EXPLANATORY MEMORANDUM TO

THE COMMUNICATIONS ACT 2003 AND THE DIGITAL ECONOMY ACT 2017 (CONSEQUENTIAL AMENDMENTS TO PRIMARY LEGISLATION) REGULATIONS

2017 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Digital, Culture, Media and Sport ("the Department") and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument contains amendments to primary legislation consequential on the implementation of the reformed electronic communications code, as enacted in Part 2 of the Digital Economy Act 2017. It also contains some amendments to legislation which were missed after the Communications Act 2003 was enacted.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland.

4. Legislative Context

4.1 Part 2 of, and Schedule 1 to, the Digital Economy Act 2017 reforms the electronic communications code. These Regulations contain amendments to primary legislation consequential on the enactment of these reforms.

5. Extent and Territorial Application

5.1 The extent and application of this instrument is the whole of the United Kingdom.

6. European Convention on Human Rights

6.1 The Minister of State for Digital and Culture, Matt Hancock, has made the following statement regarding Human Rights:

"In my view the provisions of the Communications Act 2003 and the Digital Economy Act 2017 (Consequential Amendments to Primary Legislation) Regulations 2017 are compatible with the Convention rights."

7. Policy background

7.1 The electronic communications code ("the Code") originally enacted in Schedule 2 to the Telecommunications Act 1984, governs the rights of network operators to build and maintain digital communications infrastructure on land.

7.2 The Code had been criticised as outdated and no longer providing adequate regulatory support for the deployment of modern communications infrastructure. The Department therefore asked the Law Commission for England and Wales to review the Code in 2011. The Law Commission reported on its findings in February 2013.

7.3 The Department subsequently conducted its own 9 week consultation, which ended on 30 April 2015. The response to this consultation was published on 17 May 2016 and can be accessed from the following link: http://www.gov.uk/government/publications/government-publishes-proposals-for-a-new-electronic-communications-code.

7.4 As a consequence, the Digital Economy Act 2017 enacts a new electronic communications code which is set out in what has become Schedule 3A to the Communications Act 2003. That Act received Royal Assent on 27 April 2017.

8. Consultation outcome

8.1 The Department received a total of 153 responses to its consultation. Responses were received from members of the digital communications industry, land and property owners and interest groups and industry experts, including legal and valuation practitioners, as well as from public sector organisations. While respondents disagreed on the scope and extent of reforms (for example, land and property interest groups opposed the proposed changes to the land valuation regime, which industry representatives strongly supported) the majority recognised the need for the Code to be reformed in principle, in order to support the rollout of digital communications infrastructure. The Department subsequently worked closely with stakeholders from all interested sectors to deliver a balanced package of reforms that will encourage investment in digital communications infrastructure and support increased coverage and connectivity across the United Kingdom.

9. Guidance

9.1 The Department will not be issuing guidance associated with this Statutory Instrument. OFCOM will be publishing a Code of Practice regarding Electronic Communications Code agreements.

10. Impact

10.1 There is no, or negligible, impact on business, charities or voluntary bodies.

10.2 There is no, or negligible, impact on the public sector.

10.3 A stand-alone Impact Assessment has not been prepared for this instrument.

10.4 An overall Impact Assessment was completed for the Electronic Communications Code Reforms. This is available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/524895/ECC_Impact_Assessment.pdf

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The Department will monitor the impact of the Code reforms as a whole. Details of how this monitoring will be carried out are being finalised.

13. Contact

13.1 Lisa Price at the Department for Digital, Culture, Media and Sport, Telephone: 0207 211 6642 or email: lisa.price@culture.gov.uk can answer any queries regarding this instrument.