

## Written evidence submitted by the National Farmers' Union (NFU) (DEB 20)

### 1.0 Why the NFU is requesting amendment to the bill.

1.2 The NFU represents 47,000 farm businesses in England and Wales. In addition we have 40,000 countryside members with an interest in farming and the countryside. Farmers and growers have an important role as consumers of broadband and mobile phone technology and also as landowners and tenants who can host telecommunications equipment. To put this in context of the Digital Economy Bill:

- farmers and growers are within the last 5%<sup>1</sup> of the population for whom there is no superfast roll out provision and with the right legislation may benefit in the future from a proposed broadband Universal Service Obligation.
- Farmland covers 70% of the UK land area<sup>2</sup>, so NFU members also represent landowners and tenants who host telecommunications apparatus and who need to get a fair deal through a revised Electronic Communications Code.

1.3 The NFU evidence will concentrate on the proposed legislation informing the broadband Universal Service Obligation and Electronic Communications Code, with more limited reference to consumers' rights.

- **The NFU's overall message is that the Digital Economy Bill has the opportunity to provide the legislative framework to ensure the UK can become the best connected country in the world, but it needs to be bolder and introduce future and rural proofed legislation.** For example to ensure superfast speeds broadband speeds are provided as the basis for legislation with potential for rapid progression to ultrafast and gigabit speeds. The NFU is also concerned that the Bill seeks to change the Electronic Communications Code, but does not seek to introduce legislation to ensure wider telecommunications coverage.
- **Specifically for the farming sector, the Bill needs to provide the legislation to ensure digital infrastructure is provided at a cost farmers and growers can afford and at a speed that makes sense for competitive businesses in 2016.** We believe that that should be targeted at a minimum of 30mbps with technology that would allow this to be increased. For a farmer this means sufficient speed to access cloud technology, map data and to monitor animals and crops. Many operators advertise this speed now. European Union governments are committed to providing this speed universally by 2020, with EU targets now of 100Mbps by 2025<sup>3</sup>. If the Broadband USO is only intended to be a 'safety net', this means currently there is nothing offered in this Bill for the 5% of all premises, which have no access to the Government's superfast broadband programme.

1.4 **The NFU believes that if there is to be a broadband USO this should also be designed to accommodate business needs, and that the standards for this should be included in the Bill.** The need for a broadband USO does not appear to have been assessed for business needs or to meet the requirements of the Government rollout of digital only services. If the broadband USO is to work in practice it has to be affordable to the consumer and offer parity in service to urban areas. Currently it is being left to Ofcom to decide any broadband USO speed when they draft secondary legislation. Ofcom has based the standard on 10mbps, which is what

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<sup>1</sup> <http://www.nfuonline.com/assets/64143/>

<sup>2</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/557993/AUK-2015-05oct16.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/557993/AUK-2015-05oct16.pdf)

<sup>3</sup> <https://ec.europa.eu/digital-single-market/en/news/commission-paves-way-more-and-better-internet-connectivity-and-proposes-modern-eu-copyright>

the Regulator believed a family needed in 2015. It appears counterintuitive to set broadband speeds so far out of date, digital policy has to plan for the future: not to increase the digital divide between 'gigabits cities' and rural areas with no or very slow connections.

- 1.5 **The fact that more online only Government services are targeted to be introduced in 2018 adds more urgency for the measures to be introduced by the Digital Economy Bill to introduce legislation that can be swiftly brought into place.** This will be critical to ensure services can be provided in practice and people living in rural communities are not excluded. The NFU has evidence of what can go wrong when this is not done. The introduction of an online only Common Agricultural Policy Basic Payment Service had to be abandoned in 2015, wasting millions of pounds of government money, and introducing uncertainty of income for farmers at a time when total farm income fell by one third (Defra 2016).
- 1.6 **Fair deals are also needed for farmers and landowners offering their land for telecommunications projects, so they can continue to farm safely and in compliance with regulations.** The Bill needs to recognise that when farm land is permanently taken to serve an increasing amount of equipment and digital users, this needs to be viewed in a farming context; it is a very different land deal in comparison to a multi-tenanted building in central London. A voluntary code could provide quicker and simpler solutions for the majority of land deals, if it is appropriately designed. However, the willingness of the operators to extend into areas where they do not believe they have sufficient market interest can be more of a barrier.

## 2.0 Why the Bill needs to deliver for farmers and growers and their rural communities.

- 2.1 The NFU believes the Digital Economy Bill needs to be bolder and to introduce legislation that will effectively reduce the growing digital divide between rural and urban areas, and provide the digital infrastructure essential not only for the food and farming sector but also to serve the wider rural economy. The bill needs to address 'market failure' in the digital sector that is currently preventing a world class broadband and mobile phone network being delivered to rural areas.
- 2.2 Over 90% of farmers and growers are small and medium sized family enterprises contributing to a food and farming sector worth £108 billion in 2015 (Defra 2016). Farmers operate businesses that increasingly need effective superfast broadband and mobile networks infrastructure to operate efficiently, to access markets, comply with regulation and to maintain family life. The NFU believes that delivering superfast broadband and mobile phone infrastructure to all farms and rural businesses should be a national priority as we need to grow more food to feed our growing population and ensure that the rural economy is profitable, competitive and productive. According to current estimates our food self-sufficiency has dropped to 61% (Defra 2016), whilst rural businesses are 17% less productive overall in comparison to their urban counterparts (DCLG 2016).
- 3.0 Data collected for rural broadband provision has not captured data for postcodes with four premises or less, meaning that there has been a lack of accurate data for farms and more sparsely populated areas. Therefore, until the publication of the NFU Spotlight on Farm Broadband and Mobile Networks document the lack of broadband provision in rural areas had been underestimated nationally, to the frustration of those communities who were not being connected. The NFU Spotlight document was launched in May 2016 to give the true picture of broadband and mobile phone provision and provide solutions to accelerate provision. This document is included as key background evidence for this Committee.
- 3.1 Ageing infrastructure is a particular barrier for rural connection, with many areas relying on old copper and even aluminium cables. For example, in September 2015, twenty eight homes in the village of Staylitle in Powys, Wales, were left without their landlines following a lightning strike.

They had no mobile phone connection and no broadband without the landline. There were delays in getting the telephone service back as their ageing infrastructure took longer to be replaced. This illustrates that broadband USO needs to include primary enabling legislation that incentivises the replacement and upgrading of such infrastructure, so farmers and rural dwellers can get a better service and it is easier to attract a wider choice of digital providers. If the ability to access a USO is purely based on cost to the digital industries, this will prevent wider broadband coverage being delivered and innovative solutions being advanced.

- 3.2 Incentives are also needed to encourage more broadband and mobile phone operators to invest in rural areas and improve coverage more widely. Introducing legislation allowing a consumer to switch will only make sense if there is a competitive market. If an industry levy is to be introduced, to fund the USO, it should not penalise those who choose to extend market coverage and competition.
- 3.3 The Bill seeks to update the Electronic Communications Code, which is broadly welcomed by the NFU. We are also helping to draft a new voluntary code, which we hope could be used in preference to the complex regulatory system. It is however important to note that revisions to the code will not deliver mobile phone masts where there is no coverage, if the telecommunication operators still choose not to cover areas due to lack of market demand. The provisions of the Bill need to build upon the lessons learnt from the Mobile Infrastructure Project, where 75 of a potential 600 masts are to be delivered (NFU Spotlight report page 11). This may mean more focused targets within the Bill.

## 4.0 NFU recommendations for amendments to the Bill

### 4.1 Part 1: Access to Digital Services

#### 4.2 1 Universal service broadband obligations.

#### 4.3 Part 1, 4:

- 4.4 Under subsection 2 to add further wording to the legislation that provides a firmer commitment to broadband provision in terms of minimum speeds and quality of infrastructure provided, for competition to be introduced and switching between providers, rather than leaving this to secondary legislation.

#### 4.5 The detailed legislation to include:

- a minimum speed threshold to be included of 30mpbs upload and downloads speeds with infrastructure future-proofed to provide superior speed and latency measures and to ensure a reliable service.
- measures to avoid a monopoly in USO provision: to ensure more than one company can provide a service in any area and competition is incentivised.
- measures to ensure that either a public or industry levy can be used to make up the shortfall for the hardest to reach properties, this could include the spend of 'claw back' funds from the first two phases of superfast roll out or the creation of financial instruments.

#### 4.6 2 General conditions: switching communications provider.

- The Bill needs to ensure anyone benefiting from a broadband connection via the broadband USO can then change provider in the future (to prevent monopolies and excessive charging schedules).

#### 4.7 3 Automatic compensation for failure to meet performance standards

- There should be a commitment for performance standards not only for the role out of infrastructure, but also to replace infrastructure following extreme events such as floods or storms and to upgrade infrastructure to meet standards set by the new USO.
- Compensation should also be available for customers who lose connections due to changes in the operator's business model, such as loss of voice coverage when 2G is replaced by 4G coverage.

#### 4.8 Schedule 3A 'The Electronic Communications Code'

##### 4.9 Part 1:

- Clause 3(f) – This sub clause requires 'not' to be inserted. Access should not be obstructed or interfered with. Once this is amended the sub clause requires removal from the clause to be added elsewhere more appropriately. Alternatively, if this clause is intended to be in this part and it is intended to allow access to be obstructed or interfered with, the measure of obstruction / interference should be made clear e.g. is it only temporary interference during inspection or construction?

##### 4.10 Part 3

- Clause 15 (1) – the explanatory notes state that only the whole of an agreement can be assigned, this needs to be made sufficiently clear in the Bill itself.
- Clause 15(1) (b) – Raises ambiguity around what is meant by 'operator'. Does it mean original operator or the operator to which the agreement is to be assigned?
- Clause 15(4) – the explanatory note says that if the first operator has agreed with the second operator to guarantee performance, the guarantee will still apply. This is not made clear in the Bill; additional wording should be included to make this clear.
- Clause 16 (2) and (4) – there are areas of ambiguity here. It is not clear what 'no adverse impact' or 'minimal adverse impact' actually means and in whose view this will be determined.
- Clause 16 (5)(b) – this is very restrictive on what the parties can put in the agreement, it would seem unfair if the new operator could not be made subject to at least the conditions already in the agreement and it would be helpful if this was made clear in the Bill. The ambiguity around what is meant by 'operator' in this clause is also a concern in the same way as clause 15(1) (b).

##### 4.11 Part 6

- Clause 37 – The wording of this clause needs to be clearer. In the explanatory notes it says that this section allows for landowners to make an application to court where the operator has not responded to a notice within 3 months.

##### 4.12 Part 12

- Clause 75(5) – this clause is poorly drafted. It should be changed as follows: '*the second condition is that the court is ~~not~~ satisfied that the only possible alterations of the apparatus will not* –'as it is confusingly worded at the moment when compared with what is written in the explanatory notes.

##### 4.13 Part 13

- Clause 78 – Farmers in receipt of their European subsidy are bound by cross compliance rules. These rules require that hedgerows and trees are not trimmed 1<sup>st</sup> March – 31<sup>st</sup> August. Trimming for utility purposes is not one of the excepted reasons for trimming inside this period. Code powers should be limited to trimming outside this period.

#### 4.14 Part 2A Regulation of dynamic spectrum access services

- 4.15 The Digital Economy Bill needs to be future proofed, to pave the way for further legislative change to deliver fifth generation services. To incentivise new forms of telegraphy and

spectrum use where this will add an alternative to fixed broadband and mobile telephone provision, and promote the use of the internet within an agricultural and rural context.

- 4.16 The Digital Economy Bill or the Neighbourhood Planning Bill could also help rural areas get connected by extending simplified planning rules. By increasing permitted development rights for farmers and landowners, to enable them to erect digital equipment and supporting structures on land to boost broadband or mobile phone signals, or to boost signals from global positioning systems. It would be possible to extend these rights to give them the same rights as Electronic Communications Code providers where this can provide a service for themselves and their local communities.

#### **4.17 Part 5 Digital Government, Chapter 1, Public Services Delivery**

- 4.18 The NFU believes that the Government needs to invest in and oversee a robust and coherent 'data infrastructure' that makes useable data available, but that a 'privacy by design' approach is used. This is important given the potential value of being able to combine private and public databases to the economy, as well as to Government.
- 4.19 The sharing of information between regulatory competent authorities should be good thing for farm businesses, and the NFU would support this where it has a clear benefit of reducing regulatory burden. A large part of the Open Defra initiative is to make the Department and its agencies more efficient and effective However there must be openness with those whose data is being made open, with the risks and benefits to those businesses and people concerned.
- 4.20 The NFU believes the Government should consider and address the lack of societal understanding and norms in terms the way data are collected about people, subsequently held and used. It is not at all clear yet what is acceptable and how people are balancing risk and benefit. Indeed, this is difficult to do given the huge asymmetry between the knowledge of those in the data community and that of the general public or ordinary businesses.
- 4.21 A 'privacy impact assessment' needs to be carried out routinely on any planned release of data, recognising that 100% anonymity is very difficult if not impossible but that trust relies on understanding and communicating how much privacy is needed to reassure people. The NFU believes the work of the Information Commissioners Office <sup>4</sup>is of assistance in understanding how this could work in practice.

#### **4.22 7a Statement of strategic priorities**

- 4.23 Recommendations for additional clauses to be added after Part 7:
- More transparency in provision of information so farmers, landowners and communities know in advance if they are not going to be offered a commercial service and can qualify more quickly for a broadband USO.
  - The provision of new targets to enable wider mobile phone coverage.
  - Measures to incentivise digital technology development and research to enable 5G rollout for rural areas.

*October 2016*

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<sup>4</sup> <https://ico.org.uk/for-organisations/guide-to-data-protection/privacy-by-design/>