



The Digital Economy Bill

Committee Stage

Date: October 2016

The CLA

The CLA represents landowners, farmers and other rural businesses. We represent over 32,000 members who own and manage around half the rural land in England and Wales and operate a wide range of land based businesses. Any proposed changes to the Electronic Communications Code will have a direct effect on a significant number of our members and the proposed changes have already started to cause concern and confusion.

Please support rural businesses by:

- **Supporting the introduction of a Universal Service Obligation for broadband,**
- **extending this commitment and ambition to deliver universal coverage for mobile users across all areas of the UK, and**
- **ensuring reform of the Electronic Communications Code is fair, equitable and will increase roll out of mobile coverage to rural areas.**

Universal Service Obligation

- CLA welcomes the introduction of a Universal Service Obligation (USO) which will give rural homes and businesses certainty to plan ahead, invest, grow and compete with their urban counterparts as well as increase social inclusion across the countryside.
- In order to ensure it is effective, the USO must be legally binding, providing a legal right to the consumer. The USO must also come with a legal guarantee for consumer compensation where this speed is not met.
- We believe that it is vital to the competitiveness of rural businesses to have the certainty a USO will provide and that it should be forward looking, with the minimum speed of 10mbps seen as an evolving threshold that is flexible and can be easily increased to meet the needs of society.

Universal Coverage for Mobile

- Whilst the commitment to ensure everyone no matter where they live has access to a basic level of broadband is welcome, the same cannot be said for mobile phone coverage.

- The Government gave away major legal concessions and handed a £1 billion saving to the mobile phone industry through a deal struck in 2014 which stopped the potential introduction of national roaming instead securing a commitment to 90% coverage by 2017.
 - Yet the latest available data shows that rural communities are still being left behind:
 - **only 31% of people in rural areas get 'all networks' mobile coverage indoors compared to 91% in urban areas.**
 - **only 55% of the country is able to get 2G coverage**
- (Ofcom: Connected Nations Report 2015)*
- Mobile devices are a vital part of modern life. Access to voice and data services is already essential for health and safety, agriculture, tourism and rural business. Continued poor and inconsistent coverage will stifle business growth and harm communities.
 - Even if the mobile phone operators achieve their target of 90% 2G coverage by 2017, this will not be sufficient to enable rural businesses to invest and harness new and emerging technologies.
 - That is why the CLA is calling on Government to **legislate for a universal coverage target for mobile**, with a minimum level of 3G coverage and a concrete date for this to be achieved.

Electronic Communications Code (ECC)

Overview

- The CLA supports the implementation of an updated ECC and recognise its importance in helping in the roll out of infrastructure that will deliver the phone and data coverage that is required across the country.
- The Government's approach to this however has been poor; creating confusion. It has been three years since the Law Commission arrived at a fair and balanced recommendation for a workable update to the existing Code (the 2003 Code). It is wholly unclear why it has taken so long to deliver on it and why the Government at the eleventh hour departed so far from the valuation recommendations it set out.
- This uncertainty will only add to our members concerns that the proposed changes will have no bearing on the continuing poor performance in actually providing mobile coverage and a competitive market in rural areas. Farmers and landowners have had promise after promise about improved mobile phone coverage, and target announced after target announced, but with no results in rural areas.
- We are calling on Government for clarity over the new system of valuation for site rents that is fair and equitable as well as a robust Code of Practice to ensure landowners, infrastructure providers and mobile phone operators are clear about agreements they enter into under the new Code, and an effective and reliable dispute resolution procedure.

Retrospective application of the proposed Code

- Whilst CLA welcomed the Minister's clarification at 2nd Reading that the proposed Code would not be retrospective, we believe this must be written onto the face of the Bill to ensure certainty and security for rural businesses.
- This will ensure that the primary focus of mobile operators is on improving coverage in rural areas rather than tearing up contracts to inflate their balance sheets.

Paragraph 23 and site rental

- CLA remain concerned that where there was scope for a sensible change with broad support from industry and landowners, we have instead a last minute change from open market value to compulsory purchase that adds only complexity and confusion.
- DCMS asked the Law Commission to undertake an independent review of the Electronic Communications Code which they did over a number of years in a three phased approach; taking evidence from a range of stakeholders across the industry, an open consultation including open meetings and finally an analysis of the 130 formal responses they received. In their final report, they recommended:

'we have recommended that the revised Code should maintain that market value basis..... To do anything else would generate an extremely difficult transition, and a consequent overload of litigation; more importantly, the market in sites benefits the economy – not only small businesses in the countryside but also some larger concerns.'

- After a further 18 months of consultation, at the eleventh hour Government decided to ignore this advice, moving from a consensual system that was fair and equitable to a no scheme valuation system based on unsubstantiated assertions by mobile operators regarding ransom rents. CLA have always condoned the practice ransom rents and have yet to see any evidence to substantiate that this is happening in rural areas.
- Instead, the Government are proposing a system of compulsory purchase with consideration and compensation to be paid but are yet to work out and clearly set out what the stipulations and additional factors are for consideration and compensation.
- This change, moving from open market value to compulsory purchase has not been done since the nationalisation of electricity and water in the 1940's and is premised on assumptions made in a report by Nordicity in 2013. This assumption is based on wayleave payments for electricity cables and capital payments for water pipes which are not comparable. Both relate to linear infrastructure, rather than static masts. The proposal contained within this legislation is not a wayleave payment and the estimate is predicated on incomparable wayleave agreements.
- However, the report also states:

*'Our research also indicates that **there is merit in landowners' arguments** regarding the transfer of income to multinational communications companies. Such a transfer is likely to have a negative impact on the UK balance of payments in the short run, given the agricultural sector's low direct import ratio'.*

- Even the Government's own Impact Assessment shows that the new system is a risk:

*The impact on the wayleave market has been **estimated** by an independent consultancy using industry data from across sectors. However, as the move to compulsory purchase principles is a major departure from current practice in the telecommunications market **there is uncertainty as to how negotiations between operators and landowners will develop**. This is also **associated with the risk of an increase in legal disputes**, although the staggered nature of contract renewals minimises the impact of this.*

- As such, any move to a new system of compulsory purchase must offer farmers, landowners and rural businesses certainty whilst at the same time seeking to avoid dispute, leading to a slow down of roll out to the detriment of operators, rural businesses and communities alike. In order to create this certainty we believe that the Bill must set out clearly what additional factors are to be taken into account with regard to the compensation and consideration as proposed:

Amendment to Paragraph 23

How is consideration to be determined under paragraph 22?

23 (1) The amount of consideration payable by an operator to a relevant person under an agreement imposed by an order under paragraph 19 must be an amount or amounts representing the market value of the relevant person's agreement to confer or be bound by the code right (as the case may be) taking into account all the terms of that agreement save as provided below and assessed at the date the market value is assessed

(2) For this purpose the market value of a person's agreement to confer or be bound by a code right is the amount that, at the date the market value is assessed, a willing buyer would pay a willing seller for the agreement—

- (a) in a transaction at arm's length,
- (b) on the basis that the buyer and seller were each acting prudently and with full knowledge of the transaction and without being under compulsion.

(3) The market value shall take into account as appropriate all relevant factors including:

- (a) the land subject to the agreement for the apparatus
- (b) the line of any power supply to the apparatus with restrictions on use of the land to protect it
- (c) other facilities associated with the apparatus interfering with the land
- (d) rights of access for the operator, and its agents over the land associated with the apparatus and its use
- (e) the protection required by the operator for any lines of sight for the apparatus
- (f) any detriment to other land of the site provider
- (g) any detriment to the relevant person's business and other current activity
- (h) any detriment to other uses of land owned or occupied by the relevant person.

(4) The market value—

- (a) must not be assessed on the basis of the value to the operator of the right or agreement or of the uses by that operator under the right or agreement, and
- (b) must be assessed on the assumption that paragraphs 15 and 16 (assignment of code rights and upgrading and sharing of apparatus) do not apply to the code right or any electronic communications apparatus to which the code right could apply.

(5) The terms of the agreement may provide for consideration to be payable—

- (a) as a lump sum or periodically,
- (b) on the occurrence of a specified event or events, or
- (c) in such other form or at such other time or times as the court may direct.

Ring-fenced fund to improve coverage in rural areas

- CLA believe that in order to ensure that the new proposed Code delivers for rural communities that the £1 billion saving being handed to mobile operators through savings from both site rental and business rates must be used to improve poor and on-existent coverage in rural areas.

For further information related to this briefing or the CLA's work more generally please contact Oliver Strudwick, Public Affairs Adviser on oliver.strudwick@cla.org.uk or 020 7460 7927.