
The Electronic Communications (Universal Service) (Costs) (Amendment) Regulations 2021

Statement on the making of amendment regulations
under section 71 of the Communications Act 2003

STATEMENT

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1. Overview

- 1.1 In our Notice of proposal to make The Electronic Communications (Universal Service) (Costs) (Amendment) Regulations 2021 (the “June 2021 Consultation”), we consulted on the amendment regulations we intended to make with the purpose of changing The Electronic Communications (Universal Service) (Costs) Regulations 2020 (the “Costs Regulations”) to correct the minor errors identified by the Joint Committee on Statutory Instruments (“JCSI”).
- 1.2 We have considered comments received in response to our consultation and set out our decision on the amendment regulations in this document.

What we have decided – in brief

We have decided to make amendment regulations which will be substantively in the form contained in Annex 1.

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.

- 1.3 We plan to make the amendment regulations shortly after the publication of this statement after which they will come into force.
- 1.4 Once made, the amendment regulations will be available on the [legislation.gov.uk](https://www.legislation.gov.uk) website.

2. Our Decision

Background

- 2.1 In 2018, the UK Government introduced legislation for a broadband universal service obligation (the “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.
- 2.2 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.
- 2.3 In our [Statement](#) dated 22 May 2020, we recorded our decision to put in place the Costs Regulations to establish a process to compensate Universal Service Providers for providing universal services. The decision was made following a [consultation](#).
- 2.4 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”).
- 2.5 The JCSI identified minor errors in the Regulations.
- 2.6 In the June 2021 Consultation, we consulted on the amendment regulations we intended to make with the purpose of changing the Costs Regulations to correct the errors identified by the JCSI.
- 2.7 We have considered comments received in response to our June 2021 Consultation and set out our decision on the amendment regulations below.

Our consultation

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

- 2.8 There is no definition of “central funds”¹ in the Costs Regulations or the Act which contains Ofcom’s powers to make the legislation (i.e. the enabling powers). However, it was

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.

intended that the term bear the meaning set out in Schedule 1 to the Interpretation Act 1978: “money provided by Parliament”.

- 2.9 In its [Seventeenth Report of Session 2019–21](#) (the “Report”), the JCSI drew special attention to the Costs Regulations. Having asked Ofcom to clarify the meaning of “central funds” 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.”

- 2.10 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”).”

- 2.11 In the June 2021 Consultation, we explained that we proposed to make amendment regulations which would modify the Costs Regulations so that:

- a) the term “central funds” will be replaced with the term “public funds” wherever it is used in the Costs 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

- 2.12 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.

- 2.13 In the June 2021 Consultation, we explained that we proposed to make further regulations which would modify the Costs Regulations such that the relevant S.I. numbers are included.

- 2.14 In the June 2021 Consultation, we also explained that we intended to include a provision in the amendment regulations which amend the reference to “The Electronic Communications (Universal Service) Regulations 2018” such that it includes the correct

² This appears at Appendix 1 of the Report.

title of this statutory instrument which is “The Electronic Communications (Universal Service) (Broadband) Regulations 2018”.

Consultation Responses

- 2.15 We received one formal response to the June 2021 Consultation which did not contain any substantive comments on the proposed making of the amendment regulations.
- 2.16 BT did not submit a formal consultation response but confirmed that it had no comments on Ofcom’s proposed amendments to the Costs Regulations.

Our decision

- 2.17 Having considered comments received in response to the June 2021 Consultation, we have decided to make amendment regulations which will be substantively in the form set out in Annex 1 to the June 2021 Consultation (which is replicated at Annex 1 of this document for ease of reference).

Next Steps

- 2.18 We plan to make the amendment regulations shortly after the publication of this statement after which they will come into force.
- 2.19 Once made, the amendment regulations will be available on the [legislation.gov.uk](https://www.legislation.gov.uk) website.

A1. Amendment Regulations

A1.1 We have published the [amendment regulations](#) alongside this statement.

A2. Regulatory impact assessment – Decision to make The Electronic Communications (Universal Service) (Costs) (Amendment) Regulations 2021

Introduction

- A2.1 The analysis set out in this document is a regulatory impact assessment (“RIA”) relating to The Electronic Communications (Universal Service) (Costs) (Amendment) Regulations 2021 (the “amendment regulations”).
- A2.2 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 policymaking. This is reflected in section 7 of the Communications Act 2003 (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. This is also consistent with Government practice.
- A2.3 As a matter of policy, we are committed to carrying out and publishing impact assessments in relation to the vast 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
- A2.4 This RIA relates to our decision to make the amendment regulations which will amend The Electronic Communications (Universal Service) (Costs) Regulations 2020 (the “Costs Regulations”) as follows:
- a) substituting the term “central funds” for “public funds” and inserting a definition of public funds (this is intended to clarify the Costs Regulations);
 - b) amending the reference to The Electronic Communications (Universal Service) Regulations 2018 in footnote (a) on page 2 of the Costs Regulations such that it includes the correct title of this statutory instrument which is The Electronic Communications (Universal Service) (Broadband) Regulations 2018;
 - c) adding 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 of the Costs Regulations (this is intended to correct the omission of these S.I. numbers).
- A2.5 Since the effect of the proposed further regulations is to ensure that the Costs Regulations are clear on their face, we do not anticipate that the making of the amendment regulations will have any impact on UK businesses, citizens and consumers save that the additional clarity may result in some minor administrative costs savings for those UK businesses

affected by the Costs Regulations resulting from the need to consult fewer documents in order to ascertain the circumstances in which Ofcom can require contributions from industry.

- A2.6 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.
- A2.7 We consider that, overall 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.

Equality Impact Assessment

- A2.8 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.
- A2.9 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. 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.
- A2.10 Following an initial assessment of our decision, we considered that it is reasonable to assume that the making of the amendment regulations will not have equality implications under the 2010 Act or the 1998 Act.

Declaration

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

Signed



Date 08/11/21

Lindsey Fussell, Group Director for Networks and Communications

Contact Point:

Samantha Hawley

Ofcom,

Riverside House

2A Southwark Bridge Road

London

SE1 9HA