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<u>De Minimis Assessment: Self-Certification</u>	
 Department for Digital, Culture Media & Sport	
Title of regulatory proposal	European Electronic Communications Code (EECC) ¹ - Universal Service Obligations
Stage	Final
Lead Department/Agency	DCMS
Expected date of implementation	Transposition Deadline: 21/12/2020
Origin	EU Directive
Date	28/04/2020
Lead Departmental Contact	eecc@culture.gov.uk
Departmental Triage Assessment	Equivalent Annual Cost to Business (EANDCB) = £1,400

Call in criteria check-list	
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

Spoke Analyst: Fraser McNeil	Date: 25/08/20
BRU signoff: Adam Bennett	Date: 07/09/20
Chief Economist signoff: Dipti Bhadresa	Date: 07/09/20

SUMMARY

¹ European Parliament (2018), Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast)Text with EEA relevance. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2018.321.01.0036.01.ENG

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Rationale for government intervention

The Government believes that access to decent² broadband is vital for all to participate in a modern, digital society. In 2018 a domestic broadband Universal Service Obligations (USO), which is now being implemented by Ofcom, was adopted. This was underpinned by the EU Framework Directive and the Universal Service Directive, both of which will be superseded by the European Electronic Communications Code.

The European Electronic Communications Code (EECC) was adopted by the EU in December 2018. It updates the existing regulatory framework (which comprises the Framework Directive 2002/21/EC³, the Access Directive 2002/19/EC⁴, the Universal Service Directive 2002/22/EC⁵ and the Authorisation Directive 2002/20/EC)⁶ to ensure that the telecoms framework continues to address market failures.

As the UK government updated its USO legislation in 2018, enabled through the Electronic Communications (Universal Service) (Broadband) Order 2018⁷ and an impact assessment was conducted as part of this, we expect transposing the current legislation discussed in this document to have minimal effects on the UK as it merely restates what has already been legislated. Some minor changes have been identified, specifically regarding considering the need for, and delivery of, a broadband social tariff and hence the need for us to conduct the current assessment, but as discussed in the following sections the impact is expected to be minimal.

Given that the UK remains subject to its EU rights and obligations throughout the post-Exit Implementation Period, the Government is obliged to update domestic telecoms law in line with the provisions in the EECC. The EECC will be implemented in the UK under section 2(2) of the European Communities Act 1972 (as repurposed for the transition period by the EU (Withdrawal Agreement) Act 2020).

Policy options

² 10 Megabits per second (Mbps) is the minimum download speed that Ofcom says is needed to meet the typical needs of an average family. See below section

³ Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32002L0021>

⁴ Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive). Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32002L0019>

⁵ Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive). Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32002L0022>.

⁶ Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive); Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32002L0020>.

⁷ Available at: <http://www.legislation.gov.uk/ukxi/2018/445/contents/made>

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Option 1 - The UK Government does not transpose the Universal Service Obligation articles from the EEC (articles 84 to 91) (Do Nothing). The UK retains the domestic USO, based on the USO and the Framework.

Option 2 - The UK Government does transpose the Universal Service Obligation articles from the EEC (articles 84 to 91) (Agreed Approach). The Government transposes the articles in UK legislation

Summary of business impact

Option 1 has no direct cost impacts on businesses.

Option 2 has a direct one-off familiarisation cost to businesses, though relatively small. We estimated familiarisation costs to be equivalent to £12,500 (more below). There is an implementation cost relating to Ofcom evaluating the need for social tariffs. This direct cost is estimated to be £110,600. No other direct cost on businesses has been identified. USO legislation in the UK has previously been appraised and implemented⁸, and therefore the cost benefit analysis has been already conducted. The proposed legislation will have no direct impact on the UK economy, besides a small familiarisation cost, but will only inform the existing legislation to be in line with that of the European Union.

SUPPORTING EVIDENCE

Rationale for government intervention

1. For many, across generations, full participation in society and the economy is impossible without access to the internet. 10 Megabits per second (Mbps) is the minimum download speed that Ofcom⁹ says is needed to meet the typical needs of an average family. However, there are still some areas of the UK, particularly, although not exclusively, the more rural areas, which cannot receive speeds of at least 10Mbps as the necessary infrastructure has not been deployed there.
2. There are limits to what the market can deliver through competition alone, and limited commercial incentives for any firm to roll out broadband infrastructure to these areas, given the large investment necessary, and the relatively low returns. Ofcom's Connected Nations 2019 and 2020 Summer update reports shows that the number of premises without 10Mbps broadband download and 1Mbps upload speeds, considering fixed line connections only, is 2% of premises, compared with 4% of premises in 2017. Government

⁸ DCMS (2018), The Electronic Communications (Universal Service)(Broadband) Order 2018.

Available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/695123/Universal_Service_Obligation_-_final_IA.pdf

⁹ Ofcom (2018), Broadband universal service obligation: What you need to know. Available at:

<https://www.ofcom.org.uk/phones-telecoms-and-internet/advice-for-consumers/broadband-usage-need-to-know>

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intervention is necessary on an equity basis to ensure households and small businesses in these areas do not get left behind.

3. The Government implemented its manifesto commitment to introduce a broadband USO which gives everyone the right to request high speed broadband of at least 10Mbps by 2020. In order to meet this, the Digital Economy Act 2017¹⁰ introduced a power to enable the Secretary of State to bring in a broadband USO. This was subsequently enabled by the The Electronic Communications (Universal Service) (Broadband) Order 2018¹¹, which came into force on 23 April 2018. During the process of establishing the domestic broadband USO, in 2018 an Impact Assessment¹² was conducted to determine the costs and benefits to industry.
4. The European Electronic Communications Code (EECC) was adopted by the EU in December 2018. It contains a number of provisions that update the current regulatory framework, with the objective of:
 - a. Incentivising investment in very high-capacity broadband networks; promoting more efficient spectrum management;
 - b. Ensuring effective consumer protection;
 - c. Strengthening the institutional framework.
5. The UK played an active part in EECC negotiations, and we are satisfied that the provisions provide a net benefit to the UK and support our ambitions to improve connectivity. Given that the UK remains subject to its EU rights and obligations throughout the post-Exit Implementation Period, the Government is obliged to update domestic telecoms law in line with the provisions in the EECC.
6. The EU first established a comprehensive regulatory framework for telecoms in 2002¹³, in order to address market failures across the EU. The EECC updates that framework to ensure that it continues to address the market failures that still persist, including those in the UK telecoms market.
7. The current regulatory framework comprises the Framework Directive 2002/21/EC¹⁴, the Access Directive 2002/19/EC¹⁵, the Universal Service Directive 2002/22/EC¹⁶ and the Authorisation Directive 2002/20/EC¹⁷. It also includes provisions adopted in 2009 updating these Directives (predominantly through the Better Regulation Directive 2009/140/EC) and a directly applicable Regulation (BEREC Regulation 1211/2009). These Directives were primarily transposed via the Communications Act 2003, the Wireless Telegraphy Act

¹⁰ Available at: <http://www.legislation.gov.uk/ukpga/2017/30/contents/enacted>

¹¹ Available at: <http://www.legislation.gov.uk/uksi/2018/445/contents/made>

¹² Available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/695123/Universal_Service_Obligation_-_final_IA.pdf

¹³ See footnote 2

¹⁴ See footnote 1.

¹⁵ See footnote 2.

¹⁶ See footnote 3.

¹⁷ See footnote 4.

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2006 and the Office of Communications ('Ofcom') Act 2002. Other EU telecoms legislation is also applicable in the UK.

8. The EU Framework Directive (Framework), and the Universal Service Directive (USD), provide the framework within which our domestic broadband USO operates. Under the USD Member States are required to ensure that all reasonable requests by end-users, for connection at a fixed location, are met. The connection must support voice and data communications permitting "functional internet access". Since the USD was introduced in 2002, the concept of functional internet access has changed as technology and consumer demands have evolved - narrowband connections rapidly became inadequate to support consumers' online needs. In light of this, the 2009 revisions to the USD gave Member States flexibility to choose whether to also include broadband connectivity as part of universal service, according to their own national circumstances, and the option to introduce a broadband USO with minimum speeds if they determined national conditions make it necessary to do so. In determining this, Member States were required to take into account the prevailing bandwidth used by the majority of subscribers and technological feasibility.
9. The EECC recasts the Framework, Access, Universal Service and Authorisation Directives in line with the requirement for the European Commission to review the framework every five years in light of market trends and technological developments. The EECC SI will be made under section 2(2) of the European Communities Act 1972 (as repurposed for the transition period by the EU (Withdrawal Agreement) Act 2020).
10. Transposing the USO measures from the EECC will meet our obligations in a transition period post-EU Exit and would, at least initially, ensure regulatory alignment on these provisions. There would be no issue in terms of the domestic USO measures.
11. One difference from the domestic USO measures is the requirement to consider the need for a social tariff in Article 85. As the EECC requirement is to consider the need for such a tariff, rather than mandating its implementation at this stage, there is no further immediate burden on industry than what was determined under the Impact Assessment conducted for the domestic USO in 2018. However a periodic reevaluation of this position would potentially translate to increased costs for Ofcom and/or Government.

Policy options

Option 1 - The UK Government does not transpose the Universal Service Obligation articles from the EECC (Do Nothing): We will still retain the domestic USO, based on the USD and the Framework. This would not meet the obligations of transposition.

Option 2 - The UK Government does transpose the Universal Service Obligation articles from the EECC (Agreed Approach): The Government transposes the articles in UK legislation. See below for a description of the articles:

Article 84 of the European Electronic Communications Code (EECC) requires that member states shall ensure access to adequate broadband and voice services at a fixed location, at an affordable price. Member states may also ensure the affordability of services that are not

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at a fixed location when they deem it necessary to ensure consumers' full social and economic participation in society. It also requires that adequate broadband must deliver the services listed in Annex V (e.g. email, video calling), and that BEREC will report on member states' best practice after entry into force.

Article 85 requires that member states monitor the costs of broadband for consumers, and take action if that cost is deemed unaffordable, in particular for those on low incomes and/or with special social needs. Member states are also to ensure that consumers with disabilities are appropriately supported. The proposed implementation of article 85 is as follows:

1. The Secretary of State may direct Ofcom to review the affordability of qualifying services¹⁸ for individuals on low incomes or with special social needs, and to report the results of the review. The SoS may also give guidance to Ofcom on carrying out the review and in making the recommendation, and publish this.
2. Ofcom then undertakes the review, and makes a recommendation to the Secretary of State on the setting, modification or revocation of a social tariff. Ofcom must publish the results of the review and how they have assessed the different options evaluated. Ofcom must also publish a notification setting out the impact of their recommendation.
3. The Secretary of State may direct Ofcom to implement the recommendation.

Article 86 requires member states apply the universal service in an efficient way that minimises market distortion, and may designate a specific provider(s) for the service.

Article 87 requires member states to ensure the availability or affordability of other Universal Services that were in force on 20 December 2018 as required by member states. The requirement for these services must be reviewed by 21 December 2021 and every three years thereafter.

Article 88 requires member states to ensure consumers of the universal service are not subject to unnecessary costs or unwarranted termination.

Article 89 requires member states to monitor the costs of the universal service provision, and ensure the burden of delivery is not unfair on providers.

Article 90 allows member states to introduce compensatory measures for providers, in the event provision of the universal service is deemed unfair. This may include an industry-wide cost sharing mechanism.

Article 91 requires that any industry-wide cost sharing mechanism developed under A90 is transparent, and that national regulatory authorities publish annual reports on the costs of the universal service. It also allows for additional services to be added, beyond those set out in the previous articles, but these cannot be compensated. It also requires regulatory controls on retail services.

¹⁸ Qualifying services include: broadband services at a fixed location, telephone services at a fixed location and mobile services.

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Article 92 allows member states to make additional services available to those included in the universal service obligations referred to in Articles 84 to 87. However in these cases no compensation mechanism involving specific companies shall be imposed.

Assessment of business impact

Option 1 has no direct impact on businesses.

Option 2: We have assessed that none of the measures outlined in Articles 84-91 impose any significant cost burden on the industry. We have implemented the UK USO so we will not need to deliver further provisions.

With respect to option 2, there is a direct cost to businesses. While current USO obligations apply to only two telecoms operators (BT and KCOM), the costs are expected to be shared with the rest of the industry should this be required. The costs of a future social tariff may also be applicable to a broader range of telecom operators, but the need for changes to such tariffs or implementation of a new approach is yet to be decided. We account costs below for all telecom firms which would potentially need to familiarise themselves with the new legislation. Each telecoms business operating in the UK would need to familiarise themselves with the changes in legislation. We have calculated the cost of familiarising with the new legislation to be £9,636.7, plus an additional £2,120.07 in 22% overhead costs (2019 prices). We envision an employee in each business will need to spend thirty minutes in order to read this section of the legislation. We have calculated the familiarisation cost by multiplying £21.90, the average hourly pay for a telecommunications professional¹⁹, by 8,450, the number of telecommunications businesses operating in the UK and 0.5 (as only 30 minutes will be required to read this section of the legislation). This cost has subsequently been translated to 2019 prices by using the BIT Impact Assessment Calculator.

We estimated that the implementation of article 85 could cost Ofcom up to £85,056 (2019 prices). After applying 22% overhead costs²⁰, this equates to an estimated cost of £103,768.32. Using the same approach as for familiarisation costs (above), we estimate that this would require the work of up to three Ofcom analysts for about 6 months to produce a report on the topic. The median salary at Ofcom for 2017/2018 was £56,704 and therefore we estimated that for three analysts employed for 6 months each the cost could run up to £85,056. It is important to note that the additional impact on business of the proposed social tariff would be assessed in an impact assessment if a revised social tariff were to be implemented. Ofcom is obliged to do this under section 7 of the Communications act 2003. However as this is not a direct cost on business this is not included in the EANDCB.

Aside from familiarisation costs and implementation costs from any social tariff, no direct cost impacts on businesses have been identified. USO legislation in the UK has previously been

¹⁹ ONS (2018), Employee earnings in the UK: 2018. Available online: <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/annualsurveyofhoursandearnings/2018>

²⁰ <https://www.gov.uk/government/publications/rpc-short-guidance-note-implementation-costs-august-2019>

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appraised and approved²¹, and therefore the cost benefit analysis has been previously conducted. The proposed legislation will have no direct impact, besides familiarisation costs and implementation costs, on the UK economy but will only inform the existing legislation to be in line with that of the European Union.

Risks and assumptions

No risks and assumptions have been identified regarding this legislation. UK USO legislation has been previously approved

Call-in check list explanations

Distributional Impacts

Conclusion: There are no significant distributional impacts

Small and Micro Business Assessment (SaMBA)

Due to their limited personnel, familiarisation costs affect SaMBA operators disproportionately to larger businesses. However, given that total familiarisation costs for all operators is below £10,000, it is reasonable to assume this effect is negligible. We have no other reason to believe this legislation disproportionately affects small or micro businesses.

Conclusion: There are no disproportionate effects on small businesses

Gross Effects

Conclusion: There are no significant gross effects

Wider Impacts

Conclusion: There are no significant wider effects

Significant, Novel, or Contentious

Conclusion: There are no significant, novel or contentious impacts

²¹ DCMS (2018), The Electronic Communications (Universal Service)(Broadband) Order 2018. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/695123/Universal_Service_Obligation_-_final_IA.pdf