

Protect & Connect Submission to the Product Security and Telecommunications Infrastructure Bill Committee

Reforms enacted in Digital Economy Act 2017 have not delivered a faster 5G rollout, despite that being their original intent. They have further enriched mobile operators at the expense of small businesses and communities, broken the market-based approach to site rental and damaged long-established property rights. The Protect and Connect campaign was set up to defend the interests of those let down by the 2017 reforms.

Despite reassurances that the Product Security and Telecommunications Infrastructure Bill would not do so, it revisits the changes to further expand their use to landowners that had previously been safeguarded against drastic reductions. It does so again with the intention of speeding up the 5G rollout, and delivering faster and cheaper digital connectivity to communities across the UK. However, no evidence has been provided to suggest that this has happened since 2017, or will happen now. Despite promising a review as part of the original legislative process in 2017, the government has ruled out carrying out a review prior to introducing these changes. While Protect and Connect agrees with the underlying objective of the Bill - to speed up the UK's 5G rollout - we have a number of concerns regarding the Bill's contents as currently drafted.

If not corrected, the Bill as drafted will make things worse: further damaging the interests of communities and small site providers, further holding back roll-out while providing further subsidies to operators who already make multi-billion pound profits. This is at a time where those operators have announced increases in consumer pricing, while simultaneously receiving direct state funding to cover areas they have failed to cover, such as the Shared Rural Network.

In each case, simple changes could ensure a fairer system that can deliver sorely needed improvements in digital connectivity and without relying on subsidies from property and land owners like sports clubs, churches and small farmers. These changes should be accompanied by an appropriate regulatory regime that ensures savings are reinvested, rather than simply absorbed into profits.

1. A fair valuation system that incentivises site owners to host infrastructure. The government must act to stop dramatic rent reductions.

Protect & Connect has campaigned strongly for site owners to receive fair payment for their land. Under changes to the Electronic Communications Code made in the Digital Economy Act 2017, a new methodology for valuing land was introduced, which only allowed site owners to recover the raw value of their land, rather than

receiving a market price. This is the fundamental issue with the Electronic Communications Code today, as identified by many stakeholders including the Law Society.

The effect has been enormous, with rents commonly reduced to less than 10% of what they were before 2017, often through threats of legal action. The Government did not expect this outcome, and nor did Parliament vote for it. We continue to believe that the right solution to get this market moving again is to reinstate a fair, market-based valuation mechanism, such as the one envisaged by the Law Commission. However, the government has explicitly ruled out revisiting the unfair valuation system, despite its functioning being directly affected by the provisions of the Bill. The valuation system is the single biggest flaw of the 2017 reforms, and it needs to be addressed.

2. Rent changes should not be backdated to before the court's decision, in order to avoid bankruptcies caused by backdated payments and respect existing contracts.

In this Bill, telecoms companies are getting additional powers in Clauses 61 and 67 which mean that when a dispute between a site provider and a telecoms company goes to court, the site owner may be required to pay back the majority of rent received in the period between the initial notice being served and the final judgement being made. Some of these notices could have been served years ago and will lead to huge repayments from site providers to telecoms companies.

Many site owners are already going to face severe financial pressure as a result of the 2017 reforms. But we are concerned that this reform will lead to sudden and significant sums of money being owed to telecoms operators by site providers. This will not help the 5G roll out but is a disproportionate and retrospective act which will incentivise court action and will only boost the operators' bottom lines.

3. The Bill's drafting could inadvertently lead to some severe outcomes for site owners and hamper the rollout of better connectivity.

The Government stated explicitly in its response to the consultation preceding this legislation that agreements could not be changed by court order during the course of the contract. It said: "we do not have sufficient evidence to support making reforms which would allow the courts to modify an ongoing Code agreement."

However, we do not think that the Government's stated position will be delivered by this legislation, based on the current drafting in the Bill. Specifically, the change to the definition of "occupier" in Clause 57 has the unintended consequence of allowing the cancellation or modification of agreements which were agreed in good faith and still have years to run. Given this, we would urge the government to review the impact of the draft definition of 'occupier' and make appropriate amendments to the legislation in line with the publicly stated policy intent, ensuring that it only deals with the specific circumstances intended in the consultation response.

4. There are insufficient protections against abuse by telecoms companies.

The government has recognised poor behaviour by telecoms companies which falls short of what should be expected – yet has thus far refused to carry out a review. Protect and Connect confirmed this after surveying 116 site owners that host mobile telecoms masts, and found:

- 23% have suffered damage to their property;
- 35% had their sites upgraded without permission;
- 46% found telecoms companies on their land without warning; and
- 50% have been threatened with legal action.

The Government plans to tackle these sorts of issues by creating a new Alternative Dispute Resolution (ADR) mechanism, directing the telecoms companies have a complaints handling process, and encouraging Ofcom to provide better guidance in Clauses 68 - 69.

To resolve this, the Committee should amend the Bill, to ensure protections are added that more align to the regulatory powers imposed on other utility providers and in order to:

- Make the ADR mechanism compulsory for any dispute (Clause 68)
- Enhance the statutory handling process for complaints about operator behaviour and give Ofcom the ability to impose fines on telecoms companies and compensation for site providers (Clause 69)
- Oblige Ofcom to issue statutory guidance on operator behaviour that is designed by a respected independent expert. (Clause 69)

5. Setting the right precedents - Clauses 61 - 66 of the Bill undermines the Landlord and Tenant Act 1954 and the Business Tenancies (Northern Ireland) Order 1996, which may hamper the government's ability to deliver investment in other critical sectors.

Site owners had no way of foreseeing that the Government would act to reduce their income stream down to as little as fifty pounds a year for some. For the overwhelming majority, there is no way they would have entered into an agreement if they knew this to be the case. Yet now they have limited rights to remove the mast from their land, except in narrow circumstances such as property redevelopment, and for which they would have to go to court.

This Bill will expand the reforms to valuation (despite explicitly stating that valuation is not to be under consideration in this Bill), which in 2017 were limited to the Electronic Communications Code, to agreements made under the Landlord and Tenant Act 1954 and the Business Tenancies (Northern Ireland) Order 1996, which governs all agreements in Northern Ireland, in Clauses 61 - 66. This fundamentally

undermines legislation that has been a cornerstone of British property rights for over half a century and sets a worrying precedent for other sectors like wind turbines or other renewables where site providers will subsequently be unwilling to enter into long-term arrangements to supply land.

To engender trust among site owners hosting the different types of equipment serving the public good, the Bill must treat them fairly and adhere to long-established principles of minimising interference with property rights. At the very least, the Committee should remove the damaging alterations to the LTA 1954 and BT(NI)O 1990. However, we firmly believe that trust will only be rebuilt if the government also commits to revisiting the principle of valuation and adopts a fair, market-based system such as the one envisaged by the Law Commission.

6. There is no evidence base for the interference in property rights posed by the Bill. The government should explain this to Parliament so that MPs and Lords can form their own view on whether the reforms are proportionate.

The Government has not provided a full Impact Assessment of the Digital Economy Act 2017, even though it promised to do a full review in 2022. The Government now claims that the 2017 reforms do not create significant distributional impacts between different businesses.

Protect & Connect commissioned independent research from the Centre for Economics and Business Research (CEBR). In a major study¹, the CEBR set out that the Government's proposals would slow down the 5G rollout and cost the economy billions of pounds. In a follow up report² the CEBR demonstrates that rents paid to site providers before the 2017 reforms were sustainable. The Government has refused to acknowledge both reports, despite acknowledging the report commission by Speed Up Britain, which was funded by operators.

We do not think this is a sufficient evidence base for policy making, and we urge the government to fulfil its obligations to fully review the outcomes of the 2017 reforms.

The Product Security and Telecommunications Infrastructure Bill is an opportunity to correct, rather than exacerbate, the mistakes of the Digital Economy Act 2017, and deliver faster, cheaper connectivity across the UK in a fair and equitable manner. In order to deliver on this opportunity, the Committee should amend the Bill to ensure that it delivers on its objectives without harming the small communities and businesses who are most vulnerable to abuse by large mobile network operators.

¹ [CEBR - Electronic Communications Code](#), April 2021

² [CEBR – Sustainability of pre-2017 telecoms land rents](#), September 2021