

Title: Portability of online content services - The Intellectual Property (Copyright and Related Rights) (Amendment) (EU Exit) Regulations 2018 IA No: BEISIPO019 RPC Reference No: RPC-4294(1)-BEIS Lead department or agency: IPO Other departments or agencies:	Impact Assessment (IA)			
	Date: 17/10/2018			
	Stage: Final			
	Source of intervention: Domestic			
	Type of measure: Secondary legislation			
Contact for enquiries: david.burns@ipo.gov.uk				
Summary: Intervention and Options			RPC Opinion: GREEN	

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2014 prices)	One-In, Three-Out	Business Impact Target Status
N/A	N/A	N/A	Not in scope	Non qualifying provision

What is the problem under consideration? Why is government intervention necessary?

The Portability Regulation allows EU customers to access their online content services when temporarily in an EU Member State other than their home state. The rules that achieve this are cross-border and reciprocal in nature and extend only to EU Member States. If the UK and EU do not agree to extend a Portability mechanism to the UK post-exit, reciprocal portability between the UK and EU will cease and cannot be fully reproduced on a unilateral basis. Under the European Union (Withdrawal) Act, the Regulation will be retained in UK law but will not function properly. If the UK and EU do not agree to provide mutual portability after exit, the retained Portability Regulation will require repeal or amendment.

What are the policy objectives and the intended effects?

In the absence of a mutual agreement to provide reciprocal portability between the UK and EU after exit, the aim of UK policy is to minimise disruption and costs to consumers and service providers while avoiding maintaining unnecessary regulation in UK law that is of no benefit to those in the UK. This should include removing inappropriate obligations on service providers arising from a retained Portability Regulation.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 0.1: Status quo (current arrangements): UK and EU consumers have access to their online services when visiting other EU states under the Regulation.

Option 0.2: Do nothing (after exit). The Regulation is automatically incorporated into UK law without any changes. The UK provides unilateral portability for EU consumers in the UK and compels service providers to provide portability to UK customers in the EU despite the EU Regulation not covering UK-EU travel.

Option 1 (preferred): Repeal the Portability Regulation after it is retained in UK law. The UK will remove portability obligations on service providers and not provide portability for EU consumers visiting the UK.

Option 2: Amend the retained Portability Regulation to unilaterally provide portability to EU consumers temporarily visiting the UK while removing obligations on service providers to provide portability for UK customers in the EU.

Will the policy be reviewed? It will not be reviewed. If applicable, set review date: Month/Year						
Does implementation go beyond minimum EU requirements?			N/A			
Are any of these organisations in scope?			Micro Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A		Non-traded: N/A	

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister: _____ Chris Skidmore _____ Date: _____ 12th Dec 2018 _____

Summary: Analysis & Evidence

Policy Option 1

Description: In a no-deal scenario, repeal the Portability Regulation after it is automatically retained in UK law by the Withdrawal Act.

FULL ECONOMIC ASSESSMENT

Price Base Year 2018	PV Base Year 2018	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	N/A	N/A	N/A

Description and scale of key monetised costs by 'main affected groups'

There is a lack of quantitative evidence of the impact of the Portability Regulation (due, in part, to its recent introduction). Therefore, the monetised costs to EU consumers and service providers of repealing the Regulation is not known at this stage. However, they are expected to be small, primarily one-off costs to service providers of 'turning off' portability and familiarisation; the latter should be limited by the recent (1 April 2018) introduction of the Portability Regulation.

Other key non-monetised costs by 'main affected groups'

EU consumers travelling to the UK may lose access to some or all content in their online services except where the service provider specifically licenses this in the UK. Online service providers, who only recently implemented intra-EU portability, will need to familiarise themselves with the change in law and reverse the changes for travel to or from the UK. This is not expected to be a significant cost; it will consist of treating the UK in the same manner as other non-EU countries.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	N/A	N/A	N/A

Description and scale of key monetised benefits by 'main affected groups'

Due to the lack of quantitative evidence of the impact of the Portability Regulation, the monetised benefit of removing portability on online service providers is not known. Any benefits, however, are expected to be minimal, primarily (if anything) being administrative savings to service providers.

Other key non-monetised benefits by 'main affected groups'

Service providers may see an administrative saving in no longer needing to identify the state of residence of customers accessing content in the UK. This option also offers benefits over not introducing legislation, which would otherwise result in costs to service providers.

Key assumptions/sensitivities/risks

Discount rate

3.5%

It is assumed that the loss of portability in the UK for EU consumers will not have any knock-on effect on EU-to-UK tourism or other travel.

The impact of the loss of UK-EU portability on UK consumers is not considered within this IA as this would not arise as a result of the policy option, though would be a primary impact of the UK and EU not agreeing mutual portability post-exit.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: N/A	Benefits: N/A	Net: N/A	
			N/A

Summary: Analysis & Evidence

Policy Option 2

Description: In a no-deal scenario, continue to provide portability to EU consumers visiting the UK on a unilateral basis.

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
2018	2018	10	Low: N/A	High: N/A	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	N/A	N/A	N/A

Description and scale of key monetised costs by 'main affected groups'

This option would result in familiarisation costs associated with the amendment to the law to service providers operating in the UK; these may be greater than would be the case in merely repealing the Regulation due to the asymmetry in treatment of UK and EU customers in the UK this option will introduce. However, we are not able to monetise these costs as there is a lack of available data.

Other key non-monetised costs by 'main affected groups'

This policy option would result in the situation where the UK provides portability of online content services to EU consumers while this is not reciprocated by the EU for UK consumers. This does not appear to benefit any UK stakeholders. Continuing to allow service providers operating in the EU to provide portability for EU-to-UK travel, while service providers operating in the UK will not be able to do so for UK-to-EU travel, may mean UK-based services are seen as comparatively worse value.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	N/A	N/A	N/A

Description and scale of key monetised benefits by 'main affected groups'

This option is not expected to give rise to any quantifiable benefits relative to the status quo.

Other key non-monetised benefits by 'main affected groups'

This option provides continuity for EU customers of online content services when travelling to the UK and the providers of those services. This does not provide any benefit for those in the UK relative to the status quo or repealing the Regulation after exit.

Key assumptions/sensitivities/risks	Discount rate	3.5%
The impact of the loss of UK-EU portability on UK consumers is not considered within this IA as this would not arise as a result of the policy option, though this would be a primary impact of the UK and EU not agreeing mutual portability post-exit.		

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: N/A	Benefits: N/A	Net: N/A	
			N/A

Evidence Base (for summary sheets)

Background

Online content services are services through which consumers can access copyright content (such as films, television programs, music, and e-books) over the internet. These services take a range of forms. Films and television programs, for example, can be provided through video-on-demand platforms, such as Netflix and Amazon Prime Video; digital rental services in which a user pays a one-off fee to gain access to a particular film or program for a limited time, such as iTunes; and free-to-access catch-up services offered by public broadcasters. Consumers benefit from the flexibility these services provide over traditional content delivery services: customers are able to access content of their choosing on a range of devices (e.g. smartphones, tablets, or laptops) often at a time and place of their choosing.

The content offered in online services comprises both content owned by service providers and content that providers license from elsewhere. Licences for copyright works are typically agreed on a territory-by-territory basis – meaning that licensees can only use (i.e. make available online) a work in the countries for which they have obtained explicit permission from the right holder. For online content services that are offered in multiple countries, this means that service providers generally tailor the content they provide on a country-by-country basis depending on the particular licensing agreements they have agreed with right holders.

A result of the territorial dependence – or the lack of ‘portability’ – of online content services is that customers who travel internationally often find that they are unable to access the content ordinarily available to them. Unless the service provider has specifically obtained licences that cover the country to which a customer has travelled, they are unable to provide the corresponding content to the customer without infringing copyright. Customers therefore lose access to content for which they may have paid and that may be of cultural significance (e.g. sporting events in a customer’s home country) when they travel abroad.

The extent to which consumers are affected by a lack of portability of online services varies. Online services that primarily provide content owned by the service provider are less likely to ‘geoblock’ their content on copyright-related grounds. Furthermore, certain types of content, such as music and e-books, are typically licensed on exclusive terms on, at least, a pan-European basis. Services offering this content are therefore often available with minimal or no geographical restrictions. By contrast, right holders of audio-visual content (i.e. films or television programmes) tend to license their works separately in each territory and online service providers may not be able to (or may not wish to) acquire the rights in all countries in which they offer their service. As a result, video-on-demand and live sports streaming services often vary significantly in the content they offer in each country and, consequently, are not ‘portable’.

The portability of online content services is inherently a cross-border issue and cannot be fully achieved except via reciprocal, cross-border legislation. The EU Portability Regulation¹ was introduced for this purpose. The Regulation applies across the EU (and is due to be extended across the EEA²) and aims to provide EU consumers with full access to their online content services when they temporarily visit another Member State.

Broadly, the Portability Regulation achieves its aims through three main principles:

- When a customer is temporarily in a Member State other than their Member State of residence, an online service provider must treat them as if they are in their home state – i.e. provide them with the content ordinarily available to the customer in their home state at no extra charge.
- When a service provider provides content to a customer temporarily in another Member State, that act is considered to take place in, and under the law of, the Member State of permanent residence – this ‘legal fiction’ protects service providers against claims of copyright infringement for acting outside the scope of their licensing agreements.
- A right holder cannot contract out of the principle of portability when licensing their work to an online service provider – any provision in a licensing agreement that rules out portability is unenforceable.

¹ Regulation (EU) 2017/1128 of the European Parliament and of the Council of 14 June 2017 on cross-border portability of online content services in the internal market

² The Regulation is intended to become part of the EEA Agreement and may do so prior to the UK’s withdrawal from the EU. A draft of the change to the EEA Agreement was sent to the Commission on 2 May 2018: <http://www.efta.int/eea-lex/32017R1128>.

The combined impact of these requirements is that customers maintain access to their content when they travel within the EU, while service providers are protected against potential copyright infringement claims by the 'legal fiction' without needing to re-negotiate their licensing agreements with right holders.

The Portability Regulation was introduced in response to a perceived significant consumer demand. A 2015 Eurobarometer survey³ found that 20% of EU internet users pay a subscription to access content and almost two fifths of those who have a subscription have either already tried to use or would be interested in using their subscription abroad. A third of those who do not pay for a subscription service say that portability would be important for them if they took out such a service. Based on this data, the European Commission Impact Assessment for the Portability Regulation estimated that there would be over 8 million potential users of portability of online content in the UK alone⁴. Portability, therefore, has the potential to be of significant consumer benefit in the UK – which, in turn, may lead to an increase in subscriber numbers and revenue for online content service providers.

The Regulation came into force in April 2018. At the present time, there is no quantitative assessment of its impact, including whether greater numbers of consumers are using online content services and the extent of any administrative costs to the providers of those services. A consultation was undertaken in the UK on enforcement of the portability mechanism⁵ prior to the Regulation coming into force. In their responses, service providers noted that they had incurred a cost in preparing their systems for portability but did not give quantitative detail of these costs.

While the UK remains in the EU, the UK continues to be subject to EU law. UK customers who travel within the EU on a temporary basis are able to access their online content without restriction because of the Portability Regulation. Conversely, consumers temporarily in the UK from another Member State have full access to their online content. At present, there is no need for the online service providers operating in the UK to negotiate portability into their licensing agreements and no risk of infringing copyright when they provide content to a customer temporarily in another Member State.

What happens when the UK leaves the EU?

The Portability Regulation extends only to EU Member States and, due to the cross-border nature of portability, cannot be extended to cover travel to and from other countries on a unilateral basis. When the UK leaves the EU, unless the UK and EU agree on its continuation, the Portability Regulation will cease to extend to the UK.

As part of the Government's aim to provide continuity and certainty as the UK leaves the EU, directly applicable EU law will be transposed into UK legislation as 'retained EU law' under Section 3 of the EU (Withdrawal) Act 2018⁶. Retaining the Portability Regulation in UK law will not have the same effect as a mutual agreement between the EU and UK on portability; rather, it will function inappropriately. In effect, the retained Regulation would unilaterally provide portability for EU consumers travelling to the UK (without the EU reciprocating this provision for UK consumers) and would place an obligation on online service providers that operate in the UK to provide portability for UK consumers temporarily in the EU, despite the 'legal fiction' of the EU Portability Regulation not covering such acts.

Without amendment after exit, the Portability Regulation would require a service provider operating in the EU to treat an EU customer visiting the UK as if they were in their home state – i.e. they would be obliged to provide the customer with the content available in their member state of permanent residence free of any extra charge. No copyright infringement would take place in the UK, even if the service provider had not licensed the work in the UK, as the legal fiction in the retained Portability Regulation would consider the service provider's acts to have taken place in the customer's home state. Therefore, EU consumers temporarily visiting the UK would continue to benefit from portability in the UK.

By contrast, the retained Portability Regulation would not function properly for UK customers visiting the EU. If a UK customer of an online content service travelled to the EU, the service provider would be required by the UK's retained Regulation to provide the customer the content ordinarily available in the UK. However, the legal fiction in the EU's Portability Regulation applies only to travel between Member

³ Flash Eurobarometer 411 "Cross border access to online content", available online at <http://ec.europa.eu/COMMFrontOffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/FLASH/surveyKy/2059>

⁴ Figure 3, European Commission Impact Assessment accompanying the Proposal for a Regulation of the European Parliament and of the Council to ensure the cross-border portability of online content services in the internal market

⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/690128/DPS-007149-Cross-border-portability-of-online-content-services-response.pdf

⁶ European Union (Withdrawal) Act 2018

States and so will not apply to UK-to-EU travel post-exit; any acts by the service provider would be considered by EU law to take place in the Member State in which the customer accesses the service, where the provider might not have the relevant right holder permissions. The service provider would be faced with the decision of complying with UK law and infringing copyright in the EU; or respecting copyright in the EU and contravening the retained UK Regulation.

Rationale for intervention

The Government is seeking to correct problems in UK legislation that will arise as a result of the UK's withdrawal from the EU. This will ensure the UK's regulatory framework functions in all scenarios. In line with this general aim, action is necessary if the UK leaves the EU without an agreement on the portability of online content to avoid providing preferential treatment for EU consumers that the EU does not reciprocate for UK consumers and to remove obligations on service providers to infringe copyright in the EU.

Objectives

In the absence of an agreement between the EU and UK on the portability of online content, the Government's aim is to minimise disruption and costs to consumers and service providers while ensuring there are no inappropriate obligations on service providers that would be of no benefit to those in the UK.

Options considered

Option 0.1: Status quo (current arrangements). UK consumers have full access to their online content services when visiting another EU Member State. (Conversely, other EU consumers have full access to their online content services when temporarily visiting the UK.) Service providers are obliged to identify and verify the home state of residence of EU customers to provide portability.

Option 0.2: Do nothing (after the UK leaves the EU). The Regulation will be automatically incorporated into UK law without any changes. The UK will provide unilateral portability for EU consumers in the UK and will compel service providers to provide portability to UK customers in the EU, even though the EU's Regulation will not cover UK-EU travel.

Option 1: In the event of no deal, repeal the Portability Regulation after it is automatically retained in UK law by the EU (Withdrawal) Bill. The UK will cease to compel UK service providers to provide services in the EU, and will cease to provide portability for EU consumers temporarily in the UK.

Option 2: In the event of no deal, amend the retained Portability Regulation to unilaterally provide portability to EU consumers temporarily visiting the UK while removing obligations on service providers to provide portability for UK customers in the EU.

Costs and benefits of each option

The options described in the following would be undertaken in the context of EU-UK portability no longer functioning. The primary impact in the UK in this scenario will be the loss of portability for UK consumers travelling to the EU. However, this does not arise as a result of any of the proposed policy options; rather, the policy options herein and the loss of portability for UK consumers each arise out of the EU and UK not agreeing to provide UK-EU portability post-exit. Therefore, impacts on UK consumers are outside the scope of this impact assessment.

Option 0.1: As discussed in the preceding, under the status quo, EU customers of online content services are able to access those services without restriction when temporarily visiting another EU Member State. This is currently achieved by the Portability Regulation, which applies across the EU and mandates that online service providers treat customers temporarily in another Member State as if they were in their home state. The Regulation states that the act of providing the content to the customer should be considered as occurring in the home state, which is necessary to avoid compelling service providers to infringe copyright in the state of temporary residence.

Option 0.2:

Costs

As described above, if no changes are made after leaving the EU, the Portability Regulation will be retained in UK law as it has effect prior to exit. The retained UK Regulation would require online service providers that operate in the UK to provide portability for UK customers that are temporarily visiting an EU Member State – i.e., provide the customer with the content to which they ordinarily have access. However, the legal fiction in the EU Portability Regulation will no longer apply to UK-to-EU travel. As

such, under EU law, the act of making the content available to the customer would be considered to take place in the Member State of temporary residence – where the service provider may not have the necessary licences in place to provide that content. For content that service providers have not licenced across the EU and UK, the service provider would not be able to simultaneously meet legal obligations in both the UK and EU. This could result in right holders or UK customers taking action against the service provider for infringing copyright or failing to meet the obligations of the retained Portability Regulation⁷ respectively. The cost and administrative burden on service providers in the UK facing numerous legal actions by right holders or customers could be substantial. The monetised cost on service providers is not known as it would depend on the numbers of UK customers travelling to the EU; whether the service providers are able or willing to renegotiate any of their existing licences; the business choices of the providers; and the actions of the right holders or customers.

This option would also mean that portability of online content services is available to EU consumers travelling to the UK, without UK consumers receiving equivalent treatment in the EU; this would not be of any benefit to those in the UK. Option 0.2 is ruled out.

Option 1: The primary impacts, relative to the status quo (option 0.1), that arise as a result of this policy option are the loss of portability for EU consumers visiting the UK; the administrative cost of ‘switching off’ portability for online service providers that operate in the UK; and the administrative savings for the same providers in not having to verify the home state of consumers in the UK. While the benefits of this policy option relative to the status quo are limited, this option is preferable to taking no action as it avoids the costs seen in option 0.2.

Costs to consumers

EU consumers that visit the UK will no longer have full access to their content when temporarily in the UK as they would when visiting other EU countries and may face increased costs in having to use alternative services to access copyright-restricted content. It is possible that the loss of portability for EU consumers could affect EU-to-UK tourism but, in practice, it is considered unlikely that this would be the case (see ‘Wider Impacts’ below). Therefore, this issue does not affect UK stakeholders.

Costs to online service providers

There will be familiarisation costs for online service providers, who will have to adjust to the change in law. These are expected to be minimal as the Portability Regulation has only been in place since the 1 April 2018.

In the Government’s consultation on enforcement mechanisms for the Portability Regulation, some service providers operating in the UK noted, in response to a call for views on how the Regulation would be affected by the UK exiting the EU, that they had incurred costs in setting up their systems to provide portability within the EU and would incur further costs in ‘switching off’ these systems (though did not provide estimates of these costs). However, the cost of removing portability in the UK is not expected to be significant – in effect, this should amount to no more than treating the UK in the same way in which all other non-EU countries are currently treated and reverting systems to their status prior to the EU Portability Regulation being introduced. The systems for this are expected to already be in place and so the administrative burden of this change on service providers should be minor. Any direct costs to service providers are expected to be one-off expenses incurred only in the first year of the change, rather than on a recurring basis. The precise scale of these costs is not known; no information on the costs of portability were provided to the European Commission when the assessment of the Portability Regulation took place in 2015, though the European Commission concluded the operational costs of providing portability would be minimal⁸; it may be expected that the costs of removing portability are also minimal.

Benefits to online service providers

Removing portability in the UK will remove the burden on service providers to identify and verify the home state of customers in the UK. However, as any service provider that also operates in the EU will need to maintain systems to verify the permanent state of residence of customers under the EU

⁷ In the UK, customers of service providers who fail to meet the obligations of the Portability Regulation can bring proceedings against the provider under Reg. 4 of the Portability of Online Content Services Regulations 2018 (SI 2018/249).

⁸ Page 40 of the Impact Assessment: Proposal for a Regulation of the European Parliament and of the Council to ensure the cross-border portability of online content services in the internal market.

Regulation, it is not clear to what extent service providers will benefit financially by the removal of Portability from the UK, though it is expected to be minor.

Relative to the status quo, this option may result in an increase of revenue for online service providers operating in the UK from EU consumers. The loss of portability for EU consumers travelling to the UK will mean that, if they wish to access content ordinarily available via online content services in their home state of residence, they may be required to separately pay for that content in the UK, which will benefit providers operating in the UK and the right holders of the content. In a European Commission survey of EU consumers, almost two fifths of EU customers of online subscription services have tried to use or would be interested in using their online content services while abroad⁹. With over 25 million visitors from the EU in 2016¹⁰, the demand from EU consumers to access online content in the UK could be high, although this will depend on several factors: the number of subscriptions for online content taken out by EU consumers, how much content is offered in the EU but unavailable in the UK (and the desirability thereof), the costs of accessing that content in the UK, and the individual choices of EU consumers. We do not expect this to be of a significant benefit to service providers however, as this was not identified as a significant issue in the European Commission 2015 Impact Assessment on the Portability Regulation¹¹.

The benefits of option 1 relative to the status quo are therefore likely to be limited. However, in the event that the UK and EU do not provide mutual portability for online content services after the UK leaves the EU, this option is beneficial relative to taking no action (i.e. option 0.2) as it avoids the costs that would arise in that scenario.

Wider Impacts

There is a risk that removing portability for EU consumers could reduce the level of EU-to-UK travel and the associated revenues for UK businesses from EU consumers, as EU consumers will not be able to access online content in the UK when visiting the UK. However, in practice, it is considered very unlikely that the loss of portability would have any significant impact on consumer travel habits.

Even for the subset of EU consumers who both use paid online content services and who would like to use those services while abroad, those consumers may be able to access their desired content by purchasing a separate subscription in the UK. These are relatively low in cost when compared to the average spending of EU tourists visiting the UK¹². This supports the view that the lack of portability would not be a determining factor in the choice of destination for EU tourists.

Option 2: Under this option, the Portability Regulation will be retained in UK law but amended to remove any obligations on online content service providers when their UK-based customers temporarily visit the EU. Service providers would still be required to offer portability of online content to EU-based customers when they travel to the UK and the legal fiction for EU-to-UK travel would be maintained to allow this without copyright infringement in the UK.

Benefits

This option appears to only be of benefit to EU consumers of online content services, by maintaining the status quo on the portability of online content services for EU residents temporarily in the UK, thereby providing continuity for EU customers of online content services and the providers of those services.

This option would not produce any benefit to UK consumers relative to the status quo, though, relative to taking no action after the UK leaves the EU (i.e. option 0.2), it would be beneficial to service providers by removing any obligations on them to provide portability to UK customers temporarily in the EU, as discussed in the above.

Costs

Under this option, EU consumers will benefit from portability under UK law, while UK consumers will not be offered the same under EU law. For service providers operating in the UK to provide UK customers with services equivalent to those offered to EU customers (i.e. to provide UK-EU portability), service

⁹ Flash Eurobarometer 411 "Cross border access to online content", available online at <http://ec.europa.eu/COMMFrontOffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/FLASH/surveyKy/2059>

¹⁰ <https://www.ons.gov.uk/peoplepopulationandcommunity/leisureandtourism/datasets/overseasresidentsvisitsstotheuk>

¹¹ European Commission Impact Assessment accompanying the Proposal for a Regulation of the European Parliament and of the Council to ensure the cross-border portability of online content services in the internal market

¹² A day-pass to Sky Sports, for example, costs £7.99 (<https://www.nowtv.com/watch-sky-sports-online>), whereas the average spend for an EU resident visiting the UK in 2016 is estimated at £386 (Data for 2016. Travel trends estimates: overseas residents in the UK <https://www.ons.gov.uk/peoplepopulationandcommunity/leisureandtourism/datasets/overseasresidentsvisitsstotheuk>).

providers operating in the UK would need to negotiate portability into their licensing agreements with right holders – which may be costly or impossible (where the relevant content has been licensed in other territories on an exclusive basis). EU service providers would not face these new costs to provide EU-UK portability to EU customers. This would place UK service providers at a comparative disadvantage to EU service providers in the value of the services they provide and may make these services less desirable.

Wider Impacts

There are not expected to be any wider impacts of this policy option; EU consumers visiting the UK will be able to access their online content services after the UK leaves the EU in the same manner as prior to exit.

This policy option appears to be of no benefit to UK consumers or businesses while maintaining unnecessary regulations on businesses that operate in the UK (i.e. on service providers with EU-based customers). For this reason, this policy option is ruled out.

Risks and assumptions

These changes are proposed only in the context of not reaching agreement with the EU on the continuation of the portability regulation. In assessing the proposed options, the following assumptions have been made:

- The loss of portability does not significantly change the travel habits of tourists, businesses or students – i.e., the removal of portability in the UK does not lead to any reduction in tourism-based income from EU-to-UK travel.
- Industry are unlikely to provide portability on a widespread voluntary basis for UK-EU travel if portability is no longer mandated by legislation.
- There will be no significant recurring costs on online service providers of removing the Portability Regulation.

The impact of the loss of portability on UK consumers has not been considered as it does not arise as a result of the proposed policy options.

Assessment of the business impact to micro businesses and SMEs

No data on the percentage of micro-enterprises among providers of online content services is available, however the European Commission's Impact Assessment estimates that the creative industries in the EU are dominated by micro firms with 95% having fewer than 10 employees¹³. We expect therefore that for the UK, micro businesses and SMEs will make up a significant proportion of the market. Micro businesses and SMEs have been included in our assessment of costs and benefits of each option. Option 0.2 ("do nothing") would create a disproportionate impact to SMEs in comparison to larger businesses, as smaller service providers would not necessarily have the resources to ensure they are meeting legal obligations and be able to face any legal action that may arise. Option 1 places the least burden on SMEs as it retains the status quo as far as possible.

To minimise familiarisation costs to businesses (which may disproportionately impact SMEs), the government plans to engage with stakeholders prior to these changes entering into force. The government will publish – prior to legislation being made – a series of technical notices explaining the impacts of no deal, covering, among other things, sui generis database rights; the European Commission has published similar notices explaining how no deal will affect UK (and EU) stakeholders. The Intellectual Property Office has also held a series of roundtables with industry (including technology firms) in which the effects of withdrawing from the EU on copyright legislation, and the proposed changes thereto, were explained.

Summary and preferred option

The Government's preferred option in the scenario where no agreement is reached with the EU on the continuation of the portability of online content is option 1, which will repeal the Portability Regulation in UK law and revert the status of online service provision to its pre-Regulation status. There are costs associated with this relative to the status quo, but these are unavoidable without a mutually agreed deal with the EU and this action avoids further costs that would arise if no action were taken.

¹³ <http://ec.europa.eu/transparency/reqdoc/doc/10102/2015/EN/SWD-2015-270-F1-EN-MAIN-PART-1.PDF>

Although the preferred option may involve some familiarisation costs, these may be mitigated by communications to businesses from the government and the European Commission. The government plans to publish – prior to legislation being made – a series of technical notices explaining the impacts of no deal, covering, among other things, cross-border portability; the European Commission has published similar notices explaining how no deal will affect UK (and EU) stakeholders. The Intellectual Property Office has held a series of roundtables with industry (including technology firms and broadcasters) in which the effects of withdrawing from the EU on copyright legislation, and the proposed changes thereto, were explained.