

**EXPLANATORY MEMORANDUM TO**  
**THE ELECTRONIC COMMUNICATIONS (UNIVERSAL SERVICE)**  
**(BROADBAND) ORDER 2018**

**2018 No. 445**

**1. Introduction**

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

**2. Purpose of the instrument**

- 2.1 This instrument sets out the extent to which broadband connections and services must be provided throughout the United Kingdom, and gives guidance to Ofcom about matters relating to its implementation of broadband universal service. It also amends the Electronic Communications (Universal Service) Order 2003 (SI No 1904) to omit the obligation concerning the provision of functional internet access, namely the provision of an internet connection as this will be provided for in the Order.

**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 Section 65 of the Communications Act 2003 (c.21) (“the CA 2003”) requires the Secretary of State to set out in an order (“the universal service order”) the extent to which the things falling within subsection (2) must be provided for the purpose of securing compliance with EU obligations, Section 65(2) of the CA 2003 (inter alia) lists “electronic communications networks and electronic communications services”.
- 4.2 Section 65(2B)<sup>1</sup> of the CA 2003 provides that the universal service order may in particular provide for broadband connections and services, but where it does so, the order must specify a minimum download speed that is at least 10 megabits per second. Section 65(2C) of the CA 2003 states that the universal service order may contain guidance about matters relating to the speed or other characteristics of broadband connections or services that must be provided, and guidance about any other matters relating to those connections or services.
- 4.3 Sections 66 to 72B of the CA 2003 contains provisions enabling the implementation of the universal service obligation set out in an order made pursuant to section 65. In particular, Ofcom (the telecommunications regulator) may make regulations for the purpose of designating a universal service provider (“USP”) (section 66); set

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<sup>1</sup> Inserted by section 1 of the Digital Economy Act 2017 (c.30)

conditions on the designated USP (section 67); review the tariffs charged by the USP (section 68); review costs incurred by the USP in meeting the universal service obligation (section 70) and provide for a cost sharing mechanism where the USP is assessed to be under an “unfair financial burden” (section 71 and 72).

- 4.4 The Secretary of State has power to direct Ofcom to review the provisions contained in a universal service order and must direct Ofcom to carry out a review where the order specifies a download speed of less than 30 megabits per second and it appears to the Secretary of State that broadband connections and services that provide a minimum download speed of at least 30 megabits per second are subscribed for use in at least 75% of premises in the United Kingdom (sections 72A and 72B).
- 4.5 The Electronic Communications (Universal Service) Order 2003<sup>2</sup> (“the 2003 USO”) contains the universal service obligation setting out the things that must be made available or supplied throughout the United Kingdom in the Schedule to the Order. Paragraph 1 of the Schedule sets out the publicly available telephone services which must be provided by at least one designated universal service provider – a connection at a fixed location to the public electronic communications network and for access to publicly available telephone services over that communications network where a reasonable request is made. The connection must, inter alia, “*be capable of data communications, at data rates that are sufficient to permit functional internet access*”.
- 4.6 These provisions of the CA 2003 and the 2003 USO implement the EU Universal Service Directive (Directive 2002/22/EC amended by Directive 2009/136/EC).

## **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 This Order sets out the broadband connections and services which must be provided throughout the United Kingdom and amends the 2003 USO to remove the requirement regarding functional internet access, as the obligation relating to broadband connections and services is contained in this Order.
- 7.2 This Order is being made to ensure that a decent minimum level of broadband connectivity is available to everyone on reasonable request and at an affordable price. As the world goes increasingly online, those without internet access risk social and economic exclusion.
- 7.3 High levels of commercial and public investment in recent years has improved superfast coverage across the UK. Superfast broadband is now available to 95% of UK premises. Superfast rollout will continue, with at least a further 2% coverage

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<sup>2</sup> Amended by S.I 2011/1209

likely to be achieved. The Government has also committed to making full fibre broadband available to at least 10 million homes and businesses by 2022. Despite this progress in improving the UK's digital infrastructure, there remain however some areas of the UK, particularly, although not exclusively, the more rural areas, which cannot receive download speeds of at least 10Mbps as the necessary infrastructure has not been deployed there.

- 7.4 10Mbps is the minimum level of broadband performance required according to Ofcom for a typical household's use of internet access to services such as web browsing, email and certain video services, and also because consumers on connections of less than 10Mbps tend to use less data, suggesting that internet usage is constrained below this speed. Ofcom's Connected Nations 2017 report shows that the number of premises without 10Mbps broadband download and 1Mbps upload speeds is 1.1m, or 4% of premises, compared with 1.6 million or 6% of premises in 2016.
- 7.5 There are limits to what the market can deliver through competition alone, and limited commercial incentives for any firm to roll out broadband infrastructure to these areas, given the large investment necessary, and the relatively low returns. The Government therefore wants to address this market failure by introducing a broadband universal service order to ensure that, where superfast broadband remains unavailable, a good quality broadband service is nonetheless available.

#### *Consolidation*

- 7.6 Not applicable.

### **8. Consultation outcome**

- 8.1 A ten-week consultation was published in July 2017 seeking views on the Government's proposed design for the broadband USO. There were 14 questions on the detail of the Government's proposals which were:
- A proposed minimum download speed of at least 10Mbps;
  - Additional quality parameters of 1Mbps upload speed, standards for latency, a maximum sharing between customers (a 'contention ratio' of 50:1), and data cap of at least 100GB per month;
  - Given the proposed specification of the USO, that FTTP, FTTC (VDSL), fixed wireless and mobile technologies can meet the proposed specification to deliver universal affordable broadband, but based on its current capabilities, that satellite cannot.
  - A cost threshold of £3,400 per premise, with demand aggregation forming an essential feature of USO implementation;
  - Uniform pricing to be required so that people connected under the USO do not pay more for their broadband than others pay for comparable services in non-USO areas; and
  - The costs to be met by industry through a cost-sharing mechanism which will be established by Ofcom, as part of its implementation of the USO.
- 8.2 140 responses to the consultation were received from a range of organisations, including local authorities, communications providers, rural stakeholders, and members of the public. A summary of responses to the consultation together with the Government response to the consultation has been published at <https://www.gov.uk/government/consultations/broadband-universal-service->

[obligation-consultation-on-design](#) . Responses to the consultation showed that there was broad support for the introduction of a broadband USO.

## **9. Guidance**

9.1 There is no proposal to issue any guidance for this instrument.

## **10. Impact**

10.1 There is no impact on charities or voluntary bodies.

10.2 The impact on business is £30.5m per year.

10.3 The impact on the public sector is minimal, and primarily limited to the costs incurred by Ofcom in implementing the legislation.

10.4 An updated Impact Assessment is submitted with this memorandum and is published alongside the Explanatory Memorandum on the [legislation.gov.uk](http://legislation.gov.uk) website.

## **11. Regulating small business**

11.1 The legislation applies to activities that are undertaken by small businesses. The impact on small businesses will be assessed later in the USO implementation process, together with any mitigating action to minimise regulatory burdens on small businesses.

11.2 The obligation to deliver the USO will be borne by a broadband provider (or providers) who are designated by Ofcom as the Universal Service Provider(s) (USPs). Ofcom will be responsible for the process of designating USPs. The USPs may be able to receive funding from an industry fund to compensate them for any net cost burden associated with delivering the USO. Where Ofcom determines that the USO imposes an unfair burden on a USP, it can establish an industry fund to compensate the USP. Ofcom will decide who should contribute to the fund and how it should be administered, and would be determined by Ofcom after a separate consultation. Any impact on small business would be assessed at that stage.

## **12. Monitoring & review**

12.1 Monitoring and reporting on progress of the broadband USO will be through Ofcom's Connected Nations reports. Section 72A of the CA 2003 provides powers for the Secretary of State to direct Ofcom to review the specification for the USO and assess whether it needs to be changed at any time, after consulting Ofcom. The CA 2003 also stipulates in section 72B of the CA 2003 that the specification must be reviewed when at least 75% of premises in the UK subscribe to broadband connections or services that provide a download speed of at least 30Mbps.

12.2 The Minister has determined that it would not be appropriate to make provision in the Order for a review under sections 28-32 of the Small Business, Enterprise and Employment Act 2015. Such a provision would be unreasonable (in accordance with section 31(2)(b) of that Act) given the existing statutory review provisions in sections 72A and 72B of the CA 2003. Once the Order has been laid, Ofcom's regulatory implementation is expected to take two years. Given this 2-year lead time it would not be appropriate to set a 5-year review requirement.

12.3 The Department proposes to carry out a Post Implementation Review (PIR) to evaluate the effectiveness of this policy at 10 years to allow time for at least one

Ofcom review to have taken place and for the market to have responded. For the same reason as noted above in relation to the SBEE review provision, our view is that a PIR at 5 years would be premature given the expected 2-year lead time for Ofcom to implement the Order.

### **13. Contact**

- 13.1 Jeanne Grey at the Department for Digital, Culture, Media and Sport, Telephone: 020 7211 6104 or email: [Jeanne.grey@culture.gov.uk](mailto:Jeanne.grey@culture.gov.uk) can answer any queries regarding the instrument.