
Regulatory Impact Assessment for the Electronic Communications (Universal Service) Regulations 2018

Regulations for the designation of universal service
providers

ISSUED:

26 November 2018

1. Regulatory Impact Assessment

Introduction

- 1.1 Ofcom acts in accordance with Government practice that, where a statutory regulation is made, a Regulatory Impact Assessment (“RIA”) must be undertaken. We also comply with our duty under section 7 of the Communications Act 2003 (the “Act”) to undertake impact assessments.
- 1.2 The analysis in this document is a regulatory impact assessment relating to the Electronic Communications (Universal Service) Regulations 2018 (the “Regulations”). It is consistent with the Government practice on RIAs and Ofcom’s duty under the Act.
- 1.3 Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This is reflected in section 7 of the Act, which imposes a duty on Ofcom to carry out impact assessments where our decisions would be likely to have a significant effect on businesses or the general public, or when there is a major change in our activities.
- 1.4 As a matter of policy we are committed to carrying out and publishing impact assessments in relation to the great majority of our policy decisions. For further information about our approach to impact assessments, see the guidelines, Better policy-making: Ofcom’s approach to impact assessment, which are on our website:
http://www.ofcom.org.uk/consult/policy_making/guidelines.pdf .
- 1.5 This RIA relates to our decision regarding the process undertaken to designate universal service providers.

Legislative background

- 1.6 In March 2018, the Secretary of State made The Electronic Communications (Universal Service) (Broadband) Order 2018 (the “Order”) setting out the broadband connections and services which must be made available to all eligible consumers in the United Kingdom (“the USO”). The Order sets out a minimum technical specification for the broadband connections and services which are to be provided and contains eligibility criteria specifying those premises which will benefit from the USO.
- 1.7 Under the Act, it falls to Ofcom to implement the provisions of the Order by designating particular providers (“Universal Service Providers”) as responsible for the provision of the USO and imposing regulatory obligations, in the form of universal service conditions, upon them.
- 1.8 Section 66(1) enables Ofcom by regulations to make provision the designation of a person as a Universal Service Provider. Under sections 66(2) and (3) those regulations must not authorise the designation of a person other than a communications provider, except for the purposes of conditions relating to:

- a) the supply of directories capable of being used in connection with the use of an electronic communications network or electronic communications service; and
 - b) the making available of directory enquiry facilities capable of being used for purposes connected with the use of such a network or service.
- 1.9 Sections 66(4) to (5) enable Ofcom to review the designation of Universal Service Providers from time to time and require the regulations to include provision as to the procedure that must be followed in the case of every such review.
- 1.10 Under Section 66(6) the regulations must provide for a person's designation as a Universal Service Provider to cease in the event that the conditions to which it is subject are all revoked.
- 1.11 Section 66(7) requires Ofcom to only make regulations that provide for a designation procedure and review of that designation, which appears to Ofcom to be efficient, objective and transparent, and which does not involve, or tend to give rise to, any undue discrimination against any person or description of persons.

Decision

- 1.12 The intention of the Regulations is to implement a procedure to designate Universal Service Providers by way of a direct designation process, which we consider is most likely to meet our primary objectives:
- **Speed:** to deliver the USO as quickly as possible, so consumers benefit as soon as possible;
 - **Effectiveness:** to ensure any designated provider can deliver services that meet the USO specifications; and
 - **Efficiency:** to ensure the cost of delivery, and therefore impact on industry and consumers, is minimised.
- 1.13 Further, direct designation provides the flexibility to take account of the various uncertainties associated with the implementation of the USO, such as the number of premises which will remain eligible for the USO by the time it comes into effect.
- 1.14 The Regulations set out a procedure which we have designed to meet the requirements of section 66 of the Act. Under those procedures, we will set out proposals for designating a particular person as a Universal Service Provider. Where we make designation proposals, we will also invite alternative proposals from any providers who think that they are better placed to deliver the USO (or elements thereof) to ensure that there is no undue discrimination against any person or description of persons. Should any alternative providers come forward, we will carefully consider their proposals before reaching our conclusion.
- 1.15 The Regulations would apply not only to the designation of Universal Service Providers for the broadband connections and services set out in the Order. The process which is set out in those draft regulations would, if made, apply equally to any subsequent designation of providers for other elements of a universal service. BT and KCOM have already been

designated as Universal Service Providers in respect of the services set out in The Electronic Communications (Universal Service) Order 2003. Those designations were made under the Electronic Communications (Universal Service) Regulations 2003 (“the 2003 Regulations”) which were made by the Secretary of State prior to the coming into force of the Act.

- 1.16 We are proposing to revoke the 2003 Regulations to ensure that any future designation will follow the same procedure as that set out in the Regulations. In doing so, we are mindful of the need to ensure that the designations made under the 2003 Regulations continue to have effect. We have therefore included a provision to this effect in the Regulations.

The citizen and/or consumer interest

- 1.17 Our principal duty under section 3 of the 2003 Act is to further the interests of citizens in relation to communications matters; and of consumers in relevant markets, where appropriate by promoting competition.
- 1.18 We take account of the impact of our decisions upon both citizen and consumer interests in the markets we regulate.
- 1.19 In deciding to make these Regulations we considered the wider impact beyond immediate stakeholders in the telecommunications community. We believe that the decision will be of benefit to consumers for the following reasons:
- the Regulations ensure the delivery of the USO as quickly as possible, so consumers benefit as soon as possible;
 - the Regulations ensure any designated provider can deliver to eligible consumers services that meet the USO specifications; and
 - the Regulations ensure the cost of delivery, and therefore impact on consumers, is minimised.

Our policy objective

- 1.20 In accordance with section 66 of the Act, Ofcom is empowered to make regulations which provide for the designation of Universal Service Providers.
- 1.21 The measures set out in the Regulations would enable the designation of a Universal Service Provider to deliver universal service, as defined in the Order, to eligible consumers across the UK.
- 1.22 We consider that implementing the Regulations is likely to generate a net benefit for UK businesses, citizens and consumers and at worst would have a neutral outcome (to the extent that benefits may depend on the uptake of the new opportunities afforded by the proposal).
- 1.23 There are one-off administrative costs 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 benefits to businesses and consumers outlined above.

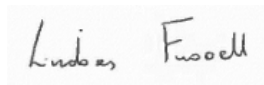
Equality Impact Assessment

- 1.24 Following an initial assessment of our policy decision, we considered that it is reasonable to assume that any impacts on consumers and citizens arising from the Regulations would not differ significantly between groups or classes of UK consumers and citizens.
- 1.25 We do not consider that there is evidence to suggest that the decision to make the Regulations would have a significantly greater direct financial impact on groups including based on gender, race or disability or for consumers in Northern Ireland relative to consumers in general.
- 1.26 We have not carried out a full Equality Impact Assessment in relation to race equality or equality schemes under the Northern Ireland and disability equality schemes at this stage. This is because we are not aware that the proposals being considered here are intended (or would, in practice) have a significant differential impact on different gender or racial groups, on consumers in Northern Ireland or on disabled consumers compared to consumers in general.

Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed



Lindsey Fussell

Group Director, Consumer Group

27/11/18

Contact Point:

Jack Gaches

Ofcom

Riverside House

2a Southwark Bridge Road

London

SE1 9HA

0207 783 4254