ reiterates the regulatory outcomes the Government set out in the FTIR as necessary to create a pro-competitive and pro-investment environment for gigabit-capable fixed broadband and 5G networks. The Government has consulted on the draft SSP and is now considering the responses received. The next stage is for the SSP to be laid before Parliament. After 40 days, excluding recesses, it can be formally designated by the Secretary of State unless either House of Parliament resolves not to approve it. Once the SSP is designated, Ofcom must have regard to it when exercising its regulatory functions.

As already noted, this consultation explores the case for departing from the usual transposition policy on a small number of specific provisions in the EECC, where the Government has discretion and we believe there is justification for doing so, to ensure these provisions contribute as far as is possible to the Government's connectivity ambitions in the FTIR and the draft SSP.

¹⁴ <https://www.gov.uk/government/consultations/public-consultation-on-the-statement-of-strategic-priorities>

Implementing the EECC

Access and investment incentives

Access provisions form a key part of the regulatory framework. These provisions govern when and how providers are required to make available their facilities or services - such as physical infrastructure or other network elements - to other providers. Ofcom can impose regulatory conditions relating to access on a specific provider where that provider has significant market power (SMP, i.e. a position equivalent to dominance in any given telecoms market¹⁵). Under certain circumstances, Ofcom can also impose access conditions where there is not SMP. The UK's access regime is primarily contained in sections 73 to 91 of the Communications Act 2003.

Both the access provisions and the EECC's revised general objectives strengthen pro-competitive powers in the regulatory framework and, for the first time, aim to promote the deployment and take-up of very high capacity networks (VHCNs)¹⁶. The powers introduced by the EECC are designed to shift the market from reliance on access to the incumbent's infrastructure, to an environment that can better support investment from incumbents and new entrants alike. These provisions are aligned with the Government's priorities, set out in the FTIR, to promote commercial investment and competition where possible, and provide additional support where necessary. We are particularly interested in hearing your views on articles 3 and 22. These and the following EECC articles make notable changes to the network access regulatory framework:

- **Article 3 ('General objectives')** sets out the objectives that the relevant authorities should pursue when carrying out the regulatory tasks in the EECC, adding the objective to promote the deployment of VHCNs;
- **Article 22 ('Geographical surveys of network deployments')** sets the requirement to conduct a geographical survey of network reach, with the option to conduct a forecast and a process to further clarify future build plans;

¹⁵ The EECC defines dominance as a position of economic strength, affording an undertaking the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers.

¹⁶ The EECC defines 'very high capacity network' as either an electronic communications network which consists wholly of optical fibre elements at least up to the distribution point at the serving location, or an electronic communications network which is capable of delivering, under usual peak-time conditions, similar network performance in terms of available downlink and uplink bandwidth, resilience, error-related parameters, and latency and its variation. The EECC states that network performance can be considered similar regardless of whether the end-user experience varies due to the inherently different characteristics of the medium by which the network ultimately connects with the network termination point.

- **Article 67 ('Market analysis procedure')** sets out the procedure for how the regulator should carry out a market analysis, including provision increasing the maximum review cycle from three to five years;
- **Article 76 ('Regulatory treatment of new very high capacity network elements')** requires the regulator to refrain from imposing SMP obligations on new network deployments that take place pursuant to a co-investment agreement with one or more other communications providers, and meets certain criteria; and
- **Article 79 ('Commitments procedure')** sets out new powers for the regulator to make access and co-investment offers made by an SMP provider binding, which could be in lieu of SMP obligations.
- **Article 81 ('Migration from legacy infrastructure')** requires the regulator to ensure that migration from copper networks subject to SMP obligations carries a transparent timetable and conditions, and that consumers will continue to have access to broadband and telephony products at least as good as those they had before migration, if necessary to safeguard competition and the rights of end-users.

Below, we set out some of these provisions in more detail where we have identified options for transposition. Were we to opt for option 2 to transpose these articles, all new powers would be assigned to Ofcom and Ofcom would have full discretion (to the extent allowed by the EECC) over how it exercises them. We also set out transposition option 3, in which the provisions could be modified to better support the delivery of the FTIR's recommendations.

No options are identified for implementation of article 67, which provides longer maximum periods between market reviews. We include article 67 in this consultation document because of the impact on industry stakeholders of the expected reduced frequency of market reviews. At the end of this chapter, we request data submissions on the impact of this, and other articles included in the impact assessment accompanying this document. We also note article 81, which creates obligations for the incumbent to support a smooth migration from copper to fibre networks. The draft SSP sets out the Government's strategic priorities and outcome in relation to the switchover from legacy infrastructure.

General objective to promote deployment of VHCNs (Article 3)

The EECC requires NRAs (and other authorities carrying out regulatory functions) to "*promote connectivity and access to, and take-up of, very high capacity networks, including fixed, mobile and wireless networks*¹⁷". The EECC defines the new term 'very high capacity networks' as:

¹⁷ Article 3(2)(a) EECC

“either an electronic communications network which consists wholly of optical fibre elements at least up to the distribution point at the serving location, or an electronic communications network which is capable of delivering, under usual peak-time conditions, similar network performance in terms of available downlink and uplink bandwidth, resilience, error-related parameters, and latency and its variation; network performance can be considered similar regardless of whether the end-user experience varies due to the inherently different characteristics of the medium by which the network ultimately connects with the network termination point;”

Recital 13 explains how to interpret “*the distribution point at the serving location*”. For fixed networks, the network performance of VHCN is that equivalent to fibre to the multi-dwelling building (i.e. a block of flats). For wireless networks, the serving location is considered to be the base station. The average fibre connection to a multi-dwelling building in the UK will be gigabit-capable. EECC’s definition therefore requires VHCN to have network performance equivalent to full fibre or equivalent connections.

BEREC, the Body of European Regulators for Electronic Communications, will publish non-binding guidelines by 21 December 2020 on the criteria that a network should fulfil in order to be considered a VHCN. These guidelines are expected to provide criteria on down- and uplink bandwidth, resilience, error-related parameters and latency. The Government proposes to work with Ofcom to contribute to the work of BEREC on these guidelines. Our aim is that the criteria require gigabit-capable network performance.

Current general regulatory objectives have been implemented in section 4 of the Communications Act 2003 (‘Duties for the purpose of fulfilling EU obligations’).

Option 1 (retain the status quo)

Not applicable for this article; we will need to transpose this article into UK law.

Option 2 (transpose the minimum requirements)

Transposing the minimum requirements would involve copying out the new objective, and accompanying definition of very high capacity networks - including the clarification from recital 13 - into UK law.

Option 3 (alternative approach to transposition)

The EECC recitals¹⁸ provide clarification that Ofcom may differentiate between different technologies in its regulatory decision-making, and that the objective of promoting VHCN is to further increase network capabilities, and pave the way for future wireless network generations. To ensure that Ofcom is able to reflect these in its regulatory actions, transposition option 3

¹⁸ See recitals 13, and 23 to 25, EECC

would be to clarify Ofcom's duty to act in accordance with the principle of neutrality under section 4 of the Communications Act, specifically that:

- **Ofcom must aim for the highest capacity networks and services economically sustainable in a given area** – balancing this with the pursuit of convergence in capacity between different areas;
- **Certain technologies have physical characteristics and architectural features that can be superior** in terms of quality of service, capacity, maintenance cost, energy efficiency, management flexibility, reliability, robustness and scalability, and performance – which must be reflected in regulatory actions;
- **Ofcom's regulatory actions related to fixed and wireless networks must aim to further increase the capabilities of networks** and pave the way for the roll-out of future wireless network generations based on enhanced air interfaces and a more densified network architecture¹⁹.

1. We propose that Ofcom's regulatory actions must reflect the benefits of future-proof networks.

To what extent does this approach support objectives set out in the Future Telecoms Infrastructure Review, for 15 million premises to be connected to gigabit-capable networks by 2025, with nationwide coverage by 2033, and 5G deployment to the majority of the country by 2027?

Geographical surveys of network deployments (Article 22)

The FTIR suggested that a large majority of the UK could support two or more competing gigabit-capable networks. There are, however, likely to be some areas which, while commercially viable for at least one operator, do not benefit from investment. There can be a number of reasons for such 'hold-up' problems. The Government is interested in approaches that can provide stronger incentives for investment in these areas. The EECC provides powers to identify and designate areas where no operator has indicated plans to deploy gigabit-capable networks and invite operators to declare an intention (or not) to invest. This mechanism could have the effect of de-risking investment by making build plans transparent.

Article 22 of the EECC requires powers related to geographical surveys of the current and future reach of telecoms networks capable of delivering fixed and/or wireless broadband. The article

¹⁹ This could imply, for example, that Ofcom would regulate fixed networks in a way that supports the rollout of 5G networks - ie, promote the deployment of full fibre capable of providing backhaul for 5G.

has the potential to promote faster initial spread of commercial roll-out; improve transparency to help unlock private investment held up by uncertainty in approximately 10% of the UK²⁰; and improve regulatory and policy decision-making, including decisions as to whether public funding for broadband is appropriate. It introduces new powers, which could be assigned to Ofcom or another authority, or be shared between Ofcom and that authority. The measures include:

- a requirement to conduct a survey, at least every three years, of the reach of telecoms networks capable of delivering broadband (including both fixed and mobile);
- the option to conduct a forecast of future network reach (considering VHCNs specifically), to the extent that this information is available and can be provided with reasonable effort;
- a requirement to make directly accessible to the public all non-confidential information included in the survey, and in the forecast if this has been conducted;
- a requirement to provide relevant information (including confidential survey and forecast information) to public bodies for the purposes of fulfilling specific connectivity policy²¹ functions; and
- the option for Ofcom or another authority to further clarify deployment plans by:
 - designating and publishing areas where there is no expected coverage by VHCNs or significant upgrades or extensions of networks to at least 100Mbps within the survey forecast period; then
 - inviting providers to declare an intention to deploy or upgrade to VHCNs in these areas, and requiring other undertakings to declare their intentions to deploy in those areas if at least one provider has declared an intention to deploy²²; then
 - sharing information with those expressing an interest in expected network coverage in the area in question.

²⁰ The FTIR identified a 'hold-up' problem deterring commercial investment in areas that could support a single full fibre network. Page 40-41, FTIR (2018)
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/732496/Future_Telecoms_Infrastructure_Review.pdf

²¹ Specific connectivity policy functions include those by local, regional and national authorities with responsibility for the allocation of public funds for the deployment of electronic communications networks, for the design of national broadband plans, for defining coverage obligations attached to rights of use for radio spectrum and for verifying availability of services falling within the universal service obligation in their territory. The EECC recitals specify that undertakings should be aware of the intended use of the information sought by Ofcom, and should be limited to that which is relevant and proportionate.

²² Information on other providers' deployment plans would not have to be made public but the relevant authority would be able to share with other providers that have declared an intention to deploy in specific areas whether they are likely to face competition.

All providers would have to be treated equally under the process outlined in the article. This means that, when carrying out the processes in this article, the relevant authority would have to request and make available to others the same information in the same context²³.

Article 20 of the EEC support this provision by giving the relevant authority the power to require the provision of information under article 22. Article 29 specifically enables the relevant authority to impose a penalty in relation to the designation process (see paragraph 2), if a provider knowingly or grossly negligently provides misleading, erroneous or incomplete information when responding to an invitation to declare an intention to deploy or upgrade to VHCNs in a designated area. When determining the amount of any fine, if any, the relevant authority will have to consider whether there is a justification for the change in the network provider's deployment plans, and whether this has resulted in detriment to competition.

Below, we explore transposition options for the gathering and sharing of **forecast** network reach information, and the **designation and build plan clarification process** in areas where there is no planned network deployment.

Option 1 (retain the status quo)

Not applicable for this article; we will need to transpose this article into UK law.

Option 2 (transpose the minimum requirements): Forecasting

In the option 2 scenario, Ofcom would be obliged to conduct a survey of broadband network reach, and make non-confidential survey information public (similar to the process already currently undertaken for its Connected Nations²⁴ reports).

Option 3 (alternative approach to transposition): Forecasting

Tailoring the survey and forecast process could better support accelerated commercial roll-out of gigabit-capable broadband, Government barrier removal and broadband planning initiatives, and reduce costs to operators.

To achieve these policy objectives, our transposition option 3 would mandate that:

²³ Providers' internal decision-making and record-keeping processes mean that there may be variations in the responses submitted to the same data requests.

²⁴ The Connected Nations report, which Ofcom publishes annually and updates three times a year, is a high-level publication of postcode-level data on existing fixed and mobile network reach. The report is informed by a detailed survey completed by providers on current network characteristics. Ofcom shares some of these data with Government's BDUK programme, on a restricted basis, to support decision-making on public funded network roll-out. Ofcom also makes certain datasets available to local authorities on an ad-hoc basis, upon request. Available at <https://www.ofcom.org.uk/research-and-data/multi-sector-research/infrastructure-research>

- **By 2021, Ofcom must conduct an annual forecast of near- and medium-term (with a forward view of up to three years) broadband network reach**, at a suitable level of granularity. Both the survey and the forecast would be covered by the requirement to make non-confidential information directly accessible. The aim is to accelerate the spread of commercial roll-out through the mandatory publication of information gathered through any survey or forecast under this article - by allowing providers to choose where to build - gather sufficient information to inform Government support for deployment, and provide information on the appropriate time to start the process of designating and clarifying build plans in areas where there is no planned deployment of VHCNs and clarifying providers' intentions for these areas;
- **Ofcom must publish survey and forecast information, disaggregated** to the extent permitted by commercial confidentiality. The aim is to ensure that public information on network reach is granular enough to support meaningful decisions on future build plans, to accelerate the spread of commercial rollout.
- **Ofcom data sharing with national and local Government**, to support effective policy decision-making. The aim is to support barrier-removal, the designation and build plan clarification process provided for in this article, and other Government intervention to support investment in full-fibre networks. DCMS will consult the Devolved Administrations and local government on the extent that data collected by the survey should be shared with them to support local broadband roll-out strategies; and
- **Ofcom must avoid duplicating regulatory data requests** on network reach wherever possible to minimise the administrative burden on industry.

2. We propose that Ofcom must conduct an annual forecast of near and medium-term broadband network reach, which it will have to publish to the extent that it is non-confidential.

What are the main benefits and risks this presents to accelerating the pace of commercial broadband network roll-out?

3. We propose that Ofcom must share with Government all information that it collects through the survey and forecast process of article 22 of the EECC.

What should Government take into account when implementing this requirement?

Option 1 (retain the status quo)

Not applicable for this article; we will need to transpose this article into UK law.

Option 2 (transpose the minimum requirements): Designation and build plan clarification

Transposing the minimum requirements would involve giving Ofcom powers to designate areas in which no deployment of VHCNs are forecast in the forecast period and follow the procedure described on page 21. The use of these powers would be at Ofcom's discretion.

Option 3 (alternative approach to transposition): Designation and build plan clarification

We consider that the ability to designate areas where there is no planned deployment could help to resolve the hold-up problem identified in the FTIR and facilitate Government support for areas where commercial deployment may not be feasible. An alternative approach to transposition of Article 22 would:

- **give Government (rather than Ofcom) the power to conduct the designation process**, with the aim of ensuring the effective use of Government support; and
- **ensure that Government can designate areas where there is no planned deployment of specific kinds of very high capacity networks, such as gigabit-capable networks.** The aim is to allow Government to designate areas where there is no planned deployment of, for example, gigabit-capable networks - even where there is deployment or planned deployment of other broadband networks.
- **require providers to submit substantiated justification where network rollout deviates** from that declared during the designation and clarification process. The aim is to give providers an opportunity to ensure that all evidence is taken into account when deciding whether the change of plans was justified, and ensure that the prospect of penalties is sufficiently dissuasive in view of the negative impact caused on competition and to publicly funded projects.

4. We propose that Government has the power to designate areas where there is no planned coverage of gigabit-capable networks, and clarify deployment plans in these areas, per the process set out in article 22 of the EECC.

To what extent do you agree that this will provide the right tools for Government to address problems associated with investment hold-up in areas where the business case for gigabit-capable network investment is uncertain?

5. Article 29 of the EECC would enable the relevant authority to impose penalties on providers that knowingly or grossly negligently provide misleading, erroneous or incomplete information

when invited to declare an intention to deploy in a designated area, and do not provide objective justification for a change of plan.

How do you think the prospect of penalties will affect how providers act when invited to declare their intentions?

Voluntary access and co-investment commitments (Articles 79 and 76)

Co-investment arrangements typically allow operators to share parts of their networks and could be an important means to reduce costs; they should be pursued on a commercial basis, where justified. Arrangements involving operators with SMP raise more complicated regulatory issues.

Article 79 provides for Ofcom to make commitments proposed by an SMP provider in relation to network access or co-investment binding, and consider these in lieu of some or all SMP obligations in the relevant market. This is a new provision and it is designed to incentivise commercial access and co-investment agreements by improving regulatory predictability.

The commitments procedure under Article 79 applies to the provisions concerning co-investment in very high capacity networks in Article 76. **Article 76** provides that SMP obligations must not be imposed on new elements of FTTP or fibre-to-the-base station networks, where a co-investment offer and accompanying commitments by the SMP operator meet certain criteria, intended to lead to pro-competitive outcomes.

Ofcom would assess those commitments according to the procedure in article 79. If Ofcom considered that the commitments met the minimum criteria specified in article 76 and Annex IV of the EECC, it would make the commitments binding, for any period from seven years up to the duration of the commitments, and not impose any SMP obligations on new network elements that form part of the co-investment, provided at least one co-investor has entered the co-investment agreement. However, Ofcom would retain the power to impose SMP obligations if it found significant competition problems that would not otherwise be addressed.

Article 76 provides Ofcom with the discretion to consider additional criteria when assessing commitments to the extent that these are necessary to “ensure accessibility of potential investors of the co-investment”²⁵.

²⁵ Annex IV EECC

Option 1 (retain the status quo)

Not applicable for this article; we will need to transpose this article into UK law.

Option 2 (transpose the minimum requirements)

This option would transpose this provision in order to meet the requirements of article 76 and 79 and Annex IV. At its discretion, Ofcom would be able to consider additional criteria.

Option 3 (alternative approach to transposition)

We are considering how the implementation of article 76 can best support full-fibre investment and efficient competition.

Transposition option 3 is therefore to clarify that Ofcom has the power to publish guidance in advance of how it will assess co-investment offers. Where Ofcom exercises its power to add additional criteria, we propose that it must consult on these criteria in draft.

Impact Assessment on Access provisions

As part of the public consultation process, we have produced an assessment of the impact on the UK economy and businesses of implementing articles 3, 22, 61, 67, 73, 74, 76, 79; these are the access articles we consider to have the greatest impact (please see www.gov.uk for a copy of the impact assessment). The following consultation questions are designed to gather further data in order to inform our impact analysis.

6. How much would it cost to businesses to familiarise themselves with the access provisions?

7. How much would businesses save as a consequence of longer market review periods?

8. How much does it cost for businesses to comply with the current network mapping requirements by Ofcom?

9. How much would it cost to business to forecast their future network plans?

10. What is your estimate on the number of premises in the hold-up areas?

11. What would be the size of the investment required to deploy fibre in the hold-up areas?

Radio spectrum

Radio spectrum ('spectrum') refers to the airwaves over which communication signals are transmitted. Spectrum is a critical national asset that the Government wants to ensure is maximised for its economic and social value. Spectrum underpins mobile connectivity and is pivotal to developments in the digital economy, including 5G roll-out and new wireless services.

As set out in the FTIR, the Government's key objectives in relation to spectrum are: ensuring the efficient use of spectrum (including preventing under-utilisation); improving mobile coverage; encouraging innovation and investment in new 5G services; and promoting competition in mobile markets.²⁶

The provisions of the EEC are broadly consistent with the FTIR. The EEC seeks to harmonise measures and procedures for spectrum management while maintaining powers for Member States to manage spectrum in line with their specific needs, taking into account national demographics and geography. It strengthens powers to support efficient and effective spectrum use, promoting competition, the timely roll-out of 5G services and the widespread availability of mobile connectivity.

The following EEC articles make notable changes to the regulatory framework for spectrum:

- **Article 47 ('Conditions attached to individual rights of use for radio spectrum')** contains powers that enable the relevant authorities to impose and enforce (among other conditions) 'use it or lose it' conditions related to individual spectrum rights. This obligation will encourage more efficient use of spectrum through sharing and leasing. Article 47(2) also allows competent authorities to provide for the possibility of roaming access agreements and infrastructure or spectrum sharing when attaching conditions.
- **Article 49 ('Duration of rights')** requires Member States to consider the promotion of innovation, competition and investment as well as effective and efficient use of spectrum when setting spectrum licence durations. There are specific rules for the duration of licences for harmonised spectrum designated for wireless broadband services.
- **Article 51 ('Transfer or lease of individual rights of use for radio spectrum')** obliges Member States to allow undertakings to transfer or lease individual rights of use to other undertakings, provided licence conditions are maintained (subject to certain exceptions). It works in conjunction with the provisions of Article 47. This obligation will facilitate more dynamic use of spectrum by clarifying that the transfer or lease of spectrum is not

²⁶ <https://www.gov.uk/government/publications/future-telecoms-infrastructure-review>

prohibited and reduce barriers to entry into the spectrum market, allowing new players to invest;

- **Article 52 ('Competition')** obliges both the NRA and any other competent authorities to promote effective competition when granting, amending and renewing rights of use for spectrum. It also clarifies that appropriate measures may be taken, including attaching conditions such as roaming in justified circumstances. The Government is committed to promoting competition in mobile markets and considers that this obligation will stimulate market development;
- **Article 54 ('Coordinated timing of assignments for specific 5G bands')** specifies the bands to be made available for 5G services (3.4-3.8 GHz and 24.25-27.5 GHz) by 31 December 2020, including the requirement to allow use of 1 GHz of spectrum in the 26 GHz band, subject to market demand and the absence of specified significant constraints;
- **Article 61(4) ('Powers and responsibilities for NRAs and other competent authorities with regard to access and interconnection')** requires that competent authorities have the power to impose obligations to share passive (and where necessary, active) infrastructure or conclude localised roaming access agreements, subject to strict conditions, where directly necessary for the local provision of services. This power will improve connectivity, support the roll-out of infrastructure and provide benefits from spectrum sharing.

The role of the Competent Authority

The EECC updates the current framework to give Member States flexibility to assign certain spectrum management functions to a 'competent authority' other than the NRA, for example a ministerial department or competition authority.

This explicit flexibility was not present in previous EU Directives. It was introduced in the EECC recognising that the approach to spectrum management, including the relevant powers of the regulator or other authorities, is different across Member States.

In the UK, Ofcom is responsible for spectrum management under the Wireless Telegraphy Act 2006 and Communications Act 2003. The Government can direct Ofcom on how to carry out its spectrum management functions.

Where functions are assigned to a competent authority other than the NRA, the NRA must provide technical and competition advice on those decisions.

As the EECC introduces new flexibility to assign spectrum management functions, we would welcome stakeholder views on the appropriate authority for different spectrum management functions.

12. Do you have views on the appropriate competent authority for different spectrum management functions?

The EECC largely reflects current UK practice on spectrum management. Transposing the minimum requirements is therefore appropriate for most spectrum articles. For articles 47 and 54, we considered whether an alternative approach to transposition would better facilitate the Government's objectives for digital connectivity. We set out options for transposition of these articles below and seek stakeholder views to inform our final transposition choices. We also ask for views on aspects of Article 49 and provisions relating to roaming (Articles 47(2), 52(2) and 61(4)).

'Use it or lose it' conditions (Article 47)

As outlined in the FTIR and the draft Statement of Strategic Priorities, the introduction of a flexible, shared spectrum model and releasing additional spectrum are important steps toward realising the Government's objectives for digital connectivity. The FTIR also details the Government's objective to address barriers to entry into the spectrum market to ensure efficient utilisation of spectrum.²⁷ Spectrum sharing practices are an opportunity to unlock opportunities for innovative new applications.²⁸

Article 47 requires the competent authority to attach conditions to individual rights of use for spectrum to ensure the most effective and efficient use of spectrum. These conditions include the concept of 'use it or lose it' for spectrum, specifying the level of use required and the possibility to fulfil that requirement through trading or leasing.

The implementation of a 'use it or lose it' condition will facilitate a dynamic, efficient market for spectrum and minimise under-utilisation of spectrum (see accompanying impact assessment).

Option 1 (retain the status quo)

In this option, the status quo is maintained and no changes are made to Ofcom's existing powers to impose licence conditions.

Option 2 (preferred approach)

²⁷ <https://www.gov.uk/government/publications/future-telecoms-infrastructure-review>

²⁸ <https://www.gov.uk/government/consultations/public-consultation-on-the-statement-of-strategic-priorities>

This option would transpose the requirements of the article (and corresponding recital) so that spectrum licence enforcement conditions must include ‘use it or lose it’ conditions in future *mobile* spectrum licences only.

Option 3 (alternative approach)

This option would state in law that spectrum licence enforcement conditions must include ‘use it or lose it’ conditions in *all* future radio spectrum band licences to ensure efficient use of all spectrum bands.

13. Do you think that a ‘use it or lose it’ condition would promote spectrum trading, prevent under utilisation, enhance mobile coverage and/or mitigate barriers to entry?

14. In relation to any ‘use it or lose it’ condition, what do you consider would be the best measure of the ‘level of use’ of spectrum? Beyond ‘level of use’, what other conditions should be considered when designing a ‘use it or lose it’ condition?

15. Do you agree with our preferred approach for ‘use it or lose it’ to be applied to future mobile spectrum licences only? If no, please provide any supporting evidence.

Assignments for specific 5G bands (Article 54)

Article 54 allows for the use of at least 1 GHz of the 26 GHz band (24.25-27.5 GHz) and “sufficiently large blocks” of 3.4-3.8 GHz for 5G mobile services by 31 December 2020. This band will support the roll-out of 5G and create a harmonised 5G band. The article requires Member States to make available (at least) 1 GHz within the 26 GHz band, subject to the need to protect defence functions and providing there is evidence of market demand. As the options below set out, the Government has identified 26.5-27.5 GHz as the section of the band to be made available.²⁹ This does not preclude other sections of the band from being made available.

Option 1 (retain the status quo)

In this option, the status quo is maintained and no changes are made. Ofcom already have powers to release spectrum in the 26 GHz band. Failure to release the spectrum by the EECC deadline of 31 December 2020 would put the UK at risk of infraction proceedings by the European Commission.

²⁹ To note, this analysis was conducted before the Commission Implementing Decision (EU) 2019/784 on the harmonisation of the 24.25-27.5 GHz frequency band was made.

Option 2 (preferred approach)

This option would allow the use of 26.5-27.5 GHz of the 26 GHz band for mobile, subject to market demand and the absence of significant constraints and the need to protect essential defence functions.

Option 3 (alternative approach)

This option would allow the use of 26.5-27.5 GHz of the 26 GHz band for mobile and subsequently make the rest of the 26 GHz band (24.25-26.5 GHz) available for mobile, subject to market demand, the absence of significant constraints and the need to protect essential defence functions.

16. If you hold licences in the 26 GHz spectrum band, what do you expect the cost of sharing by 2022 to be? (Please specify cost for both sharing or clearing.)

17. Is there a market demand for the 26 GHz band for 5G? (yes/no)

If yes, please provide any supporting evidence and give an indication of timing.

18. What do you estimate the total value of making available the 26.5-27.5 GHz spectrum band for 5G services in the UK to be?

19. What do you estimate the total value of making available the whole 26 GHz spectrum band for 5G services in the UK to be?

Roaming (Articles 47(2), 52(2) and 61(4))

Roaming refers to the ability of end-users to use another provider's network when they do not have access to a signal in a given area on their own network. Roaming has the potential to improve consumer choice and solve the problem of "partial not-spots" (where one or more operators are present, but all four are not). As outlined in the draft Statement of Strategic Priorities, Government considers roaming to be a potential solution to improve coverage and help achieve the 95% coverage manifesto commitment.

Articles 47(2), 52(2) and 61(4) each contain powers for the competent authority to, among other things, impose roaming obligations:

- Article 47(2) recognises that infrastructure and spectrum sharing can facilitate a more effective and efficient use of spectrum and support network deployment, especially in less densely populated areas. It gives competent authorities the power to provide for, among other things, commercial roaming access agreements when attaching conditions to rights of use for spectrum.
- Article 52(2) allows for competent authorities to take appropriate measures when granting, amending or renewing spectrum rights of use in order to promote effective competition and avoid distortions of competition. These measures include, in justified circumstances, attaching conditions to the rights of use such as the provision of wholesale access and national or regional roaming.
- Article 61(4) requires that competent authorities have the power to impose obligations to share passive (and where necessary, active) infrastructure or conclude localised roaming access agreements if directly necessary for the local provision of services, where there is no alternative means of access to end-users and market-driven deployment of infrastructure is subject to insurmountable economic or physical obstacles. These obligations can only be imposed where the possibility is provided for when granting the rights of use for radio spectrum.

Given the potential importance of roaming to Government's digital connectivity objectives, we will ensure the above powers are transposed. We welcome any views on the appropriate circumstances for imposing roaming obligations in the UK.

Option 1 (retain the status quo)

In this option, the status quo is maintained. Some powers already exist, however, Article 61(4) introduces new powers for competent authorities to impose access-related conditions. Failure to transpose would therefore put the UK at risk of infraction proceedings by the European Commission.

Option 2 (preferred approach)

This option would transpose all EECC powers for competent authorities to mandate or provide for the possibility of roaming, both in spectrum rights of use (Articles 47(2) and 52(2)) and access-related conditions (Article 61(4)). In line with Article 47(2) and corresponding recital 124,

we will require that competent authorities consider providing for the possibility of roaming access agreements when attaching conditions to individual spectrum rights of use.

20. Under what circumstances should roaming obligations be imposed to improve coverage or support network deployment?

Duration of rights (Article 49)

Article 49 is designed to ensure a minimum period of regulatory predictability of 20 years for harmonised spectrum for wireless broadband services, through a minimum duration of 15 years with rights of extension. The powers provided by this provision also allow Member States to amend rights in objectively justified cases (in line with Article 18) or to extend rights based on a forward-looking assessment of the general criteria for an extension.

Article 49 aims to strike a balance between regulatory predictability and the need to encourage innovation and support different uses of spectrum. Member States can, where justified, deviate from the minimum duration requirements and extension procedures in specified cases, for example specific short-term projects and experimental use. We would welcome views on the potential impact of minimum licence durations and the EECC exemption criteria given anticipated market developments and the roll-out of 5G services.

Option 1 (preferred approach)

Under current UK legislation, Ofcom issues licences on an indefinite basis through its spectrum award process, with the exception of certain types of licences requiring shorter durations. Existing arrangements therefore already meet the requirements for regulatory predictability in the EECC.

Option 2 (alternative approach)

This option would expressly transpose the EECC requirement for Member States to grant individual rights of use for 'wireless broadband services' for a minimum duration of 15 years with rights of extension to ensure regulatory predictability for 20 years for harmonised spectrum.

21. What is the impact of setting minimum durations for individual rights of use given anticipated UK market developments?



Impact Assessment on Spectrum provisions

A full assessment of the impact of the implementation of articles 47 and 54 on the UK economy and businesses is published with this document. We consider these two articles, concerning spectrum licence conditions and the release of spectrum for 5G mobile services, to carry the greatest potential market impacts. The impact assessment can be found on www.gov.uk.

In line with standard practice, we have also analysed the cost to business of familiarising themselves with the changes that will be made by the EECC to the UK's spectrum management framework after UK law is updated. The following question gathers further data in order to inform our impact analysis.

22. How much would it cost to businesses to familiarise themselves with the spectrum provisions in the EECC?

End-User Rights

Title III of the EECC ('End-user rights') expands on the consumer protections set out in the current Universal Service Directive, and introduces new provisions to secure a higher and more harmonised level of consumer protection across Member States. In the EECC, users of communication services are defined as 'end-users', which is further categorised as consumers (i.e. domestic users), and not-for-profit organisations and small and medium enterprises. '.

Article 101 provides that Member States shall not maintain or introduce in the national law end-user provisions which diverge from the provisions in articles 102 - 115 of the EECC, except in circumstances permitted by those provisions. In practice, this means that these EECC end-user rights Articles must be implemented as is by all Member States, including the UK, and any existing or new national rules that go below or above the level of consumer protection in relation to matters covered directly by the EECC are prohibited, except where specific discretion is provided for in the EECC.

During the EECC negotiations, the UK was able to successfully secure high levels of protection for consumers, including additional protections for consumers of bundled services and, notwithstanding Article 101, some flexibility for EU Member States to maintain and introduce new national provisions to deal with emerging consumer harms (for issues not otherwise directly covered by the EECC), amongst other key protections.

Ofcom, as the UK telecoms regulator, has a statutory duty under the Communications Act to further the interests of consumers. As part of this duty, Ofcom has a broad power to set 'General Conditions of Entitlement'. These are regulatory conditions that all providers of electronic communications networks and services must comply with in order to provide services in the UK. A number of these conditions relate to consumer protection matters, including provisions on contracts, transparency and information requirements and equivalent access for disabled users of communication services based on the Universal Service Directive provisions.³⁰

Ofcom's existing power to set general conditions are sufficient to enable it to implement a large part of new provisions set out in the EECC's end-user rights articles, including articles 98, 101-106, 108, 109, 111, 112 and 115 (a significant proportion of the provisions set out in the end-user rights elements are already reflected in Ofcom's general conditions). In its implementation of these articles, Ofcom will carry out the relevant impact analysis as appropriate under the

³⁰ Ofcom's current General Conditions can be found at:

<https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/telecoms-competition-regulation/general-conditions-of-entitlement>

Communications Act 2003, and currently plans to publish a consultation on its implementation proposals before the end of 2019.³¹

However, as the EECC has introduced new provisions and protections, the Government is seeking views on the implementation of end-user articles that may require legislative or other changes, specifically:

- Article 99 ('Non-discrimination provisions');
- Article 103 ('Transparency, comparison of offers and publication of information'); and
- Article 107('Bundled offers').

The EECC also makes provision for existing national law remedies to be available to consumers in specific circumstances. Government will make necessary changes to ensure these are implemented, as Ofcom cannot implement these via their general condition powers. These include:

- Remedies for terminating a contract where there are service performance discrepancies (as set out in Article 105(5)), including the right to terminate the contract without charge.
- Rules on compensation due by end-users for retained subsidised terminal equipment where the right to terminate a contract is exercised (as set out in Article 105(6))
- Rules allowing consumers to terminate a bundle of services (that includes at least an internet access service or a publicly available number-based interpersonal communication service) before the end of the contract period due to lack of conformity with the contract by the provider or failure to supply (as set out in Article 107(2)).

Non-discrimination (Article 99)

This article obliges telecoms providers not to discriminate against end-users' access to telecoms services, based on nationality, place of residence or place of establishment, unless different treatment is objectively justified based on costs and risks. The article seeks to remove barriers for end-users in accessing cross-border telecoms services across the EU, as noted in Recital 256 of the EECC.

³¹ As set out in Ofcom's 2019/20 Annual Plan, available here:
<https://www.ofcom.org.uk/consultations-and-statements/category-1/annual-plan-2019-20>.

In practice, most fixed broadband and mobile consumers typically purchase services from communication providers based in their country of residence. In addition, as set out above, the article does permit providers to handle customers differently, providing that this difference can be objectively justified. On this basis, we consider that, in general, the impact of this provision is not likely to be significant. However, it may have some more relevance to:

- ‘Over the top’ communication services that consumers are potentially more likely to purchase on a cross-border basis.
- EU nationals visiting or working in the UK.
- People living and working in Northern Ireland, given the close proximity to Ireland.

Proposed Implementation approach

The Government intends to transpose article 99 into UK law directly and for Ofcom to be given the powers to enforce this obligation, if necessary.

23. Do you agree with our assessment that the requirements of this Article are unlikely to have a significant impact on communication providers in practice?

If you do not agree, could you set out the impact that it is likely to have, particularly the potential costs to communication providers of compliance, including whether differences in the costs/risks of providing cross-border access to networks/services would not be objectively justified?

24. Do you agree with our proposal to implement article 99 directly into UK law and for Ofcom to be given the powers to enforce this obligation?

Certification of Independent Comparison Tools (Article 103)

Paragraphs (2) and (3) of article 103 of the EEC requires Member States to ensure that consumers have free access to at least one independent comparison tool that enables them to compare and evaluate different broadband and phone services, both on price and quality of service. Article 103(3) sets out a number of criteria with which such a comparison tool must comply. The comparison tool must:

- be operationally independent from the providers of communication services, with clear disclosure of the owners and operators of the comparison tool;

- set out clear and objective criteria on which the comparison is to be based;
- use plain and unambiguous language;
- provide accurate and up-to-date information and state the time of the last update;
- be open to any provider of broadband and phone services and include a broad range of offers covering a significant part of the market and, where the information presented is not a complete overview of the market, that must be made clear;
- provide an effective procedure to report incorrect information; and
- include the possibility of comparing prices, tariffs and quality of service performance between offers available to consumers and, if required by Member States, between those offers and the standard offers publicly available to other consumers.

Proposed implementation approach

Ofcom currently has a voluntary accreditation scheme in place for comparison tools, which will need to be amended to meet the requirements set out in the EECC.³² As the amendments required to Ofcom's voluntary scheme are not particularly significant and there are currently nine members of their scheme and interest in it is growing, we are very confident that at least one comparison tool would sign up to the amended scheme. However, there is a theoretical risk that, if no comparison tools signed up, or all those that signed up leave the scheme, the UK would not be compliant with article 103(2). In this unlikely circumstance, our proposal would be for Ofcom to set up its own comparison tool.

There are two alternatives to this fallback option, which we are not proposing to implement but which are included here for completeness. One option would be for Ofcom to run a process to designate a single price comparison tool, which would be required to comply with the requirements of article 103. The second would be for Ofcom to have a power to require all comparison tools to comply with article 103, in circumstances where no providers signed up voluntarily. In relation to the first option, it is difficult to envisage how a designation process could fairly select a single comparison tool in circumstances where no comparison tools had signed up to Ofcom's scheme voluntarily. Whilst the second option would arguably be fairer than the first, it is a disproportionate way of meeting the requirements of article 103 and could affect the ease of entry into, and competition in this market (since comparison tools would have to be accredited by Ofcom before starting to operate).

25. Do you agree with the Government's proposal for Ofcom to set up a comparison tool to comply with article 103(2), which will not require new legislation, in the unlikely event that a single comparison could not sign-up to Ofcom's voluntary accreditation scheme, that will be

³² A list of Ofcom-accredited price comparison websites and guidelines on the voluntary scheme is available here: <https://www.ofcom.org.uk/phones-telecoms-and-internet/advice-for-consumers/costs-and-billing/price-comparison>.

amended to comply with article 103(2)?

Bundled offers (Article 107)

Most consumers now purchase services as part of bundles³³ which includes a combination of communication and wider services or products. The EECC recognises that different rules applying to different elements of a bundle could create difficulties for consumers in switching services and create a risk of contractual ‘lock-in’, hampering competition in the market. Therefore, Article 107 gives consumers³⁴ new and greater protection by mandating that, where services are provided in a bundle (including terminal equipment, e.g. routers/modems) and where the bundle includes at least one ‘internet access service’ (e.g. fixed broadband) or a ‘publicly available number-based interpersonal communications service’ (e.g. fixed landline or mobile services), the following protections shall apply to all elements of that bundle:

- contract information requirements set out in article 102(3);
- transparency requirements set out in article 103(1);
- contract duration and termination requirements (article 105); and
- switching rules set out in article 106(1).

Additionally, where the consumer has the right to terminate one element of a bundle before the end of contract date, e.g. due to a lack of conformity with the contract or a failure to supply, the EECC requires that the consumer must be able to cancel all elements of the bundle. Furthermore, Article 107 gives discretion to extend the new bundles protections to include other provisions in the EECC.

Proposed implementation approach

The Government’s preferred approach is for Ofcom to implement Article 107 through its general conditions powers.

We propose to give Ofcom express powers to set general conditions that apply to all the elements of a bundle, provided that the bundle includes at least one internet access service or a publicly available number-based interpersonal communications service, including the ability to exercise the discretionary powers set out in Article 107.

³³ Ofcom’s 2018 Communications Report notes 8 in 10 households purchased at least two of their communication services in a bundle from the same provider. See here:

https://www.ofcom.org.uk/_data/assets/pdf_file/0022/117256/CMR-2018-narrative-report.pdf

³⁴ This protection is also extended to micro-enterprises, SMEs, and not-for-profit organisations as end-users of communication services, unless they explicitly waive such protections.

This change would mean that Ofcom would have express powers to regulate non-communication elements of a bundle including, potentially, services that are subject to separate regulatory regimes. For instance, if energy products are bundled together with broadband services, the EECC rules on contract information requirements, maximum contract length and termination rights and switching would extend to the energy service element of the bundle. However, Ofgem have their own license conditions in relation to contract information requirements and switching. This creates the potential for 'regulatory clash'.

Our view is that the potential for such a clash is limited at the current time, as other regulated services are not routinely included in communication bundles. In addition, the requirements of the EECC in relation to contract information, transparency, termination and switching do not appear to be overtly incompatible with other regulatory regimes, although we would appreciate views from respondents to this consultation. Alongside this consultation, DCMS will be undertaking discussions with other Government departments and regulators to test this further and developing solutions where needed.

If a regulatory clash does emerge in the future, we envisage that Ofcom would work with the other regulator bilaterally to seek to resolve that clash, where feasible and practical. In the event that this clash cannot be resolved bilaterally, we would be interested in respondents' views as to how any potential clashes could be resolved, including whether any changes to primary legislation may be required.

26. Do you agree with the Government's approach to implementing Article 107 by granting an express power to Ofcom to enable it to regulate communication bundles which include non-communication services?

27. Are there any other legislative changes that you think might be needed? If so, please specify these and provide any supporting information.

28. Do you agree with the Government's assessment that the potential for Article 107 to create 'regulatory clash' is limited at the current time? If not, please provide evidence and any views on how these could potentially be addressed.

Universal Service Obligations

A universal service obligation (USO), placed on designated providers to guarantee a decent level of telephony services, is a longstanding feature of the UK telecoms framework. The nature of the obligation has altered over time as technology has changed. The existing and upcoming USOs implement requirements set out in the current European Universal Service Directive. The EECC universal service requirements reflect advances in technology, with a view to ensuring that the USO can be adapted to meet the circumstances of Member States, and to meet future demands for data and voice communication services.

BT, and KCom in Hull, are the current designated providers of the existing universal service obligation for telephony services, as set out in the Electronic Communications (Universal Service) Order 2003 (the “2003 Order”). The obligations set out in the 2003 Order require the provision, availability or supply of certain services at affordable prices that are uniform throughout the UK. These include, for example: publicly available telephone services (i.e. fixed telephony) and special measures for consumers on low incomes or with special social needs.

Obligations concerning the provision of broadband services are contained in the Electronic Communications (Universal Service) (Broadband) Order 2018³⁵ (the “2018 Order”), requiring the provision of broadband connections and services to premises throughout the UK that meet the specification, quality parameters and the eligibility criteria set out in that Order. Ofcom are responsible for implementing the 2018 Order by 2020, and recently consulted on its design and operation³⁶. This included the issue of affordability, where Ofcom are proposing that premises should be eligible for the USO if they cannot get a broadband service that meets the technical criteria under the USO Order for £45 per month or less.

In the EECC, Articles 84 - 92 deal with USOs. Article 84 (‘Affordable universal service’) outlines that all consumers shall have access at an affordable price, to an “available adequate broadband internet access service” and to “voice communications services” at a fixed location. The Article also includes a discretionary provision for Member States to extend affordable universal services to non-fixed (i.e. mobile) services where this is necessary to ensure full social and economic participation in society, and to extend the scope of the provisions to microenterprises, SMEs and not-for-profit organisations.

The Government intends to amend the Communications Act 2003 to make clear that universal service provisions can extend to mobile services, as the widespread availability of mobile

³⁵ There is an existing Universal Service Obligation for basic fixed line telephone services.

³⁶ www.ofcom.org.uk/consultations-and-statements/category-1/delivering-broadband-universal-service

services is important for social and economic reasons. While the Government does not currently plan to implement the universal service provisions in this way, it reserves the right to do so if other policy and regulatory tools do not prove effective in securing its commitment to universal mobile connectivity. If the Government does decide to exercise this new power in the future, a public consultation and impact assessment would be carried out.

Article 85 ('Provision of affordable universal service') changes significantly the current USO provisions in the Universal Service Directive. In particular, whilst the EECC continues to require that Member States consider affordability for people on low incomes and with special social needs specifically, it changes significantly the approach to deciding which providers should be required to offer social tariffs to such consumers.

Where Member States establish that retail prices are not affordable for consumers with low incomes or special social needs, Article 85 permits them to ensure that support is provided to such consumers or to require all providers to offer them special tariff options or packages. Only in exceptional circumstances does Article 85 permit Member States to impose the obligation to offer special tariffs on 'designated undertaking(s)' such as operators, like the designated Universal Service Providers. The EECC provides examples of people with 'special social needs' who might be beneficiaries of those tariffs as older people, people with disabilities and consumers living in rural or geographically isolated areas.

In implementing Article 85, our intention is that Ofcom will continue to monitor the evolution and level of retail prices, as well as consider affordability as part of their implementation of the broadband USO, both for consumers in general and also consumers with low incomes or special social needs. If an issue is identified, it would therefore be for Ofcom to take action, either to ensure that USO services are generally affordable, as they have done in implementing our existing broadband USO, or are specifically affordable for consumers with low incomes or special social needs. In relation to consumers with low incomes or special social needs, such action is likely to be limited to the implementation of a requirement on providers to offer special tariffs.

29. Do you agree that it should continue to be for Ofcom to consider affordability as part of the broadband USO and, if they identify an issue, to take the appropriate action, e.g. through the implementation of a special tariff?

Article 87 ('Status of the existing universal service') allows Member States to ensure that legacy USO services (such as public pay telephones), other than adequate broadband and voice communications services at a fixed location, that are subject to universal service provisions in

force on 20 December 2018 remain available or affordable. Article 87 also requires Member States to complete a review of these obligations by 21 December 2021, and every three years thereafter, to ensure that consumers continue to have access to the services that most suit their needs. We propose that Ofcom should be required in law to carry out reviews of legacy services. Government will consider the results of the review and take a decision on whether to amend the Electronic Communications (Universal Service) Order 2003 as a result.

Article 92 (Additional mandatory services) confirms that Member States may to make services in addition to those included in Article 84 publicly available, but notes that no compensation mechanism shall be imposed. The Government understands that digital technology is continually evolving and new services can quickly become essential for people and businesses. However, we would be concerned about adopting a broad power without a clear objective in the near-term. Unless strong arguments for transposing this discretionary article are presented by respondents to this consultation, we propose not to do so. This does not prevent a future Government from legislating to transpose it, should they wish to do so in the future.

The remaining articles that comprise the USO provisions feature only minor drafting changes: Article 86 ('Availability of universal service'), Article 88 ('Control of expenditure'), Articles 89 and 90 ('Cost' and 'Financing of universal service obligations' respectively), Article 91 ('Transparency') and Article 92 ('Additional mandatory services').

In summary, the Government intends to transpose the USO articles that would provide powers to:

- introduce an affordable mobile universal service should this be necessary and proportionate in the future (with any such proposal subject to consultation);
- require Ofcom to monitor the evolution and level of retail prices for fixed broadband and telephony, as required by Article 85, and take action in relation to the affordability of the broadband USO if necessary, and;
- require Ofcom to carry out a review of legacy universal services by 21 December 2021 and every three years thereafter in order to comply with Article 87, with Government taking the final decision on whether or not to retain such services.

We also propose *not* to transpose the discretionary power in Article 92, which enables Member States to introduce additional universal services beyond those permitted by Article 84 and the legacy universal services set out in the 2003 Universal Service Order.

Mobile and fixed termination rates

Termination rates are the charges imposed by one operator on another for terminating (completing) calls on its network. Because each organisation issued with mobile and fixed telephone numbers holds a position of significant market power (SMP, i.e. a monopoly) for termination on its own network, termination rates are therefore generally regulated by Ofcom.

The European Commission's Recommendation on fixed and mobile termination rates, published in 2009, has the aim of achieving consistency between the various approaches applied by national regulatory authorities when regulating wholesale termination rates. At the end of 2018, the Commission's evaluation report on the Recommendation concluded that, whilst it had led to improved consistency in the way these rates are regulated, a non-binding instrument such as the current approach is unlikely to be sufficient to achieve a fully consistent regulation of termination rates across the EU.

Article 75 of the EECC creates a mechanism to set single maximum EU-wide voice termination rates for both mobile and fixed-line calls. These maximum termination rates, to be determined by the European Commission by 31 December 2020, will be imposed on any provider of mobile or fixed voice termination services in any Member State.

The EU-wide voice termination rates will take into account the weighted average of efficient costs in fixed and mobile networks. Annex III of the EECC sets out the principles by which this shall be calculated. It states that rates shall be based on the recovery of costs incurred by an efficient operator and that the evaluation of efficient costs shall be based on current cost values.

The EECC stipulates that the EU-wide voice termination rates shall not be higher than the highest of those rates that were in force six months before the adoption of the EU-wide rates. It will take into account the total number of end-users in each Member State in order to ensure a proper weighting of the maximum termination rates, as well as national circumstances which result in significant differences between Member States.

Intervention was considered necessary as the European Commission has observed significant disparity in the approaches to the regulation of termination rates by national regulators, which are often too high and not reflective of cost. The Commission would contend that lower termination rates can help increase competition in mobile and fixed telephony markets.

Network security and resilience

Provisions for the security and resilience of telecoms networks currently derive from the Framework Directive and have been implemented in sections 105A-D of the Communications Act 2003. The Government is currently reviewing the legislative framework for the security and resilience of telecoms networks and services as part of the Telecoms Supply Chain Review³⁷. As such, while the EECC introduces some changes to strengthen the current network security provisions, it would not be appropriate to consult on their implementation at this time.

The Telecoms Supply Chain Review, which will inform the implementation of these provisions, is due to conclude in summer 2019.

³⁷ <https://www.gov.uk/government/publications/telecoms-supply-chain-review-terms-of-reference>



General

30. Do you have any concerns about any of the articles not explored in this consultation document? (Yes/No/Don't know)

If yes, what are your concerns?



General Information

This is a public consultation. The consultation dates are as follows:

Issued: 16/07/2019

Respond by: 10/09/2019

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome. We ask stakeholders to limit any responses to a maximum of 10 pages. When responding, please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation response form and, where applicable, how the views of members were assembled.

We have an online form for responses that can be accessed via the following link:

https://dcms.eu.qualtrics.com/jfe/form/SV_50lePV2BoRCpCZY

Alternatively, a response form is available electronically on the Government's website.

Responses should be emailed to the following address: EECC@culture.gov.uk

Responses or material sent to any other email addresses may not be taken into consideration.

If you cannot reply by email, please respond by post:

EECC Team
European Electronic Communications Code
Digital Infrastructure Directorate
Department for Digital, Culture, Media and Sport
1C/09 100 Parliament Street
SW1A 2BQ

Telephone: 020 7211 6404

For enquiries about the consultation (handling) process only please email enquiries@culture.gov.uk, heading your communication 'European Electronic Communications Code consultation'.

Please contact the data protection team 020 7211 2077 (or enquiries@culture.gov.uk) if you require any other formats e.g. Braille, large font or audio.

This consultation is intended to be an entirely written exercise but we reserve the right to follow up any responses to seek further information.

For enquiries about the handling of this consultation please contact the Department for Digital, Culture, Media and Sport Correspondence Team at the above address heading your communication 'European Electronic Communications Code consultation'.

Copies of responses may be published after the consultation closing date on the Department's website: www.gov.uk/dcms. Information provided in response to this consultation may be published or disclosed in accordance with access to information regimes (these are primarily the Freedom of Information Act 2000 ('FOIA'), the Data Protection Act 2018 and the Environmental Information Regulations 2004). If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential.

If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department. The Department will process your personal data in accordance with the Data Protection Act 2018 (and the General Data Protection Regulation). This consultation follows the Government's Consultation Principles (published in 2013) which are available at:

<https://www.gov.uk/government/publications/consultation-principles-guidance>

What Happens Next


This consultation closes on Tuesday 10 September 2019. DCMS will publish an official Government response to the consultation. Responses will inform the legislation implementing the EECC, which will be laid when Parliamentary time allows.



Annex A: Questions Summary

1. We propose that Ofcom's regulatory actions must reflect the benefits of future-proof networks.
To what extent does this approach support objectives set out in the Future Telecoms Infrastructure Review, for 15 million premises to be connected to gigabit-capable networks by 2025, with nationwide coverage by 2033, and 5G deployment to the majority of the country by 2027?
2. We propose that Ofcom must conduct an annual forecast of near and medium-term broadband network reach, which it will have to publish to the extent that it is non-confidential.
What are the main benefits and risks this presents to accelerating the pace of commercial broadband network roll-out?
3. We propose that Ofcom must share with Government all information that it collects through the survey and forecast process of article 22 of the EECC.
What should Government take into account when implementing this requirement?
4. We propose that Government has the power to designate areas where there is no planned coverage of gigabit-capable networks, and clarify deployment plans in these areas, per the process set out in article 22 of the EECC.
To what extent do you agree that this will provide the right tools for Government to address problems associated with investment hold-up in areas where the business case for gigabit-capable network investment is uncertain?
5. Article 29 of the EECC would enable the relevant authority to impose penalties on providers that knowingly or grossly negligently provide misleading, erroneous or incomplete information when invited to declare an intention to deploy in a designated area, and does not provide objective justification for a change of plan.
How do you think the prospect of penalties will affect how providers act when invited to declare their intentions?
6. How much would it cost to businesses to familiarise themselves with the access provisions?

7. How much would businesses save as a consequence of longer market review periods?
8. How much does it cost for businesses to comply with the current network mapping requirements by Ofcom?
9. How much would it cost to business to forecast their future network plans?
10. What is your estimate on the number of premises in the hold-up areas?
11. What would be the size of the investment required to deploy fibre in the hold-up areas?
12. Do you have views on the appropriate competent authority for different spectrum management tasks?
13. Do you think that a 'use it or lose it' mechanism would promote spectrum trading, prevent under utilisation, enhance mobile coverage and/or mitigate barriers to entry?
14. In relation to any 'use it or lose it' mechanism, what do you consider would be the best measure of the 'level of use' of spectrum? Beyond 'level of use', what other conditions should be considered when designing a 'use it or lose it' mechanism?
15. Do you agree with our preferred approach for 'use it or lose it' to be applied to future mobile spectrum licences only? If no, please provide any supporting evidence.
16. If you hold licences in the 26 GHz spectrum band, what do you expect the cost of sharing by 2022 to be? (Please specify cost for both sharing or clearing.)
17. Is there a market demand for the 26 GHz band for 5G? (yes/no)
If yes, please provide any supporting evidence and give an indication of timing.
18. What do you estimate the total value of making available the 26.5-27.5 GHz spectrum band for 5G services in the UK to be?
19. What do you estimate the total value of making available the whole 26 GHz spectrum band for 5G services in the UK to be?

20. Under what circumstances should roaming obligations be imposed to improve coverage or support network deployment?
 21. What is the impact of setting minimum durations for individual rights of use given anticipated UK market developments?
 22. How much would it cost to businesses to familiarise themselves with the spectrum provisions in the EECC?
 23. Do you agree with our assessment that the requirements of this Article are unlikely to have a significant impact on communication providers in practice?
If you do not agree, could you set out the impact that it is likely to have, particularly the potential costs to communication providers of compliance, including whether differences in the costs/risks of providing cross-border access to networks/services would not be objectively justified?
 24. Do you agree with our proposal to implement article 99 directly into UK law and for Ofcom to be given the powers to enforce this obligation?
 25. Do you agree with the Government's proposal for Ofcom to set up a comparison tool to comply with article 103(2), which will not require new legislation, in the unlikely event that a single comparison could not sign-up to Ofcom's voluntary accreditation scheme, that will be amended to comply with article 103(2)?
 26. Do you agree with the Government's approach to implementing Article 107 by granting an express power to Ofcom to enable it to regulate communication bundles which include non-communication services?
 27. Are there any other legislative changes that you think might be needed? If so, please specify these and provide any supporting information.
 28. Do you agree with the Government's assessment that the potential for Article 107 to create 'regulatory clash' is limited at the current time? If not, please provide evidence and any views on how these could potentially be addressed.
 29. Do you agree that it should continue to be for Ofcom to consider affordability as part of the broadband USO and, if they identify an issue, to take the appropriate action, e.g. through the implementation of a special tariff?
- 

30. Do you have any concerns about any of the articles not explored in this consultation document? (Yes/No/Don't know)
If yes, what are your concerns?

Annex B: Glossary



Term	Definition
5G	The term used to describe the next generation of wireless networks beyond 4G LTE mobile networks. 5G is expected to deliver faster data rates and better user experience. Technical standards are still under development and are likely to include both an evolution of existing and new radio technologies. Generations of technology are often defined as 2G (the introduction of rudimentary data and SMS services), 3G (upgraded online data services and connectivity quality), 4G (introduction of high-speed data services).
5G Testbeds and Trials programme	A programme that coordinates the development of 5G services and applications through a series of trials, which contribute to the development of the 5G ecosystem across the UK.
Access	The making available of facilities and/or services to another undertaking, under defined conditions, on either an exclusive or non-exclusive basis, for the purpose of providing electronic communications services, including when they are used for the delivery of information society services or broadcast content services.
Bandwidth	The measure of the maximum capacity of a data link in the network.
Body of European Regulators for Electronic Communications (BEREC)	The Body of European Regulators for Electronic Communications (BEREC) was created in 2009 to improve consistency of the EU telecoms rules and to contribute to the development of the Single Market. The mission of BEREC is to assist the Commission and the national regulatory authorities (NRAs) in the implementation of the EU telecoms rules, to give advice on request and on its own initiative to the European institutions and to complement at European level the regulatory tasks performed at national level by the regulatory authorities.
Broadband	A service or connection generally defined as being 'always on' and providing a bandwidth greater than narrowband. Broadband has been

	the norm for Internet connectivity (non-mobile) since the mid-2000s, with ADSL being the first mainstream technology standard adopted.
Bundled offers, services, or 'bundles'	A contract that includes more than one service, such as a landline, broadband, pay TV and/or mobile service. The majority of Internet broadband services in the UK come bundled with a telephone line, and increasingly so with a pay-TV offer.
Competent Authority	A person or organisation that has the capacity and legally delegated authority to perform the functions assigned to it. In many places, for example spectrum management, the EECC updates the current framework to give Member States the flexibility of assigning certain functions to a competent authority other than the National Regulatory Authority.
Devolved Administrations	The governments of the devolved nations of the UK. These are the Scottish Government, the Welsh Government and the Northern Ireland Executive.
European Commission	The European Commission is the EU institution that has the monopoly on legislative initiative and important executive powers in policies such as competition and external trade. It is the principal executive body of the European Union and it is formed by a College of members composed of one Commissioner per Member State.
European Electronic Communications Code (EECC)	The EECC is a European directive setting out current rules for telecoms. The EECC will replace the following four existing telecoms directives: Framework, Access, Authorisation and Universal Service.
EU institutions	There are a number of EU bodies which are defined under the Treaties as EU institutions including the European Parliament, the European Council, the Council of the European Union and the European Commission.

Electronic Communications Network	<p>Transmission systems, whether or not based on a permanent infrastructure or centralised administration capacity, and, where applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the conveyance of signals by wire, radio, optical or other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including internet) and mobile networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed.</p>
Fibre to the Premises (FTTP), or Full Fibre	<p>An access network using optical fibre to provide the connection between the local exchange and the end users' houses or business premises. The optical fibre may be point-to-point – a dedicated fibre connection for each home – or may use a shared infrastructure such as GPON (Gigabit passive optical network). This type of connectivity is considered in general more reliable and being capable of providing higher throughput and speeds than legacy copper-based networks (i.e. DSL services provided over telephone lines).</p>
Future Telecoms Infrastructure Review (FTIR)	<p>The FTIR, published in July 2018, set out a national, long-term strategy for digital infrastructure in the UK, with the aim of securing world-class connectivity that is gigabit-capable, reliable, secure and widely available.</p>
General Conditions of Entitlement, or 'General Conditions'	<p>Regulatory conditions that all providers of electronic communications networks and services must comply with in order to provide services in the UK.</p>
GHz	<p>Gigahertz – a unit of frequency of 1 billion cycles per second.</p>
Gigabit-capable networks	<p>A network connection that is capable of achieving 1,000 Megabits per second (Mbps), i.e. 1 Gigabits per second (Gbps), download speeds.</p>
Interconnection	<p>The physical and logical linking of public communications networks used by the same or a different undertaking in order to allow the users</p>

	<p>of one undertaking to communicate with users of the same or another undertaking, or to access services provided by another undertaking. Services may be provided by the parties involved or other parties who have access to the network. Interconnection is a specific type of access implemented between public network operators.</p>
Latency	<p>The amount of time a message takes to travel across a system.</p>
National Regulatory Authority (NRA)	<p>The body or bodies charged by a Member State with any of the regulatory tasks assigned in the EECC. Ofcom is the UK's National Regulatory Authority and is responsible for regulating the telecoms, broadcasting, and postal sectors.</p>
Number-independent interpersonal communication service (NIICS)	<p>An interpersonal communications service which does not connect through the use of publicly assigned numbering resources, namely, a number or numbers in national or international numbering plans, or which does not enable communication through a number or numbers in national or international numbering plans. This includes several over-the-top (OTT) communication apps that allow users to communicate using Internet Protocol (IP) communications. Some OTT communication apps enable voice-over-ip (VoIP) using assigned numbered resources while being enabled by the Internet.</p>
Ofcom	<p>Ofcom is the regulator and competition authority for the UK communications industries. It regulates the TV and radio sectors, fixed line telecoms, mobiles, postal services, plus the airwaves over which wireless devices operate.</p>
Ofgem (Office of Gas and Electricity Markets)	<p>Ofgem is the independent regulator for the electricity and gas industries. It is a non-ministerial government department and an independent National Regulatory Authority, recognised by EU Directives. Its principal objective when carrying out its functions is to protect the interests of existing and future electricity and gas consumers.</p>
'Outside-in' approach	<p>The Government's approach to ensure connectivity across all areas of the UK is achieved at the same time, and no areas are systematically left behind.</p>

Over the top (OTT) services	An Over-The-Top (OTT) application is any digital product that disrupts or provides an alternative to the traditional billing models of telcos or cable/satellite companies.
Spectrum	The descriptor of the range of electromagnetic frequencies which can be modulated to carry information. Spectrum is a finite resource and a critical national asset that the Government wants to ensure is maximised for its economic and social value.
Significant market power (SMP)	A communications provider is deemed to have significant market power if, either individually or jointly with others, it enjoys a position in the market equivalent to dominance, that is to say a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers.
Statement of Strategic Priorities (SSP) for Ofcom	As described in Clause 98 of the Digital Economy Act 2017, the SSP will set out the Government's strategic priorities for Ofcom in telecommunications, the management of radio spectrum, and postal services. Under the legislation Ofcom must have regard to the Statement when carrying out its regulatory functions.
Universal service obligation (USO)	A legal right established by the UK Government for everyone to access high speed fixed broadband (10 Mbps download, 1 Mbps upload) if they do not have it, subject to a cost threshold.

Annex C: Privacy Notice

The following is to explain your rights and give you the information you are entitled to under the Data Protection Act 2018. Note that this section only refers to your personal data (your name, address, email address, telephone number and anything that could be used to identify you personally) not the content of your response to the consultation.

1. The identity of the data controller and contact details of our Data Protection Officer: The Department for Digital, Culture, Media and Sport (“the department”) is the data controller. The Data Protection Officer can be contacted at dcmsdataprotection@culture.gov.uk.
2. Why we are collecting your personal data: Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.
3. Our legal basis for processing your personal data: The Data Protection Act 2018 states that, as a government department, the department may process personal data as necessary for the effective performance of a task carried out in the public interest. i.e. a consultation.
4. With whom we will be sharing your personal data: We will not share the personal data obtained through this consultation outside of the department. Copies of responses may be published after the consultation closing date on the Department’s website: www.gov.uk/dcms
5. If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
6. For how long we will keep your personal data, or criteria used to determine the retention period: Your personal data will be held for three months after the consultation is closed. This is so that the department is able to contact you regarding the result of the consultation following analysis of the responses.

7. Your rights, e.g. access, rectification, erasure: The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right:

- to see what data we have about you
- to ask us to stop using your data, but keep it on record
- to have all or some of your data deleted or corrected
- to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law.

You can contact the ICO at <https://ico.org.uk/>, or telephone 0303 123 1113.

8. Your personal data will not be sent overseas.

9. Your personal data will not be used for any automated decision making.

10. Your personal data will be stored in a secure government IT system.

