

Business Impact Target: Ofcom list of non-qualifying regulatory provisions, May 2015-March 2017

Under the Small Business, Enterprise and Employment Act 2015 ('the SBEE Act'), we have a statutory obligation to produce an assessment of the economic impact on business of every qualifying regulatory provision we make during the relevant period. A qualifying regulatory provision is one that does not fall under any of the exclusions prescribed in the SBEE Act.¹ Our list of qualifying regulatory provisions and their Business Impact Target score, validated by the Regulatory Policy Committee, can be found here:

https://www.ofcom.org.uk/_data/assets/pdf_file/0021/102738/bit-qtps-2017.pdf

Under the SBEE Act, we are also required to publish a list of 'non-qualifying regulatory provisions', which are those that fall under one of the exclusions set out in the SBEE Act. This document sets out our non-qualifying regulatory provisions for the first reporting period (May 2015-March 2017).

Excluded Category*	Summary of measure(s), including any impact data where available**
A – EU and International	<p>We have implemented 5 EU Regulations:</p> <ul style="list-style-type: none"> • the Broadband Cost Reduction Directive, which set out measures to reduce the cost of deploying high-speed electronic communications networks; • Made mobile user terminals in the 3400 to 3800 MHz ('3.4 GHz band') that comply with certain technical parameters licence exempt; • Retained a requirement for all postal operators to establish, make available, and comply with transparent, simple and inexpensive procedures for dealing with complaints of users of postal services (part of our Review of Royal Mail Regulation – we have provided a BIT assessments for the elements of this that are in scope); • We made a decision relating directly to the implementation of the AVMS Directive in relation to non-domestic channels in December 2016²; and • We made changes to our licensing procedures regulations due to provisions in the Wireless Telegraphy Act, which implemented the European Framework Directives <p>These decisions did not involve any 'gold-plating'.</p>

¹ Department for Business, Energy and Industrial Strategy, (2016). *Business impact target: statutory and administrative exclusions guide*.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/608836/business-impact-target-exclusions.pdf

² In this document we also extended the transitional period during which non-domestic channels could meet their signing requirement by providing additional subtitling. This was not a lifting of the access obligations or the imposition of new obligations but a decision that non-domestic channels with smaller audiences could choose to subtitle an additional amount during the transitional period as an alternative to providing from 1 Jan 2014 sign presented programming (or securing Ofcom's consent to alternative arrangements), during which time Ofcom would seek the views of sign language users and broadcasters on what arrangements would be most beneficial. As such, it would fall out of scope. We made a similar decision in December 2015, which is out of scope for the same reason.

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B – Economic Regulation	<p>We have made 7 provisions falling under this exemption. The most significant includes our Narrowband Market Review and quality of service provisions for BT. The provisions are listed below and mostly relate to regulation of BT because of its SMP.</p> <ul style="list-style-type: none"> • Business Connectivity Market Review which examines the markets for the provision of leased lines to businesses in the UK. • Charge controls on leased lines and dark fibre pricing on regulating BT’s charges for its wholesale leased line services. • Assessment of the VULA margin – the minimum margin that BT must maintain between its wholesale and retail superfast broadband prices. • Narrowband market review – which covers five wholesale markets that underpin the delivery of retail fixed voice telephone services in the UK. • Reform of Openreach • Quality of service for WLR and MPF which covers minimum quality of service standards for the provisioning and repair of some wholesale products. • Review of Royal Mail Regulation
C – Price Control	<p>As part of our review of regulation on Royal Mail, we decided to retain the ‘safeguard cap’ – this is a price control. (We have provided a BIT impact assessment for the other decisions we took in this document).</p>
D - Civil Emergencies	<p>We designated ‘105’ as the single number for the national power cut and electricity network safety service.</p>
E – Fines and Penalties	<p>Ofcom has considered the exclusion category and is satisfied that none of its measures for the reporting period qualify for the exclusion.</p>
F – Pro-Competition	<p>We introduced two measures that met the BIT pro-competition criteria and increased the net direct burden of regulation. This simplified charges to consumers for calling non-geographic numbers. Because of this decision we made minor modifications to the telephone number application form – this was necessary to implement our pro-competition decision. The second measure related to some aspects of our Review of Royal Mail Regulation – we have provided a BIT assessment for the elements of this that are in scope.</p>
G – Large Infrastructure projects	<p>Ofcom has considered the exclusion category and is satisfied that none of its measures for the reporting period qualify for the exclusion.</p>

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H – Misuse of Drugs/National Minimum Wage	Ofcom has considered the exclusion category and is satisfied that none of its measures for the reporting period qualify for the exclusion.
I – Systemic Financial Risk	Ofcom has considered the exclusion category and is satisfied that none of its measures for the reporting period qualify for the exclusion.
K – Industry Codes	We approved the 14th edition of the PhonePayPlus Code of Practice.
L1 – Casework	We carried out a significant level of casework. This included investigations into contraventions of the General Conditions, awarding community radio licences, investigating breaches of the Broadcasting Code, applying Code Powers to several operators, and individual spectrum enforcement cases, including taking individuals to court.
L2 – Education, communications and promotion	Ofcom has considered the exclusion category and is satisfied that none of its measures for the reporting period qualify for the exclusion.
L3 – Activity related to policy development	We undertook a review of Public Service Broadcasting and set out a framework for spectrum sharing . We set out our policy principles for improving spectrum access for consumers in the 5GHz band , but the decision relating to this that may impact businesses will come into force later in 2017. We also set out our strategy for space spectrum , set out advice on the design of a potential broadband USO , and are designing the auction for 2.3 and 3.4 GHz spectrum .
L4 – Changes to management of regulator	We appointed new Board members and brought video-on-demand regulation in-house .
S27 of the SBEE Act: Controlled by a public authority	We also published an operating framework for the BBC, along with a series of documents setting out how our regulation of the BBC will work. ‘Regulatory provisions’ relating to the activities of the BBC do not fall within scope as the definition of ‘business activities’ under s27 of the SBEE Act makes clear that the activities of entities ‘controlled by a public authority’ (i.e. bodies in the public sector), are excluded from that definition. The BBC is a public corporation and classified by the Office of National Statistics as being within the public sector, therefore decisions relating to its activities would not fall within the scope of a ‘qualifying regulatory provision’.

Other decisions which do not fall within scope for this reporting period

Published after March 2017	We intend to publish 4 provisions between April and May 2017. In line with guidance provided by the RPC over email on 7 March 2017, we have not included these decisions in this year’s report because they will be made outside the
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	<p>relevant reporting period. They will be included in a future report. The provisions are:</p> <ul style="list-style-type: none"> • Review of the General Conditions: Technical and Consumer Protection Measures; • Improving consumer access to mobile services at 3.6 to 3.8 GHz; • Revision of the enforcement guidelines; and • Auction of 2.3 and 3.4 GHz spectrum bands.
Regulatory provisions that come into force after the relevant period for this year's report	<p>We published our intention to make the centre gap of the 700MHz band available for mobile services but need to further consult on the details of a grant scheme to disburse funding to support PMSE users who must vacate the 700 MHz band earlier than expected before we can carry out an assessment of the impact on these businesses.</p>
Not 'business activities' under the SBEE Act	<p>We amended the list of larger political parties to include UKIP and the Green party in some nations and regions and set out rules on due impartiality, due accuracy, elections and referendums.</p>
Voluntary	<p>We introduced a Voluntary Business Broadband Speeds Code of Practice and have exempted it on the basis that it is voluntary and does not necessarily impose costs on business.</p>
Court decision	<p>We amended the Wireless Telegraphy (Exemption) Regulations to give legislative effect to the decision of the Court in Recall Support Services and Others v Secretary of State for Culture Media and Sport (2013, EWHC 3091 (Ch)), confirmed by the Court of Appeal (2014 EWCA Civ 1370) with regard to commercial single user gateways. This falls out of scope because the substantive decision was made by the court. Ofcom's role was to reflect the court's decision in secondary legislation.</p>