

De Minimis Assessment: Self-Certification Template



Department for
Digital, Culture
Media & Sport

Title of regulatory proposal	<i>Reforms to the Electronic Communications Code</i>
Stage	Final
Lead Department/Agency	DCMS
Expected date of implementation	2023
Date	12 October 2021
Lead Departmental Contact	Pete McDougall, 07711729281
Departmental Triage Assessment	Equivalent Annual Cost to Business (EANDCB: 2020 prices) = £1.0m

Call in criteria checklist

Significant distributional impacts (e.g. significant transfers between different businesses or sectors)	No
Disproportionate burdens on small businesses	No
Significant gross effects despite small net impacts	No
Significant wider social, environmental, financial, or economic impacts	No
Significant, novel, or contentious elements	No

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SUMMARY

Rationale for government intervention

The key motivation for intervening is to help promote deployment of digital infrastructure, which is critical for driving digital connectivity and economic growth. The 2017 legislation aimed to achieve this through a series of amendments to make deployment more cost effective, improve the efficiency of operations (e.g. allowing operators to share apparatus), and more generally improve the system to resolve disputes.

A number of issues are preventing the completion of agreements of Code rights and the efficient use of those rights. These are the result of site providers and operators having differing incentives, expectations and bargaining power in making agreements related to the Code. In negotiations both parties are likely to aim to maximise the benefit to themselves, leading to risks of monopoly power and coordination failure. Site providers can have a local monopoly over the supply of land for a particular site. In these areas, they may try to charge operators above market prices for leasing their sites and/or making changes (e.g. upgrades) to sites. These mean the benefits of the 2017 reforms are not being fully realised.

Policy options

This DMA separates out three subsections: policy issues and proposals to address issues involving (i) obtaining and using Code rights; (ii) upgrading and sharing; and (iii) renewing expired agreements.

Four Critical Success Factors (“CSFs”) have been developed to assess policy options considered in the consultation, as outlined in the draft consultation response document.¹ Evidence from the consultation is used to assess whether the options:

1. Would improve the speed of deployment of digital infrastructure
2. Would be supported by operators, amongst other stakeholders
3. Would be supported by site providers, amongst other stakeholders
4. Would provide outcomes that might not be achieved through alternative mechanisms.

Based on the score of the policy options on these success factors, a selection of measures for each policy grouping was agreed on. These measures are what is evaluated and can be summarised as:

For (i), to better underpin negotiations by introducing an Alternative Dispute Resolution process (an “ADR”) and introduce an alternative process for operators to acquire code rights in cases involving non responsive / unidentifiable site providers.

¹ DCMS (2021, August, DRAFT) [Access to land: consultation on changes to the Electronic Communications Code. Government response](#)

For (ii) to introduce automatic rights to upgrade and share underground fixed apparatus installed before 2017 and accessible from public land and amend the Code to make clear that an operator can seek additional rights.

For (iii), to introduce reforms to bring more renewals of leases under the Code, introduce a mechanism allowing the parties to seek “interim orders” from the Tribunal pending a final determination of the case, including “interim rent” pending agreement on new terms, and align the processes for renewals with the equivalent mechanisms for new agreements

Summary of business impact /Rationale for DMA Rating

The chief impact of these reforms will be from policy changes in the third grouping discussed above, reforms to renewals of leases under the Code. These will have the direct benefit of reducing administration costs associated with managing expiring agreements. They will have indirect benefits of reducing the legal and negotiation costs associated with renewals. The policy changes will also effectively decrease the rents paid by the telecom sector to landowners, although these are transfers.

Policy changes allowing sharing and upgrading of underground equipment accessible from public land might have a significant impact on the fixed networks. Yet, a lack of evidence about the network length in scope for these changes prevents quantification of this impact.

Overall, the EANDCB for our analysis is estimated to be £1m per year with an NPSV of slightly below £20m. Most benefits come from improving the process for renewal of agreements in the mobile market, offset by significant familiarisation costs, which we estimate conservatively to reflect the diversity of the stakeholders and the possible complexity of adapting to the changes.

Section 1 - Policy background and rationale for change

Policy background and context

The Electronic Communications Code (“the Code”) is the legal framework underpinning the rights of digital network operators to install, maintain and upgrade communications networks on public and private land. Code rights can only be exercised by agreement with site providers and in accordance with the agreed terms.² These agreements are normally reached on a consensual basis, but the Code includes a framework permitting the courts³ to “impose” an agreement where a mutually acceptable outcome cannot be achieved.

The Code was substantially reformed in 2017 to address the enormous changes in demand for digital services since the Code’s first inception in 1984. The 2017 reforms recognised the substantial public interest in access to digital communications, and the importance of access to fast and reliable digital services for the society and the economy.

The 2017 reforms explicitly aimed to make network deployment faster and more cost effective, by:

- Introducing a new statutory framework for the **valuation of land** accessed and used through “Code rights”. This was intended to significantly reduce the amounts that operators would be required to pay site providers, making network deployment more cost effective and thereby encouraging investment. Analysys Mason (2016) expected the new valuation regime to lower rentals for telecommunications equipment by up to 40%.⁴
- Providing operators with limited **automatic rights to upgrade and share** installed apparatus. These rights were intended to remove the need for operators to have to seek the consent of site providers (and make additional payments) where upgrading existing apparatus, or sharing that apparatus with another operator to extend alternative networks, would have little impact on the site provider; and
- Transferring the **jurisdiction for the resolution of disagreements** relating to the Code from the county courts to the Lands Chamber of the Upper Tribunal (the “Upper Tribunal”) and its equivalent in Scotland.⁵ When compared with the county courts, the Tribunal offers a faster and cheaper option for dispute resolution, and this was intended to ensure that both operators and site providers had access to a mechanism that would enable disagreements to be dealt with more proportionately in terms of time and costs. Resolving disputes more quickly was expected to speed

² The Consultation refers to “occupiers” (the parties in occupation of land who are required to agree Code rights and against whom Code rights may be imposed); and “site providers” (parties who have entered into a Code agreement). For ease of reference, this document refers to “site providers” throughout, but the term here includes occupiers of land who have not yet agreed to Code rights.

³ Part 16 of the Electronic Communications Code grants the Secretary of State powers to prescribe which court has jurisdiction to hear Code disputes. The detail on this is contained in separate regulations. We use the term “courts” to cover the full range of forums capable of determining Code disputes.

⁴ Analysys Mason (2016, May) [Financial impact of ECC changes](#), Report for DCMS

⁵ The Electronic Communications Code (Jurisdiction) Regulations 2017 prescribed that, in the first instance, disputes should be dealt with by the Upper Tribunal in England and Wales, and its equivalent in Scotland. Transfer of jurisdiction could not be completed in Northern Ireland, due to the absence of a legislative executive at the time the Code reforms were implemented. We will address this as part of any future Code changes.

up deployment, although this wasn't quantified.⁶

It has now been almost four years since the 2017 reforms came into effect. In those four years, site providers and operators have had significant opportunities to adapt to and implement the new legislation. Moreover, a number of significant tribunal determinations have been published that provide a degree of clarification on how the legal provisions of the 2017 reforms are to be interpreted in practice. Yet, a series of roundtables chaired by the Minister for Digital Infrastructure in September 2020 identified a number of factors as hampering the Code's effectiveness as a tool to enable and support digital networks:

- Deteriorating relationships between site providers and operators
- Differing interpretations of key provisions of the Code
- The evolving nature of digital networks (which affects what rights operators need)

These are reportedly limiting the effectiveness of the 2017 reforms. They are contributing to it now reportedly taking even longer for new and renewal agreements to be completed than under the old Code.

In light of this, it is critical that we revisit the Code, its purpose and effect. **From our stakeholder feedback from the public consultation, these beliefs have been confirmed. Such feedback is summarised in this DMA, along with supporting evidence.** As a result of this we believe changes to the legislative framework are necessary.

This assessment focuses on the impacts relating to the deployment of digital networks. There is therefore some concentration throughout the narrative on the effect that changes will have on operator rights and powers. However, it is important to note that: (i) any changes will be carefully assessed to ensure they achieve an appropriate balance between the public interest in digital networks and the individual rights of site providers, including providing adequate protections for the latter; and (ii) a number of the changes specifically aim to promote site provider confidence and the protections and remedies available to them. Such changes will be of benefit for site providers and are considered in more detail within the consultation.

A study commissioned by telecommunications vendor Huawei puts the gross value to the UK economy of the Government's ambition of nationwide gigabit-capable broadband by 2025 at £52 billion.⁷ The Government hopes to achieve nationwide gigabit-capable connectivity as soon as possible. The Covid-19 pandemic has increased the critical importance of digital communication services for society and the economy to both function and recover. This impact is reflected in publications like OECD (2020) and International Telecommunication Union (2020).^{8,9} Recent analytical evidence demonstrating the impact includes the paper,

⁶ Department of Digital, Culture, Media and Sport (2016, 12 May, p. 20) [Impact Assessment: Electronic Communications Code](#)

⁷ Assembly Research (2020, 27 April) [Delivering Gigabit Britain: Broadband for all](#), Report for Huawei

⁸ OECD (2020), [Digital Transformation in the Age of COVID-19: Building Resilience and Bridging Divides](#), Digital Economy Outlook 2020 Supplement, OECD, Paris

⁹ International Telecommunication Union (2020) [Economic Impact of Covid-19 on Digital Infrastructure](#), Report of an Economic Experts Roundtable, GSR-20 Discussion Paper

Zhang (2021).¹⁰ DCMS is committed to exploring interventions needed to ensure a robust regulatory framework is in place that promotes investment in our digital networks, enabling them to expand and thrive.

Having an effective legislative framework to facilitate and regulate agreements between operators and site providers is crucial to ensuring that the UK has the digital networks and services it needs. The Government's intention is that the legislative framework should support agreements relating to Code rights being reached on a consensual basis. A large number of agreements are needed to maintain and extend the UK's digital networks. This makes it critical that agreements can be reached at pace and without litigation wherever possible and good working relationships between site providers and Code Operators are essential for this to happen. There are estimated to be around 30 million homes and business premises in the UK.¹¹ To connect each premises to fixed networks will require an agreement to be reached with the building's owner, as well as the site providers that exist between the property and the telecoms exchange. Likewise, agreements between mobile network providers and landowners are vital for operating mobile networks.

However, the rate at which agreements for digital networks are being reached or renewed is not keeping pace with the speed at which deployment and upgrading must happen if the government's digital ambitions are to be realised. For example, DCMS is aware that one operator is preparing to add 5G equipment to almost half of their 14,000 sites with others preparing to upgrade existing 4G sites to make them 5G ready. Modifying rights to upgrade or share apparatus in these cases could make it significantly easier for operators to adapt their 4G networks to 5G.

Issue & rationale for government intervention

Economic rationale for intervention

The key economic motivation for intervening to improve the effectiveness of the 2017 legislation is to help promote deployment of digital infrastructure, which is critical for driving digital connectivity and economic growth. The 2017 legislation aimed to achieve this through a series of amendments to make deployment more cost effective, improve the efficiency of operations (e.g. allowing operators to share apparatus), and more generally improve the system to resolve disputes. As described above there are a number of issues which are preventing the completion of agreements of Code rights and the efficient use of those rights.

In part, some of these challenges are the result of site providers and operators having differing incentives, expectations and bargaining power in making agreements related to the Code. In negotiations both parties are likely to aim to maximise the benefit to themselves, leading to risks of monopoly power and coordination failure.

Indeed, a major issue the 2017 amendments tried to address was that some site providers possessed a degree of local monopoly power, which comes about because of the difficulties of using alternative sites. Deloitte (2015) describes the process for mobile network operators

¹⁰ Zhang, X. (2021) "[Broadband and economic growth in China: An empirical study during the COVID-19 pandemic period](#)", *Telematics and Informatics*, 58

¹¹ ONS UK business activity; ONS UK families and households in the UK

selecting sites for mobile equipment.¹² It shows how technical design constraints, planning restrictions and the cost of moving sites, once established, mean that in practice, operators have few options for siting base stations in particular locations. While improving technology might change this issue, no evidence suggests it has been fully resolved.

Site providers can have a local monopoly over the supply of land for a particular site. In these areas, they may try to charge operators above market prices (“ransom rents”) for leasing their sites and/or making changes (e.g. upgrades) to sites. Monopoly power might also lead to rent extraction through activities other than pricing, such as refusing access for emergency repairs.¹³ Reducing the possibility of ransom pricing, but also further reforming the valuation system to reduce the cost to network operators of deploying infrastructure were key elements of the 2017 changes.

While the 2017 reforms targeted local monopoly power, further non-government actions are extending their effectiveness in this. For instance, courts appear to be adopting a “rate card” approach,¹⁴ indicating what is a reasonable rental rate by type of mobile site. This means that precedents are being set and subsequent court cases might be much easier to resolve.

Problems of monopoly power are distinct from a coordination failure that might also be present. There is a perception that different expectations about how quickly the 2017 changes would influence factors like rent pricing have contributed to this. Jackman and King (2020, p.23) describe that those changes caused temporary market uncertainty and stopped it functioning effectively.¹⁵

A mix of both local monopoly power and coordination failure are contributing to a number of issues that are hampering the Code’s effectiveness. While the 2017 reforms reduced site providers’ ability to charge ransom rents, they did not prevent them from engaging in other behaviour, such as resisting operator efforts to upgrade/share equipment or making it difficult for agreements to be reached or causing concluded agreements not to operate effectively. It is difficult to distinguish between monopoly power and coordination failure as a cause of these actions. Yet, they mean the benefits of the 2017 reforms are not being fully realised. Changes that improve incentives to complete agreements consensually, clarify and extend Code rights (e.g. to upgrade and share) and improve dispute resolution processes, could help realise the benefits sought through the 2017 changes and further promote digital infrastructure deployment.

Consultation

The Code was substantially reformed in 2017, recognising the important role effective legislation plays in delivering the rollout of digital infrastructure and enabling both society and the economy to benefit from fast and reliable digital services. However, feedback following them indicated a need for further changes to support the aims of the 2017 reforms. A

¹² Deloitte (2015, 26 February) *Economic impact of the proposed Electronic Communications Code reforms*, A report for the Mobile Operators Association

¹³ Example of a case where a site provider refused emergency access provided in Deloitte (ibid, p. 22).

¹⁴ Stott, J.(2021, 17 January) “Telecoms valuations: three years post-code and the Upper Tribunal endorses a specific approach”, Gately plc Insight

¹⁵ Jackman, A. and King, N. (2020), [Upwardly Mobile: How the UK can gain the full benefits of the 5G revolution](#), Centre for Policy Studies

consultation ran on such changes between 27 January and 24 March 2021 and sought stakeholders' views on changes in the following three categories:

- obtaining and using Code agreements
- rights to upgrade and share apparatus
- expired agreements

There were 1266 responses to the consultation, largely from landowners, the general public, telecoms operators and professional bodies representing industry stakeholders. The Government responded by introducing the proposed changes via primary legislation based on evidence from the consultation. This DMA considers the impact of the proposed legislation. The responses to the public consultation have been crucial in informing evidence underpinning our analysis here and estimating the potential impacts of the changes as accurately as possible.

Policy options

As explained above, for the purposes of the consultation, the policy options were divided into three distinct groups. This DMA treats the policies equivalently, separating out three subsections: policy issues and proposals to address issues involving (i) obtaining and using Code rights; (ii) upgrading and sharing; and (iii) renewing expired agreements. Each includes a table summarising the policy changes considered in the consultation and whether evidence from the consultation shows those changes meet certain Critical Success Factors ("CSFs"). The subsections then turn to providing further details on the policy changes that have been taken forward into the draft legislation.

Critical Success Factors for assessing options

Four CSFs have been developed to assess policy options considered in the consultation, as outlined in the draft consultation response document.¹⁶ Evidence from the consultation is used to assess whether the options:

1. Would improve the speed of deployment of digital infrastructure
2. Would be supported by operators, amongst other stakeholders
3. Would be supported by site providers, amongst other stakeholders
4. Would provide outcomes that might not be achieved through alternative mechanisms, such as by other policy changes or by non-regulatory options.

The proposed changes are assessed using a binary choice mechanism. The table presents the number of CSFs each change meets. The scores given for particular policy changes are better explained in Annex 1. Although it is the consultation response that is the ultimate guide for which changes are carried forward, this CSF analysis provides an easy method for understanding why changes have been adopted in the draft legislation.

Policy grouping 1 – Obtaining and using Code rights

The Code is premised on operators and site providers reaching mutually acceptable agreements in the majority of cases, with litigation only used where reasonable efforts to achieve this have failed. Good working relationships between site providers and operators

¹⁶ DCMS (2021, August, DRAFT) [Access to land: consultation on changes to the Electronic Communications Code. Government response](#)

are therefore critical from the point at which the process for negotiating an agreement commences. They are also important throughout the duration of the agreement (and beyond when renewal agreements might be required). Where relationships between site providers and operators are poor, this leads to unnecessary delays in relation to deployment and upgrading, unnecessary costs in relation to protracted negotiations and, sometimes, litigation.

Table 1 sets out the policies in the first grouping that were considered at consultation. They cover a range of issues relating to obtaining and using Code rights. We believe a number of these issues are linked to tensions between site providers and operators. The issues are grouped together because:

- They might have the cumulative effect of making it difficult for agreements to be reached
- They cause concluded (or imposed) agreements not to operate effectively; and
- Introducing certain changes will have a holistic impact across all of them, leading to better overall outcomes.

As well as summarising the policy changes considered at consultation, Table 1 includes an assessment of the four CSFs outlined above.

Table 1. Policy changes from consultation to improve the way Code rights are obtained and used

Policy option	Description of issue	CSF rating
Do nothing	This would not make any changes to tackle any issues. Relationships between site providers and operators will likely remain poor, leading to unnecessary delays in relation to deployment and unnecessary costs.	0
Better underpin negotiations by introducing an Alternative Dispute Resolution process (an “ADR”)	Code operators report that the time it takes to progress and complete negotiations is having a detrimental impact on their ability to deploy at pace. At the same time, site providers and their representative organisations report finding the negotiation process difficult. Disagreements can be resolved through collaborative negotiations. Yet, if negotiating parties’ expectations for agreements differ substantially and the only alternative means of resolution is costly litigation, negotiations may be less likely to succeed.	3
Introduce an alternative process for operators to acquire code rights in cases involving non-responsive /	Negotiation and engagement between an operator and (potential) site provider is only possible where the party whose agreement is required (i) can be identified and (ii) engages with the process. Operators have expressed concern that they are increasingly finding themselves in situations where it is impossible to even start the engagement process because notices sent to site providers are failing to elicit any response. Operators have also highlighted difficulties they face in some cases in even identifying who is the site provider. Of operators	3

unidentifiable site providers	that responded to the consultation on the question relevant to this issue, 75% felt it appropriate to make this change.	
Make changes to who is able to confer Code rights in a limited range of circumstances to “streamline” the agreement process.	<p>In cases where one operator is <i>in situ</i>, and a different operator wishes to take over the site at the point of renewal, the Tribunal has held that it is the operator in situ who as the “occupier” of the land has the capacity to grant Code rights. This is a technical issue that prevents new operators from negotiating directly with the site provider and requires unnecessary “work arounds”.</p> <p>There have also been issues where the operator in situ wishes to enter into a new Code agreement. The operator has again been held to be the occupier and been unable to enter into a new Code agreement, as it is legally impossible to contract with oneself.</p>	2
Introduce a cleaner process for the parties to seek changes to the agreed rights if circumstances change during the life of an agreement	Circumstances can change for either or both parties during the course of an agreement, which means either party may want to seek changes to the rights agreed. While it is open to a site provider and operator to mutually agree alterations to the terms of their agreement, if one party wishes to do this and the other does not agree, the Tribunal has no jurisdiction to intervene. This may mean, for example, that a site provider has scope to seek “ransom payments” for what may be essential changes or additional rights or that - where additional rights are refused - existing sites cannot be upgraded.	0
Introduce faster processes for addressing failures to comply with agreed terms	Stakeholders report that they have concerns about compliance with the terms of agreements once these have been concluded. Policy officials want to test whether different measures to enforce compliance with the terms of agreements would help build site provider confidence and encourage willingness to enter into agreement.	0
Introduce a statutory complaint / penalty system for non-compliance with the Ofcom Code of Practice ¹⁷	The Ofcom Code of Practice sets out expected standards or behaviour and good practice for operators and site providers engaged in negotiations. These are specifically aimed at encouraging a collaborative relationship between the parties at the negotiation stage. However, site providers have reported operators are “negotiating in bad faith” and failing to comply with the Code of Practice once agreements are reached. The Code of Practice is not, in itself, enforceable and there is no formal channel by which site providers or operators can raise concerns about negotiating behaviours. Operator failures to comply with the Ofcom Code of Practice, and the	1

¹⁷ Ofcom (2017, 15 December), [Electronic Communications Code: Code of Practice](#)

	absence of any punitive measures in relation to this, reportedly undermines site provider confidence and contributes to reluctance to engage in new and renewal agreements.	
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Proposed policy changes following consultation

The Government has responded to the consultation by drafting legislation that would make the following policy changes:

- Introduce a duty for operators to notify site providers of the availability of ADR if they are unable to reach an agreement, when serving a notice under the Code.
- It will not be mandatory for the parties to have attempted ADR before making an application to the Tribunal, but the changes require the tribunal to consider any unreasonable refusal to engage in ADR when awarding court costs.
- Create a similar process to that set out in the Telecommunications Infrastructure (Leasehold Property) Act, to address the issue of unresponsive occupiers or landowners or occupiers (rather than building owners). It will have the following steps:
 - the operator requests access from a landowner/occupier for the installation of new infrastructure under or over land (but not on the land, minimising the impact on the land itself), (noting that the Code contains a number of procedural safeguards to ensure the operator takes reasonable steps to identify and contact the correct person);
 - the landowner/occupier fails to respond to repeated requests for access;
 - the operator may apply to the First Tier Tribunal (Property Chamber) for access;
 - Proceedings before the First Tier Tribunal (FTT) will cease should the landowner/occupier respond before a decision is made by the FTT;
 - The FTT can award the required interim access rights to the operator for no more than six years;
 - The access rights will expire if:
 - i. they are superseded by a negotiated agreement;
 - ii. a court imposes full rights over the land; or
 - iii. the six years expires with no further application from the operator. Where this occurs the landowner/occupier would have the right to require the removal of the apparatus and restoration of the land to its former condition.
 - Where a Court has made an order, a landowner/occupier can seek an order from the Court for compensation derived from any loss or damage that has or will be sustained as a result of the access.

- Provide that in circumstances where an operator is in occupation of a site and needs to renew their agreement or obtain new Code rights, they are able to obtain them from the person who would be deemed to be the occupier were it not for the operator's presence on the land, in most circumstances the landowner (subject to negotiation or imposition by the courts).
- Introduce a requirement for Ofcom to include in the existing code of practice matters concerning operators' handling of complaints relating to their conduct pursuant to the Code. This will ensure that all operators have a complaints procedure in place.

Policy grouping 2 - Sharing & upgrading

The second group of policy issues is considered in Table 2 below. These involve rights to upgrade and share apparatus and sites.

The efficient deployment and use of fixed and mobile networks depends upon operators having effective rights to share and upgrade installed apparatus. The 2017 reforms to the Code recognised this, and introduced automatic upgrading and sharing rights which could be exercised without the operator having to obtain the site provider's consent, or being required to make additional payments. However, these automatic rights included specific limitations, which mean they cannot be exercised in all cases. Furthermore, the automatic rights only took effect in relation to agreements concluded after the 2017 reforms came into effect.

As discussed in the Economic rationale for intervention, site providers might possess high bargaining power, especially once equipment is installed on their property, and/or have misaligned incentives with operators. The Code was revised in 2017 partly to ensure that upgrading and sharing that would have very little impact on a site provider could take place without the additional time and cost involved in having to negotiate an agreement for it. Policy changes in this grouping look to improve the level of protection provided to further promote the deployment and efficient use of digital infrastructure.

Table 2. Policy changes from consultation for rights to upgrade and share

Policy option	Description of issue	CSF rating
Do nothing	This would not make any changes to tackle any issues. Impediments to upgrading and sharing will remain, preventing the deployment and efficient use of digital infrastructure.	0
Introduce automatic rights to upgrade and share apparatus installed before 2017	At present only agreements entered into under the 2017 version of the Code attract automatic rights to upgrade and share. Where the Code agreement predates this an operator has to negotiate with the site provider for additional rights to upgrade or share equipment. If agreement cannot be reached with the site provider, the operator would need to make an application to Court, which is both time consuming and costly.	3
Clarify the conditions relating to the automatic	Operators have not taken full advantage of the automatic rights to upgrade and share which were introduced in 2017. They advise that this is because they are unsure of when the criteria currently in Paragraph 17 of the Code is applicable.	3

rights to upgrade and share		
Amend the Code to clarify operators can seek additional rights	There was disagreement between operators and site providers over whether courts had jurisdiction to impose rights to upgrade and share apparatus that would not otherwise be permitted under Paragraph 17 of the Code.	3

Proposed policy changes following consultation

The proposed policy changes have been structured to balance the rights of both site providers and operators. They will:

- Grant operators automatic rights to upgrade and/or share equipment under land regardless of when it was installed and the date of any agreement, providing that:
 - There is no additional impact on the land or the site provider;
 - The work can be carried out from the public highway or public land without accessing the private land under which the apparatus is installed or by only accessing the land in accordance with an existing agreement.
- Clarify the Code to make it clear that other (non-automatic/conditional) rights to upgrade and share equipment can be agreed by the parties and/or imposed by the tribunal.

Policy grouping 3 - Renewals

Table 3 below sets out the policy problems and the options being considered to address them in relation to renewal agreements. This means agreements that gave operators rights to install equipment for a specified period, which have already lapsed or will shortly do so. In such circumstances, operators already have equipment in place and they will normally prefer - for reasons of time and cost - to renew their existing agreement than to seek an alternative site. However, incentives to conclude renewal agreements swiftly and implement the changes intended by the new Code are not aligned between negotiating parties, and hence there may be disruption.

Renewing expired agreements creates distinct challenges. Firstly, the site provider will be used to receiving payments at levels significantly higher than those expected following the Code reforms. As explained earlier, the 2017 reforms introduced a valuation regime specifically intended to lower rents. Secondly, expired agreements will not include the automatic rights to upgrade and share that were introduced through the 2017 reforms, and it is important that any renewed agreement also includes these, to ensure parity with the agreements reached with new site providers. Finally, there are anomalies to the dispute resolution process for renewal agreements which mean it can take significantly longer for disagreements about them to be dealt with. These issues are expanded on in more detail after Table 3.

Table 3. Policy changes from consultation for renewal of expired agreements

Policy option	Description of issue	CSF rating
Do nothing	This would not make any changes to tackle any issues. Incentives to conclude renewal agreements swiftly and implement the changes intended by the new Code will remain misaligned between negotiating parties, and hence may disrupt digital infrastructure.	0
Introduce reforms to bring more renewals of leases under the Code	<p>Not all sites that host telecoms equipment are in scope of the renewals framework contained in the Code. In <i>Cornerstone Telecommunications Infrastructure Limited v Ashloch Limited and other [2019] UKUT 338 (LC)</i>, the Upper Tribunal held that agreements completed prior to 2017 under the LTA 1954 (rather than the Code) remain protected by it. This means disagreements at the renewal stage can only be dealt with by the County Court and any new terms imposed would have to be “substantially similar” to those previously in place. This prevents any new (imposed) agreement benefitting from the new rights and valuation regime of the 2017 reforms. It remains open to the parties to reach a “new Code” agreement on a consensual basis, but there is no incentive for the site provider to agree to this: retaining the LTA 54 terms will normally mean higher fiscal benefits.</p> <p>In <i>Arqiva v AP Wireless [2020] UKUT 195 (LC) UTLC Case No TCR/324/2019</i>, the Upper Tribunal held that the operator in situ could not use the Code to obtain the renewal of an expired agreement at all, with similar effects.</p> <p>The transitional provisions under the 2017 Act, excluded existing agreements from being able to use the renewal process set out in Part 5 of the Code.</p> <p>Where those agreements have protection pursuant to the LTA 1954, the tribunal has refused to impose new Code rights and has held that any renewal should be made pursuant to the LTA 1954. This prevents the operators from taking advantage of the ‘no network’ valuation scheme in the Code, resulting in them having to pay a higher, market value rent to the landowner.</p> <p>Even where an expired agreement does not have the protection of the LTA 1954 (because the parties agreed to contract out of its provisions), the tribunal has held that an operator is unable to use the renewal process in Part 5 of the Code. In these circumstances the operator is potentially left in limbo, being unable to use either renewal mechanism.</p>	3
Introduce a mechanism allowing the parties to	The law provides that where an existing agreement lapses, rent continues to be paid at the agreed amount pending the conclusion of a new agreement. While a landowner can apply to the Court for an interim order to decide the amount of rent	3

<p>seek “interim orders” from the Tribunal pending a final determination of the case, including “interim rent” pending agreement on new terms. The new rate of payment could then be backdated to the date at which an interim rent was requested, encouraging both parties to agree on a realistic interim figure.</p>	<p>payable pending final determination of the case, there is no reciprocal provision to enable the operator to do so. This incentivises site providers and their agents to delay renewal negotiations as long as possible, to avoid the reduction in rents that the 2017 reforms were intended to achieve.</p>	
<p>Align the processes for renewals with the equivalent mechanisms for new agreements</p>	<p>Where an operator applies for a new agreement, the Code allows them to commence proceedings 28 days after serving notice. For renewals, the comparative time limit is 6 months.</p> <p>In addition, regulations set down by the Wireless Telegraphy Act 2006 have been construed as requiring Tribunals to determine new site applications within 6 months of receipt. There is no such limit in relation to disputes relating to renewal applications.</p>	<p>3</p>

Proposed policy changes following consultation

- Where an operator wishes to renew an old Code agreement which is protected by the Landlord and Tenant Act 1954, the procedure for any dispute, and the terms of any new agreement imposed will be more closely aligned to the Code;
- Where an operator occupying land under a previously expired agreement is currently unable to renew that agreement or ask for a new agreement, they will now be able to apply for a new agreement under the Code
 - this relates to the change referred to in the previous section whereby the operator in situ may seek code rights from the person deemed to be the occupier if the operator was not in occupation of the land;

- It will be possible for disputes to be commenced in the First Tier Tribunal, rather than the Upper Tribunal. This should increase the judicial resource available for Code disputes and help ensure all cases are dealt with as expeditiously as possible; and
- Where an application to the courts is made in relation to an expired agreement, either party will be able to apply for an interim order pending the resolution of that dispute.

Section 2 - Cost-Benefit analysis

Proportionality of the analysis

The proposed policy changes do not seek to substantially modify the principles which underpinned the changes made to the Code in 2017. Instead, they are intended to introduce amendments that will improve its effectiveness in supporting the completion of agreements to grant Code rights and enabling those rights to be used efficiently. The Impact Assessment for the 2017 legislation estimated the EANDCB to be zero.¹⁸ The only quantitative analysis conducted was on the new valuation of land amendment, which it concluded was a zero net cost proposal.

Since the 2017 reforms have been introduced, some evidence has emerged that has helped clarify the impact changes to the Code might have. Responses to the Consultation have enabled policy officials to develop a package of reforms that can best achieve the aim of making it cheaper and easier for digital networks to be deployed, installed, maintained, and shared by clarifying the rights that enable these and supporting the process for agreement about rights.

This greater amount of evidence allows for a more quantitative approach to this assessment.

For each proposed policy change, this section describes the methodology and approach to measurement of their impact on fixed and mobile deployment, relative to the counterfactual of no policy changes. This assessment analyses their effect on costs, benefits and transfers by considering all the policies in groups. Since the cost burdens of these policies are composed of familiarisation and legal compliance costs, which are similar across fixed and mobile policy groupings, we summarise these impacts collectively.

The main impact on operators and site providers is that it influences the relative strength of their negotiating positions. This we deem an appropriate approach, as the main market failure we identify is localised monopoly power of site providers and coordination failure in the negotiating process. The post-2017 legislative regime failed to solve these pre-existing problems, holding back the market from continuing its operations. By introducing changes that address these concerns the subsequent holdup in the market can be solved.

Reducing legislative uncertainty and the subsequent impacts on network deployment is the key impact on the market. It should be noted that, without the proposed legislation, the market might eventually adapt, at least partially, and generate outcomes that are improvements upon the status quo. It could for example be assisted by Courts' interpretation of the current legislation and establishing stronger precedents. A number of the 1266 responses to the Consultation mention legal appeals to Court decisions in relation to mobile

¹⁸ Department of Digital, Culture, Media and Sport (2016, 12 May) [Impact Assessment: Electronic Communications Code](#)

decisions. The uncertainty about these appeals suggests that making predictions around the counterfactual, at least for the mobile market, is challenging. A counterfactual of no change is thus considered, even though it is a pessimistic one that arguably exaggerates the impact of the changes.

Fixed Broadband Networks

The market for fixed network connections for homes and businesses is dominated by incumbent, BT-owned Openreach. While its exact share of fixed connections depends on the rurality of the area being considered, it is estimated to be between 70-100%.¹⁹ There are five other significant companies deploying full fibre networks in the UK and a larger number of smaller ones (known collectively as the Altnets).²⁰

For considering the impact on fixed networks, we estimate these benefits using operators' deployment profiles. As well as reducing capital and labour costs, another major benefit of the potential reforms is that they improve the speed of deployment of new digital infrastructure. This analysis also uses a quantitative approach to these benefits. It does so by calculating the benefits of better connectivity brought on by faster deployment, mainly higher long-run productivity and reduction in long-term unemployment.

The proposed changes to the ECC might reduce the need for operators to negotiate wayleaves, directly benefiting operators. Openreach needs to renegotiate some portion of its existing wayleaves (i.e. telephone/broadband network) to upgrade its copper network to full fibre. This has a knock on effect on Altnets which need to either negotiate new wayleaves, or use the less costly approach of sharing Openreach's ducts and poles via its Ducts and Pole Access (DPA)²¹ product but that requires Openreach to have its own wayleaves secured.

Mobile networks

There are four Mobile Network Operators (MNOs) in the UK (Vodafone, EE, O2 and Three.) These supply around 90% of the retail mobile market in the UK.²² The remainder is supplied by Mobile Virtual Network Operators (MVNOs) who purchase network services from MNOs on a wholesale basis.

MNOs require sites to house their transmission equipment (land, buildings) and mast infrastructure (large lattice towers, monopoles.) The UK tower sector is dominated by the MNOs and their two joint ventures. They supply passive infrastructure to wireless communication providers and these structures can take several forms, such as purpose-built towers, rooftop masts, water towers, pylons, lamp posts or other street furniture.

For considering the mobile market, our primary approach is to consider the impact of the policy changes on the administrative and negotiation processes that take place between landowners and site providers. Renegotiating and updating the terms of lease agreements is currently time consuming, costly and often unsuccessful in outcome. Moreover, and unlike

¹⁹ Ofcom (2020, p. 110) Promoting competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2021-26 Volume 2: Market assessment, Non-confidential version

²⁰ The five are Virgin Media O2, CityFibre, Hyperoptic, Gigaclear and Fibrus.

²¹ This refers to the regulated physical infrastructure access product of the monopolist, usually reusing existing poles and ducts/trenches dug by Openreach, as described more formally [here](#).

²² Competition and Markets Authority (2021, 14 April) [Anticipated joint venture between Liberty Global Plc and Telefónica S.A.: Provisional findings report](#)

for negotiation issues involving fixed apparatus, they often involve costly external legal advice. We consider these cost burdens and how legislative change can reduce these.

The change in negotiating positions will also affect the rent payments to site providers from operators. One of the main qualitative benefits of the legislative changes is to render the site rental market more predictable and to simplify negotiations between parties, such as by introducing a rate card for site rental. While the introduction of more predictable rental cost ranges for sites should help make costs more predictable, there are several exceptions that apply depending on the characteristics of individual sites that will ultimately influence the resulting rental price. It should be made clear however that these efforts are likely to push rents down, a transfer payment from landlords to telco firms. These impacts on rentals are captured as transfer payments between industry groups.

The models try to capture these benefits relative to a counterfactual of no changes. The models roughly follow a standard cost model approach (i.e. Price x Quantity). Price being the legal and admin costs exhibited by the firm. Quantity being the number of instances expected for this cost to occur each year (e.g. the number of upgrades predicted per year, or the number of renewals).

These measures aim to boost overall network infrastructure, its sharing, and its speed of deployment, quality of service and overall reliability. These benefits are particularly difficult to quantify at this stage, especially given the uncertainty of the impact of legislation on the market. For this reason we consider it to not be proportional to try and quantify these.

Framework for assessing policy options

As discussed in Section 1, the policy options considered are wide and varied. The chief aim is to ease deployment of digital infrastructure by lowering the cost and simplifying the process of deployment through different methods. The below section sets out the methodological approach for considering the impacts of policy change, split out between fixed and mobile impacts.

Costs

Implementation costs

Although they don't involve wholesale changes to the Code, the proposed policy groupings are relevant to a variety of activities and groups involved with telecommunications networks. The key groups are both fixed and mobile network operators and site providers, as well as advisors to those first two groups. Furthermore, employees of real estate firms are expected to need to become familiar with the changes.

- For operators, this analysis relies on an estimate obtained from previous industry work that 0.15% of employees involved with telecommunications work on site management. A 2019 ONS estimate that there are 215,000 employees in wired and wireless telecommunications across the UK (SIC Code 61) is used.²³ These figures imply 323 workers will need to become familiar with the changes to the Code. An

²³ Office of National Statistics (2020, November) [Business Register and Employment Survey \(BRES\): Table 2](#), 2019P

equivalent number of 323 are added to this total as employees of legal advisory firms to provide a conservative estimate.

- For existing site providers with mobile network equipment on their property, we assume that an agent will have to familiarise themselves with the changes made in the short term. We focus on the 13,200 agreements that have expired or will expire in the next three years. Responses received at consultation indicate a number of land agents and legal firms advised site providers. From them, we estimate a further 1000 employees of such firms are added to this total. Insufficient information exists to estimate the familiarisation costs borne by existing site providers with fixed network equipment on their property. The nature of the policy changes, particularly the lack of relevance of renewals for fixed networks, suggests these won't likely be as significant though.
- Since the proposed changes will affect real estate purchases, we use our understanding of the significance of the ECC to the real estate market to make an assumption about the level of familiarisation. We assume 5% of employees involved with buying and selling of own real estate, renting and operating of Housing Association real estate and management of real estate on a contract basis (SIC codes 68201, 68209 and 68320) bear familiarisation costs.²⁴ This is likely an overestimation as most legal and admin costs are actually borne by operators for real estate providers, but we are including these to remain conservative in our analysis.

With further assumptions, familiarisation costs for the three groups can be calculated. Based on our understanding of the proposed legislative changes and familiarisation costs of similar policies, we have assumed that each individual is assumed to take ten hours to become familiar with the proposed changes. Data on the gross hourly wages for the three groups are taken from ONS 2020 ASHE data.²⁵ Finally, head office costs of 22% are included in gross wages, in line with the Regulatory Policy Committee's (RPC) guidance. After applying these, familiarisation costs are calculated to total **£6.3m**. We have taken an overall pessimistic approach to these costs to reflect the decentralised nature of the market, with a multitude of site providers that might compound familiarisation costs.

ADR costs

We have also included an estimate for the costs associated with inclusion of an Alternative Dispute Mechanism. Further in this section we discuss the role of an ADR introduction as a benefit, via a cost saving from preventing a dispute ending in court or tribunal, thereby incurring significant legal and administrative cost burden. A cost of £1,000 is included for each case that requires resolution via an Alternative Dispute mechanism, totalling a nominal value of **£2.8m** in cost over a 10 year appraisal period, based on approximately 2,800 cases. Table 5 below features a breakdown of disputed cases. The cost per case is based on stakeholder evidence around average legal costs in the market.

We have chosen to include these as direct costs, as the legislation will introduce the ADR process in this market where it was previously absent, rendering this an immediate effect. We have chosen to deviate somewhat from the relatively lower costs from ADR we have

²⁴ Office of National Statistics (ibid)

²⁵ Office of National Statistics (2020, November) [Earnings and hours worked, occupation by four-digit SOC: ASHE Table 14](#), 2020P

seen in other assessments²⁶ for the following reasons: a) The existing assessment evidence is dated and refer to retail disputes, b) we have benchmarked these costs on consultation evidence around the average legal costs per case and our own research on industry costs, c) we wanted to remain conservative, given that the equilibrium price is impossible to know ex-ante for this industry in specific, but will most likely be above the cost of settling a retail dispute by some margin.

Non-monetised costs

Responses to the consultation indicate one potential impact of the policy changes being considered that is not monetised above. The consultation document outlines problems of a lack of engagement and collaboration between operators, occupiers and site providers, affecting negotiations of new agreements for land use. The proposed policy changes might contribute to weaker trust between parties, impacting subsequent negotiations. As those responses admit, significant difficulties exist for quantifying issues of trust. These prevent the monetisation of those issues here.

The above trust issue is a key risk we have identified. This is largely mitigated by the clearer dispute resolution mechanism. In particular, we believe the introduction of an ADR will go some margin towards improving trust on issues involving the Code.

Benefits of policy change

In this section, we set out the potential benefits that are likely to be realised from policy changes. For each benefit in turn, we consider the impact of fixed and mobile impacts. We have chosen to separate these by fixed and mobile, given the impacts vary between the two network types.

Benefit #1 - Reduced legal and administrative costs to the negotiations process

The primary benefit to mobile networks concern the reduction in legal and administrative costs from easing the process of renewing agreements for mobile infrastructure. This may have a further impact of reducing the costs of upgrading and sharing such infrastructure. A considerable proportion of these costs are likely to be in the form of external legal costs, whereby the relevant party sources legal expertise outside of their own enterprise and capabilities.

Impact of policy on process of renewing expired leases for mobile sites

The proposed policy changes described in Section 1 are likely to make the renewal of mobile agreements easier. This will be achieved by several methods:

- Evidence suggests 34% of existing agreements are protected by the Landlord and Tenant Act 1954. By making this piece of legislation more closely aligned to the Code, site providers who's agreements are protected by it are likely to become less resistant to signing new Code agreements;
- Where an operator occupying land under a previously expired agreement is currently unable to renew that agreement or ask for a new agreement, they will now be able to apply for a new agreement under the Code;

²⁶ Estimated at about £250 for retail commercial disputes
https://www.legislation.gov.uk/ukia/2015/241/pdfs/ukia_20150241_en.pdf

- It will be possible for disputes to be commenced in the First Tier Tribunal, rather than the Upper Tribunal. This should increase the judicial resource available for Code disputes and help ensure all cases are dealt with as expeditiously as possible; and
- Where an application to the courts is made in relation to an expired agreement, either party will be able to apply for an interim order pending the resolution of that dispute.

We expect the primary impact of these policy changes to be that site providers who are party to expired agreements less strongly resist renewals under the Code. This will mean more agreements are resolved cooperatively. If this occurs, it will lead to a reduction in legal and negotiation costs expended by operators. Further, we would expect the reduction in the number of disputed cases to result in fewer cases going to tribunal or court.

Based on consultation evidence, we estimate that each renewal at present costs £13,250 in legal negotiation fees, with those ending up as disputed potentially costing still higher. This figure includes renewal supplier fees, legal suppliers fees, early completion payments and site provider fees. We treat these savings the same way as for savings in the upgrading process, listed above.

Evidence provided by industry body, Mobile UK suggests that there are 21,076 leases up for renewal over the next 10 years. These can be broken down into:

- Leases that have expired: 7,194
- Expiring in 1 year: 2,289
- Expiring in 3 years: 3,698
- Expiring in 5 years: 3,129
- Expiring later than 5 years time: 4,766

Our counterfactual scenario assumes the following:

Table 4. Breakdown of agreements by resolution status in model counterfactual

Agreement classification	Percentage
Proportion of agreements solved cooperatively	75%
Proportion of agreements disputed	25%
<i>Of these disputed that are escalated to court / tribunal</i>	5%
<i>Of these disputed that are left unresolved</i>	95%

With policy changes to the code, we assume the following breakdowns of expired agreements.

Table 5. Breakdown of agreements by resolution status (with policy change)

Agreement classification	Percentage
Proportion of agreements solved cooperatively	85%

Proportion of agreements disputed	15%
<i>Of these that are escalated to court / tribunal</i>	5%
<i>Of these resolved via an alternative dispute mechanism</i>	90%
<i>Of these left unresolved</i>	5%

We estimate that the changes as a result of the code reforms to renewing expired agreements are:

- **More agreements being solved cooperatively.** We expect the number of renewal agreements solved cooperatively to increase from 75% to 85%. This is due to changes to the code incentivising site providers and land owners to resolve renewal disputes and avoid other costly legal mechanisms. We still anticipate that even with policy change, a proportion of lease renewals will still remain unresolved and thus require a dispute resolution process.

The share of renewals solved cooperatively are based on some evidence from consultation, indicating that the overwhelming majority of renewals are still agreed upon - albeit at much higher rents than operators are willing to settle on. The share of uncooperative landlords has been estimated based on consultation evidence at roughly 25%. The increase in cooperation is policy driven, based on benchmarking the options presented.

The share of cases that go to court are based on Ministry of Justice statistics on the average number of disputes that escalate to Court cases are less than 4%.²⁷ This is corroborated by consultation evidence that suggests 336 cases being trialled, out of 7,194 renewals being under consideration. (less than 5%). We also assume that our intervention will not solve entirely all disputes, with a 5% of all disputes remaining unresolved to remain conservative in our analysis.

- **Reduction in cost of the process.** We expect that legal negotiation costs per agreement would fall from £13,250 to £10,250 per cooperatively solved cases.²⁸ These costs represent legal expertise required to support the renegotiation of lease agreements and are largely external resources, whose services are contracted to support the renewals process. This also includes the legal costs for site providers, which mobile operators cover for them. These savings, as discussed previously, we consider to be split evenly between transfer payments from operators to site providers, and as indirect savings. In addition, admin costs per agreement would also fall by the same proportion, from £269 to £208. These administrative costs are considered as part of the process of renegotiating new terms of a lease agreement and do not require legal expertise. These we account as direct savings.
- **Introduction of an ADR mechanism.** Those cases that are disputed, now face reduced legal costs as an ADR mechanism can be used to resolve disputes. This

²⁷ Ministry of Justice (2021, 4 March) [Civil justice statistics quarterly: October to December 2020](#)

²⁸ We estimate that legal negotiation costs [in the counterfactual] are payments to external advisors, which are treated as transfers.

approach is favourable compared to a full court procedure, whereby the legal resources and time required are considerably higher. Therefore, with this mechanism in place, the proportion of disputed cases that end up unresolved can be reduced as a result.

The below table summarises total impacts. Most of these impacts are transfers from mobile operators to site providers, and the estimated indirect savings. These are excluded from EANDCB calculations.

Table 6. Estimated benefits to renewals process from policy change (£m, 2021 prices, 2023 base year)

Breakdown of benefits	Direct Impact	Indirect Impact	Transfers (excluded)	Total Impact (direct and indirect)
Total cost - Counterfactual	£5.57	£122.4	£117.4	£128.0
<i>Total renegotiation costs</i>	-	£117.4	£117.4	£117.4
<i>Total court costs from disputed agreements</i>	£0.2	£5.0	-	£5.2
<i>Admin costs (all agreements)</i>	£5.4	-	-	£5.4
Total cost - With intervention	£4.95	£96.4	£93.4	
<i>Total renegotiation costs</i>	-	£93.4	£93.4	£93.4
<i>Total court costs from disputed agreements</i>	£0.8	£3.0	-	£3.8
<i>Admin costs (all agreements)</i>	£4.2	-	-	£4.2
Total estimated benefits (over 10 years)	£0.6	£26.0	£24.0	£26.6

In addition to the impacts above, the changes are likely to have the further benefit of reducing court costs borne not by stakeholders, but by broader society. This reduction arises from fewer cases ending in court as more agreements are solved cooperatively and those that are disputed are able to be resolved via an Alternative Dispute Mechanism. Data from the HMTC²⁹ and the Law Society³⁰ are suggestive of the magnitude of these costs and they are expected to be small. Yet, since the impacts are significantly less certain, they are excluded from any final calculations.

Impact of policy on process of negotiating upgrading and sharing of mobile apparatus

By causing a greater number of renewals to become Code agreements, the policy changes discussed above will likely allow more upgrading and sharing of mobile sites to occur. Following its reform in 2017, the Code grants operators automatic rights to upgrade their

²⁹ HM Courts and Tribunal Service (2021, 18 May) [EX50 - Civil and Family Court Fees - High Court and County Court \(05.21\)](#)

³⁰ The Law Society of England and Wales (2018, 27 July) [Cost of a day in court](#)

apparatus and share the use of it with other operators, providing two conditions are satisfied. These conditions are:

1. That the upgrading or sharing has no adverse impact or no more than a minimal adverse impact on the appearance of the apparatus; and
2. That the upgrading or sharing imposes no additional burden on the site provider.

Evidence suggests that greater use of these rights could have a significant impact:

- Operators suggested during the consultation that each upgrade requiring site provider approval involves an average negotiation cost of approximately £7,000 per upgrade. By bringing more potential upgrades in scope of the current Code, such costs are likely to be reduced.
- Of the estimated 41,250³¹ mobile sites, we estimate up to 13,000 of these are currently not shared. If a greater number of them are in scope of the current Code (by way of being renewed under it), agreements to share these are likely to benefit from reduced legal and administrative cost savings, compared to the current process for agreeing a clause to share infrastructure.

Yet, significant uncertainty exists about whether an overall impact will materialise:

- The degree to which the renewing of sites is successful.
 - Our model of renewals assumes 5% of sites remain unresolved, even after the policy changes are implemented.
- Whether operators would utilise automatic rights for upgrading and sharing on renewed sites, since:
 - They might not meet the two conditions described above and
 - Evidence suggests that agreements for some sites might already allow sharing and upgrading without site provider agreement.
- If operators need to negotiate upgrading and sharing rights with site providers, the estimated cost of those negotiations.

This uncertainty prevents us from quantifying the exact impact of enabling more renewals on upgrading and sharing.

Benefit #2 - Lower deployment costs

This subsection considers the benefit from the reduced costs of deployment. It describes how the changes would impact these costs and, given the expected amount of deployment to occur, it quantifies the total impact these cost decreases would have. Policy changes might have impacts on the speed of deployment as well as on deployment costs. These are captured in the next subsection.

³¹ Figures based on internal DCMS analysis.

Sharing and upgrading for fixed networks

In relation to sharing and upgrading, Section 1 described the policy change granting operators the right, after giving notice, to automatically upgrade and/or share the equipment under land provided that:

- There is no additional impact on the land or the site provider;
- The work can be carried out from the public highway or public land without accessing the land or by only accessing the land in accordance with an existing agreement.

It is difficult to quantify the overall impact of this policy change as evidence hasn't yet been presented showing the amount of equipment in ducting or chambers, which host equipment under land, that might be in scope. This impedes quantification of the overall impact of this policy change.

Yet, if significant amounts of ducting can be upgraded or shared, the possible benefits are substantial. Suggesting:

- Evidence provided at consultation indicates that, without any policy changes, wayleave negotiation costs (wayleave capex) amount to £50 per premise. The policy change might mean Openreach would likely avoid such costs when upgrading equipment in scope.
- For altnets, the policy change would mean they avoid the need to negotiate their own wayleaves to share Openreach's ducts in scope over DPA.
- Connecting premises via DPA will lower average per-premises capital expenditure from £400 to £268 in commercial areas and from £600 to £468 in rural ones.³²
 - A common industry assumption is that annual opex directly associated with connections is assumed to be 10% of capex. This means that lower capex from DPA usage will also mean lower opex.
 - We estimate that wayleave rentals, when expressed as a part of total opex, might account for about 2% of it.³³ If opex is lower, rental payments are likely also to be lower.
- It will reduce the head-office costs for altnets and Openreach associated with teams that manage wayleaves.

Other pieces of evidence suggest the benefits of the policy change are likely to be more limited:

- Based on evidence provided at consultation, we estimate that up to 75% of total wayleave agreements from the Openreach network, the former telephone state monopoly network, are simply missing due to the age of the network. This may mean that it is no longer in scope, ducting covered by missing wayleaves that can't be accessed from the public highway or public land.
- No evidence is available to estimate the impact of policy changes affecting rental payments associated with upgrades.

³² Frontier Economics analysis underpinning the FTIR, and using cost inputs from the Tactis/Prism report for the National Infrastructure Commission, suggests that the average cost per metre is £29 if build is 100% brownfield and £41 if 100% greenfield. Tactis & Prism (2018), 'Costs for digital communications infrastructures'.

³³ Tactis and Prism (2017, p. 100) [A Cost Analysis of the UK's Digital Communications Infrastructure options 2017- 2050](#), commissioned by the National Infrastructure Commission

- A lack of evidence means it isn't possible to monetise the benefits of upgrading from reductions in equipment deployment costs.

Should further information become available about the amount of ducting in scope of the policy change, these potential impacts could be quantified. This is something we plan on monitoring and is reflected in the Post-Implementation Review.

Process for non-responsive site providers for fixed networks

Another policy change discussed in Section 1 might serve to lower the costs of fixed network deployments. It involves introducing a process for non-responsive site providers for land that mirrors the process that exists for buildings in the Telecommunications Infrastructure (Leasehold Property) Act ("TILPA"). In rural areas, such a process is important because a non-responsive site provider can cause deployment to a whole community to be blocked until the site provider responds or an alternative method across other land is found to connect the community.

Given the TILPA process for building owners exists already, the impact of this ECC policy change is in practice likely to be limited just to landowners in rural areas. The policy change might have the impact of improving the speed of deployment, an impact further discussed in the third subsection of this Section 2. Considered here is its impact to lower the cost of deployment. It might do this if it saves operators from having to find more costly methods to connect communities.

Evidence suggests premises connected with DPA are less likely to be affected by non-responsive site providers, given that Openreach should have a wayleave secured before providing access to the relevant infrastructure. Accordingly, the number of blocking, non-responsive wayleaves can be calculated through the following pieces of data from evidence supplied to the consultation:

- The number of premises in rural areas altnets are expected to pass in the coming years, excluding those that will be connected with DPA
- An estimated number of blocking wayleaves per premise passed and
- A rate of 10% at which site providers are assumed not to respond to requests to connect.

The number of blocking, non-responsive wayleaves calculated through the steps above is used for two further calculations, the data for which are estimated from operator information provided to DCMS:

- This cost savings are calculated by multiplying the number of blocking, non-responsive wayleaves by £4300, the estimated cost saved per blocking wayleave from not having to find an alternative route to connect a community.
- The number of rural premises affected are calculated by multiplying the number of blocking, non-responsive wayleaves by the average number of premises in each blocked community.

Table 7 presents the results of this analysis suggesting the number of premises affected and the potential cost savings from the proposed policy change.

Table 7. Estimated indirect impact of improving the process for non-responsive site providers (£m, 2021 prices, 2023 base year)

Year	Rural premises affected	Total cost savings (£m)
2023	4,639	£0.05
2024	4,479	£0.05
2025	3,963	£0.04
2026	5,874	£0.06
2027	8,910	£0.08
2028	10,243	£0.09
2029	7,227	£0.06
2030	2,381	£0.02
Sum	47,717	£0.45

Benefit #3 - Faster deployment of infrastructure

Whereas the previous subsection considers benefits from lower costs of deployment, this section considers the estimated benefits from faster deployment. It considers the impact on deployment speed of the three policy grouping changes described in the previous section; sharing, upgrading and renewing. It also considers the policy change improving the process for non-responsive site providers that has a chief benefit of improving the speed of deployment.

Having considered the deployment speed benefits each of the policy changes might bring, this subsection introduces a framework for considering their overall impact.

Sharing, upgrading and renewing

Presently, both fixed and mobile operators often need to negotiate agreements with site providers before undertaking deployments. This is the case even when those deployments have negligible impact on those site providers.

- Evidence provided by fixed operators during the consultation indicates negotiations can occupy significant amounts of time, particularly for tenanted properties and especially for social housing stock. For leasehold and tenanted homes, operators indicated in the consultation that negotiations can take on average nine months. Some landlords, in particular Local Authorities and housing associations, are reported to lack the resources to fully engage in the negotiating process. For them, an average negotiating time of up to two years has been reported.
- During the consultation, mobile operators reported significant delays to the process in addition to legal and administrative costs to attempt to engage in the necessary processes to upgrade. Given that a significant aspect of 5G deployment relates to upgrading existing infrastructure deployments, this is slowing down pace of rollout and deployment. One stakeholder provided evidence pre-consultation that upgrade and sharing agreements outside of those scenarios where automatic rights can be

exercised, could take as much as *12 months* longer to process, due to legal and administrative delays and costs.

Since the policy groupings will reduce the need to negotiate wayleaves (when the impact on the site provider is negligible), digital infrastructure can be deployed at a faster rate. The impact of this is summarised after considering the impact on deployment speed of improving the process for non-responsive site providers.

Impact on speed of fixed deployment

The proposed policy granting the automatic right to upgrade and/or share equipment under land might accelerate deployment. Using existing duct and chambers will likely increase the speed with which operators can deploy fibre since they can reduce their need to install new equipment underground, including their need to agree wayleaves with site providers. Yet, since evidence is not available to assess the length of network in scope of the proposed policy, we are also not able to quantify its impact on deployment speed.

Another policy change discussed in Section 1 might have a more direct impact on fixed network deployment speed, though. It seeks to create a similar process to that set out in the Telecommunications Infrastructure (Leasehold Property) Act, which is able to address the issue of unresponsive occupiers or landowners (rather than building owners). Evidence provided at consultation suggests such a process would be useful in rural areas, particularly for properties deployment needs to cross to connect sizable communities.

If landowners or occupiers can't be contacted to agree to new wayleaves, these blocking wayleaves might prevent or substantially delay connections reaching the community affected. Evidence suggests it might take a further 3-6 months to connect these premises, if an alternative method for connecting them is available. Analysis presented in Table 7 above suggests improving affected premise numbers amount to an average of approximately 6,000 a year between 2023 and 2030.

Impact on speed of mobile deployment

It is possible that in addition to making the process cheaper and less burdensome, the process for deployment of certain mobile apparatus could become simplified. Evidence from the public consultation suggested that upgrading and sharing of mobile equipment in particular is time-consuming at present for sites where the current Code does not apply.

We suggest that bringing more sites in scope of the current Code with its automatic conditions to upgrade or share creates a more efficient market and conditions for mobile deployment more generally. Particularly for upgrading sites to accommodate 5G networks, where the disincentives for operators to engage in the lengthy and costly process to upgrade their sites to 5G are reduced.

It is more challenging to consider how these reforms might impact wider deployment plans for mobile operators. Yet, as discussed earlier, the counterfactual is challenging to estimate for mobile networks. As a result, we have chosen not to monetise the impact on the pace of any mobile infrastructure deployment. Yet, this suggests the indirect benefits of the proposed policy changes will be higher than estimated in this analysis.

Indirect benefit - Reduced rent for agreements on mobile networks

When agreeing new terms for renewal of a lease, we also assume that site providers negotiate a reduction in rent with landowners. This is in line with stakeholder evidence around old and new code average rental prices, which in practice will vary considerably, depending on the exact site and agreement.

We model two annual rent costs per agreement, £6,500 and £4,000, in pre and post negotiation fees respectively. We assume that as expired lease agreements are renewed, one year later, site providers pay a reduced rental fee, reducing the effective rent paid by £2,500 per annum per agreement in the process. This estimated reduction in rental fees is based on consultation evidence. Our modeling assumes that in a counterfactual scenario without policy intervention, lower rents are not negotiated and the higher rent fee is paid to landowners in all scenarios - a highly conservative assumption that relies on a static counterfactual, i.e. the market not adapting to judicial intervention.

The below table provides an estimate for the impact of this change on total rent paid for all agreements within scope of our analysis over a 10 year period. These are purely indicative as we think in practice the decrease in rents cannot be accurately predicted ex-ante and will depend on the new market equilibrium at the macro level, and on individual arrangements at the micro level. This involves also a static counterfactual, where the market is not adapting on its own as a response to higher rents (e.g. by consolidating at the wholesale level) to counter higher rents. In practice it would also be impossible to disentangle and estimate how much the legislation alone would induce a change in rents vis-a-vis the market adapting regardless of intervention.

Table 8. Estimated total rent paid over a 10 year period (2023 - 2032) and impact of policy, nominal prices

Scenario	Total rent (£m)
<i>Counterfactual - Total rent paid (over 10 year period)</i>	£1,369.9
<i>Factual - Total rent paid (Over 10 year period)</i>	£1,080.0
<i>Total estimated impact of policy change (over 10 year period)</i>	£289.9
Annual estimated impact on total rent (over 10 year period)	£29.0

As these transactions are simply passing over rent from one party to another, we consider these as transfer payments and are therefore excluded from any overall impact estimates.

Other non-monetised benefits

This intervention is likely to produce substantial other benefits for both mobile and fixed networks. For fixed networks, it is often reported that fibre networks have lower ongoing costs than copper networks, so there can be some genuine cost savings from upgrading to fibre. For instance, the NIC estimated that running a fibre network can save up to £5.1 billion in operating costs over a thirty-year period, compared with copper.³⁴ This cost saving has not

³⁴ National Infrastructure Commission (2018) [National Infrastructure Assessment](#)

been estimated in this analysis due to uncertainty around its likely magnitude, including because one major operator, Openreach, is likely to run both fibre and copper networks until 2030 when it is expected to switch off its copper network.

As noted earlier, the UK Broadband Impact Study reported that higher internet speeds can lead to an improved sense of wellbeing. This is in line with other studies that showed a higher subjectively felt sense of wellbeing.³⁵

The internet has become increasingly central to education. Daoud, Starkey, Eppel, Vo & Sylvester (2020) conduct a systematic review of the literature and find 86% of studies show that internet access improves educational achievement or skills.³⁶

The COVID-19 pandemic is forcing substantial changes in the conduct of telemedicine in the UK and other countries.³⁷ While not every change might be long-lasting, telemedicine is very likely to find a stronger place within the country's health service, including through increased acceptance among both patients and health care providers.

Recent papers define a framework for assessing the impact of better broadband on individual and community resilience.^{38,39}

In addition, the previous subsection mentioned the focus of analysis on unique build: it captures the benefits of when households receive their first gigabit-capable connection. Yet, households might also benefit from overbuild or deployment by additional operators. They might do so, for example, because of greater competition to provide them with broadband services. It is difficult to quantify these benefits, however - they are not monetised in this analysis.

For mobile networks, fewer pieces of evidence point to the benefits this intervention might generate. Yet, these are likely to also be substantial. Not included in the monetised benefits above was the sharing of mobile infrastructure. This sharing in any significant scale naturally leads to fewer physical deployments being required, resulting in a reduced visual footprint from masts, towers and other associated infrastructure. This benefit is challenging to quantify or estimate the magnitude of and there is limited to no data supporting the impact of this. As a result we have not attempted to attach any monetary value to this impact and suggest that any such impacts are likely to be minimal, given the scale of sharing we anticipate.

Sharing can also increase the number of providers on a given site, enabling more operators to offer a service in a given area. This effect gives consumers a more competitive market to choose their tariffs from. Benefits of competition include greater consumer variety and

³⁵ Kraut, R & Burke, M (2015) "[Internet use and psychological well-being](#)", *Communications of the ACM*, 58, 12; and Valkenburg, P & Peter, J (2007), 'Internet communication and its relation to well-being', *Media Psychology*, 9, 1

³⁶ Daoud, R., Starkey, L., Eppel, E., Vo T.D., & Sylvester, A. (2020). 'The educational value of internet use in the home for school children: A systematic review of literature', *Journal of Research on Technology in Education*

³⁷ Fisk, M.; Livingstone, and Pit, S. (2020) "Telehealth in the Context of COVID-19: Changing Perspectives in Australia, the United Kingdom, and the United States", *Journal of Medical Internet Research*, 22(6)

³⁸ Heesen, F, Farrington, J & Skerratt, S (2013), [Analysing the role of superfast broadband in enhancing rural community resilience](#)

³⁹ Townsend, L, Wallace, C & Fairhurst, G (2015) "[Stuck out here: the critical role of Broadband for remote rural places](#)", *Scottish Geographical Journal*, 131, 3-4

choice, lower prices and improved innovation in the long run. The uncertainty of this indirect benefit means we have not chosen to attempt to attach a monetary value to this.

The Shared Rural Network (SRN) programme aims to increase coverage from all 4 operators across the UK from **66%** to **84%** by 2026. The SRN project estimated the consumer surplus benefit (willingness to pay for consumers to have 4G coverage) was assumed to be around **£25 per person per month**. Greater choice for consumers to choose between different networks where they live, work or travel might generate such benefits (in proportion to the increase in choice).

EANDCB calculations

The below table summarises total direct costs and benefits for impacts of the policy on both fixed and mobile apparatus. These reflect our best estimates for each calculation. Sensitivity analysis has been conducted on the key parameters informing these calculations. These can be seen in Section 3.

We estimate overall direct impacts to be limited. We estimate the net present value of impacts occurring between 2023 and 2032 to be £18m. Most of the benefits for which we have greater certainty of the policy impact stem from bringing more renewals of agreements in the mobile market under the scope of the Code. These benefits are partly offset by considerable familiarisation and compliance costs, for which we provide conservative estimates to reflect the diversity of the stakeholders and the possible complexity of adapting to the changes.

We estimate that even in this best estimate there is a risk of inflating the impacts. This is due to several reasons outlined in the rest of the document, namely inflated cost and benefit evidence by telecom operators and the uncertainty of the counterfactual.

Table 9. Summary of direct impacts, 2021 prices, 2023 base year

Metric	Figure (£m)
Direct non-transfer benefits (present value, 2023-2032)	
<i>Total direct benefits - Mobile renewals</i>	£0.6
Direct costs (present value, 2023-2032)	
<i>Total direct costs - Familiarisation</i>	£6.3
<i>Total direct costs - ADR compliance</i>	£2.7
<i>Direct costs - Total</i>	£9.0
Total direct impact	
Estimated cumulative net present value of direct impact on business across all policies	-£8.4
EANDCB (2023, annualised)	£1.0

Net Present Social Value

The following table summarises all the direct and indirect impacts of the proposed policy changes. Chiefly from renewal of expired mobile leases, it suggests positive social benefits from the policy changes.

Table 10. Summary of direct and indirect impacts, 2021 prices, 2023 base year

Metric	Figure (£m)
Direct non-transfer benefits (present value, 2023-2032)	
<i>Total direct benefits - Mobile renewals</i>	£0.6
Indirect benefits (present value, 2023-2032)	
<i>Indirect benefits - Process for non-responsives</i>	£0.5
<i>Indirect benefits - Mobile renewals</i>	£26.0
Direct costs (present value, 2023-2032)	
<i>Total direct costs - Familiarisation</i>	£6.3
<i>Total direct costs - ADR compliance</i>	£2.7
<i>Direct costs - Total</i>	£9.0
Total impact	
NPSV	£18.0

Section 3 - Risks & sensitivity Analysis

This section discusses assumptions underpinning the analysis in Section 2 and tests their impact on its outputs. It considers sensitivities involving impacts on mobile networks first, before considering fixed networks.

Most of the modelling is based on substantial evidence and the majority of important assumptions (in terms of impact) are well corroborated. The evidence includes both extensive DCMS resources, but also all the evidence compiled from stakeholders' responses.

Sensitivities involving impacts on mobile networks

Overall we expect that on the mobile side the upside risk of impacts being much lower than expected is higher than the downside risks. This is chiefly due to:

- The cost of negotiations is borne entirely by operators. This likely skews the available evidence upwards, as operators have an incentive to inflate their costs of acquiring agreements. We are also aware a large part of the savings reported are transfers between them and site providers (e.g. early cancellation fees), but they have not confirmed on which accounts these savings apply. We retain the entire cost savings to remain conservative and consistent with consultation evidence, but we do apply a

factor on costs being transfers between sectors rather than legal or admin costs, based on the relative share of each account.

- Linked to the above, our counterfactual is static rather than dynamic. The counterfactual is assumed to be no change without intervention, a particularly pessimistic assumption needed to remain conservative but likely inflates impact. We are confident that agreements are being made, albeit at a slower pace without our interference and that the courts are working on clarifying the legislation and establishing a new regime. For instance, courts have decided on a “rate card”, indicating what is a reasonable rental rate by type of mobile site, meaning that a precedent has been set and subsequent court cases might be much easier to resolve. This is likely to induce the behavioural change we seek to instigate with this legislation, albeit at a likely slower pace. The current code is informed by these developments and partly seeks to clarify these precedents and enshrine them in law.

Table 11 below summarises assumptions affecting the impacts calculated in Section 2.

Table 11. Key mobile modelling assumptions and parameters

Assumption	RAG rating	Impact	Issues
Number of sites due to be renewed each year	Green	High	Stakeholder evidence, backed by external research and some internal modelling.
Cost of negotiations, renewals	Amber	High	Stakeholder responses, possibly inflated (operators bear both theirs and site providers' costs).
% of renewals that are resolved/unresolved	Red	High	Very limited stakeholder evidence. Likely inflated by stakeholders due to incentives.
% of renewals that end up in court	Amber	Medium	Some evidence available from stakeholders and MoJ
% of renewals that become disputes	Amber	Medium	Some evidence available, mostly inferred by number of court cases and MoJ stats
% of renewals that will be solved using ADR	Red	Medium	Limited evidence, assumed based on incentive structure changing (no incentive to go to court)
Costs of using ADR processes	Amber	Low	Relevant impact assessment available
Cost of going to Court	Amber	Low	Some evidence available, likely inflated

For the impact on renewals of expired mobile leases, a similar approach has been taken, although this considers both high and low end estimates for the following parameters:

- Estimated cost saving as a result of policy change (increase of 50% from £3,000 to £4,500 and decrease of 50% to £1,500)
- The number of renewals in scope of our policy (50% increase and 50% decrease)
- The proportion of disputes resolved using ADR.
- The costs, and subsequent savings, incurred when conducting a renewal under the Code.

Table 12. Sensitivity analysis - Renewals of expired leases (present value, 2023 base year)

Input	Total direct benefits (2023 2030)	% change
<i>Central Modelling</i>		
Base scenario	£0.6	
Sensitivity analysis		
Fewer renewals (-50%)	£0.3	-50%
More renewals (+50%)	£0.9	+50%
Fewer renewals solved cooperatively (factual - 75%)	£0.1	-85%
More renewals solved cooperatively (factual - 95%)	£0.1	+85%
Lower % of disputes resolved using ADR	£0.7	+12%
Higher % of disputes resolved using ADR	£0.5	-12%
Lower cost savings (-50%)	£0.6	0% (all indirect)
Higher cost savings (+50%)	£0.6	0% (all indirect)
Upper range extreme	£1.8	184%
Lower range extreme	£0.02	97%

The above table highlights where the key parameters lie in the renewals model. The cost saving impact is a key driver of the overall impact of the policies, as shown by the sensitivity analysis, that a 50% increase or decrease leads to a significant reduction or increase in the impact. Other drivers such as the number of renewals in scope are also significant, although not as prominent a driver of the figures.

Overall the impacts are considerable in relative but not in absolute terms. The extremes provided are purely for illustrative purposes. An appropriate, but disproportional approach to identify a suitable range within these extremes would require truncating multiple scenarios shifting these parameters based on a probabilistic range, i.e. a Monte Carlo simulation. Given the minimal impacts observed even in the extreme scenarios this is deemed disproportionate. The same applies for all the sensitivity analysis that follows.

Sensitivities involving impacts on fixed networks

As explained in Section 2, a lack of evidence suggesting the impact of most policy changes on fixed networks impedes the quantification of these impacts. While one impact is quantified, the one involving an improved process for non-responsive site providers in rural

areas, its estimated impact is not large. Accordingly, this assessment does not include sensitivities involving fixed network impacts.

Overall sensitivity

The overall combined direct impacts are captured in Table 13. As it can be seen even in the unrealistic upper extremes of the range, impacts remain very limited. This comes on top of an already conservative static counterfactual.

Table 13: Sensitivity analysis - Total direct impacts, excluding transfers (present value £m, 2023 - 2030, 2023 base year)

Impact channel	Total impacts	Upper extreme	Lower extreme
Mobile renewals	£0.6	£1.8	£0.02
Total Benefits	£0.6	£1.8	£0.02
Total direct costs - Familiarisation	£6.3	£5.1	£7.6
Total direct costs - ADR	£2.7	£2.7	£2.7
Total costs	£9.0	£7.8	£10.3
Overall impact	-£8.4	-£6.0	-£10.3

Section 4 - Unintended consequences & other impacts

Innovation Test

It is not clear whether, and if so how, the amendments would impact innovation. The policy is focused on addressing specific issues with current legislation. These issues are primarily related to the relationship between site providers and telecoms operators and not specifically innovation related policy.

It could be possible that by reducing costs for operators and making it easier for them to upgrade and share sites and/or networks, that it could allow new innovative business models to come about or encourage further telecoms infrastructure innovation. However, these are very uncertain and would depend on the actions of independent agents. As a result, our position is that it is unlikely that there are any clear, obvious or intentional direct impacts on innovation as a result of this policy.

Small and Micro Business Assessment

The Code is the legal framework underpinning the rights of digital network operators to install, maintain and upgrade communication networks on private land. Section 2 summarised the impact potential policies to amend this framework could have. There are

currently 219 operators in scope of the Code,⁴⁰ which are likely to be primarily made of large businesses - for example according to [its 2021 Annual Report](#), BT Group had 99,700 full time equivalent employees. There is less information available on the number of site providers and how many of these are small and micro businesses. It is difficult to understand the amount and identity of site providers, let alone the economic classification (in terms of operational size) of these providers. However, operators estimate there are 36,000 mobile sites. It is likely that some of the site providers are small and micro businesses. This is because some sites will, for example, be located in rural areas on land owned by small farming enterprises, or, as other examples, in urban areas on shop fronts or in church steeples. This section therefore focuses on site providers.

Site providers would be affected by the impacts discussed previously. Most notably, they would be negatively impacted by lower lease or rental payments from network operators to site providers. These impacts would likely be proportional to the number of sites rented/leased and not the size of the site provider i.e. it would be expected that a similar reduction in rent/lease payments occur for each site. It would not matter if the site provider was a large business renting, for example their rooftop, rather than a small business. Furthermore, it is possible that a site provider (large or small) that provides many sites may have greater bargaining power in negotiations and hence be impacted relatively less from these amendments, although this is not a completely clear relationship. Bargaining power in negotiations would depend on a number of factors, including alternative options available to operators to deploy their infrastructure. As discussed earlier, some site providers (e.g. a farmer who has a number of fields) may have a local monopoly on a particular area where operators wish to deploy infrastructure. To this extent, the amendments may not disproportionately impact small and micro business site providers compared to larger site providers, and if they would, it is not completely clear to what extent this would occur. Given the evidence challenges, it has not been possible to estimate the impact these amendments may have on small and micro businesses. Given that this update of the law was spurred by the engagement of the Government with industry around issues surrounding the Code revisions of 2017, we are confident that any possible concerns around the impact on SaMBAs will be captured through future engagement.

Operators of telecommunications networks will aim to provide services in the areas their customers seek to have them. It was an objective of the reforms in 2017 to improve network coverage - small and micro businesses were in scope for them.⁴¹ It would not be possible to achieve the aims of the amendments if small and micro businesses were made exempt. These amendments do not seek to make substantial changes to the Code, only to improve the effectiveness of the changes introduced in 2017 to help realise the intended benefits.

Equalities Impact Test

Both our analysis and insights from the public consultation suggest that there are no likely positive or negative disproportionate impacts of these policy proposals on the protected groups

⁴⁰ Ofcom (2021, 4 August) [Register of persons with powers under the Electronic Communications Code](#)

⁴¹ Department for Digital, Culture, Media and Sport (2016) [A New Electronic Communications Code](#)

Justice Impact Test

The proposed policies do have implications for the UK's judicial system. Policy colleagues within DCMS are in discussions with Ministry of Justice colleagues about completing a Justice Impact Test and the overall impact on the courts.

Competition

The Competition and Market Authority (CMA) sets out a "competition assessment checklist" to be used in DMAs. It creates a framework to consider whether policy changes might affect competition in markets. The framework starts with a Competition Checklist, comprising four questions:

- Will the measure directly or indirectly limit the number or range of suppliers?
- Will the measure limit the ability of suppliers to compete?
- Will the measure limit suppliers' incentives to compete vigorously?
- Will the measure limit the choices and information available to consumers?

This document considers that the answer to all of the above questions is no. The measures are rather trying to limit the monopoly power of certain parties and improve competition. Accordingly, it does not contemplate an in-depth assessment.

Devolution Test

Telecommunications is a reserved matter for the UK Parliament. Accordingly, there are no devolved issues.

Family Test/loneliness/ social isolation

We do not consider that this policy will have significant impacts on family, loneliness or social isolation. Previous evaluations on the benefits of connectivity have indicated its importance in reducing social isolation especially among rural demographics.

Health Impact Assessment

We do not believe that there are any impacts on Health and Social care, including both Health services specifically and also the wider determinants of health such as education, housing, employment, environment, crime and transport.

Rural Proofing

By having an indirect effect of increasing the deployment of telecommunications infrastructure, the policy changes considered in this assessment might have beneficial impacts on those living in rural areas. Yet, it might also affect them negatively, by directly reducing the transfers certain members of these communities would receive from network operators. Since these impacts are similar to those affecting urban areas, however, the policy changes do not require adapting to make them acceptable, consistent with this [Government guidance](#).

Sustainable Development

We anticipate no impacts on sustainable development. Any impacts of this nature would be included accordingly as part of the cost benefits analysis.

Post implementation review

Following the 2017 reforms to the Code, a period followed of regular engagement between government representatives and industry bodies about their impact. This included regular data gathering and exchange. The Minister for Digital Infrastructure held roundtables with key stakeholders in September 2020. The policy changes considered in this document have developed from this process. Following the implementation of these changes, a similar approach will be implemented.

Given the issues borne from the previous changes to the legislative framework, we are keen to understand the impacts that arise from these policy changes and ensure that the policy works as intended. We also are keen to improve our evidence base and continue our engagement with industry to understand the impacts of the policy changes. As we engage, we expect our evidence to improve and we will also monitor the impacts. However the evidence develops, though, we will complete a review of the legislation, 5 years after commencement.

Annex 1. Reasoning for CSF rating

CSFs to be applied by assessing whether the proposed policy changes:

1. Would improve the speed of deployment of digital infrastructure
2. Would be supported by operators, amongst other stakeholders
3. Would be supported by site providers, amongst other stakeholders
4. Would provide outcomes that might not be achieved through alternative mechanisms

Policy in consultation document	Adopted in Bill	Reasoning from draft consultation response document⁴²	Reasons for CSF ratings
ADR	Yes	<ul style="list-style-type: none"> • Mandatory ADR has been ruled out. This is because the majority of respondents said they did not want ADR to be mandatory. In addition, compelling the parties to mediate prior to legal proceedings, would have ECHR implications. • No one form of ADR is to be prescribed under the Bill. This is because respondents felt that both mediation and arbitration could be useful in certain circumstances. • The majority of respondents felt that where disputes relate to the terms of the agreement and not to points of law that ADR would be useful to reach agreement. Even if agreement is not reached through ADR, it is likely to narrow the issues, which in turn should result in the Court needing less time to hear the case. • The Bill encourages parties to consider ADR at an early stage before legal proceedings have been issued. At this point, it is hoped that the parties positions are less entrenched and the ADR will have more chance of success. This should reduce the number of cases which will come before the Court. It is also hoped that the process will improve relations between operators and land owners, which have deteriorated in recent years. • The Court has to decide a case within 6 months of it being issued. 	<ol style="list-style-type: none"> 1. Yes 2. Yes 3. Yes 4. Unclear <p>Score: 3</p>

⁴² DCMS (2021, August, DRAFT) [Access to land: consultation on changes to the Electronic Communications Code. Government response](#)

		<p>By encouraging ADR at an early stage, this 6 month time limit should not be impacted. The consultation response shows that this was something that operators were concerned about. Disputes can still therefore be resolved relatively quickly, assisting digital rollout.</p> <ul style="list-style-type: none"> To encourage use of ADR, the Bill introduces costs consequences if a party unreasonably refuses to engage in ADR. The Court is already able to consider parties' behaviour when deciding costs. However by having a specific provision in the Bill, it is hoped this will focus the parties minds and incentivise them to engage in ADR. 	
Statutory Process to deal with breaches of OFCOM Code of Practice	No	<ul style="list-style-type: none"> Respondents were split as to whether this was a good idea (landowners in favour, operators against). The Code of Practice was designed as a code of best practice, rather than as a set of rules which need to be adhered to. Would therefore be difficult/unsuitable to enforce. The introduction of a statutory process would delay digital roll out, as it could hamper negotiations and cause cases to be stayed whilst the statutory process was ongoing. Instead propose that there will be a requirement for operators to have a complaints procedure, specifically dealing with complaints about operators' behaviour under the Code. This will fall under the Electronic Communications Code (Conditions and Restrictions) Regulations 2003. Under s109 Communications Act 2003, SoS has power to amend the Regs to require a complaints procedure. Under s110, OFCOM would be able to take action where there is a breach of the complaints process. Court will still be able to take account of an operator's behaviour when making a decision on costs. 	<ol style="list-style-type: none"> Unclear Yes No No, alternatives are available <p>Score: 1</p>

Fast Track Court Procedure	No	<ul style="list-style-type: none"> ● Insufficient evidence provided during consultation process that this is needed. Responses in favour were 50/50. ● Interim and temporary measures are already available to secure urgent access where needed. Therefore if Fast Track Procedure introduced would be significant overlap with measures currently in place. ● Increased uptake of ADR and other measures in the Bill should mean that disputes are resolved faster. ● As the Court deals with more cases under the Code, precedents will be set, meaning that fewer cases will be brought (the parties will look at the legal precedent and know whether they are going to be successful before trial) therefore increasing Court time. Also the Court will have precedent to follow, meaning that cases should be dealt with more quickly. 	<ol style="list-style-type: none"> 1. Unclear 2. Unclear 3. Unclear 4. No, alternatives are available <p>Score: 0</p>
Process to deal with unresponsive/unidentifiable land owners/occupiers	yes	<ul style="list-style-type: none"> ● Operators sought a streamlined process, which would enable them to gain access more quickly where the land owner/occupier failed to respond to a Code rights request. ● Some operators suggested a form of deemed consent, so that if no response was received the landowner/occupier would be deemed to have consented. ● Deemed consent would give operators more certainty and speed up roll out. ● Deemed consent problematic: would be imposing a contractual wayleave on the unresponsive party. Under contract law, silence cannot be deemed to be consent to entering into a contract. ● Some operators were looking for a process which would give them similar powers to utility companies: they would be able to apply to a court for a warrant to enable them to obtain access. The issue here is that utility operators use this process to cut off supply, remove 	<ol style="list-style-type: none"> 1. Yes 2. Yes 3. Unclear 4. No <p>Score: 3</p>

		<p>equipment or to fix equipment where there is a threat to life etc. Once they have entered the property and done what they need to do, their rights in relation to the property end. This would not be the case if an operator used a similar process: they would have a subsisting right over the property as their infrastructure would remain there. No public body has similar powers. Even the rights of entry for Police do not involve obtaining subsisting rights. Telecoms operators having stronger powers than the Police would be hard to justify.</p> <ul style="list-style-type: none"> ● Deemed consent and powers analogous to utilities would create ECHR issues. ● One option would be to do nothing. However the current process where an operator applies to a tribunal to obtain code rights against an unresponsive is lengthy. It is estimated to take 6 to 8 months. CityFibre estimates that a straightforward case can cost approx £15k. Operators may therefore choose not to connect the property, rather than incur this additional cost and delay. ● Bill will amend the Code to create a process similar to TILPA, but that applies to land, rather than to buildings. Will apply where access is needed to deploy new infrastructure and where the occupier/landowner has failed to respond to repeated requests. Some land will be outside the scope of the provision i.e. land which is a constituent part of a dwelling e.g. garden, driveway, farmyard. The provision can only be used where the installation of the infrastructure is under or over land (which will minimise the impact on the land itself) ● If the criteria is met an application can be made to the First Tier Tribunal property chamber. This will free up some of the Upper Tribunal's time to deal with points 	
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		<p>of law under the Code. The process should also be quicker and cheaper for operators.</p> <ul style="list-style-type: none"> Any rights obtained will last for a maximum period of 6 years. It is envisioned that in that time the operator can develop a dialogue with the unresponsive and obtain their agreement to enter into a Code agreement. If a Code agreement is entered into before the 6 year time limit, the Code agreement will replace the terms ordered by the Court. 	
Extending who is able to grant Code Rights	No	<ul style="list-style-type: none"> Under the current Code only the occupier is able to grant Code rights. This has caused issues where an operator is already in occupation and is wanting to enter into a new Code agreement. The consultation therefore sought views on whether the definition of 'occupier' should be amended or whether the landowner should be given the power to confer Code rights. If this amendment is not made, the only way that an operator in situ would be able to obtain Code rights would be for it to remove its apparatus and vacate the property. It would then be able to approach the landowner to obtain new Code rights and once obtained would be able to move back onto the land and reinstall its equipment. This change would increase the speed of infrastructure deployment. Many respondents to the consultation didn't express an opinion on this issue. The majority of those who did respond said they didn't agree with the proposal to amend the definition and/or expand who can confer Code rights. The change being introduced addresses the specific problem without changing the definition. Alternative ways to deal with this specific issue have not materialised. 	<ol style="list-style-type: none"> Yes No No Yes, alternatives aren't available <p>Score: 2</p>

Enforcing Code Agreements	No	<ul style="list-style-type: none"> Some respondents to the consultation reported difficulties concerning a term in a Code agreement or compliance with such a term. Almost all respondents said that these issues were not due to the Code itself, but due to poor behaviour from a party to a Code Agreement. There was therefore no demand for the Code to be amended to give parties a Code specific method of enforcing an agreement, in addition to the legal remedies currently available. 	<ol style="list-style-type: none"> No No No No, there are alternatives available <p>Score: 0</p>
Modifying Agreements	No	<ul style="list-style-type: none"> Respondents were asked whether parties to a Code agreement should be given the ability to apply to court for the terms of that agreement to be modified. This would not affect the parties' current ability to voluntarily agree modifications. The majority of respondents were against these proposals, although a majority of telecoms operators were in favour. If the proposals were implemented there would be a significant risk that the Tribunal's workload would increase. This could lead to a delay in hearing cases and have a knock on impact on the speed of rollout. This proposal is not being included in the Bill because on balance, it is felt that it would create too much uncertainty in initial negotiations, poorer relationships between the parties and, potentially, a disproportionate impact on the Tribunal. 	<ol style="list-style-type: none"> No No No No, there are alternatives available <p>Score: 0</p>
Upgrading and Sharing	Yes	<ul style="list-style-type: none"> The current position is that there is no retrospective right to upgrade or share infrastructure installed prior to 2017. In relation to upgrading this is preventing operators from deploying the latest technology at 	<ol style="list-style-type: none"> Yes Yes Unclear Yes, alternatives aren't available

		<p>their existing infrastructure sites, which in turn could have a negative impact on rollout, network coverage and the ability to pass on technological advancements to consumers. This could significantly slow down the rollout of 5G services to consumers;</p> <ul style="list-style-type: none"> ● In relation to sharing, this means that operators cannot optimise the use of existing infrastructure, which is significantly cheaper than installing their own. ● Keeping the status quo will therefore impede the speed of rollout and increase operators' costs. In addition there is an environmental cost, in that additional street works will be required and additional masts will be built. ● An unfettered right to upgrade and share would not be workable. On the fixed side, operators would still need a procedure to gain access to land/property to install infrastructure. On the mobile side, there would be significant opposition from landowners, which could slow down the market and cause relations between the two groups to deteriorate further. ● The majority of respondents to the consultation agreed that there should only be automatic rights to upgrade and share where there would be minimal impact on the site provider. ● The Bill will put forward proposals to amend the Code giving operators the right to automatically upgrade and share infrastructure regardless of when it was installed, provided that there is no additional impact on the site provider. ● For apparatus installed prior to 2017, rights for upgrading and sharing will need to be agreed with the site provider or imposed by the courts; ● For apparatus installed under agreements concluded after the 2017 reforms came into effect, operators will remain able to use 	<p>Score: 3</p>
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		<p>the conditional rights to upgrade and share apparatus already contained in the code, and to negotiate / ask a tribunal to impose any additional upgrading and sharing rights needed. The proposals set out above will improve operators' ability to upgrade and share their infrastructure, whilst protecting the rights of site owners i.e. agreement or a court order will be required where the upgrading or sharing rights will have more than a minimal impact.</p>	
Renewals	Yes	<ul style="list-style-type: none"> • There are two issues which the proposals seek to address. • The first issue is the renewal of agreements that are excluded from the renewals procedure contained in Part 5 of the Code, primarily leases that are regulated by the Landlord and Tenant Act 1954. • The second issue relates to the ability of operators to secure interim terms (particularly as to the rent payable) pending a full determination by the Tribunal where the terms of a renewal agreement are in dispute. • In relation to the first issue, the courts have held that agreements entered into prior to 2017 which are regulated by the the LTA 1954, must be renewed in accordance with the framework contained in the legislation, rather than in accordance with the Code; • In practice, this means that a renewal rent would be calculated at a market rate, rather than on a no network basis. Even where the parties have contracted out of the provisions of the LTA 1954, the Court has held that an operator cannot renew under the provisions of the Code. • Furthermore, disputes relating to renewal under the LTA 54 must currently be dealt with by the county courts rather than the Tribunals. This process is 	<ol style="list-style-type: none"> 1. Yes 2. Yes 3. Unclear 4. Yes, alternatives aren't available <p>Score: 3</p>

		<p>significantly more costly and time consuming than an application to the Tribunal, and is likely to dissuade operators from pursuing legal action, leading to an imbalance in the negotiating power of the parties.</p> <ul style="list-style-type: none"> ● If no action is taken, operators cannot take advantage of the no network rents provided for by the Code, affecting their ability to reduce costs, which in turn impedes their ability to rollout new infrastructure. ● In relation to the second issue, either party can currently apply to the court for a decision on whether a new agreement should be adopted. Under this regime a site provider can ask the Court for an interim order imposing the amount which the operator should pay them. However there is no reciprocal provision for operators and the Court cannot impose any other interim terms. ● There is a perception that this process discourages a party to whom the new terms are disadvantageous to not negotiate constructively and prolong the process. ● The consultation responses were fairly evenly split between those who did and didn't want Part 5 to apply to all expired agreements. ● There was however consensus that renewals should be dealt with in a 6 months time frame, the same as applies to new agreements. ● Although the responses were fairly evenly split, the current uncertainty surrounding renewals, particularly in relation to expired agreements is unsatisfactory. The uncertainty is likely to result in an increase in litigation on this issue, putting additional burden on the Courts. ● The Bill therefore proposes to amend the LTA 1954 so that (i) any disputes relating to LTA 1954 renewals will be dealt with by the Tribunals rather than the courts; 	
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		<p>and (ii) the terms of any new agreement will be more closely aligned with the framework of the Code.</p> <ul style="list-style-type: none">• This should decrease the amount of litigation in this area, as the more favourable regime of the LTA 1954 will be unavailable to landowners, as well as ensuring that renewal agreements under the LTA 54 reflect the valuation regime introduced in 2017 to reduce industry costs and encourage investment;• Finally the Part 5 procedure is to be amended so that either party can apply for an interim order.	
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