

EXPLANATORY MEMORANDUM TO
THE COMMUNICATIONS (ACCESS TO INFRASTRUCTURE) REGULATIONS
2016

2016 No. 700

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 transposes certain of the requirements of Directive 2014/61/EU on measures to reduce the cost of deploying high-speed electronic communications networks. It enables sharing of physical infrastructure across utility, transport, and communications sectors, including exchange of information about existing infrastructure and access rights on fair and reasonable terms and conditions. It also requires enhanced transparency of civil engineering works and reasonable coordination of such works that use public funds. Ofcom will operate a dispute resolution system and prescribe administrative requirements, with the possibility to appeal decisions to the Competition Appeal Tribunal.

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 the negative 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 The European Commission tabled a proposal for a regulation to lower the cost of broadband deployment in March 2013, which was considered by the European Scrutiny Committee in its second report of 2013-2014. The report questioned whether action at Union level was required, and stated that if such action were taken it should be by directive and not by regulation. By December 2013 the UK had successfully argued for a change in instrument from a regulation to a directive, to address the concerns raised by the Committee and give Member States greater flexibility in implementing its provisions. Directive 2014/61/EU was adopted on 8 May 2014, and considered by EU sub-committee B on the Internal Market, Infrastructure and Employment in October 2014. The Committee chairman confirmed by letter to the responsible minister on 17th October 2014 that its concerns and questions about the Directive had been addressed. 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 The Directive is intended to support the Digital Agenda for Europe, including the EU Commission's two main broadband targets: 30 megabits per second broadband speeds for 100% of households and at least 50% these households subscribing to speeds over 100 Mbps, both by 2020. The UK Government shares the Commission's overall aim for high speed broadband to reach as many people as possible. The Government is currently implementing a package of measures to significantly reduce regulatory barriers related to planning, street works and access to land. This instrument further supports those measures.
- 7.2 Studies by Analysys Mason and Ofcom (Analysys Mason (2008, 2012), ENGAGE (2014) and OFCOM (2010)) identified that civil engineering works represent up to 80% of the cost of deploying high-speed broadband networks. A consultation by the European Commission identified four specific areas for action to reduce such costs: (1) inefficiencies concerning the use of existing passive infrastructure; (2) bottlenecks related to co-deployment; (3) inefficiencies regarding administrative permit granting; (4) bottlenecks concerning in-building deployment.
- 7.3 The Directive addresses these inefficiencies by introducing measures to: (1) require sharing upon request of existing passive infrastructure across telecoms, utilities and transport sectors; (2) require reasonable coordination of publicly funded civil engineering works; (3) require information sharing about existing infrastructure and plans to carry out civil works; (4) require that new buildings and major renovations are equipped with high speed ready infrastructure, accessible by communications networks. This instrument therefore provides the required framework to share information and grant access to infrastructure on terms (including price) that are fair and reasonable. It requires enhanced transparency of planned works and coordination of publicly funded works. It also provides recourse to dispute resolution by Ofcom and onward appeal to the Competition Appeal Tribunal.
- 7.4 The Directive also sets out provisions relating to permit granting, requiring applications for permits needed to roll out communications networks to be granted or refused within 4 months. The UK is already compliant with these requirements. No new requirements are introduced by this instrument in relation to the Directive's permit granting provisions.
- 7.5 The Directive sets different requirements for the terms to be agreed when making available information, surveys, infrastructure access, and in-building infrastructure access. In transposing, we have harmonised these where appropriate (regulations 4, 5, 8 & 9 use the single phrase "proportionate, non-discriminatory and transparent") but preserved the distinction between infrastructure access ("fair and reasonable") and in-

building infrastructure access (“fair and non-discriminatory”). This distinction reflects potentially substantive differences. In-building access should be on the same terms regardless of the party seeking access, as it should not present competitive issues that may arise for more general access.

Consolidation

7.6 This instrument does not revoke or consolidate any other instruments.

8. Consultation outcome

8.1 The Department for Culture, Media and Sport held a consultation on policy issues relating to transposition of Directive 2014/61/EU from 30 November 2015 to 25 January 2016. We received 56 responses from communications providers, utility companies, and other interested parties, and we are publishing a response to these submissions on the GOV.UK website:
<https://www.gov.uk/government/consultations/eu-broadband-cost-reduction-directive>.

9. Guidance

9.1 Ofcom will issue guidance on administrative procedures and operation of their dispute resolution system. Ofcom will consult publicly on this guidance.

10. Impact

10.1 The impact of these regulations is assessed to have a net present value (NPV) of -£0.13m over 10 years. This is the estimated familiarisation cost to businesses in the first year (2016-17). The estimated annual net direct cost to business (EANDCB) is nil per annum. The independent Regulatory Policy Committee has confirmed that this is a non-qualifying regulatory provision and provided their opinion on the quality of the impact assessment.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment is submitted with this memorandum and is 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 The number of small businesses in scope is limited by the definitions of “infrastructure operator” and “network provider” in the regulations. Most relevant activity is not conducted by small businesses and the impact assessment estimates the total number of companies in scope.

11.3 Government is obliged to implement EU Directive 2014/61/EU, and small businesses are not exempt from having to comply with its requirements.

12. Monitoring & review

12.1 Regulation 24 of the instrument requires the Secretary of State to carry out a review of the regulations and to produce a report setting out the conclusions of the review within 5 years of the instrument coming into force and at 5 yearly intervals thereafter. This is in line with the duties in section 28 and 30 of the Small Business Enterprise and Employment Act 2015.

13. Contact

- 13.1 Dominic Lague at the Department for Culture, Media and Sport Telephone: 0207 211 2381 or email: dominic.lague@culture.gov.uk can answer any queries regarding the instrument.