

EXPLANATORY MEMORANDUM TO
THE OPEN INTERNET ACCESS (EU REGULATION) REGULATIONS 2016
2016 No. 607

1. Introduction

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

2. Purpose of the instrument

- 2.1 This instrument gives OFCOM the necessary powers to monitor and ensure compliance with Articles 3, 4 and 5 of EU Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015, concerning open internet access. It also sets out offences and penalties for non-compliance.

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 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 EU Regulation (EU) 2015/2120 lays down provisions concerning open internet access and mobile roaming charges. The Regulation stems from the European Commission's proposal COM (2013) 627 for legislative measures to achieve a single telecoms market and a 'Connected Continent'. Ensuring open internet access (otherwise known as "net neutrality") is one focus of the Regulation. The other is the cessation of mobile roaming charges in the EU. The open internet access provisions come into effect on 30 April 2016. The mobile roaming provisions are not the subject of this instrument.
- 4.2 The proposed Regulation was considered by both Scrutiny Committees from the point of proposal in October 2013 until final agreement was reached in October 2015. It was subject to two Explanatory Memoranda by DCMS (ref no. 13555/13), in October 2013 and October 2015 (the latter due to substantial changes to the original proposals). The package was subject to extensive letter exchange between both Committees and the Minister during the period it was held under the scrutiny reserves that were put in place by both Committees.
- 4.3 A Transposition Note is submitted with this Memorandum.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the whole of the United Kingdom.
- 5.2 The territorial application of this instrument is the whole of the United Kingdom.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 Action on open internet access was proposed by the European Commission on two grounds. Firstly, to secure a high level of protection for end-users of electronic communication services, and guarantee the continued functioning of the internet ecosystem as an engine of innovation. Secondly, to prevent divergence in the regulatory framework following a number of Member States introducing relevant domestic legislation.
- 7.2 Since 2011 the UK has followed a self-regulatory approach in relation to open internet access. All major UK internet access service providers are signatories to the existing industry Open Internet and Traffic Management Codes of Practice. A recent study for the industry commissioned by the Broadband Stakeholder Group¹ concluded that the Codes of Practice are compliant with the EU Regulation. The study found little or no evidence of UK internet access providers currently engaging in activity that would breach the Regulation. OFCOM's review of the Codes have also found them to be effective.
- 7.3 The Regulations designate OFCOM as the National Regulatory Authority for the purposes of the EU Regulation. Amongst other things, the Regulations give OFCOM powers to require information (where necessary for the purpose of carrying out its functions under the EU Regulation or these Regulations). They also give OFCOM powers to impose requirements on providers (as required by Article 5 of the EU Regulation).
- 7.4 The Regulations also set out the procedures for enforcement, and a proportionate and dissuasive system of penalties (as required by Article 6 of the EU Regulation).

Consolidation

- 7.5 Not applicable.

8. Consultation outcome

- 8.1 No formal consultation was carried out as the Government is obliged to implement EU Regulation 2015/2120.

9. Guidance

- 9.1 The Government is not proposing to issue any guidance. Article 5 of EU Regulation 2015/2120 requires BEREC (the Body of European Regulators for Electronic Communications) to issue guidelines to National Regulatory Authorities on implementing their obligations. BEREC is required to issue those guidelines by 30 August 2016.

¹ 'Review of the Open Internet Codes', WIK 16 November 2015

10. Impact

- 10.1 The impact on business is in relation to OFCOM's information requests under the Regulations, and is expected to be minimal. There is no impact on charities or voluntary bodies.
- 10.2 The impact on the public sector in respect of OFCOM's duties to monitor and ensure compliance is expected to be minimal, given the UK industry is already broadly compliant through the existing Codes of Practice.
- 10.3 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 11.3 Government is obliged to implement EU Regulation 2015/2120, and small businesses are not exempt from having to comply with the open internet access provisions in Articles 3 and 4.

12. Monitoring & review

- 12.1 A provision is included requiring the Secretary of State to review the operation and effect of these Regulations, and to publish a report, within five years after they come into effect, and within every five years after that.

13. Contact

- 13.1 Duraid Silarbi at the Department for Culture, Media and Sport telephone: 020 7211 6299 or email: duraid.silarbi@culture.gov.uk can answer any queries regarding the instrument.