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Dear Dan

## **DIGITAL ECONOMY ACT 2017: PROPOSED CODE OF PRACTICE**

1. I am responding for the Scottish Government on this consultation. The requested cover sheet is attached.
2. The Scottish Government's overarching comment is that OFCOM needs to review the proposed Code of Practice to ensure it reflects Scots law and practice.
3. Detailed points the Scottish Government has noted are below:
  - Annex 5 (and elsewhere). There is a reference to "the Countryside Code". This appears to be for England and Wales only. The Scottish equivalent appears to be the Scottish Outdoor Access Code <http://www.outdooraccess-scotland.com/>
  - Annex 6. Clause 11. This refers to "Assignment". The Scots term is assignation. The same point arises later on in the draft Statutory Notice of the "Assignment" of an Agreement under the Electronic Communications Code.
  - Annex 6. Clause 12. This refers to the Contracts (Rights of Third Parties) Act 1999. This does not extend to Scotland: <http://www.legislation.gov.uk/ukpga/1999/31/section/10> A Contracts (Third Party Rights) (Scotland) Bill is currently before the Scottish Parliament: <http://www.parliament.scot/parliamentarybusiness/Bills/103313.aspx>
  - Annex 6. Clause 16. Is the Model Mediation Procedure referred to appropriate for Scotland? More generally, is a reference to arbitration needed too?
  - Annex 6. Clause 17.1 Why is there a reference to "the laws of England and Wales", when the 2017 Act extends across the UK?"
  - Annex 6. Clause 17.2. Is the reference to the "sheriff in Scotland" [and to the "courts of England"] right, given that, subject to the views of incoming ministers after the UK General Election, Her Majesty's Government intends to make a Statutory Instrument to switch the jurisdiction for disputes under the Electronic Communications Code from

the ordinary courts to the Lands Tribunal? There are similar references to “the court” elsewhere.

4. Finally, the draft Code of Practice only seems to deal with the bilateral situation involving landowner/operator. Does the Code need to cover as well the situation where there is also an infrastructure provider who may or may not be registered with Ofcom?

5. I am copying this letter to OFCOM Scotland, Steve Robinson (DCMS) and internally.

Yours sincerely

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