
Notice of proposal to make The Electronic Communications (Universal Service) (Costs) (Amendment) Regulations 2021

CONSULTATION:

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1. Notice of Proposals

Background

- 1.1 In 2018, the UK Government introduced legislation for a broadband USO, to give homes and businesses the right to request a decent and affordable broadband connection. Ofcom is responsible for implementing the broadband USO, and in June 2019 we appointed BT and KCOM to deliver these connections. The broadband USO launched on 20 March 2020 and people can now make requests for these services.
- 1.2 As the ‘Universal Service Providers’, BT and KCOM are entitled to request compensation for any cost of delivering universal services that it would not be appropriate for them to cover themselves.
- 1.3 In our [Statement](#) dated 22 May 2020 we recorded our decision to put in place The Electronic Communications (Universal Service) (Costs) Regulations 2020 (the “Regulations”) to establish a process to compensate Universal Service Providers for providing universal services. The decision was made following a [consultation](#).
- 1.4 The Regulations set out the rules and procedures which Ofcom will follow when assessing the extent of the financial burden associated with the provision of a universal service and, where appropriate, compensating a universal service provider for those costs in exercise of the powers under sections 70 and 71 of the Communications Act 2003 (“the Act”).
- 1.5 The Joint Committee on Statutory Instruments (“JCSI”) has identified minor errors which Ofcom intends to correct. In order to do so, it is necessary to make amendment regulations.

The Regulations

Clarifying the meaning of “central funds” in regulations 7 and 15

- 1.6 There is no definition of “central funds”¹ in the Regulations or the Act which contains Ofcom’s powers to make the legislation (i.e. the enabling powers). However, it was intended that the term bear the meaning set out in Schedule 1 to the Interpretation Act 1978 “money provided by Parliament”.
- 1.7 In its [Seventeenth Report of Session 2019–21](#) (the “Report”), the JCSI drew special attention to the Regulations. Having asked Ofcom to clarify the meaning of “central funds”

¹ Regulation 7(3) provides that “Where it appears to OFCOM that central funds are to be committed to compensating the whole or part of the financial burden of complying with one or more of the relevant universal service conditions, OFCOM must postpone the determination of the amount to be collected until such time as the part of the amount to be compensated from central funds is known.” Regulation 15 limits the circumstances in which Ofcom can require additional contributions from industry to those in which the alternative source of permissible funding envisaged by the legislation (i.e. public funds) will not be available to compensate the universal service provider in full. This is to ensure that the universal service provider is not over-compensated.

in regulations 7 and 15, and having received a memorandum on the same,² the JCSI stated in the Report:

“The definition in Schedule 1 to the Interpretation Act 1978... applies, however, only in relation to enactments “providing in relation to England and Wales for the payment of costs out of central funds”, which does not cover the references to compensation in these Regulations. A reference to money provided by Parliament should therefore have been used, although the legislative intent is reasonably easy to divine from the expression “central funds” and the Department has now put its intentions beyond doubt by way of its memorandum.”

1.8 In its memorandum to the JCSI dated 23 June 2020, Ofcom had stated:

“If the Committee is concerned that this definition has been improperly applied in this context, Ofcom will undertake to amend the Regulations (for example by replacing the term “central funds” with the term “public funds” defined in the Regulations as “money provided by Parliament.”

1.9 Ofcom intends to make further regulations which will modify the Regulations such that:

- a) the term “central funds” will be replaced with the term “public funds” wherever it is used in the Regulations (which is in regulations 7(2)(a), 7(3) and 15(2)(e)); and
- b) a definition of “public funds”, being “money provided by Parliament” will be added in regulation 2.

Including S.I. numbers in the footnote to regulation 2

1.10 In a letter to Ofcom dated 26 February 2021, the JCSI noted that it had identified a further minor error in the Regulations. Specifically, the letter noted that Footnote (a) on page 2 (which refers to The Electronic Communications (Universal Service) Regulations 2003 and The Electronic Communications (Universal Service) Regulations 2018) did not include S.I. numbers.

1.11 Ofcom intends to make further regulations which will modify the Regulations such that the relevant S.I. numbers are included.

1.12 At the same time, Ofcom intends to amend the reference to “The Electronic Communications (Universal Service) Regulations 2018” such that it includes the correct title of this statutory instrument which is “The Electronic Communications (Universal Service) (Broadband) Regulations 2018”.

Impact of the proposals

1.13 Since the effect of the proposed further regulations is to ensure that the Regulations are clear on their face, we do not anticipate that our proposals will, if implemented have any impact on UK businesses, citizens and consumers save that the additional clarity may result

² This appears at Appendix 1 of the Report.

in some minor administrative costs savings for those UK businesses affected by the Regulations resulting from the need to consult fewer documents in order to ascertain the circumstances in which Ofcom can require contributions from industry.

- 1.14 There are one-off administrative costs for Ofcom associated with making statutory instruments. We consider the implementation costs to be low. Moreover, the costs, such as they are, will also be offset by the benefit of the meaning of the Regulations being clear on their face.
- 1.15 We consider that, overall (and taking into account that they are an integral part of the provision of universal services as a whole) making the proposed regulations is likely to generate a net benefit for UK businesses, citizens and consumers and at worst would have a neutral outcome. Taking into account the different costs and benefits, we consider that the most appropriate way forward is to make the proposed regulations.
- 1.16 Section 149 of the Equality Act 2010 (the “2010 Act”) imposes a duty on Ofcom, when carrying out its functions, to have due regard to the need to eliminate discrimination, harassment, victimisation and other prohibited conduct related to the following protected characteristics: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex and sexual orientation. The 2010 Act also requires Ofcom to have due regard to the need to advance equality of opportunity and foster good relations between persons who share specified protected characteristics and persons who do not.
- 1.17 Section 75 of the Northern Ireland Act 1998 (the “1998 Act”) also imposes a duty on Ofcom, when carrying out its functions relating to Northern Ireland, to have due regard to the need to promote equality of opportunity and regard to the desirability of promoting good relations across a range of categories outlined in the 1998 Act. Ofcom’s [Revised Northern Ireland Equality Scheme](#) explains how we comply with our statutory duties under the 1998 Act.
- 1.18 To help us comply with our duties under the 2010 Act and the 1998 Act, we assess the impact of our proposals on persons sharing protected characteristics and in particular whether they may discriminate against such persons or impact on equality of opportunity or good relations.
- 1.19 We do not consider that our proposals have equality implications under the 2010 Act or the 1998 Act.

Conclusion

- 1.20 This document constitutes notice given pursuant to section 403(4) of the Communications Act 2003 that Ofcom intends to make the regulations included in Annex 1.
- 1.21 The effect of the regulations is:
- a) To modify the Regulations by substituting the term “central funds” for “public funds” and inserting a definition of public funds. This is intended to clarify the Regulations.

- b) To amend the reference to The Electronic Communications (Universal Service) Regulations 2018 in footnote (a) on page 2 such that it includes the correct title of this statutory instrument which is The Electronic Communications (Universal Service) (Broadband) Regulations 2018.
- c) To add the S.I. numbers for The Electronic Communications (Universal Service) Regulations 2003 (S.I. 2003/33) and The Electronic Communications (Universal Service) (Broadband) Regulations 2018 (S.I. 2018/1231) to Footnote (a) on page 2. This is intended to correct the omission of these S.I. numbers.

1.22 A copy of the proposed regulations can be obtained from Ofcom, Riverside House, 2a Southwark Bridge Road, London SE1 9HA.

1.23 Any representations with respect to the proposal must be made to OFCOM before 17:00 on 16 July 2021. See Annex 2 for further details regarding how representations should be provided.

1.24

A1. Proposed Draft Regulations

Annex 1 is provided as a stand-alone document.

A2. Providing representations in response to this Notice

How to respond

- A2.1 Ofcom would like to receive views and comments on the issues raised in this document, by 17:00 on 16 July 2021.
- A2.2 You can download a response form from <https://www.ofcom.org.uk/consultations-and-statements/category-3/uso-funding-regulations-2021>. You can return this by email or post to the address provided in the response form.
- A2.3 If your response is a large file, or has supporting charts, tables or other data, please email it to Broadband.USO@ofcom.org.uk, as an attachment in Microsoft Word format, together with the [cover sheet](#). This email address is for this consultation only.
- A2.4 Representations may alternatively be posted to the address below, marked “Representations Notice of proposal to make The Electronic Communications (Universal Service) (Costs) (Amendment) Regulations 2021”:
- Samantha Hawley
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- A2.5 We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:
- Send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files. Or
 - Upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.
- A2.6 We will publish a transcript of any audio or video responses we receive (unless your response is confidential).
- A2.7 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt if your response is submitted via the online web form, but not otherwise.
- A2.8 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A2.9 It would be helpful if your response could include direct answers to the questions asked in the consultation document. The questions are listed at Annex 5. It would also help if you

could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.

- A2.10 If you want to discuss the issues and questions raised in this consultation, please contact Samantha Hawley on 020 7783 4337 or by email to samantha.hawley@ofcom.org.uk.

Confidentiality

- A2.11 Consultations are more effective if we publish the responses before the consultation period closes. In particular, this can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that everyone who is interested in an issue can see other respondents' views, we usually publish all responses on the [Ofcom website](#) as soon as we receive them.
- A2.12 If you think your response should be kept confidential, please specify which part(s) this applies to, and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A2.13 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A2.14 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further in our [Terms of Use](#).

Next steps

- A2.15 Following this consultation period, Ofcom plans to publish a statement.
- A2.16 If you wish, you can [register to receive mail updates](#) alerting you to new Ofcom publications.

Ofcom's consultation processes

- A2.17 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 3.
- A2.18 If you have any comments or suggestions on how we manage our consultations, please email us at consult@ofcom.org.uk. We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.
- A2.19 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary:

Corporation Secretary
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA
Email: corporationsecretary@ofcom.org.uk

A3. Ofcom's consultation principles

Ofcom has seven principles that it follows for every public written consultation:

Before the consultation

- A3.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. If we do not have enough time to do this, we will hold an open meeting to explain our proposals, shortly after announcing the consultation.

During the consultation

- A3.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A3.3 We will make the consultation document as short and simple as possible, with a summary of no more than two pages. We will try to make it as easy as possible for people to give us a written response. If the consultation is complicated, we may provide a short Plain English / Cymraeg Clir guide, to help smaller organisations or individuals who would not otherwise be able to spare the time to share their views.
- A3.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A3.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.
- A3.6 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

- A3.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish all the responses on our website as soon as we receive them. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

A4. Consultation coversheet

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing

Name/contact details/job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts? _____

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

A5. Consultation questions

Question 1: Do you have any comments on drafting of the proposed draft regulations, as summarised in paragraph 1.21 and described in detail in this Notice?

Question 2: Do you have any other comments on the proposed draft regulations?