
Delivering the Broadband Universal Service

Proposals for designating providers and applying conditions

CONSULTATION:

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1. Overview

- 1.1 Ensuring people across all parts of the UK – in the countryside, towns and cities – can benefit from a decent broadband connection is a priority for Ofcom. In March 2018, the Government introduced legislation for a Broadband Universal Service Obligation (USO), which will give homes and businesses the right to request a decent broadband connection. To receive a broadband USO service, people must meet certain eligibility criteria set by the Government.
- 1.2 Ofcom welcomes the Government’s decision to introduce the USO and is now responsible for its implementation. In June, we asked telecoms providers to come forward as prospective Universal Service Providers, and in September we consulted on the regulations for designating Universal Service Providers.
- 1.3 This document sets out who we plan to designate as Universal Service Providers, and the conditions that should apply to them in delivering USO connections and services.

What we are proposing

BT and KCOM will be designated as Universal Service Providers. We assessed eight expressions of interest against our set of criteria to inform our proposals for which providers would be best placed to deliver the USO. Airband, Bentley Walker, Broadway Partners, Quickline and Viasat did not satisfy our minimum criteria. Our minimum criteria required the providers to demonstrate: 1) that they can adequately finance the delivery of the service and maintain adequate operation of the service between deployment and any compensation; 2) that the proposed geographic coverage area covers more than 5,000 eligible premises and; 3) that the proposed technology would meet the technical specification set out in the legislation. Hyperoptic did satisfy these criteria, but subsequently withdrew its interest in being a Universal Service Provider. As a result, we propose that BT will be the Universal Service Provider across the whole of the UK excluding the Hull Area, and KCOM will be the Universal Service Provider for the Hull Area.

If a consumer cannot access a decent, affordable broadband service, they may be eligible for the USO. A USO connection must be capable of delivering download speeds of at least 10Mbit/s and upload speeds of at least 1Mbit/s plus additional parameters designed to improve consumer experience and the reliability of connections.¹

Universal Service Providers will have 30 days to determine whether a consumer is eligible for the USO. As part of this process, they will have to check that: the premises is a home or business; it has no access to existing decent, affordable broadband; it will not be covered by a

¹ The full technical specification of the USO is as follows: (i) a download sync speed of at least 10Mbit/s; (ii) an upload sync speed of at least 1Mbit/s; (iii) a contention ratio of no higher than 50:1; (iv) latency which is capable of allowing the end-user to make and receive voice calls over the connection effectively; and (v) the capability to allow data usage of at least 100GB per month.

public rollout scheme in the next 12 months; and the cost of a connection will not exceed £3,400, as set in the legislation.

Universal Service Providers will have 12 months to deliver connections to eligible consumers.

A consumer should receive their USO service no later than 12 months after they place their order, unless there are exceptional circumstances which would disrupt network build.

USO customers should pay the same price as the rest of the UK and this should not be more than £45 a month. Universal Service Providers must offer connections and services on its own network at the same price regardless of whether the consumer is a USO customer or a non-USO customer. Although most services are already charged at less than £45 a month, we are proposing to set a maximum cap of £45 a month (incl. VAT) as a further affordability safeguard.

USO customers should receive the same quality of service as the rest of the UK. A USO customer will be entitled to the same quality of service as customers connected through a commercial service.

Universal Service Providers must report on performance and keep records. This is to demonstrate compliance with the conditions, and to allow any claim for funds to be properly audited and verified.

Introduction

- 1.4 Broadband is now an essential service, and it needs to be available to people across the whole of the UK – including both urban and rural communities.
- 1.5 The estimated number of premises that cannot receive decent broadband is falling. There are still around 860,000 premises that cannot currently receive decent broadband², and we estimate that number could be around 600,000 by the early 2020s.³ With significant improvements to higher speed broadband availability, and the possibility of fixed wireless services delivering higher speed services, this number is set to fall further meaning that more people have access to commercial broadband services.
- 1.6 To help the remaining homes and businesses without a decent broadband connection, the Government introduced a USO for broadband, which would provide a digital safety net to help minimise social and economic exclusion.

² Ofcom, October 2018. *Connected Nations Update*, page 9.

https://www.ofcom.org.uk/data/assets/pdf_file/0019/122194/connected-nations-october-2018.pdf

³ Ofcom, December 2016. *Achieving decent broadband connectivity for everyone: technical advice to UK Government on broadband universal service*, Figure 4.4.

https://www.ofcom.org.uk/data/assets/pdf_file/0028/95581/final-report.pdf

- 1.7 The USO will give consumers and businesses the right to request a broadband connection capable of delivering a download sync speed⁴ of 10Mbit/s and an upload sync speed of 1Mbit/s. To receive a USO service, consumers must meet certain eligibility criteria set by the Government.
- 1.8 Consumers will only be eligible where an affordable broadband connection⁵ that meets the technical specification is not available at their premises, or will not be provided by a publicly-funded rollout scheme in the next year, and where the cost of building a USO connection is no more than £3,400.⁶ Where the cost of connection is more than £3,400, consumers will have the choice to 1) pay the excess costs of installing a connection that meets the USO technical specification, 2) use an alternative technology, such as commercially available satellite broadband outside the USO scheme or 3) maintain their existing service that will deliver a lower technical specification than the USO.

Approach to our proposals

- 1.9 We are working to help introduce the broadband universal service – a major, national infrastructure project – as efficiently and quickly as possible to benefit people who currently do not have access to decent and affordable broadband. Therefore, our primary objectives in delivering the USO are to:
- deliver the USO as quickly as possible, so consumers benefit as soon as possible;
 - ensure any designated provider can deliver services that meet the USO requirements; and
 - ensure the cost of delivery, and therefore impact on industry and consumers, is minimised.
- 1.10 In June, we invited expressions of interest in being designated either on a national or sub-national basis.
- 1.11 In September, we consulted on draft designation regulations and proposed a direct designation approach. We are now concluding that direct designation is the quickest and most effective process to determine who should be the Universal Service Providers.
- 1.12 We have assessed eight expressions of interest in being a Universal Service Provider against criteria set by us to inform our proposal on which providers would be best placed to deliver the USO. As a result, we propose to designate BT and KCOM to deliver the USO.

⁴ The modem sync speed is the maximum speed achievable between a consumer's premises and their internet service provider's network.

⁵ For the purposes of eligibility we consider that an affordable broadband connection would be priced at no more than £45 per month including VAT, connection charges, monthly payments and other broadband charges.

⁶ The £3,400 cost threshold excludes VAT. Where the costs are higher than this amount, eligible consumers and businesses will be able to receive the connection and service if they pay any costs over £3,400.

- 1.13 We also make proposals on a set of obligations, summarised above, which will apply to the Universal Service Providers. Our proposals aim to ensure consumers can get access to a decent, affordable broadband service within a reasonable timeframe and have confidence they will receive a service as good as customers elsewhere in the UK.

Next steps

- 1.14 We invite comments on our proposals by 13 February 2019. We intend to publish a statement by early summer 2019 on designating Universal Service Providers and the final universal service conditions. We have proposed an implementation period to enable the Universal Service Providers to make necessary preparations for the USO, so we expect consumers to be able to make requests for connections from the end of 2019. We expect to consult on funding regulations in summer 2019.

2. Introduction and framework for implementing the broadband universal service

Introduction

- 2.1 In March 2018, the Government finalised the terms of a new universal service obligation (“USO”) by issuing secondary legislation (“the Order”)⁷ to introduce a USO for broadband connections and services. This followed the Government’s stated intention to introduce a USO in November 2015 where it acknowledged the growing importance of broadband as an essential service, in line with other basic services such as water and electricity.
- 2.2 To inform its design of the USO, in March 2016 the Government asked Ofcom to provide technical advice on several aspects of the USO, including the speed of the service, likely demand, and the potential costs of delivery.⁸ We highlighted evidence that a download speed of at least 10Mbit/s was needed to enable consumers’ full participation in a digital society. A download speed of at least 10Mbit/s would allow multiple users to simultaneously use the internet, including web browsing, HD video streaming, video calling and gaming.
- 2.3 The technical specification in the Order aims to ensure that consumers can use the digital communications they need today, but it may have to increase over time to meet rising consumer expectations and demands. The Digital Economy Act 2017 includes an automatic review of the USO to ensure it remains relevant. It stipulates that the technical specification of the USO must be reviewed when at least 75% of premises in the UK subscribe to a broadband service that provides a download speed of at least 30Mbit/s.
- 2.4 The USO will apply to the whole of the UK and is intended to help fill the gap left by existing broadband rollout programmes, including both commercial and publicly-funded programmes. It will act as an important digital safety net for people who might otherwise get left behind by ensuring every household and business will have the right to request a decent broadband connection and service. The USO aims to improve

⁷ The Electronic Communications (Universal Service) (Broadband) Order came into force on 23 April 2018. <http://www.legislation.gov.uk/uksi/2018/445/contents/made>

⁸ Ofcom, December 2016. [Technical Advice to Government](#). We published updated cost estimates for the USO in July 2017. Ofcom, July 2017. *Technical advice on a broadband USO: Updated cost estimates* https://www.ofcom.org.uk/data/assets/pdf_file/0015/105342/Technical-advice-on-a-broadband-USO-Updated-cost-estimates.pdf

broadband coverage to households and businesses in hard to reach rural and urban areas.

- 2.5 We are now consulting on our detailed implementation of the Order. In particular, we must designate the Universal Service Provider(s) to deliver the broadband universal service and set the universal service conditions that will apply to them.

Previous consultations

- 2.6 In June 2018, we published our *Implementing the Broadband Universal Service Obligation: Requests for expressions of interest* (“the June 2018 document”).⁹ We set out our objectives on implementing the USO, explaining that our approach must, above all, serve the interests of consumers.
- 2.7 We explained how we would designate the Universal Service Provider(s) and provided an early indication of the obligations and expectations we would place on these provider(s). We explained that the framework for funding a USO is set out in the Universal Service Directive¹⁰ and operates on the basis that the USO should be cost neutral for the Universal Service Provider(s), leaving it without a cost advantage or disadvantage from delivering the USO. We invited expressions of interest in being designated as a Universal Service Provider, either on a national or sub-national basis.
- 2.8 In September 2018, we published *Implementing the Broadband Universal Service Obligation: Consultation on designation regulations* (“the September 2018 consultation”).¹¹ Following consideration of the expressions of interest and responses to the June 2018 document, in so far as they related to the issue of the designation process, we consulted on draft designation regulations, setting out our reasons for proposing to proceed with a direct designation approach.

Our primary objectives

- 2.9 We are working to help introduce the universal service – a major, national infrastructure project – as efficiently and quickly as possible for the benefit of consumers who currently do not have access to decent and affordable broadband connections. Therefore, our primary objectives in delivering the USO under the Communications Act 2003 (“the Act”) are to:

⁹ Ofcom, June 2018. *Implementing the Broadband Universal Service Obligation: request for expressions of interest in serving as Universal Service Provider for broadband*.

https://www.ofcom.org.uk/_data/assets/pdf_file/0013/115042/implementing-broadband-uso.pdf

¹⁰ Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users’ rights relating to electronic communications networks and services as amended by Directive 2009/136/EC.

<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32002L0022>

¹¹ Ofcom, September 2018. *Implementing the Broadband Universal Service Obligation: consultation on designation regulations*.

https://www.ofcom.org.uk/_data/assets/pdf_file/0011/120404/Implementing-the-Broadband-Universal-Service-Obligation.pdf

- a) deliver the broadband universal service as quickly as possible, so consumers benefit as soon as possible;
 - b) ensure that any designated provider can deliver services that meet the specifications; and
 - c) ensure the cost of delivery, and therefore impact on industry and consumers, are minimised.
- 2.10 We have taken account of these objectives throughout our proposals set out in this document. In the rest of this section, we explain the legislative basis for the Order and the framework which applies to our implementation of it.

Statutory scheme and Ofcom's role

Overview

- 2.11 The requirement to secure universal service in the UK derives from the Universal Service Directive.¹² Universal service means the provision of a defined minimum set of services to everyone on request and at an affordable price.¹³ The rationale for a universal service is to act as a safety net where market forces alone do not deliver affordable access to a minimum set of communications services, in order to prevent social and economic disadvantage.
- 2.12 The Universal Service Directive has been implemented into UK law through the Act and secondary legislation. In the UK the scope of the universal service, specifying the minimum set of services that must be provided to secure compliance with the Universal Service Directive, is determined by the Secretary of State by making an order under section 65 of the Act.
- 2.13 Once the scope of the universal service has been determined, Ofcom must make proposals to secure, as far as practicable, the universal service.¹⁴ In doing so, Ofcom must designate providers who will act as Universal Service Provider(s) and be subject to universal service conditions which set out how the provision of the universal service is to be achieved.¹⁵
- 2.14 In 2003, the Secretary of State made an Order under section 65, the Electronic Communications (Universal Service) Order 2003 ("the 2003 Order").¹⁶ The 2003 Order

¹² [Directive 2002/22/EC](#) of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services as amended by Directive 2009/136/EC.

¹³ Recital 4 of the Universal Service Directive.

¹⁴ Section 66 CA03, Regulation 4(1) of The Electronic Communications (Universal Service) Regulations 2003 ("the 2003 Designation Regulations") and Regulation 3(1) of The Electronic Communications (Universal Service) Regulations 2018 ("the 2018 Designation Regulations").

¹⁵ Sections 66 and 67 of the Act.

¹⁶ The 2003 Order is available here: <http://www.legislation.gov.uk/uksi/2003/1904/contents/made>

set out that publicly available telephone services and other specified services (together “the telephony universal service”) must be provided, made available or supplied throughout the UK. Ofcom implemented the 2003 Order by designating KCOM and BT as the Universal Service Providers to deliver the telephony universal service in the Hull Area and the rest of the UK respectively.¹⁷

Broadband Universal Service Order

- 2.15 The Digital Economy Act 2017 introduced legislative amendments to section 65 of the Act¹⁸ which allow for the inclusion of broadband connections and services in a universal service order.¹⁹
- 2.16 In March 2018, the Secretary of State issued the Order that states that affordable broadband connections and services must be provided throughout the UK with certain specified technical characteristics.
- 2.17 The Government specified that only premises unable to access a service that meets the following technical specification will be eligible to receive a USO connection:
- a) download sync speed of at least 10 megabits per second;
 - b) an upload sync speed of at least 1 megabit per second;
 - c) a contention ratio of no higher than 50:1;
 - d) latency which is capable of allowing the end-user to make and receive voice calls over the connection effectively;
 - e) the capability to allow data usage of at least 100 gigabytes per month.
- 2.18 The Order also sets out eligibility criteria which determine the circumstances under which an end-user has the right to request an affordable broadband connection and service as described in the Order. It provides that prospective end-users of such connections and services, who are either consumers or businesses, will have the right to request them in the following circumstances:
- a) where the affordable broadband connection and service that meet the description in the Order are not already available to their location;
 - b) where such a connection and service will not be provided to their location by a publicly-funded rollout scheme in the next year; and

¹⁷ The Notification of the designation of BT and KCOM as Universal Service Providers and the imposition of the specific universal service conditions is available at: <https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/telecoms-competition-regulation/general-conditions-of-entitlement/universal-service-obligation>

¹⁸ See the inserted sub-section 65(2B) of the Act.

¹⁹ Any order in respect of broadband connections and services must specify the minimum download speed that must be provided by those connections and services; and the speed so specified must be at least 10 megabits per second.

- c) where the cost of such a connection is less than £3,400. Where the costs are higher than this amount, consumers and businesses will be able to receive the connection and service if they pay any costs over £3,400.
- 2.19 The Order also contains guidance to Ofcom on matters concerning the costs and prices of the broadband universal service which requires Ofcom to ensure that:
- a) in calculating the cost of providing a broadband connection to a particular location, due account is taken of the extent to which the cost may be shared between multiple locations; and
 - b) the broadband connections and services are provided at prices that are affordable; and uniform throughout the UK, unless Ofcom has determined that there is clear justification for not doing so.²⁰

Ofcom's role

- 2.20 The statutory scheme requires us to take a number of steps to secure a proper and effective implementation of the Order. We describe these steps below.

Designation process

- 2.21 Under section 66(1) of the Act, before designating Universal Service Provider(s), we are required to make regulations setting out the process by which provider(s) will be designated.
- 2.22 The procedure set out in the regulations must be one which appears to us to be:
- a) efficient, objective and transparent; and
 - b) not to involve, or to tend to give rise to, any undue discrimination against any person or description of persons.
- 2.23 In Section 4 of this document we set out our decision on the designation process that will be used to designate Universal Service Provider(s) to implement the Order. We explain in Section 4 that we have concluded that the direct designation approach is most appropriate because it meets all of the requirements under section 66 of the Act and is most likely to effectively meet our duties under the Act, including one of our primary objectives of delivering the broadband universal service as quickly as possible for the benefit of consumers. We have therefore made The Electronic Communications (Universal Service) Regulations 2018 setting out the direct designation process by which providers will be designated.

Designation of the Universal Service Providers

- 2.24 We must select provider(s) to act as Universal Service Provider(s) in accordance with the procedure set out in the 2018 Designation Regulations.

²⁰ Paragraphs 1 and 2 of Schedule 2 of the Order.

- 2.25 In light of the expressions of interest received in response to our June 2018 document, in Section 5 of this document we assess the expressions of interest against a set of criteria which reflect the information we requested from the interested providers. This assessment informs our proposals on which provider(s) will be best placed to deliver the broadband universal service for the benefit of consumers. Our assessment includes consideration of whether there may be providers who will be best placed to act as a Universal Service Provider even though they have not expressed an interest, and whether or not they are willing to be designated.
- 2.26 Having carried out this assessment, in accordance with the procedure set out in the 2018 Designation Regulations, in Section 5 we set out our proposals to designate BT and KCOM as the Universal Service Providers to deliver the broadband universal service. We also explain that in accordance with the 2018 Designation Regulations we are open to alternative proposals from any provider who thinks that it is better placed to deliver the broadband universal service than BT or KCOM.

Universal service conditions

- 2.27 To secure the provision of the broadband universal service specified in the Order, Ofcom must exercise its powers under sections 45 and 67 of the Act to set universal service conditions on the Universal Service Providers.²¹
- 2.28 We have discretion to set the conditions we consider appropriate to ensure that the Order is implemented properly and effectively, but in doing so we must have regard to any guidance set out in the Order made by the Secretary of State.²²
- 2.29 We must ensure that universal service conditions include an obligation on the Universal Service Providers requiring them to publish information about their performance in complying with those conditions. We may require that this information is independently audited and that the costs of such audit are met by the Universal Service Providers.²³ We may also impose performance targets on the Universal Service Providers with respect to any obligations set out in universal service conditions.²⁴ We must also include a requirement securing that the terms on which a

²¹ In accordance with section 45(10)(a) and (b) of the Act, Ofcom's power to set a universal service condition includes the power to impose (among other things): (i) a requirement to comply with such directions with respect to the matters to which the condition relates; and (ii) an obligation with respect to those matters that is framed by reference to, or is conditional upon, the giving of a consent or of an approval. The substantive and procedural requirements which Ofcom must comply with when giving directions, approvals and consent are set out in sections 49, 49A, 49B and 49C of the Act, including the legal tests set out in section 49(2).

²² Section 67(8) of the Act.

²³ Section 67(5) of the Act.

²⁴ Section 67(7) of the Act.

person is provided with a broadband universal service do not require them to pay any amount relating to an unnecessary additional service.²⁵

- 2.30 We can only set universal service conditions where we are satisfied that these conditions are:
- a) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which they relate;
 - b) not unduly discriminatory against particular persons or against a particular description of persons;
 - c) proportionate to what they are intended to achieve; and
 - d) transparent in relation to what they are intended to achieve.²⁶
- 2.31 As explained in Sections 6 to 9 of this document, in light of stakeholder comments and our further work, we set out our proposals on the scope and specifications of the obligations which would be imposed on the proposed Universal Service Providers. We also explain how our proposals meet the above legal tests.
- 2.32 The Universal Service Providers will be required to comply with the regulatory obligations which are imposed in the Universal Service Conditions. If we have evidence which suggests that a Universal Service Provider may not be complying with one or more of its regulatory obligations, we will consider taking enforcement action. In this situation, we would consider all the relevant factors, including the risk of consumer harm arising from the alleged conduct, and any reasons for the failure to comply with the relevant obligations before deciding on the appropriate action to take.

Funding

- 2.33 The framework applicable to funding of the universal service operates on the principle that the universal service should be cost neutral for the Universal Service Providers, i.e. the Universal Service Providers should not have a cost advantage or disadvantage from delivering the universal service.
- 2.34 The Universal Service Directive and the Act establish the following key funding principles.
- a) Only the net cost of providing the universal service (i.e. net of any direct and indirect benefits) can be compensated. We consider that it is the responsibility of the Universal Service Provider in the first instance to submit a calculation of its net costs to Ofcom and explain why it considers such net costs amount to an unfair burden. It will also need to be demonstrated that the costs incurred in providing connections to meet the technical specification of the universal service were efficient.

²⁵ Section 68(3) of the Act.

²⁶ Section 47(2) of the Act.

- b) For a net cost to be compensated, we must decide that it is an unfair burden on the Universal Service Provider. We will therefore review the submitted net cost calculation (including conducting an audit of the costs) and consider whether this represented an unfair burden on the Universal Service Provider.
- c) If an unfair net cost burden exists, we are required to establish an industry fund to compensate the Universal Service Provider, including deciding which operators should contribute to it, in accordance with the principles of transparency, least market distortion, non-discrimination and proportionality.
- d) Compensation from an industry fund occurs retrospectively and may only cover the unfair burden which has been incurred i.e. each Universal Service Provider must bear the upfront costs of delivering the universal service and cannot be provided with funds in advance of network infrastructure deployment. There will therefore be a delay between the Universal Service Providers incurring upfront capital expenditure to build broadband connections and any payments first being made to the Universal Service Providers.

2.35 In this document we have not set out the detailed rules that would apply to funding of the universal service. As set out in Section 10, we expect to consult on funding regulations in summer 2019 but we will review this position and provide an update at the time we publish our statement. Funding regulations will need to contain:

- a) procedures setting out how applications by the Universal Service Provider in respect of the net cost burden should be made;
- b) procedures setting out how Ofcom will determine such applications (i.e. procedures for verification of the net cost and for consideration of whether or not the net cost represents an unfair burden on the Universal Service Provider, and if so, the extent of that unfair burden); and
- c) provisions specifying how a fund would operate in the event that Ofcom determined that there was an unfair burden on the Universal Service Provider (i.e. who would contribute and in what proportions; and how funds would be collected and distributed).

Ofcom's duties

2.36 In addition to the statutory requirements and legal tests set out above, in fulfilling our role under the legislation in respect of the implementation of the Order, we must have regard to our duties under the Act. In particular, we must consider our principal duty to further the interests of citizens in relation to communications matters and the interests of consumers in relevant markets, where appropriate by promoting competition.²⁷

²⁷ Section 3(1) of the Act.

- 2.37 We must also act in accordance with the six Community requirements of which the following appear particularly relevant:
- a) promoting the interests of all EU citizens; and
 - b) carrying out our functions in a manner which, as far as practicable, does not favour one form of network, communications service or associated facility; or one means of providing or making available such a network, service or facility.

Procedural requirements

- 2.38 This consultation ensures that the proposed Universal Service Providers and other stakeholders have an opportunity to comment on the following:
- a) the proposed designations in accordance with Regulation 3(2) of the 2018 Designation Regulations; and
 - b) the proposed universal service conditions in accordance with section 48A of the Act.²⁸
- 2.39 Once we have considered consultation responses and made modifications that appear appropriate to us in light of these comments, we will notify a draft statement to the European Commission, BEREC and the regulatory authorities in every other member state in accordance with section 48B of the Act. This draft statement will contain our intended measures in respect of the designation and universal service conditions and set out the reasons for those measures. We aim to publish and notify this draft statement by early summer 2019.
- 2.40 In accordance with section 48B(3) of the Act, the European Commission, BEREC and the regulatory authorities in any other member state may then submit comments on the intended universal service conditions within the period of one month from the date of our notification.

Impact assessment

- 2.41 The analysis presented in this document constitutes an impact assessment as defined in section 7 of the Act.
- 2.42 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 means that generally we have to carry out impact assessments where our proposals would be likely to have a significant effect on businesses or the general public, or when there is

²⁸ We are also sending a copy of the notification of our proposals set out at Annex 6, together with this consultation document, to the Secretary of State in accordance with section 48C(1) of the Act.

a major change in our activities. However, as a matter of policy, we are committed to carrying out impact assessments in relation to the great majority of our policy decisions.²⁹

Equality impact assessment

- 2.43 Ofcom is separately required by statute to assess the potential impact of all our functions, policies, projects and practices on race, disability and gender equality. Equality Impact Assessments (“EIAs”) also assist us in making sure that we are meeting our principal duty of furthering the interests of citizens and consumers regardless of their background or identity.
- 2.44 It is not apparent to us that the proposals set out in this consultation are likely to have any particular impact on race, disability and gender equality. Specifically, we do not envisage the impact of any outcome to be to the detriment of any group of society. Nor do we envisage any need to carry out separate EIAs in relation to race or gender equality or equality schemes under the Northern Ireland and Disability Equality Schemes. This is because our implementation of the Order seeks to ensure that all consumers, irrespective of their race, disability, gender, income or the part of the UK they live in, can benefit from the broadband universal service if they meet the eligibility criteria specified in the Order.

Rest of this document

- 2.45 The rest of this document is structured as follows:
- **Section 3** provides our latest estimate of premises that cannot receive a broadband service with a download sync speed of 10Mbit/s and an upload sync speed of 1Mbit/s, the progress of publicly-funded programmes and developments in broadband technologies;
 - **Section 4** sets out the responses to the September 2018 consultation and our decision on the designation regulations;
 - **Section 5** sets out which telecoms providers we propose to designate as Universal Service Providers and the assessment we undertook to inform this proposal;
 - **Section 6** sets out the proposed obligations we will impose on the Universal Service Providers on how they will establish eligibility for the broadband USO;
 - **Section 7** sets out the proposed obligations we will impose on the Universal Service Providers on delivering the universal service connections, including delivery connection timeframes;

²⁹ For further information about our approach to impact assessments, see the guidelines, *Better policy-making: Ofcom’s approach to Impact Assessment*.

<https://www.ofcom.org.uk/consultations-and-statements/better-policy-making-ofcoms-approach-to-impact-assessment>

- **Section 8** sets out the proposed obligations we will impose on the Universal Service Providers in respect of pricing, quality of service and complaints handling;
- **Section 9** sets out proposed obligations on performance reporting and maintaining records; and
- **Section 10** sets out the proposed implementation period for the USO, our consultation on funding and next steps.

3. Market context for the implementation of the broadband universal service

- 3.1 The number of premises that could benefit from the introduction of the broadband universal service is sizeable but continues to fall. In this section we set out our latest estimate of the number of premises unable to access 10Mbit/s download and 1Mbit/s upload sync speeds. We also outline plans for publicly-funded rollout to deliver superfast broadband, which will result in the USO footprint decreasing further. In addition, developments in broadband technologies, specifically fixed wireless services, could have a greater impact still on the number of premises that can access decent, affordable broadband.
- 3.2 We expect that some premises that do not have access to decent broadband, will not be eligible for a USO service on the basis that they are likely to be too expensive to connect. The Government has set, as one of a number of its eligibility criteria, a limit of £3,400 for the cost of each connection. Consumers in this situation will have the choice to 1) pay the excess costs of installing a connection that meets the USO technical specification, 2) use an alternative technology, such as commercially available satellite broadband outside the USO scheme or 3) maintain their existing service that will deliver a lower technical specification than the USO.

Number of premises that could benefit from the USO

- 3.3 The estimated number of premises that cannot receive a 10Mbit/s download and 1Mbit/s upload broadband service has fallen in recent years, from 15% in 2014³⁰ down to 6% in 2016³¹ and 3% in May 2018.³² This improvement is largely due to commercial and publicly-funded rollout programmes to deliver superfast broadband (which we define as 30Mbit/s download speeds or higher), which is now available to 93% of UK premises.³³

³⁰ Ofcom, December 2014. *Infrastructure Report 2014*, page 2. This figure represents 15% of UK households cannot receive 10Mbit/s.

https://www.ofcom.org.uk/data/assets/pdf_file/0011/46010/infrastructure-14.pdf

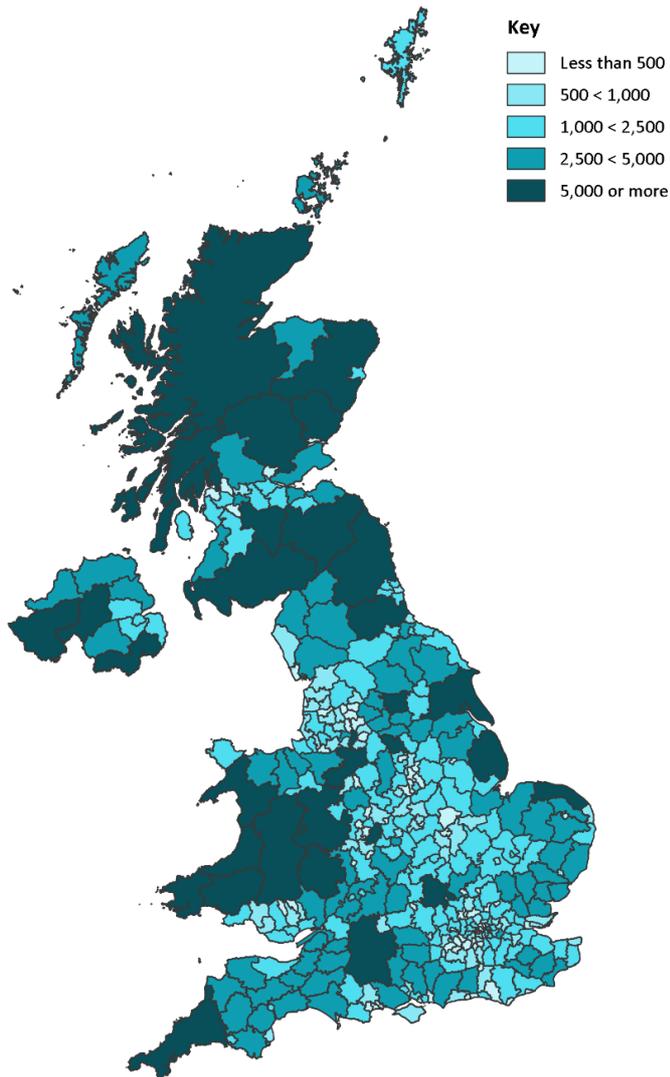
³¹ Ofcom, December 2017. *Connected Nations Report 2017*, Figure 2.

https://www.ofcom.org.uk/data/assets/pdf_file/0024/108843/summary-report-connected-nations-2017.pdf

³² As of May 2018. See Ofcom, October 2018. *Connected Nations Update*, page 9. The *Connected Nations Report 2018*, due to be published later this month, will reflect the latest estimates of the number of premises that cannot receive 10Mbit/s download and 1Mbit/s upload sync speeds. All *Connected Nations* reports and updates are available here: <https://www.ofcom.org.uk/research-and-data/multi-sector-research/infrastructure-research>

³³ As of May 2018. See Ofcom, October 2018, *Connected Nations Update*, page 9.

Figure 1: Number of premises unable to receive 10Mbit/s download and 1Mbit/s upload sync speeds by local authority (May 2018)³⁴



Source: Connected Nations, data as at 1 May 2018

- 3.4 However, this still leaves around 860,000 premises that cannot currently receive broadband that meets the USO technical specification. A greater proportion of premises in Northern Ireland, Scotland and Wales are unable to receive broadband that meets the USO specification, principally because these nations are more rural than England.
- 3.5 The table below shows our estimates for the number of premises unable to access broadband services with a download sync speed of 10Mbit/s and an upload sync speed of 1Mbit/s, and Figure 1 shows the distribution of these premises across the UK.

³⁴ To district and unitary level.

Table 1: Premises unable to receive 10Mbit/s download and 1Mbit/s upload sync speeds (May 2018)³⁵

	UK	England	Northern Ireland	Scotland	Wales
Percentage of premises	3%	3%	6%	5%	4%
Number of premises	860,000	627,000	47,000	131,000	61,000

3.6 As commercial and publicly-funded network rollout continues, we expect the number of eligible premises to fall further by the time consumers and businesses can request a service under the USO. In our December 2016 technical advice to Government, we estimated that the number of USO eligible premises could be around 600,000 by the early 2020s.³⁶

Publicly-funded rollout programmes

3.7 The Government has specified a number of eligibility criteria that determine whether a premises can receive a connection under the USO as set out in Section 2 of this document. Premises that are due to be able to access a USO level broadband connection and service as the result of a publicly-funded rollout scheme within a year of their USO request are not eligible for the USO.

3.8 In Section 6, we explain how we intend to gather information from network providers who are responsible for delivering public rollout programmes about the premises that are due to be covered by the different rollout schemes, and how we propose to share this information with the Universal Service Providers to support the eligibility checking process for the USO.

3.9 Below we set out the status of existing public rollout schemes which we expect will continue to reduce the footprint of the USO.

Future Telecoms Infrastructure Review

3.10 In July 2018, the UK Government published its Future Telecoms Infrastructure Review,³⁷ in which it set out how it would support its ambition for the UK to become a

³⁵ Figures rounded to the nearest thousand. See Ofcom, October 2018. [Connected Nations Update](#), section 1. We will publish updated estimates of the number of premises unable to receive 10Mbit/s download and 1Mbit/s upload sync speeds in our annual Connected Nations Report 2018 later this month.

³⁶ Ofcom, December 2016. [Technical Advice to Government](#), Figure 4.4.

³⁷ DCMS, July 2018. [Future Telecoms Infrastructure Review](#).

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/732496/Future_Telecoms_Infrastructure_Review.pdf

world leader in digital connectivity. Part of its approach is to pursue an “outside in” strategy to support the deployment of full-fibre to ensure that no areas are systematically left behind. It also noted that the Government and Ofcom will consider further how fibre deployment can complement existing programmes, including the right to request the USO from 2020 to maximise investment in full-fibre.

- 3.11 As part of the Autumn 2018 Budget, it was announced that £200m would be made available to fund full-fibre rollout in the hardest to reach areas across the UK. The Government has announced the £200m will enable trial models for local hubs in rural areas, starting with primary schools, alongside a voucher scheme for funding full-fibre connectivity to nearby premises. We will continue to engage with the Department for Digital, Culture, Media and Sport (“DCMS”) as this programme develops.

Broadband Delivery UK (“BDUK”)

- 3.12 BDUK is part of DCMS, and is responsible for delivering download speeds of at least 24Mbit/s through its Superfast programme and its Local Full Fibre Networks programme aims to stimulate commercial investment in full-fibre networks across the UK.³⁸ By March 2018, BDUK had made 24Mbit/s broadband available to over 4.8 million premises, with net grants from DCMS totaling around £600 million.³⁹ BDUK has already helped the Government achieve its aim of 24Mbit/s coverage for 95% of the UK,⁴⁰ and estimates that by 2020 this coverage will be extended to at least a further 2% of UK homes and businesses.⁴¹

Reaching 100% programme (R100) in Scotland

- 3.13 The Scottish Government has committed to extending the availability of superfast broadband to 100% of premises in Scotland through its Reaching 100% Programme. The Scottish Government has said the programme is designed to maximise competition whilst delivering new future-proofed fibre infrastructure in some of the most challenging geographies in the UK. The Scottish Government has committed £600 million to the first phase of procurement (of which £21 million is from the UK Government) with contracts expected to be awarded in 2019.

³⁸ The UK Government defines superfast broadband as download speeds of above 24Mbit/s.

³⁹ DCMS, March 2018. *Broadband Performance Indicator*.

<https://www.gov.uk/government/collections/broadband-performance-indicators>

⁴⁰ DCMS stated that this was achieved in December 2017.

<https://www.gov.uk/government/news/superfast-broadband-now-available-to-more-than-19-out-of-20-uk-homes-and-businesses>

⁴¹ DCMS, *A new broadband Universal Service Obligation: Government’s response to consultation on design*, page 7.

Superfast Cymru programme in Wales

- 3.14 The Welsh Government has announced that BT (Openreach) has won two of the three lots of the new Phase 2 Superfast Cymru programme. This will initially provide access to fast broadband to 16,000 premises by March 2021 in North Wales (Lot 1), the South West and in the Valleys (Lot 3). The majority of these premises will be served by FTTP connections including all premises in Lot 3. The Welsh Government continues to evaluate tenders for the Lot 2 covering East Wales.⁴²
- 3.15 The other two elements in the Welsh Government's approach include the Access Broadband Cymru (which provides financial assistance for individual connections) and the community support approach which is still in development. The Welsh Government has committed to invest more than £90 million to deliver 30Mbit/s services or above through a combination of these supply side, voucher and community measures.

Northern Ireland's Programme for Government

- 3.16 Northern Ireland's draft Programme for Government has a target to improve access to broadband services with download speeds of at least 30Mbit/s. The £150 million broadband funding under the Confidence and Supply Agreement with the UK Government offers the Department for the Economy the potential to build on achievements to date. This includes the Department for the Economy's Superfast Rollout Programme, which completed in September 2018 and has brought services of at least 24Mbit/s to around 42,000 additional premises.

Developments in broadband technologies

- 3.17 The Government specified that only premises unable to access a service that meets the following technical specification will be eligible to receive a USO connection:
- a) download sync speed of at least 10 megabits per second;
 - b) an upload sync speed of at least 1 megabit per second;
 - c) a contention ratio of no higher than 50:1;
 - d) latency which is capable of allowing the end-user to make and receive voice calls over the connection effectively;
 - e) the capability to allow data usage of at least 100 gigabytes per month.

⁴² Welsh Government, Press Notice, 23 October 2018. *Next Faster Broadband steps outlined.*
<https://gov.wales/newsroom/science-and-technology/2018/59926094/?lang=en>

Technologies that meet the technical specification

- 3.18 In our 2016 technical advice to Government, we assessed the capability of different technologies to meet a range of potential USO technical specifications, one of which was the technical specification that the Government set out in the Order.⁴³ We consider that our 2016 assessment continues to reflect our views on the capabilities of different technologies. Below we explain our assessment of the capabilities of fibre-based and fixed wireless solutions as well as other technologies capable of meeting the technical specification.
- 3.19 We consider that both Fibre to the Premises (“FTTP”), which delivers fibre directly to the customer’s premises, and Fibre to the Cabinet (“FTTC”), which delivers fibre to the street cabinet and then serves the customer’s premises through a copper line, are able to meet all aspects of the technical specification in the Order.
- 3.20 We consider that fixed wireless and mobile network wireless technologies, operating between two or more fixed points, are capable of meeting the specification in the Order. However, the bandwidth offered by an individual mast may be limited by the amount of spectrum available and because this bandwidth is typically shared by several users. This could either cause the speed of connections to drop in busy periods (leading to poorer quality of experience as the number of customers or committed data rate increases) or require more masts to be built (with cost implications). We explain below the developments in fixed wireless technologies since our 2016 technical advice and, as a result, its potential to play a larger role in delivering decent broadband in the UK.
- 3.21 We had concerns at the time of our 2016 technical advice that available services using geostationary satellites would not meet the latency tolerances due to the distances involved in transmission of signals to and from the satellites. We noted that delays may not be an issue for some internet services, such as email and streaming video, but could be significant for real-time and interactive services such as video calling and gaming.
- 3.22 In 2016, we noted that capacity available from existing satellites was insufficient to meet USO needs. This was based on our estimate that it would take ten geostationary high throughput satellites using the widest bandwidth available to provide just 0.7% of UK premises with 10Mbit/s broadband.⁴⁴ We understand that available satellite capacity is likely to increase from 2020 as several major satellite operators are launching new satellites with a footprint over the UK.
- 3.23 In our 2016 technical advice, we recognised that other technologies, such as TV white space and low-earth orbital satellite, could be used for the delivery of decent broadband in future. There remains a level of uncertainty around providers using TV

⁴³ Ofcom, December 2016. [Technical Advice to Government](#), section 7.

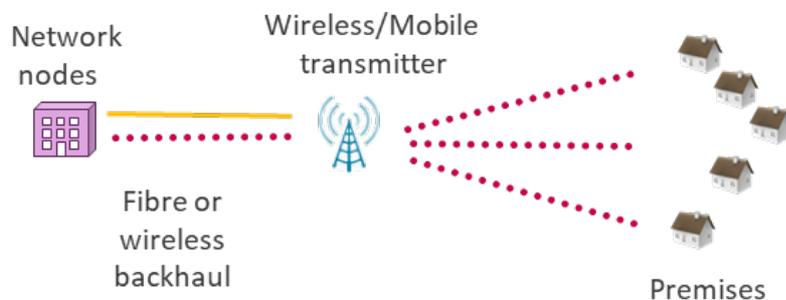
⁴⁴ Ofcom, December 2016. [Technical Advice to Government](#), Annex 4. This was modelled for satellites in the Ka band, based on a 20:1 contention ratio and assuming some capacity is used for aircraft and ships.

white space being able to consistently access the required spectrum and therefore effectively deliver the technical specification of the USO at all times. Low-earth orbital satellites services remain unavailable but may be able to deliver fixed broadband services in the UK in coming years, and are then more likely to meet the technical specification of the USO. We will continue to monitor this closely.

Developments in fixed wireless broadband services

- 3.24 There have been significant developments to fixed wireless broadband services in recent years. These developments mean these technologies could potentially provide access to decent broadband to a significant number of premises relatively easily and inexpensively. Below we explain these technologies, how they provide broadband services to consumers, and the work we have underway to monitor their effectiveness at meeting the technical specification of the USO.
- 3.25 Fixed wireless technologies use a range of different spectrum bands to provide broadband connectivity. These technologies avoid the cost of the installation of a wired connection to each individual premises. Instead, the service to the premises is provided over a wireless connection, as shown in Figure 2. This connection can be shared with an existing mobile network, i.e. the mobile transmitter providing broadband services is part of an existing mobile network, or it can be a network with dedicated spectrum serving fixed wireless broadband users only.

Figure 2: Fixed wireless connection



- 3.26 The most common models use either licence-exempt and light licensed spectrum or spectrum used by mobile networks. The majority of fixed wireless providers in the UK mainly operate in the 5 GHz bands that are shared with other services to deliver a service using line-of-sight, although some can provide non-line-of-sight with TV white space and mobile technologies using licensed spectrum.
- 3.27 We have engaged with fixed wireless providers to understand how their networks operate and perform when compared to traditional fixed wired broadband providers, the services consumers can typically expect to receive, and the types of speeds and packages available.
- 3.28 We believe there are well over 100 small wireless Internet Service Providers (WISPs) in the UK. We have asked these providers to supply us with details of their network and

services as part of the Connected Nations data collection process.⁴⁵ Results of this analysis will be published in our Connected Nations report due to be published later this month.

- 3.29 Fixed wireless services can also be provided using mobile technology. In February this year, BT/EE launched a 4G home broadband router, delivering fixed wireless access using mobile spectrum. The EE 4G home broadband service has packages with comparable pricing and data caps to fixed wired broadband packages.
- 3.30 BT has indicated that their existing EE 4G network delivers high speeds, low latency and data throughput capabilities that meet or exceed the technical specification of the USO. BT has reported that the average download speed for this service is 31Mbit/s with speeds of 100Mbit/s achieved in trials in the Cumbrian Northern Fells.⁴⁶ This suggests that it could be a cost-effective alternative to fixed wired broadband services, particularly in rural areas where there are likely to be a higher number of premises that cannot get a service that meets the USO technical specification.
- 3.31 BT has suggested that its fixed wireless coverage could substantially reduce the USO footprint, and it has estimated that by early 2020 the footprint would be down to 150k premises as a result of this product.⁴⁷
- 3.32 We are working with BT to conduct measurements and gather more information on the performance of the broadband services received by its current fixed wireless customers to understand its capabilities of meeting the technical specification of the USO. We are planning to conduct these tests over winter 2018/19 and expect the results to inform our consideration of whether this technology can provide a decent broadband service that meets the technical specification.
- 3.33 Fixed wireless services using mobile technology are also available from Relish (who are owned by Three). These services are only currently deployed in London, Swindon and Reading, and are primarily deployed on their 3.5 and 3.6 GHz bands. Relish state average speeds of 20Mbit/s on their LTE-enabled plug and play hub. Although Relish does not guarantee any minimum speed, all packages include unlimited data usage. Recently, Three announced that it is planning to launch a 5G wireless home broadband service in the second half of 2019, which it expects will be able to deliver download speeds of 80-100Mbit/s.⁴⁸

⁴⁵ Ofcom publishes an annual update focusing on coverage and performance of UK's fixed broadband and mobile networks within its Connected Nations report. In addition to the annual report, we publish two smaller updates a year, which focus on the key changes in coverage since our last report.

<https://www.ofcom.org.uk/research-and-data/multi-sector-research/infrastructure-research>

⁴⁶ BT response to the June 2018 document, pages 10-11.

⁴⁷ BT response to the June 2018 document, page 14.

⁴⁸ Three, Press Notice, 20 November 2018. *5G home broadband predicted to double internet speeds.*

<http://www.threemediacentre.co.uk/news/2018/5g-wireless-home-broadband-predicted-to-double-internet-speeds-for-uk-households.aspx>

Delivering the broadband universal service

- 3.34 We are also engaging with other mobile operators to understand any plans they have to develop fixed wireless products, and the potential for this technology to reduce the USO footprint.

4. Our approach to designation

Primary objectives

- 4.1 We set out in Section 2 the regulatory framework for our implementation of the Universal Service Order and that our primary objectives in fulfilling our duties under the Act are to:
- a) deliver the broadband universal service as quickly as possible, so consumers benefit as soon as possible;
 - b) ensure that any designated provider can deliver services that meet the specifications; and
 - c) ensure the cost of delivery, and therefore impact on industry and consumers, are minimised.

Assessment of designation approaches

- 4.2 In our September 2018 consultation, we set out the three designation approaches that we identified as being potential options for designating the Universal Service Provider(s).
- **Auction process** – Ofcom would define lots (i.e. the number of premises, the specification, quality parameters etc.) prior to the auction. Providers would then submit bids to deliver some, or all, of these lots. The lowest cost bidder would be designated as the Universal Service Provider for each lot. The winning bid would determine the terms of supply.
 - **Procurement process** – providers would submit bids which would be evaluated against a pre-determined set of criteria, including the cost to deliver the USO. Ofcom would assess submissions against the criteria and designate the provider that most effectively meets them. As with an auction the winning bid would determine the terms of supply.
 - **Direct Designation** – we would assess potential Universal Service Provider(s) against our overall objectives to determine which provider(s) to designate, and on what basis. Funding arrangements would then be determined at a later date if the Universal Service Provider(s) faces an unfair net cost burden.
- 4.3 In our September 2018 consultation, we explained that we believed an auction would not be appropriate, either on a national or sub-national basis. Our reasons were as follows.

- An auction requires a clear definition of the rights and obligations being bid for, which we will not have until the USO comes into effect.⁴⁹ There is also a possibility that the winning bid (lowest subsidy bid) could be one which involved services being offered to consumers at a very high price (potentially conflicting with the aim of affordable USO services).⁵⁰ Furthermore, a winning bid which minimised the subsidy through being low cost might be one which compromised on network rollout (e.g. speed or quality of delivery) or subsequent service provision (e.g. making the delivery of at least 10Mbps at all times less likely or delivering lower quality customer support).
- An effective auction process requires there to be sufficient competition between potential providers to drive bids down to the efficient cost of delivering the USO. No provider (other than BT) has indicated that it would be prepared to be designated on a national basis. Even if we were to conduct an auction on a sub-national basis, there is only one Local Authority in which we have received more than two expressions of interest, while large areas of the country have attracted no expressions of interest. We considered that it is unlikely that an auction process involving just two bidders would be sufficient to reveal the efficient costs of delivering the USO.
- Auctions are further complicated when the rights and obligations being awarded have synergies between them. For example, sub-national lots are likely to have complementarities between them because of common costs in network deployment or operation. As such a bid in one area may be contingent on being awarded an adjacent area, for example. This can lead to risks of stranding – i.e. winning bidders being left with an area to serve at a price which was only viable if they were awarded adjacent areas. Whilst auctions can be designed to mitigate these risks, this adds complexity to the process.

4.4 We also considered the merit of carrying out a procurement exercise to select the preferred provider of the USO. We considered that an effective procurement process also relies to some extent on rivalry between bidders. We did not consider that a procurement approach would deliver benefits over direct designation, but we identified a number of advantages to a direct designation approach.

4.5 First, we considered that direct designation can be achieved more quickly than running a procurement exercise. Second, under a procurement process, we would be likely to have to revert to a direct designation approach if a provider withdrew. Third, a direct designation approach also provides the flexibility to take account of various uncertainties that may arise during our USO implementation process, rather than requiring us to specify the terms of procurement in a way which provides for all possible eventualities. It also allows us to carry out an ex-post assessment of the

⁴⁹ In particular, we are unlikely to have clarity on the precise number and location of USO eligible premises.

⁵⁰ By lowest subsidy bid we mean the lowest bid for USO funds.

actual net cost burden falling to the Universal Service Provider(s), which is highly uncertain at the point of designation.

- 4.6 In light of the advantages of a direct designation approach and assessing each approach against our primary objectives, we considered that a direct designation approach was more likely to meet these objectives, particularly with regard to the speed of delivery and in light of the need for flexibility given the uncertainties which remained.
- 4.7 In our September 2018 consultation, we also considered the representations to our June 2018 document that specifically addressed the designation process, and took account of the total number of interested providers for the purpose of assessing whether enough providers had come forward in order to make a competitive process a viable option.⁵¹ Having considered these responses, we explained that given the number and nature of representations made, a competitive process was unlikely to best meet our objectives in this case. We proposed that a direct designation process was the most appropriate approach to secure our objectives and sought views from stakeholders on this proposal.

Designation Regulations

- 4.8 Having proposed that we would proceed on a direct designation basis, in our September 2018 consultation, we consulted on a set of draft regulations which set out the process by which providers would be designated, which Ofcom has the power to make under section 66(1) of the Act (the “2018 Designation Regulations”).
- 4.9 We explained that those regulations must:
- not authorise the designation of a person other than a communications provider⁵²;
 - include provision as to the procedure to be followed in the case of a review of designations; and
 - 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.
- 4.10 The procedure set out in the regulations must be one which appears to Ofcom to be:
- efficient, objective and transparent; and
 - not to involve, or to tend to give rise to, any undue discrimination against any person or description of persons.
- 4.11 We considered the draft regulations set out a procedure fulfilling the requirements under section(1) of the Act. We invited stakeholder responses on these regulations.

⁵¹ Ofcom, June 2018 document, paragraphs 2.10 – 2.20.

⁵² Except in respect of conditions relating to directories and directory enquiry services.

Responses to our September 2018 consultation

- 4.12 BT, Bulb Technologies, Broadband Speedchecker, CityFibre, Broadway Partners, Methera Global, the Space Growth Partnership and an individual respondent all agreed with our proposal for a direct designation approach.⁵³ However, Airband recommended a regionalised approach to the USO, and suggested that a competitive tender process would identify the best solution for each region.⁵⁴
- 4.13 The Space Growth Partnership noted that it only preferred direct designation if the future Universal Service Provider(s) have valid plans to deliver ‘complete ubiquity’ to avoid the risk of the most difficult households to connect having to wait many years to receive a decent broadband service.⁵⁵
- 4.14 An individual respondent agreed that the market is not sufficiently competitive to allow for a tender process.
- 4.15 CityFibre agreed with our view that a competitive tender process such as an auction would be inappropriate and result in the possibility that the winning bid could be one which offered services to consumers at a very high price. CityFibre also supported Ofcom’s assessment that a winning bid which minimised the subsidy from a fund through being low cost might be one which compromised on network rollout.⁵⁶
- 4.16 CityFibre did however express concern that Ofcom is unilaterally nominating and mandating a communications provider to be a Universal Service Provider(s) and suggested amendments to the Order. CityFibre proposed amending Regulation 4(1) of the draft regulations to require that Ofcom designate a Universal Service Provider(s) only where a provider has volunteered themselves in a separate formal submission to Ofcom.⁵⁷
- 4.17 The BiT Commons commented that the delivery of the USO should be aligned with existing BDUK activity, and that isolating the designation process will also risk BDUK’s agenda in respect of full-fibre and asked for further detail around the designation and its pre-conditions.⁵⁸

Our decision on the designation regulations

- 4.18 Having considered the responses outlined above, we continue to be of the view that we outlined in our September 2018 consultation that direct designation is the most appropriate approach for designating a universal service provider.

⁵³ Matthew Custance responded to the September 2018 consultation as an individual rather than on behalf of an organisation and is referred to here as ‘an individual respondent’.

⁵⁴ Airband response to September 2018 consultation, page 3.

⁵⁵ The Space Growth Partnership response to September 2018 consultation, page 1.

⁵⁶ CityFibre response to September 2018 consultation, page 10.

⁵⁷ CityFibre response to September 2018 consultation, page 11.

⁵⁸ BiT Commons is a consultancy providing advice on broadband networks. The BiT Commons response to September 2018 consultation, page 1.

- 4.19 We consider that a direct designation approach is most likely to meet our primary objectives, particularly with regard to the speed of delivery. Further, direct designation provides the flexibility to take account of the various uncertainties associated with USO implementation, such as the number and location of premises which will remain eligible for the USO by the time it comes into effect.
- 4.20 As outlined above, we believe that a competitive process in the form of an auction would not be appropriate, as supported by stakeholders in their responses to the September 2018 consultation.
- 4.21 We address BT's comments on the content of the draft regulations below.
- 4.22 In summary, having carefully considered all of the consultation responses, we have decided to adopt the direct designation approach and to implement this in line with the statutory framework. We have therefore made The Electronic Communications (Universal Service) Regulations 2018 setting out the process by which providers will be designated. These Regulations are included in this document as Annex 5.

BT comments on the drafting of the 2018 Designation Regulations

- 4.23 BT stated that the draft designation regulations should be amended to require the notification proposing the designation of a Universal Service Provider to also set out the proposed conditions that Ofcom would impose on the designated Universal Service Provider. BT argued that this should be made mandatory, which in its view would allow the proposed designated Universal Service Provider, and potential alternative Universal Service Provider, to consider such conditions when making representations on the notification.⁵⁹
- 4.24 In making the 2018 Designation Regulations, Ofcom is exercising its power under section 66(1) of the Act, which allows Ofcom to designate a person or persons to whom universal service conditions are to be applicable.
- 4.25 This power does not depend, nor is it conditional, on universal service conditions having been set or proposed to be set. The power to set universal service conditions is provided for under sections 45 to 48C and 67 of the Act. BT suggested an amendment which would create a legal obligation making the designation of a Universal Service Provider(s) conditional on the setting of universal service conditions, which is not provided for by the Act.
- 4.26 We believe that the two processes are in principle independent of each other and should not be tied. We also consider it would risk leading to procedural obstacles and inefficiencies by tying together the timeframes for designation of a Universal Service Provider(s) and setting the universal service conditions. Therefore, we have decided to remove Regulation 4(3) of the draft designation regulations. In any event, in this case, we have decided that it is appropriate to consult on both the proposed designation

⁵⁹ BT response to September 2018 consultation, page 2.

and universal service conditions at the same time and our proposals on the universal service conditions are set out in later sections of this document.

- 4.27 BT also asked for clarification on the implication of the proposed revocation of the Electronic Communications (Universal Service) Regulations 2003 (the “2003 Regulations”), and the application of the 2018 Designation Regulations to all future and past Universal Service Provider designations. BT argued that the proposed draft designation regulations omitted references to relevant EU legislation. BT considered it important that Ofcom, in its final statement, reaffirms that policy objectives and regulatory principles set out in EU legislation remain core to its designation process and conditions imposed under s66(1) of the Act. BT also asked Ofcom to reintroduce provisions ensuring due process, which it considered had been omitted from the revoked regulations.⁶⁰
- 4.28 In light of BT’s comments, and upon reflection, we have decided not to revoke the 2003 Regulations as this may lead to confusion regarding the applicability of the two sets of regulations. Instead, the 2018 Designation Regulations will only apply to Ofcom’s designation of Universal Service Provider(s) for the purpose of securing the Universal Service as set by the Order. The 2003 Regulations will therefore remain in force.
- 4.29 The 2003 Regulations were issued before the entry into force of the Act and therefore included references to the principles and duties to be adhered to by Ofcom in making a designation as set out in the Universal Service Directive. Those principles and duties are now reflected in the Act, which gives Ofcom the power to make the Designation Regulations. Accordingly, the references to the Universal Service Directive that appeared in the 2003 Regulations are not needed in the 2018 Designation Regulations, since the Act is now in force.

⁶⁰ BT response to September 2018 consultation, page 2.

5. Designation proposals

Introduction

- 5.1 In the previous section we have set out our decision that direct designation most effectively meets our primary objectives and have therefore made The Electronic Communications (Universal Service) Regulations 2018 setting out the process by which providers will be designated.
- 5.2 In this section, we set out our proposals for designation, made pursuant to the 2018 Designation Regulations.

Primary objectives

- 5.3 We set out in Section 2 the regulatory framework for our implementation of the Order and that our primary objectives in fulfilling our duties under the Act are to:
- a) deliver the broadband universal service as quickly as possible, so consumers benefit as soon as possible;
 - b) ensure that any designated provider can deliver services that meet the specifications; and
 - c) ensure the cost of delivery, and therefore impact on industry and consumers, are minimised.

The June 2018 document

- 5.4 In our June 2018 document, we set out that existing UK network infrastructure means that the majority of USO eligible premises⁶¹ will be either already connected to BT's copper network or will be in areas where BT's network is present, except in Hull, where KCOM has an extensive presence.⁶² BT and KCOM are therefore able to incrementally expand and upgrade existing network infrastructure more easily than alternative providers.
- 5.5 We explained that designating BT and KCOM as Universal Service Providers for the broadband universal service may therefore be the quickest and most efficient means of ensuring that consumers are able to request and receive USO services at the earliest opportunity. In addition, we noted that designating BT and KCOM on a national basis may simplify the process for consumers (as they will not need to check

⁶¹ See paragraph 3.4 on eligibility criteria for a USO connection of our June 2018 document.

⁶² For historic reasons, KCOM has by far the most extensive telecoms network in Hull. The 'Hull Area' refers to the area where KCOM operates as the incumbent and consists of the Kingston upon Hull City Council area and some parts of the East Riding of Yorkshire Council area. Hull is counted as a separate market to the rest of the UK in our market reviews.

which Universal Service Provider serves their area) and enable more efficient delivery of the USO due to economies of scale.

- 5.6 We recognised, however, that alternative providers which operate networks on a national or sub-national scale may be able to deliver the USO quickly and efficiently and should also be considered. We decided we could not make a full assessment of which providers would be the most appropriate to designate without assessing whether there was interest in delivering the USO from alternative providers, and how they would approach delivery. In our June 2018 document, we were keen to understand whether there was interest in delivering the USO from any alternative providers and whether this was on a national or sub-national basis.
- 5.7 We set out that a single local authority area is the smallest geographic unit which might be appropriate for a separate designation if we were to designate on a sub-national basis.⁶³ Local authority boundaries have the advantage of being established, clear and already well understood by consumers and businesses who might request the USO. They are also the smallest unit that has been used to define the boundaries of previous public local broadband interventions.⁶⁴
- 5.8 We also explained that even a single local authority area may be too small if there are very few premises which are eligible for the USO. Consequently, we said that where a local authority currently contains fewer than 5,000 premises which would be eligible for a USO connection⁶⁵, we would expect Universal Service Provider(s) to cover groups of local authorities where the combined number of eligible premises exceeds this threshold.
- 5.9 We encouraged proposals to deliver economies of scale and said that providers wishing to cover the less challenging geographic areas, such as urban centres for instance, should group these with neighbouring local authorities that have more challenging geographies.
- 5.10 We explained that this approach strikes the right balance between giving providers whose networks may be localised the opportunity to participate in delivering the USO on a sub-national basis, while avoiding the potential inefficiencies and administrative complexity associated with designation on a smaller geographic scale.

⁶³ There are different levels of local authority in different parts of the UK. By local authority we mean the ONS definition of local authority districts, of which there are 391 in the UK. Information about different levels of councils in the UK is available here <https://www.gov.uk/understand-how-your-council-works>. A map of council areas in the UK is available at the Office for National Statistics website <http://geoportal1-ons.opendata.arcgis.com/datasets/6df8fba849ba4226a8ec935752c5f195>, along with information about the hierarchy of areas relating to national and local government in the UK. <https://www.ons.gov.uk/methodology/geography/ukgeographies/administrativegeography>

⁶⁴ A map of local broadband projects supported by BDUK is available here: <https://www.google.com/maps/d/viewer?msa=0&mid=1LRA98FE4h14sm3nUm--eIc5Rg3w&ll=53.83956381239401%2C-2.8042599999999993&z=6>

⁶⁵ Based on Ofcom, April 2018, *Connected Nations Update* data. <https://www.ofcom.org.uk/research-and-data/multi-sector-research/infrastructure-research/connected-nations-update-spring-2018>

Responses to our June 2018 document

- 5.11 We asked providers interested in being designated to provide information on:
- a) the geographic areas in which they were interested in being designated as the Universal Service Provider (based on local authority boundaries);
 - b) the way in which they would manage requests for the USO connections, particularly how they would assess eligibility;
 - c) the technology they would use to deliver the USO;
 - d) the timeframes they would have to connect USO premises;
 - e) how they would resource delivery of the USO;
 - f) what quality of service they would offer to USO premises;
 - g) the products and prices they would offer to USO premises;
 - h) how they would handle the potential increase in complaints as a result of USO specific complaints;
 - i) evidence to demonstrate that they have the expertise, capacity and experience to effectively deliver the USO; and
 - j) evidence to demonstrate their ability to effectively finance the delivery of the USO in the geographic areas that they have expressed an interest in, recognising that there will be a lag between network infrastructure build and any cost recovery.
- 5.12 This information was requested to inform our assessment of who to propose to be designated as the Universal Service Provider.
- 5.13 We received 8 expressions of interest in response to this document.⁶⁶ The interested providers were:
- Airband;
 - Bentley Walker;
 - Broadway Partners;
 - BT;
 - Hyperoptic;
 - KCOM;
 - Quickline; and
 - Viasat.

⁶⁶ Airband and Viasat responded after we had published our September 2018 consultation so were not included in the list of interested operators that we published in that document.

Our assessment of expressions of interest

5.14 We issued information requests and engaged with interested providers to further our understanding of how each provider planned to deliver the USO were it to be designated. This was in part to clarify the information provided in response to the June 2018 document, and also to understand whether there was further information that could inform our assessment.

Assessment Criteria

5.15 We shared a set of objective criteria with interested providers which framed our assessment of which provider(s) to propose as Universal Service Provider(s). The criteria were split into two steps.

5.16 The first step included three criteria which we considered necessary for any provider to meet in order to be considered as a Universal Service Provider:

- a) whether the proposed technology that would be used to deliver the service would meet the technical specification set out in the Order;
- b) whether there would be sufficient sources of funding in place to deliver the service; and
- c) the geographic coverage proposed by the applicant.

5.17 If any of the step 1 criteria were not met, we did not progress that provider any further in the assessment process.

5.18 Step 2 of the assessment looked at the applicants:

- a) operational ability and whether it had the ability to build the necessary infrastructure to provide the USO connections;
- b) its ability to deliver service quality;
- c) its proposed pricing for the USO service; and
- d) its ability to manage and resolve customer complaints.

Summary of our assessment

5.19 Having considered each of the providers against the above criteria, we considered that BT, KCOM and Hyperoptic met the step 1 criteria and therefore progressed to step 2 of the process.

5.20 We did not consider that Airband, Bentley Walker, Broadway Partners, Quickline, or Viasat met all the step 1 criteria. We therefore did not progress these providers to step 2 of the assessment. For reasons of commercial confidentiality, we have not provided detail as to the reasons why we considered these companies did not meet the criteria. We have written separately to these companies.

5.21 While Hyperoptic provided evidence to meet the preliminary criteria in step 1, we did not consider that we had sufficient information from Hyperoptic to make a step 2

assessment of its ability to effectively deliver the USO. We engaged further with Hyperoptic, but Hyperoptic subsequently withdrew its interest in being a Universal Service Provider at this time.

- 5.22 In any event, we considered that insufficient information had been provided for us to conclude that Hyperoptic was the best placed provider to deliver the USO in the 13 local authorities it was interested in. Of the providers that expressed an interest in being designated, only BT and KCOM therefore remained.
- 5.23 In making our assessment we have also considered whether there were any other providers, who did not express an interest, but might nonetheless be suitable to propose for designation. We considered the existing UK network infrastructure and that the majority of USO eligible premises will be connected to BT's copper network or will be in areas where BT's network is present, except in Hull, where KCOM has an extensive presence. These two providers are therefore able to incrementally expand and upgrade existing network infrastructure more easily than alternative providers. In the absence of an expression of interest we have no analysis as to how such providers might be better placed to deliver the USO. We therefore did not consider that there were any providers who may be suitable for designation but had not expressed an interest in being a Universal Service Provider.
- 5.24 Below we set out our assessment of BT and KCOM in meeting the assessment criteria which have informed our proposals on designation.

Assessment of BT and KCOM in meeting the step 1 criteria

Proposed technology

- 5.25 We considered whether the provider demonstrated that the technology it proposed to use to deliver the service, in the areas it had identified, would meet the technical specification set out in the Order, and was an efficient means of delivering the USO.
- 5.26 We looked at whether the proposed technology was supported by evidence that showed that it would be deployed in such a way as to meet the specification.
- 5.27 We consider that a range of technologies could be utilised to deliver the USO across the UK. In our 2016 technical advice to Government we assessed the capability of different technologies in meeting a range of potential technical specifications.⁶⁷ As summarised in Section 3 of this document, we consider that our 2016 assessment continues to reflect our views on the capabilities of different technologies. Fibre to the Premises ('FTTP') and Fibre to the Cabinet ('FTTC') technologies would be able to meet all aspects of the technical specification.

⁶⁷ Ofcom, December 2016. [Technical Advice to Government](#), section 7.

- Fixed wireless and mobile network technologies - wireless systems, operating between two or more fixed points - are likely to be capable of delivering the technical specification.
- For satellite technologies, we have concerns that available services using geostationary satellites would not meet the latency tolerances due to the distances involved in transmission of signals to and from the satellites. We also have concerns about satellite capacity and its ability to meet the USO specification.

5.28 We recognise that other technologies, such as TV white space and low-earth orbital satellite, could be used for the delivery of decent broadband in future. There remains a level of uncertainty around providers using TV white space being able to consistently access the required spectrum and therefore effectively deliver the USO specification at all times. Low-earth orbital satellites services remain unavailable but may be able to deliver fixed broadband services in the UK in coming years and are then more likely to meet the technical specification of the USO.

5.29 We used this analysis to inform our assessment of the technologies proposed by providers interested in being a Universal Service Provider.

BT

5.30 BT stated that it would use a mixture of FTTP and FTTC to connect USO premises. In light of our assessment of FTTP and FTTC as outlined above, we considered that BT met this criterion.

KCOM

5.31 KCOM stated that it plans to use FTTP to deliver the USO in the Hull Area. In light of our assessment of FTTP, we considered that KCOM met this criterion.

Sources of funding

5.32 We considered whether prospective Universal Service Providers had demonstrated that they could adequately finance the delivery of the service. We considered the provider's likely capex requirements for USO infrastructure rollout and plans to fund this capex to assess whether the provider has the means to finance the deployment of the USO service to eligible premises. We also considered whether the provider could maintain adequate operation of the service between deployment and any due compensation it may receive for that deployment.⁶⁸

5.33 We looked for evidence that a provider had considered the likely capex needed to deploy to all the eligible premises in the local authorities it was interested in, and had the funds approved specifically for delivering these USO connections.

⁶⁸ The Universal Service Provider will incur the cost of building its network to eligible USO premises but will not receive reimbursement from the USO fund immediately, the provider will therefore need to be able to assume the build costs until it is reimbursed.

5.34 In instances where a provider did not provide sufficient assurances that it had estimated the capex required or had the necessary funding, we made an assessment on the information available to us at the time. We also took account of the level of risk associated with designating a provider where there was uncertainty over their access to funding.

BT

5.35 BT provided evidence that it had modelled the capital expenditure required to deliver the USO. This, coupled with our knowledge of BT's financial situation through our ongoing regulation of BT, provided additional confidence that BT met this criterion.

KCOM

5.36 KCOM stated it has the funds allocated in its business plan to deploy FTTP to every premises in the Hull Area and that the majority would be delivered before the USO comes into effect.

Geographic coverage area proposed by the applicant

5.37 We assessed against a criterion that the proposed geographic coverage area covered more than 5,000 premises in either:

- a) each chosen local authority; or
- b) in contiguous local authorities (i.e. all adjoining local authorities grouped together).

5.38 We also deemed this criterion to be met where the proposed geographic coverage area included more than one non-contiguous local authority which covered significantly more than 5,000 premises in total. We considered whether the high number of premises captured mitigated the risk of customer confusion or administrative inefficiency arising from a coverage footprint that was fragmented across parts of the country. As a result, subject to other criteria being met, we could decide to designate a Universal Service Provider for contiguous and/or non-contiguous local authorities.

BT

5.39 BT stated that it was interested in being designated as the Universal Service Provider for the whole of the UK (excluding the Hull Area), we therefore considered that BT met this criterion.

KCOM

5.40 KCOM stated that it was interested in being the Universal Service Provider in the Hull Area.⁶⁹ The Hull Area has more than 5,000 USO eligible premises so we considered that this met this criterion.

⁶⁹ KCOM response to the June 2018 document, page 1.

Assessment of BT and KCOM in meeting the step 2 criteria

Provider's ability to provide USO connections

- 5.41 These criteria measured a provider's ability to assess consumers' eligibility, process orders and deliver USO connections to consumers within reasonable timescales in the geographic area for which that provider proposes to be designated.
- 5.42 In evaluating these criteria, first we assessed each provider's operational capacity to manage the service from the point of request to delivery of the USO service. This included the provider's ability to process requests and check whether each request is from a consumer eligible to receive the service. To do this we considered what systems the provider proposed to have in place, whether it had sufficient dedicated staff and the necessary technical expertise to manage requests.
- 5.43 Secondly, we assessed each provider's ability to build out the necessary infrastructure to deliver the connection. To do this we considered the provider's access to engineers, its existing network deployment, what planning tools it has for the necessary network build, and how it would manage such a project.
- 5.44 One of our overarching objectives in implementing the USO is to ensure the delivery of USO connections to consumers as quickly as possible. We took account of this objective when considering proposals for delivering the USO.

BT

- 5.45 BT stated that it planned to cover 450k of the estimated 600k USO eligible premises by commercially deployed fixed wireless access prior to the USO coming into effect, thus reducing the number of potentially eligible premises to 150k. However, it also estimated that 110k premises could be above the £3,400 cost threshold and not eligible for the USO.⁷⁰
- 5.46 BT stated that connecting the remaining premises that would not be eligible for the USO would require further combined industry, Ofcom and Government efforts, including targeting the remaining premises with future publicly-funded schemes and policy initiatives by the Government and devolved administrations.
- 5.47 BT suggested that other communications providers may already have a network footprint that could potentially allow them to serve some of these premises. BT suggested that we should consider designating some or all of these companies as Universal Service Providers based on factors such as proximity to the consumer,

⁷⁰ BT response to June 2018 document, paragraph 3.5. BT stated that the 110k figure was an estimate derived from its own BT Group modelling that was based on a proactive network build. This modelling was based on a take-up assumption of 80% and relied on data available as of August 2018.

claiming that this would be quicker and more efficient than relying solely on BT or KCOM in Hull.⁷¹

- 5.48 BT proposed that it would initiate network build (by Openreach) only when sufficient demand is achieved in an area. BT would recover the unfair net cost burden through the USO fund.⁷²
- 5.49 BT proposed setting up a Universal Broadband Support Group to handle USO requests which it proposed would take 6-12 months to establish.⁷³ This body would be responsible for each of the 6 steps that BT has outlined as the consumer journey:
- a) checking whether the consumer requesting the service already has access to a BT fixed or fixed wireless connection or whether it is due to be covered by BT commercial rollout within 24 months;
 - b) checking whether the consumer could be served by a different provider;
 - c) checking whether the consumer will be served by a publicly-funded rollout programme within 12 months;
 - d) requesting Openreach provide a cost estimate to connect the premise including any other premises in the area that could be aggregated. If the premises is below £3,400, the order for a USO service can be placed;
 - e) if costs are above £3,400, informing the consumer of this and that the consumer has the option of paying any costs above £3,400. If the consumer agrees to pay the excess costs, an order can be placed; and
 - f) if the consumer decides not to pay the excess costs, they would be ruled ineligible for a USO service unless demand aggregation over time reduced the cost of delivery to below £3,400.
- 5.50 We note BT's suggestion that we designate multiple Universal Service Providers based on factors such as proximity to the consumer, but we do not consider this approach would be practicable. Even if we could accurately identify which providers were able to provide the USO for a given set of premises, this would likely lead to a highly fragmented coverage footprint (potentially conflicting with our minimum geographic coverage area requirements for designation), increase the administrative burden of

⁷¹ BT response to June 2018 document, paragraph 4.7.

⁷² At the point of responding to the June document, BT also proposed a proactive fibre rollout programme to connect the remaining premises that fall under the cost threshold. It proposed to recover the cost of deployment through Ofcom's Wholesale Local Access (WLA) Charge Control following an Openreach consultation of its wholesale customers. BT suggested that under this fibre rollout approach, the majority of premises would be reached by the end of 2021. BT has subsequently indicated that it does not intend to pursue this proposal.

⁷³ The proposed Universal Broadband Support Group is a dedicated team to manage USO requests. See BT response to June 2018 document, pages 21-22.

the USO, and make it more difficult for consumers to understand who their Universal Service Provider is.

- 5.51 In light of the points set out above, and taking into consideration that BT has an extensive copper network throughout the UK, and the capacity and resources to deploy large-scale build programmes, we are satisfied with BT's ability to provide USO connections in the UK excluding the Hull Area.

KCOM

- 5.52 KCOM stated that as its intention is to only be designated as the Universal Service Provider for the Hull Area, it does not envisage a scenario in which it would be managing numerous simultaneous requests across the UK.⁷⁴
- 5.53 KCOM stated that by March 2019 the vast majority of premises in Hull will already have an FTTP connection and therefore would not be eligible for the USO.⁷⁵ The premises left without a service meeting the technical specification of the USO are what KCOM define as "exceptions" i.e. premises that are very hard to connect.⁷⁶ KCOM expects that by summer 2019, 60 per cent of these exceptions will be outstanding⁷⁷ and that by March 2020 these exceptions will also all be connected.⁷⁸
- 5.54 In light of the points set out above, and taking into account KCOM's current widespread coverage and experience of delivery in the Hull Area (combined with the small number of premises that are likely to be without a service meeting the technical specification of the USO by the time the USO comes into effect), we are satisfied with KCOM's ability to provide any USO connections in this area.

Applicant's ability to deliver service quality

- 5.55 We expect the Universal Service Provider(s) to offer the same quality of service levels to USO premises as are offered to non-USO premises and expect those standards to meet those of the automatic compensation scheme.⁷⁹ We therefore considered each applicant's quality of service commitments, including repair times and meeting appointment dates. We also considered how likely those quality of service levels will be met, considering the relevant capabilities of the provider.

⁷⁴ KCOM response to June 2018 document, page 3.

⁷⁵ KCOM response to June 2018 document, page 3.

⁷⁶ KCOM stated that the costs of providing a USO connection to businesses in the Hull Area may cost more than the £3,400 cost threshold given the exceptions are disparate in nature.

⁷⁷ KCOM response to June 2018 document, page 3.

⁷⁸ KCOM response to June 2018 document, page 7, footnote 18.

⁷⁹ Ofcom, November 2017. *Automatic Compensation: protecting consumers from service quality problems*. https://www.ofcom.org.uk/data/assets/pdf_file/0026/107693/Statement-automatic-compensation.pdf. Under the automatic compensation scheme fixed broadband and landline telephone customers will receive automatic compensation by providers for slow repairs, missed appointments and delayed installations.

5.56 In making this assessment we considered the current level of quality of service being offered and whether these levels could be replicated for the comparatively more difficult to connect USO premises.

BT

5.57 BT stated that it would offer the same level of quality of service to premises connected under the USO as it does to premises connected in the rest of the UK.⁸⁰ BT also stated that USO services would be included in the automatic compensation scheme.⁸¹

5.58 The assurance from BT that USO premises would receive the same quality of service as non-USO premises, as well as its commitment to the automatic compensation scheme, mean that we are satisfied with BT's ability to deliver service quality.

KCOM

5.59 KCOM suggested that its 'Service Promise' would apply to USO premises in the same way that it does for commercially covered premises. This 'Service Promise' states that repairs will be fixed by the end of the next working day after being reported.⁸²

5.60 KCOM's intention to extend this service to USO premises, mean that we are satisfied with KCOM's ability to deliver service quality.

Proposed pricing of USO connections and services

5.61 We assessed how providers plan to ensure the pricing of USO connections and services is affordable.

BT

5.62 BT stated that USO services connected using fixed wired technologies (FTTP or FTTP) would be priced in the same way as premises connected on a commercial basis.⁸³

5.63 BT further stated that USO services connected using fixed wireless access would be priced in the same way as premises connected using fixed wireless services on a commercial basis. BT also stated that with higher take up of its fixed wireless product it would be able to pass on the efficiencies of delivering at scale to consumers. BT believed that this would allow it to deliver affordable services.⁸⁴

5.64 Taking into account these points, we are satisfied that BT will be able to deliver affordably priced USO services.

⁸⁰ BT response to June 2018 document, page 24.

⁸¹ BT response to June 2018 document, page 25.

⁸² KCOM response to June 2018 document, page 5.

⁸³ BT response to June 2018 document, page 39.

⁸⁴ BT response to June 2018 document, page 39.

KCOM

- 5.65 KCOM stated that premises connected under the USO would be offered the same prices as premises in non-USO areas. KCOM said that if the USO were to come into effect now this would mean USO premises were offered a service capable of delivering the USO specification for £32 per month. KCOM also stated that it may choose to introduce specific subsidised pricing for its broadband services in order to help ensure the widest benefit from its fibre service to promote social access. KCOM stated that it has yet to make a decision on this.⁸⁵
- 5.66 Taking into account these points we are satisfied that KCOM will be able to deliver affordably priced USO services.

Applicant's ability to manage and resolve consumer complaints

- 5.67 We considered and assessed each applicant's proposals on how it would manage complaints relating to USO services. We also considered each applicant's previous experience of complaints handling.

BT

- 5.68 BT stated that its Universal Broadband Support Group would deal with any disputes in line with its existing complaints policy, including recourse to the Alternative Dispute Resolution ("ADR") scheme run by Ombudsman Services: Communications. BT said that it would also compile statistics on the total number of enquiries, outcomes at each step of the process, and the number and outcome of any disputes.⁸⁶
- 5.69 BT currently has a large-scale complaints handling process for consumers across the UK and its proposal to develop a Universal Broadband Support Group mean that we are satisfied with BT's ability to manage and resolve consumer complaints.

KCOM

- 5.70 KCOM stated that it did not envisage a significant increase in the volume of complaints resulting from the potential designation as the Universal Service Provider for the Hull Area but that its intention would be to manage any such complaints in line with its standard complaints handling procedures. KCOM stated that it publishes its complaints code of practice and is a member of an ADR scheme (Ombudsman Services: Communications).⁸⁷
- 5.71 KCOM's proposal to extend its current complaints handling process mean that we are satisfied with its ability to manage and resolve consumer complaints and indicates that KCOM has met this criteria.

⁸⁵ KCOM response to June 2018 document, page 6.

⁸⁶ BT response to June 2018 document, page 24.

⁸⁷ KCOM response to June 2018 document, page 7.

Proposals

5.72 Having assessed each of the interested providers against our criteria, and having considered whether there were any operators that did not express an interest but who may be appropriate to be designated as a universal Service Provider, we consider that BT and KCOM are best placed to act as Universal Service Providers in their respective areas. We therefore consider, pursuant to paragraph 3(2) of the 2018 Designation Regulations, that it is appropriate to propose KCOM for designation in the Hull Area and BT for designation in the rest of the UK.

Q1. Do you agree with our proposal to designate KCOM in the Hull Area?

Q2. Do you agree with our proposal to designate BT for the whole of the UK except for the Hull Area?

Q3. Pursuant to paragraph 3(2)(c) of the 2018 Designation Regulations, are there alternative proposals from any other person to be designated as a Universal Service Provider instead of BT or KCOM?

6. Proposed requirements for establishing eligibility for the broadband USO

6.1 In this section, we explain the steps for establishing eligibility for the USO. The proposed conditions which we intend to set in this area provide how the Universal Service Providers should assess eligibility, including how they should calculate the estimated cost of delivering a connection. We set out the proposed timeframe for the Universal Service Providers to confirm the outcome of each consumer's request, and requirements to ensure that those who cannot access affordable, decent broadband are aware of their right to request a USO connection. In arriving at our consultation proposals, we have considered responses to our June 2018 document and set out below how we propose to address issues concerning eligibility checking.

Who is eligible for a USO connection?

6.2 As set out in Section 2, the Order provides that a premises will be eligible for a USO connection and service where an affordable broadband connection and service that meet the technical specification are not already available and will not be made available within a year as the result of a publicly-funded intervention. The Order also sets out that a reasonable cost threshold of £3,400 applies to USO connections. This cost threshold means that subject to meeting the other eligibility criteria, consumers will be eligible where the cost of the USO connection is no more than £3,400.⁸⁸

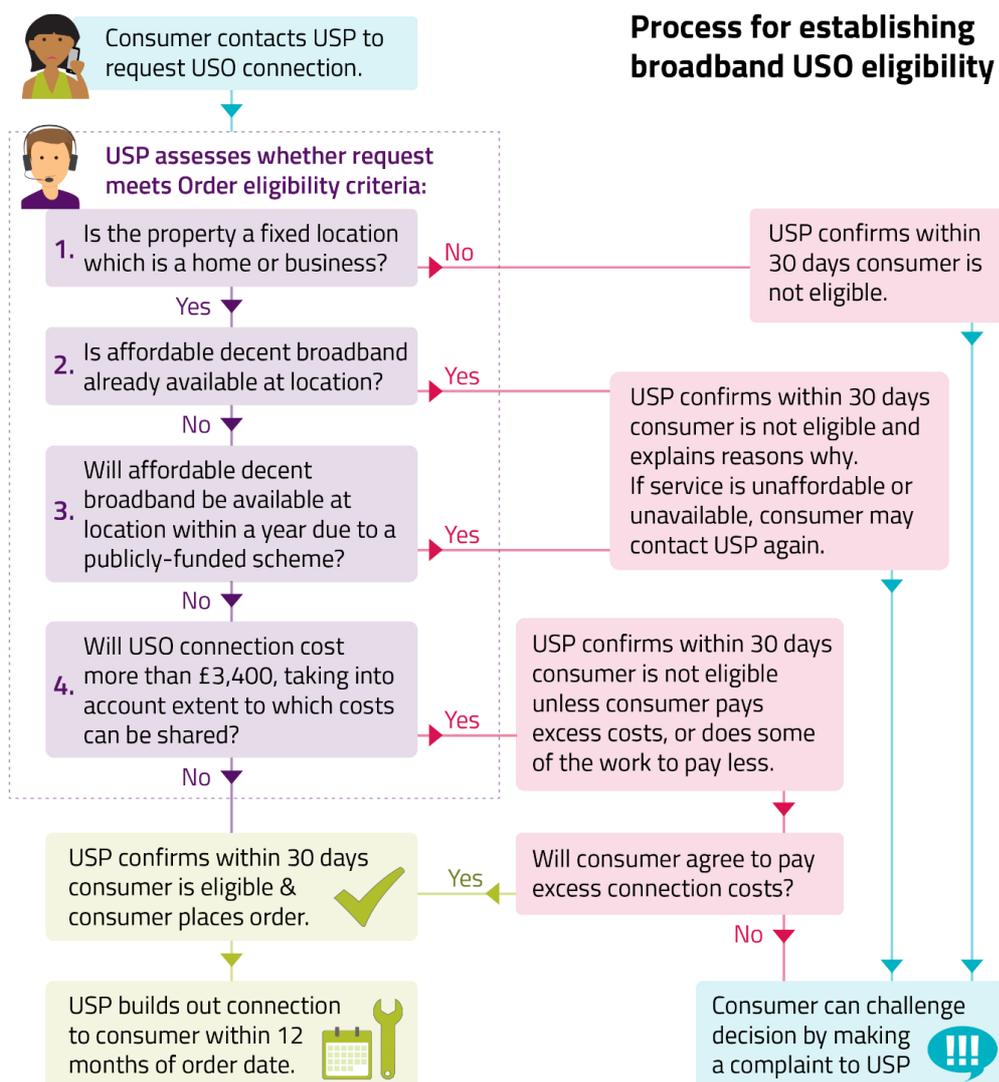
6.3 To determine whether a consumer is eligible under the USO scheme, the Universal Service Providers will need to assess the following:

- a) whether an affordable connection and service meeting the technical specification in the Order is or will become available; and
- b) whether the cost of a USO connection is no more than £3,400.

6.4 In relation to assessing each aspect of eligibility checking, our priority is to ensure a quick and simple process for consumers that is as practical as possible for the Universal Service Providers to operate. The following sections set out the anticipated steps involved. The overall process is also set out in Figure 3 below.

⁸⁸ The £3,400 cost threshold excludes VAT. Where the cost of connection is higher than this amount, eligible consumers and businesses will be able to receive the connection and service if they pay (i) any costs over £3,400 and (ii) any VAT on the cost over £3,400.

Figure 3: Establishing eligibility for the USO



Checking whether a premises is a residence or a place of business

6.5 In our June 2018 document, we explained that once a Universal Service Provider had received a USO request from a consumer, it would need to check whether the premises is at a fixed location, which is a residence or a place of business.

Responses to our June 2018 document

6.6 We received a number of comments regarding the appropriate means of checking whether a premises is eligible. These included using providers’ own coverage checkers, using the Ordnance Survey’s AddressBase dataset, and checking whether a premises had been assigned a postal address and was liable to pay council tax.

Our consultation proposal

- 6.7 The Order defines premises for the purposes of the USO as those which are fixed locations which are a residence or place of business.⁸⁹ The Government's ambition is for universal coverage and for that reason it has made clear that the definition of eligible properties includes both homes (including second homes) and businesses.⁹⁰
- 6.8 We consider that the simplest way for a Universal Service Provider to establish whether a requesting location meets the definition of being a fixed location, which is a residence or a place of business, is by checking the address of the location against Ordnance Survey's AddressBase Premium product (the "AddressBase product"). We consider that the AddressBase product is appropriate for a Universal Service Provider to rely on as it is considered the most comprehensive dataset of addresses where services are provided in the UK, combining information from local government, Ordnance Survey and Royal Mail.⁹¹ If the location can be found by the Universal Service Providers on the AddressBase product, it has a unique property reference number which has been categorised as residential, commercial, dual use, stately home or place of worship. We consider that this will be sufficient to confirm that the premises meets the definition.⁹²
- 6.9 In exceptional cases, if the address of the location where the consumer is requesting a connection cannot be found on the AddressBase product, or it can be found but is not categorised as residential, commercial, dual use, stately home or place of worship, we propose to require the Universal Service Providers to request evidence from the consumer making the request of the location's liability for council tax if it is a home, or liability for non-domestic (business) rates if it is a business. Such evidence could be any document confirming the location's liability, such as a copy of a bill or a letter from the relevant local authority. We consider that evidence that the premises is liable for either form of taxation should be sufficient to confirm that the location meets the definition.⁹³

Checking the availability of an affordable broadband service at each requested location

- 6.10 If the premises meets the definition of residence or place of business set out above, the Universal Service Provider will need to establish whether there is already an

⁸⁹ The Order, Schedule 1, para 2 (a).

⁹⁰ DCMS, *A new broadband Universal Service Obligation: Government's response to consultation on design*, page 31.

⁹¹ Ofcom intends to use all of the data sources in the AddressBase product to identify premises for the purposes of the USO.

⁹² Premises with the following AddressBase Premium (for Great Britain) and AddressBase Islands (for Northern Ireland) classification codes are in scope: commercial (C); residential (R); dual use (X); and places of worship (ZW) or stately homes (ZS). In this situation, which we expect to be the majority of cases, no evidence is required from the consumer making the request.

⁹³ We would expect static caravans to be included under the residential category of the AddressBase product if they are liable for council tax.

affordable broadband connection and service serving that location that meets the technical specification in the Order.

- 6.11 In our June 2018 document, we explained that the Universal Service Provider will be able to use its own address-level network information and information derived from Ofcom’s Connected Nations reports to establish what broadband service, if any, is already available at that location. This information will enable the Universal Service Provider to determine whether the available service meets the technical specification.

Responses to our June 2018 document

- 6.12 Respondents said that a range of information, including Connected Nations information provided by Ofcom, could be used to establish current broadband availability at a location.
- 6.13 Gigaclear highlighted that, as Ofcom’s Connected Nations information is currently updated three times a year, there is a risk that additional premises covered in the period between Ofcom’s updates could erroneously appear in the database as not able to receive the technical specification in the Order. It suggested that these issues could be mitigated by better information sharing, including the development of a live database which providers could update on an ongoing basis.⁹⁴
- 6.14 BT sought clarification on how requests from premises should be treated which could not be matched to Connected Nations information on existing coverage. It sought an assurance that if a Universal Service Provider decided that the requesting premises was eligible for a USO service and this turned out to be wrong, they could still make a claim to the USO fund.⁹⁵

Our consultation proposal

What is meant by an available service

- 6.15 The Order sets out that a premises is eligible for the USO where an affordable broadband connection and service that meets the technical specification in the Order is not “available” from an existing network provider.
- 6.16 To ensure that the Order is implemented properly and effectively, it is necessary to explain what “available” means in the context of the types of services being provided to consumers. We consider that given the types of communications services involved, available does not always mean that a broadband service can be obtained immediately, but it should be available within a reasonable timeframe.
- 6.17 We consider that availability within a reasonable timeframe means that a provider should be able to offer broadband services to that premises on its existing network (i.e. coverage), and those services should be capable of being installed and activated

⁹⁴ Gigaclear response to June 2018 document, page 7.

⁹⁵ BT response to June 2018 document, page 33.

within the standard lead times that the provider offers on a commercial basis to other consumers. Periods longer than standard lead times are unlikely to mean that a service is currently available and may involve more significant network build by a provider.

- 6.18 Standard lead times vary by provider and network technology. Ofcom's *Comparing Service Quality* report analyses data collected from providers on the time taken to deliver a landline or broadband order. It shows that for Virgin Media and the key providers that use the Openreach network, most orders are delivered within 30 calendar days of the customer's order date.⁹⁶ We therefore consider that this 30-day timeframe is an appropriate period to define the availability of a broadband service.
- 6.19 This means that if a third-party provider offers a service that meets the technical specification in the Order to the consumer's premises, but this provider cannot connect the consumer within 30 days of the order, the consumer will be eligible for a USO service from the Universal Service Provider, subject to the other eligibility criteria being met. However, even a commercially available service that takes longer than 30 days to be activated is still likely to be delivered more quickly than a service which requires new network to be built out under the USO scheme.

What is meant by an affordable existing service

- 6.20 The issue of affordability is relevant to whether a consumer is eligible to receive a service under the USO scheme and to the price paid by a consumer for a USO service. Consumers will be eligible where they cannot access broadband connections and services that meet the technical specification of the USO at an affordable price and, if eligible, USO connections and services must also be delivered at affordable prices.
- 6.21 We set out in Section 8 our approach to the prices consumers should pay for USO connections and services.⁹⁷ We explain that most UK consumers can access a variety of products at prices ranging from around £20 to £55 per month⁹⁸, and the vast majority of consumers consider broadband to be affordable when they have access to this range of prices.
- 6.22 For reasons of consistency and simplicity, we propose that the threshold for an affordable price for the purposes of eligibility should be the same as the safeguard cap for the supply of USO connections and services, as both are intended to ensure affordable broadband services. We therefore consider that it is consistent with the

⁹⁶Ofcom, May 2018. *Comparing Service Quality 2017*, page 24.

https://www.ofcom.org.uk/data/assets/pdf_file/0023/113639/full-report.pdf

⁹⁷ We set out in Section 8 that we propose to introduce a two-part obligation on the Universal Service Providers requiring them to offer USO connections and services at (i) the same price they offer equivalent services to non-USO customers; and (ii) at a price that does not exceed a safeguard cap, which we propose to set at £45 per month, including VAT, averaged over the fixed commitment period, including upfront connection charges, monthly payments and other broadband charges.

⁹⁸ Prices inclusive of VAT. We set out our analysis in Section 8.

Order to propose to set an eligibility threshold at £45 per month including VAT, connection charges, monthly payments and other broadband charges.

- 6.23 Therefore, if a consumer cannot access a decent broadband connection for £45 per month or less (including the pro-rated connection or upfront charge and VAT), they could request a broadband connection from the Universal Service Provider, subject to the other eligibility requirements for the USO scheme.
- 6.24 For example, a consumer would be eligible for the USO if they have a broadband service available to them, that meets the technical specification in the Order, but where the cost to the consumer of that connection and service is more than £45 per month over the course of their contract.⁹⁹ A consumer that is currently paying more than £45 per month for their broadband but has the option to switch to another service, that is affordable and meets the technical specification in the Order, would not be eligible for a broadband connection and service under the USO scheme.
- 6.25 There is the potential for an eligibility threshold to impact on other broadband network providers because it raises the prospect that their networks may be overbuilt by the Universal Service Provider.¹⁰⁰ With an eligibility threshold of £45 per month we expect this risk to be small. In most areas of the UK there is a wide choice of broadband suppliers and most networks offer entry level products at prices below the level of the eligibility threshold.¹⁰¹ Consequently we don't expect the eligibility threshold to distort competition in the UK broadband market generally. Many of the networks that charge higher prices also deliver speeds significantly in excess of those necessary to fulfil the USO or offer prices that are only marginally above the level of the threshold.¹⁰² We therefore expect the impact of a £45 eligibility threshold on other network providers is likely to be modest.
- 6.26 We recognise that the impact on other broadband network providers may be greater if the eligibility threshold is set at a price lower than £45 per month as this could increase the number of premises where the Universal Service Provider might overbuild a rival network and could increase the extent to which rival networks might have to adjust their entry level prices if they wish to avoid being overbuilt.

⁹⁹ This price includes connections and activation charges, the monthly payment and any other broadband charges that apply.

¹⁰⁰ In practice, non-USO providers may be incentivised to introduce a new product, priced below the eligibility threshold, to avoid having their network overbuilt by a Universal Service Provider. Whilst this might deliver new revenues from new customers that take-up these lower priced services it could also reduce profits from existing customers if they then traded down to a lower margin tariff.

¹⁰¹ For instance, Hyperoptic's entry level product delivers 30Mbit/s download speeds for £20.00 a month over a 12 month contract with no upfront connection fee, Relish deliver 20Mbit/s download speeds for £22.00 a month over a 12 month contract with no upfront connection fee, and Gigaclear deliver 30Mbit/s download speeds for £35.00 a month over an 18 month contract with £120 connection fee, working out at £42 per month. Prices correct as of 4 December 2018.

¹⁰² For instance, Truspeed's entry level product delivers 200Mbit/s download speeds for £47.50 a month over an 18 month contract with a £120 connection fee, working out at £54 a month. Prices correct as of 4 December 2018.

Q4. Do you agree that the threshold for an affordable price for the purposes of USO eligibility should be set at £45 a month (including VAT, connection charges, monthly payments and other broadband charges)?

Process by which the Universal Service Provider checks if decent and affordable broadband is available at a location

- 6.27 In assessing the eligibility of consumers who request the USO, the Universal Service Providers will have to take account of:
- a) the technical capabilities of the broadband services that are currently available to that consumer's premises; and
 - b) the affordability of broadband services offered on those networks.
- 6.28 To check whether a broadband service which meets the technical specification in the Order is already available at a location, we propose that the Universal Service Provider should first consult its own address-level network information. If an affordable service which meets the technical specification of the USO is available from the Universal Service Provider's network to that location, the customer should be offered this service on standard commercial terms.
- 6.29 If the Universal Service Provider does not offer a compliant service, we consider that the simplest way for the Universal Service Provider to check if a broadband service is available from any third-party provider(s) is to use information derived from Ofcom's Connected Nations reports.
- 6.30 If information derived from Ofcom's Connected Nations reports indicates that a third-party service is available at that premises which meets the technical specification in the Order, we propose that the Universal Service Provider should advise the consumer to contact the third-party provider(s) directly to confirm that this provider can supply the consumer with an appropriate service. We consider that this will be the quickest way to ensure the consumer can obtain accurate, up-to-date information about the availability and price of that connection and service. As discussed further below, we propose that the Universal Service Provider should advise the consumer of the third-party provider(s) that can serve the consumer's premises.
- 6.31 When advising the consumer to contact a third-party provider, the Universal Service Provider must inform the consumer that if a connection and service which meets the technical specification in the Order is not affordable in line with Ofcom's £45 eligibility threshold, or is not available, they may be eligible to receive a USO service and can contact the Universal Service Provider again. The Universal Service Provider should keep records of the consumer's first request and provide the consumer with a reference number so that if they contact the Universal Service Provider again, their subsequent request can be dealt with as quickly as possible by building on the information provided during the first request.

Sharing information with the Universal Service Providers

- 6.32 Ofcom collects information from network providers on where they offer fixed broadband services three times a year for the Connected Nations reports. Although we recognise that this gap in data collection means that there is a risk that the data may not reflect any network rollout completed in the intervening period, we consider that this frequency of data collection strikes the right balance between our aim to provide up to date coverage information, while not imposing a disproportionate data collection burden on industry and Ofcom. We think that this frequency of data collection is sufficiently regular for the Universal Service Provider to use when assessing this aspect of USO eligibility.
- 6.33 We are collecting information from a wider range of providers to inform data published in the next Connected Nations report. We currently collect fixed broadband coverage information from the main network providers and key alternative network providers.¹⁰³ However, from December 2018, our reports will include data from a wider range of smaller full-fibre networks, as well as more of those offering fixed wireless services. This will give us a clearer picture of broadband coverage across the UK. While there is a small risk that our data collection may not be complete, the steps we are taking to increase the number of smaller providers we collect data from means that we consider Connected Nations is the best available source of information to help establish eligibility for the USO.
- 6.34 To enable the Universal Service Providers to carry out the eligibility checking process effectively, we agree that improved information sharing is needed between Ofcom and the Universal Service Providers.
- 6.35 Under section 393 of the Act, we cannot disclose information with respect to a particular business without consent of the person carrying out that business, unless such disclosure is necessary and appropriate for the purposes of facilitating the discharge of any of our functions.
- 6.36 To ensure the proper and effective implementation of the Order, and to carry out our functions, we consider that it is likely to be necessary and appropriate to provide the Universal Service Providers with access to an Ofcom-held database which would allow the Universal Service Providers to check on an individual address-level basis whether there is a service there that already meets the technical specification in the Order and if so, which network providers serve that location. This will enable Universal Service Providers to give consumers the contact details of the network providers that serve their address, so that consumers are able to contact them.
- 6.37 Early next year we plan to engage with relevant network providers to seek their views about our proposed disclosure of information to the Universal Service Providers to

¹⁰³ For Ofcom's October 2018 *Connected Nations Update*, we collected broadband coverage information from major fixed telecoms operators (BT, Virgin Media, Sky, TalkTalk, Vodafone and KCOM). We also collected information from alternative network providers (B4RN, BU-UK, CityFibre, Gigaclear, Hyperoptic, ITS and Relish).

enable us to make a judgement as to what scope of disclosure, if any, is necessary and appropriate in light of any confidentiality concerns raised by those providers.

- 6.38 If following our engagement we decide that disclosure is necessary and appropriate, any such disclosure will only be made after putting in place all necessary safeguards, bearing in mind the likely commercial sensitivity of the information. We therefore propose to include a universal service condition requiring the Universal Service Provider to use information provided by Ofcom only for the purposes of complying with those conditions, and to put in place appropriate mechanisms to ensure that the information is not shared more widely than this. The aim of this universal service condition is to prevent access to sensitive information concerning the USO by restricting information flows between the division of the Universal Service Provider which will receive and deal with such sensitive information and other divisions within the group.
- 6.39 To minimise the risk that a premises where a USO request is made cannot be found in Ofcom's information on third-party coverage, we will seek to match network provider information provided to Ofcom via Connected Nations to the AddressBase product. We will consider various forms of address identification to ensure that a comprehensive list of premises and third-party coverage is available to inform a Universal Service Provider's assessment of eligibility.
- 6.40 We note BT's question concerning whether a Universal Service Provider could make a claim on the USO fund in respect of a premises if it decides that the requesting premises is eligible for a USO service based on the information available at the time, and this subsequently turns out to be wrong. We are working to ensure that the data we collect as part of the Connected Nations report is as comprehensive and accurate as possible as explained above. We accept that a Universal Service Provider can only make an assessment on the eligibility of premises based on the best information available at the time. If the Universal Service Provider has made a reasonable assessment in respect of a premises based on this information and in the event that we find that these costs are part of an unfair net cost burden, these costs will be compensated through an industry fund.

Checking whether the location is due to be covered by a publicly-funded programme

- 6.41 In our June 2018 document, we explained that if there was no broadband connection or the connection available did not meet the technical specification in the Order, the Universal Service Provider would need to check whether such a connection would become available at that location as a result of a publicly-funded rollout programme within the period of one year from the request date.
- 6.42 We envisaged using our information gathering powers to request delivery plans from publicly-funded programmes and sharing that information with relevant Universal Service Providers on a regular basis to ensure this element of the process could be

completed as swiftly as possible. Universal Service Providers could therefore check premises against that information to help determine eligibility.

Responses to our June 2018 document

6.43 Respondents highlighted that future publicly-funded rollout programmes cannot be considered if they are due to deliver connections to premises in longer than 12 months from the point of the consumer's request and that many schemes would take longer than 12 months to deliver, especially those in rural areas. Respondents also raised that publicly-funded deployment timings at address-level can be uncertain and subject to change, which could lead to overlapping programmes and undermine the viability of public contracts. To mitigate these risks, providers called for Ofcom to identify and exclude premises likely to receive a publicly-funded connection from the USO and for better information sharing with the Universal Service Provider.¹⁰⁴ It was also suggested that providers could use relevant information to work with local councils to check if premises were due to be covered by a publicly-funded rollout scheme within a year.¹⁰⁵

Our consultation proposal

6.44 The Order defines how the USO should interact with ongoing publicly-funded broadband schemes. For eligibility purposes, it sets a one-year cut-off date for future publicly-funded programmes. This means that consumers who request a USO connection are not eligible where their home or business is due to receive an affordable broadband service which will meet the technical specification in the Order from a publicly-funded scheme within one year of their USO request.

6.45 We note the comments that some publicly-funded schemes may take longer than one year to deliver, particularly in rural areas. However, we cannot change the parameters of the Order, including extending the cut-off timeframe from the point of the request beyond one year. We cannot therefore impose any obligations in the universal service conditions which may be in contradiction to, or inconsistent with, the provisions set out in the Order. The Order is also clear that only future publicly-funded network rollout can be considered when assessing this aspect of eligibility under the USO scheme. Future commercial rollout plans are not a relevant consideration.

Sharing information with the Universal Service Providers

6.46 To assess this aspect of the eligibility checking process, we remain of the view that the Universal Service Providers should use information gathered by Ofcom. We intend to use our information gathering powers to collect future publicly-funded rollout plans and to share these with relevant Universal Service Providers.

¹⁰⁴ Cityfibre response to June 2018 document, page 7.

¹⁰⁵ Broadway Partners response to June 2018 document, page 3.

- 6.47 We have reflected further on the best approach to gathering publicly-funded delivery plans. We propose that, rather than using our powers to request delivery plans from the large number of local bodies responsible for procuring publicly-funded programmes, it will be more efficient for us to gather this information directly from the relatively small number of network providers contracted to deliver these schemes.
- 6.48 Ofcom does not currently collect future publicly-funded delivery plans. We intend to engage with contracted network providers in early 2019 with the aim of providing sufficient information to enable the Universal Service Providers to check whether a premises is due to be covered by a publicly-funded scheme and in what timeframe.¹⁰⁶ We note BT's comment that publicly-funded deployment timings at address-level can be uncertain and subject to change. However, we consider that information collected by Ofcom will be the best available source of information and the Universal Service Providers should therefore be able to rely on this data.
- 6.49 We intend to collect information about publicly-funded rollout plans three times a year, alongside our Connected Nations information requests.

Checking whether premises fall within the cost threshold of £3,400

- 6.50 The Order requires us to ensure that, when assessing the cost of providing a connection, Universal Service Providers take due account of the extent to which costs may be shared by multiple locations. Where network infrastructure can be shared, build costs should also be shared between premises to determine whether the cost of provision to an individual premise would fall below £3,400. This is referred to in the Order as "demand aggregation".
- 6.51 In our June 2018 document, we explained our view that the most effective means of aggregating demand is to use a forecast of take-up of network infrastructure. For example, if a cabinet served 100 premises and the cost of deploying FTTC was £100,000, using a forecast take-up of 70 per cent would mean that the cost of upgrading that cabinet would be £1,429 for each premise.
- 6.52 We considered that aggregating requests over a given timeframe (e.g. 6 months) to determine actual demand would result in a delay before the Universal Service Provider could begin building connections. This would not meet our objective of providing USO connections to consumers as quickly as possible.

¹⁰⁶ Network providers contracted to deliver publicly-funded BDUK and Nations broadband rollout schemes include Openreach, Airband and Gigaclear. There are no publicly-funded rollout schemes in the Hull Area.

Responses to our June 2018 document

- 6.53 BT said that it was concerned that the demand aggregation process may be complex and said that a major challenge is that an on-demand build does not allow the provider to proactively plan the network.¹⁰⁷
- 6.54 BT said that if actual take-up is lower than forecast take-up, it would expect this to be considered in any funding arrangements, but cautioned that this may raise questions of fairness if it means that some premises, for which the actual connection cost is above the £3,400 cost threshold, are connected without having to pay any excess charge.¹⁰⁸ It also asked for clarity on which cost elements can contribute to the £3,400 cost threshold.¹⁰⁹

Our consultation proposal

- 6.55 The USO is a request-driven process which means that the Universal Service Providers must only provide broadband connections to end-users who request them.¹¹⁰ Within this framework, the Order requires us to establish a process for taking due account of shared connection costs. We do this through our demand aggregation approach.
- 6.56 Our proposed approach to using a forecast level of take-up for demand aggregation is intended to minimise the delay in providing USO connections. It allows the Universal Service Provider to assess the cost of connecting premises at the point that a request is received, while taking account of the likely extent of any shared costs in the long run. The Universal Service Provider is therefore able to begin connecting that premises immediately if the estimated cost of building that connection is below the £3,400 cost threshold. This avoids the lead times involved in collecting and aggregating connection requests, which would be necessary if shared connection costs were assessed based on actual demand for the USO at a given point in time.
- 6.57 Using a forecast take-up would also reduce the uncertainty for consumers who may otherwise have to wait for a significant time – while actual requests are submitted under the USO scheme – before learning whether they are eligible for a connection.
- 6.58 Respondents who commented on our proposed demand aggregation approach agreed that using a forecast take-up would mitigate the risk of delays. In relation to BT’s point about the risks when forecast take-up exceeds actual take-up, while we recognise this risk, we consider that it is inherent with any forecast-based approach. As explained above, we consider that a forecast-based approach is much more effective at meeting

¹⁰⁷ BT response to June 2018 document, page 27. For instance, with an on-demand build, the order in which broadband connections are provided is determined by the timing of requests. In contrast, under a proactive rollout, a broadband provider may deploy its network to different regional areas in turn.

¹⁰⁸ BT response to June 2018 document, page 16.

¹⁰⁹ BT response to June 2018 document, page 32.

¹¹⁰ We recognise that a proactive network build to USO premises could commence before the formal designation process has been completed. Providers including Universal Service Providers remain free to deploy or upgrade network, outside of the scope of the USO. We discuss BT’s proactive build proposals in more detail in Section 7.

our objective of delivering the USO as quickly as possible than an approach based on actual take-up. In our view, the benefits of removing delay in delivering connections to consumers outweigh the risks of actual demand differing from forecast demand.

6.59 Addressing the specific points BT raised on funding and the fairness of this approach:

- a) in accordance with the legislation, if we find that there has been an unfair net cost burden in respect of actual network build costs, we are required to ensure that any such costs are compensated through an industry fund. This will ensure that the Universal Service Provider itself is not disadvantaged by a forecast that is revealed to be too high; and
- b) while some premises may avoid paying charges over the £3,400 cost threshold, this is not inherently unfair because we would not expect any forecast error to systematically favour a particular premises or class of premises.

6.60 As such, our view remains that the best approach for ensuring a proper and effective implementation of the Order is to use a forecast take-up for demand aggregation in the first instance. Nevertheless, when coming to a view on the most appropriate forecast take-up to use for demand aggregation, we have had regard to the risk identified by BT. We set out our proposed forecast in the next section.

6.61 Finally, we propose to require Universal Service Providers to monitor actual USO take-up among eligible premises and use actual take-up as the basis for demand aggregation if it exceeds the forecast take-up level at any point after the USO is introduced. This is because the purpose of a forecast, as explained above, is to minimise the delay to delivering some USO connections that would be caused if actual demand emerges gradually over time. Once actual take-up meets or exceeds forecast take-up, there is no benefit in continuing to calculate connection costs using the forecast.

6.62 In Section 9 we explain that we propose to require Universal Service Providers to record the number of broadband USO requests received, the number of confirmed orders placed and the number of broadband services delivered. We may review and adjust the forecast take-up level in future, should we consider that it is not set at an appropriate level.

Setting a forecast take-up figure

6.63 Forecasting the long-run take-up of USO connections inevitably involves a degree of judgement, as there will nearly always be some margin of error when estimating USO demand. We have considered the impacts of setting the forecast too high or too low.

- a) If forecast take-up is lower than actual long-run take-up, some customers may have to wait longer before they are considered eligible for a USO service. However, as we are proposing that the Universal Service Provider should use actual take-up to estimate connection costs if it exceeds forecast take-up, this concern is mitigated once take-up approaches its long-run level.

- b) If forecast take-up exceeds actual take-up, it could increase the net cost of the USO by making some premises eligible for which the actual connection cost exceeds the £3,400 cost threshold. This could increase the size of any industry fund, and by extension the potential impact on consumer bills for broadband customers that are currently served commercially as we expect that fund contributors are likely to pass on at least some of the cost of contributing to the fund to their customers.

6.64 As such, there are potential adverse consequences from forecasting errors on both sides. A higher forecast would better serve our objective to deliver the USO as quickly as possible, which benefits USO premises, while a lower forecast would be more consistent with minimising the cost of delivery (and any impact on industry and other consumers).

6.65 We have estimated a plausible range for the likely proportion of USO premises requesting a USO connection as follows.

- a) We consider a relevant starting point for this exercise is the level of take-up of fixed broadband in the UK, which is around 80%.¹¹¹ In our 2016 technical advice to Government, we assumed (for the purposes of estimating the costs of USO delivery) that USO take-up would also be around 80%. We said that this is intended to represent the long-run level of take-up of broadband services.¹¹²
- b) However, take-up of a USO service might be lower than 80%. This is because some premises in non-USO areas do not actually receive a 10Mbit/s or higher speed connection. Analysis of our 2017 Connected Nations data indicates that 61% of non-USO premises received download speeds of 10Mbit/s or above in 2017, while 18% of premises received download speeds below 10Mbit/s despite a service of 10Mbit/s or above being available.¹¹³ In other words, 18% of premises may be

¹¹¹ Ofcom, August 2018. *Communications Market Report*, Figure 1.3.

https://www.ofcom.org.uk/data/assets/pdf_file/0022/117256/CMR-2018-narrative-report.pdf. This is based on household take-up.

¹¹² Ofcom, December 2016. *Technical Advice to Government*, paragraph 8.17. Our volume forecasts undertaken for the 2018 Wholesale Local Access review imply broadband take-up on the Openreach network will continue to increase albeit gradually over the next three years, while the proportion of mobile-only households will remain static. This implies that overall fixed broadband take-up could increase further. Ofcom, March 2018. *Wholesale Local Access Market Review Statement*. Annex 10.

https://www.ofcom.org.uk/data/assets/pdf_file/0018/112491/wla-statement-annexes-1016.pdf

¹¹³ The data underlying our *Connected Nations Report 2017* is available here: <https://www.ofcom.org.uk/research-and-data/multi-sector-research/infrastructure-research/connected-nations-2017>. We identify USO areas and non-USO areas by modelling the predicted download speed of the fastest package which is available to a given premises. We use data on average sync speed to derive actual speeds received by premises. A small number of premises – around 3% – were categorised as USO premises (as their predicted speeds were below 10Mbit/s) despite having reported actual speeds at or above 10Mbit/s, possibly because there was a lag between the information used to model predicted speed and the date at which actual sync speeds were tested. We have excluded these premises for the purposes of this analysis.

satisfied with a connection which does not meet the USO specification. A further 21% of premises in these areas did not have a fixed broadband connection.

- c) If the distribution of speeds in USO areas converges to the 2017 distribution of speeds in non-USO areas following the implementation of the USO, we might expect around 60% of premises to request a USO connection.¹¹⁴

6.66 However, with growing bandwidth demand and more households requiring superfast broadband services to accommodate their internet usage, we expect that the proportion of premises in non-USO areas receiving speeds of 10Mbit/s or above will be growing over time. This suggests that the long-run level of USO take-up would more likely sit somewhere between 60% (i.e. existing take-up of 10Mbit/s or above services in non-USO areas) and 80% (the long-run level of fixed broadband demand).

6.67 Recognising that there is significant uncertainty over actual long-run take-up rates, and also noting that there are risks of overestimating take-up (which could increase the cost of USO delivery) or underestimating take-up (which slows the pace of USO delivery), we consider that a forecast of 70% reflecting the midpoint of this range is a reasonable estimate. We therefore propose setting a 70% forecast take-up for the purposes of calculating the cost of provision of a USO connection.

Calculating the cost of providing a USO connection

6.68 The total estimated connection cost for a given USO connection, for the purposes of checking eligibility, is calculated as the sum of:

- the provision of infrastructure that is specific to the individual premises that has requested a connection; and
- a proportion of the infrastructure costs that can be shared by multiple locations.

6.69 The latter component of this calculation is influenced by the demand aggregation approach.

6.70 To implement our proposed approach to calculating the cost of connections as set out above, the Universal Service Provider would calculate shared infrastructure unit costs using the formula in Figure 4 below (as also set out in universal service condition B.8).

¹¹⁴ We recognise that this data only focuses on download speeds and ignores other aspects of the technical specification of the USO. It also focuses exclusively on take-up of fixed broadband technologies.

Figure 4: Approach to calculating shared infrastructure costs

$$\frac{\text{Total cost of provision of infrastructure which is capable of being shared}}{\text{Number of relevant residences and/or places of business}}$$

where the number of relevant residences and/or places of business is the highest of:

- 70% of the total number of potentially eligible residences and/or places of business which can be served by that infrastructure; or
- the actual number of Premises which can be served by that infrastructure and in respect of which requests for Broadband Services which meet the criteria in Condition A.3 have been made.

6.71 We recognise that the number of potentially eligible premises which can be served by infrastructure will vary according to the network asset in question. Some assets can be shared by many premises, whereas other assets will be shared by a smaller number of premises.

6.72 In our proposals for deriving the cost per connection, we are only interested in the costs that directly arise from connecting USO premises, not the costs that would already exist in the network (from serving non-USO premises). In specifying the overall take-up threshold to identify such network costs, we propose that this overall threshold is used by the Universal Service Provider to derive the likely network deployment required to support end customers on the Universal Service Provider’s chosen infrastructure e.g. fixed wireless, FTTC or FTTP. We consider that the Universal Service Provider is best-placed to determine how the demand aggregation calculation should be applied to its various network assets. The Universal Service Provider must, however, always ensure that the estimated connection cost for a given premise takes full account of all premises in the Universal Service Provider’s designated area that may share relevant network assets with the premises in question, as set out in the formula above (Figure 4).¹¹⁵

6.73 We also recognise that the number of potentially eligible premises which can be served by infrastructure may vary over time. Where the Universal Service Provider has not yet deployed shared assets, we consider that it should use the best available information on the number of relevant premises that can be served using those assets. Once shared USO assets have been deployed, we propose that it would be more appropriate for the Universal Service Provider to allocate the shared costs of

¹¹⁵ If any infrastructure costs are incremental to the provision of the USO as a whole, they should be shared across all eligible USO premises (adjusted by the relevant take-up assumption).

those assets for any subsequent connection requests using the original calculation, as this is the basis on which they were initially incurred.

- 6.74 We consider that only infrastructure-related costs should be included in the demand aggregation calculation. Customer premises equipment should be excluded.¹¹⁶ We propose that marketing costs associated with promoting awareness of the USO should also be excluded, as they are not directly related to the provision of an individual broadband connection, but are more likely to arise from the scheme as a whole.¹¹⁷ We further propose that general administration and management overheads should be excluded unless they are clearly incremental to the request in question.
- 6.75 Finally, as set out above, the £3,400 cost threshold excludes VAT as this is not a cost of providing the broadband connection. This means that consumers would be eligible for a USO connection, without paying anything themselves, if their estimated connection cost is less than £3,400 excluding VAT.

Sharing information with the Universal Service Providers

- 6.76 To perform this cost calculation, Universal Service Providers will need to be aware of the location of premises that cannot get decent broadband. We therefore propose to provide Universal Service Providers with access to a full list of premises that we do not consider have access to a 10Mbit/s download and 1Mbit/s upload sync speeds service. This information would be based on our Connected Nations data, which is updated three times per year. It will assist Universal Service Providers with estimating the number of eligible premises which could share a given network asset, which serves as the basis for estimating per premises connection costs.
- 6.77 While we consider that information derived from Connected Nations data is a good estimate of the number of potentially eligible premises, there may be some specific cases where this data could differ from the true number of eligible premises.
- a) The data may not reflect network rollout which has been completed very recently, or which has been undertaken by smaller broadband providers. This would serve to overstate the number of eligible premises.
 - b) The data may also include some premises that are not in a state that requires a connection, such as premises that are under construction or being prepared for demolition. This would also serve to overstate the true number of eligible premises.

¹¹⁶ This is equipment on a consumer's premises which is not part of the communications network and which is directly or indirectly attached to it, such as a broadband modem or router. We propose that the definition of customer premises equipment would not include external antennae which may be required for a fixed-wireless broadband connection, as these are located externally before the network's demarcation point and require provider installation, so would be included as an infrastructure-related cost.

¹¹⁷ However, we consider that these costs would in principle be eligible for funding, should we find that an unfair net cost burden has arisen.

- c) On the other hand, the data may exclude some eligible premises due to the way our information is classified e.g. a dwelling that has been subdivided into multiple units or where individual buildings (such as a barn) are not registered separately from the main premises.
 - d) It will also exclude premises which can receive a broadband service that meets the technical specification in the Order, but where the connection and service is not affordable when measured against the eligibility threshold that we propose to set at £45 a month, as set out above.
- 6.78 With regard to (d), we do not intend to share information with the Universal Service Provider about other providers' network coverage footprint.¹¹⁸ We consider that there is a risk that this could afford the Universal Service Provider an unfair competitive advantage, for instance by allowing it to see where other network providers had recently expanded their networks and respond with targeted retail offers. It may also provide the Universal Service Provider with an indication of the future rollout plans of rival networks.
- 6.79 We recognise that appropriate safeguards can be put in place to prevent the Universal Service Provider from using this information for such purposes. We explain above that we consider that these safeguards are sufficiently robust to allow the Universal Service Provider to have access to an Ofcom-held database which provides this information on an individual address-level basis only. However, given that the associated risks are greater when this information is shared on a national basis, we do not believe that it would be appropriate to do so unless it was absolutely necessary for demand aggregation.
- 6.80 To this end, we expect that the number of eligible premises excluded from the list due to our proposed eligibility threshold of £45 a month will be low. Moreover, we propose that the Universal Service Provider should keep a record of any premises which are not included in the initial eligibility list, but which are identified as eligible when they request a USO connection (i.e. because the only fixed broadband service available to them is unaffordable). The Universal Service Provider should then update its eligibility list and include these premises within subsequent demand aggregation calculations. This means that the number of incorrectly excluded premises should decrease, as USO delivery progresses.
- 6.81 We therefore consider this approach strikes an appropriate balance between providing the Universal Service Provider with sufficient information to derive accurate estimates of connection costs, while protecting other network providers' claims over potentially commercially sensitive data.

¹¹⁸ As set out above, for the purposes of advising consumers about available services that meet the technical specification in the Order, we consider it is likely to be necessary and appropriate to provide the Universal Service Providers with access to an Ofcom-held database which would allow the Universal Service Providers to check this information on an individual address-level basis only.

Q5. Do you agree with our proposed approach to how Universal Service Providers should check eligibility for the USO?

Q6. Do you agree with our proposed approach to how Universal Service Providers should take account of shared connection costs?

Informing consumers of the outcome of their request for a USO connection

- 6.82 In our June 2018 document, we explained that we expected consumers to be informed whether they are eligible for a USO service as soon as possible. We suggested that 20 working days would be an appropriate and proportionate period from the point of the consumer request for the Universal Service Provider to assess eligibility and to inform the consumer of the outcome.
- 6.83 We outlined that if the request was declined because the premises did not meet one or more of the eligibility criteria specified in the Order, the Universal Service Provider should clearly explain the reason for its refusal to each affected consumer. If a request was declined because the costs of connecting the premises exceeded £3,400, the consumer should be given the option of funding any excess connection costs. If the consumer agreed to pay the excess connection costs, the Universal Service Provider is required to proceed with the network infrastructure build.

Responses to our June 2018 document

- 6.84 Broadband Speedchecker urged Ofcom to include clear guidance for consumers on how long the Universal Service Provider should take to respond to a consumer's USO request.¹¹⁹
- 6.85 Other respondents suggested various timeframes for confirming the outcome of a consumer's request, including 20 working days, 30 days, and extending it to 40 working days where a Universal Service Provider was negotiating access to a third-party network to deliver a USO connection.¹²⁰

Our consultation proposal

Timeframe for responding to requests

- 6.86 We have considered responses to our June 2018 document on the timeframe for the Universal Service Provider to assess eligibility and to inform the consumer of the outcome. We agree with Broadband Speedchecker that it is important for consumers to find out the outcome of their request as soon as possible. For this reason, we

¹¹⁹ Broadband Speedchecker's response to June 2018 document, page 1.

¹²⁰ Hyperoptic response to June 2018 document, page 5; BT response to June 2018 document, page 23; and Cityfibre response to June 2018 document, page 6.

propose to require the Universal Service Providers to confirm the outcome of a request within a set timeframe. For clarity, we propose to specify in the universal service conditions that a consumer's USO request is the point of first contact by the consumer with a Universal Service Provider to explore eligibility for the USO.

- 6.87 When considering what the period of time for responding to requests should be, we need to strike a balance between our objective for the consumer to be informed of the outcome of their request as soon as possible against the need to allow the Universal Service Provider sufficient time to conduct the eligibility checking exercise. We have also taken into account points where there could be a large volume of USO requests, for example in the initial period once the USO goes live or following consumer awareness activity.
- 6.88 We consider that 40 working days is too long for consumers to wait to find out the outcome of their request.¹²¹ Although some providers suggested that they would be able to confirm the outcome of requests within our envisaged 20 working days, we note that this was where they proposed to cover smaller geographic areas, with fewer USO-eligible premises. BT's response suggested that it would be able to confirm the outcome of requests within 30 calendar days of a request, were it to be designated as the Universal Service Provider for the whole of the UK, excluding the Hull Area – a much larger area, with a greater number of USO-eligible premises.
- 6.89 Given that our initial proposal was expressed in working days rather than calendar days, BT's suggested timeframe of 30 calendar days to confirm the outcome of a consumer's request is only slightly longer than our initial proposal of 20 working days. We note that 30 calendar days is also the period within which some BDUK local bodies commit to confirm eligibility for the Better Broadband Voucher Scheme, which has similar eligibility criteria to the USO.¹²² We therefore consider that 30 calendar days is a reasonable and proportionate timeframe, which strikes the balance between our objectives. We also consider that it would be better for consumers to set a timeframe based on calendar days, rather than working days, as it is clearer and reflects modern working practices.
- 6.90 Given the above, we propose to include a universal service condition requiring Universal Service Providers to confirm the outcome of a consumer's request for a USO connection within 30 calendar days from the date of the consumer's request.
- 6.91 As set out above, where a USO request is made and the location's address cannot be found on the AddressBase product categorised as residential, commercial, dual use, a

¹²¹ We address CityFibre's point on the use by the Universal Service Providers of third-party network infrastructure to deliver USO connections in Section 7.

¹²² BDUK's Better Broadband scheme provides broadband of at least 10Mbit/s. A home or business is eligible for BDUK's Better Broadband scheme if they (i) cannot access a broadband download speed of at least 2Mbit/s (ii) there are no alternative affordable broadband services available which would provide a download speed of at least 2Mbit/s; and (iii) there are no plans to provide superfast broadband to the location within 6-12 months. The following local bodies state on their websites that they take up to 30 days to confirm eligibility for this scheme: Norfolk, Cumbria and Hampshire.

stately home or place of worship, we propose that the Universal Service Provider should be required to request evidence from the consumer of that location's liability for council tax or business rates. In this situation, the Universal Service Provider should allow the consumer 5 calendar days within the 30 calendar day period to provide this evidence. If the consumer takes longer than 5 days to provide the information, the Universal Service Provider may extend the 30 day period incrementally by the number of additional days.

Information to be provided to a consumer on outcome of their request

- 6.92 When responding to a consumer to confirm the outcome of their request, it is important that the Universal Service Provider clearly explains the reasons why it has made its decision about eligibility.
- 6.93 Where the Universal Service Provider confirms that a consumer is eligible under the USO scheme, the Universal Service Provider should explain that the request meets the Order criteria and simultaneously make an offer to supply the connection and service for the consumer to accept.
- 6.94 If a request is declined by the Universal Service Provider because it does not meet one or more of the eligibility criteria specified in the Order, we propose to require the Universal Service Provider to clearly explain the reason for its refusal to each affected consumer and, where relevant, to direct the consumer to third parties.
- 6.95 Where there is already a broadband service serving a location that meets the specification in the Order from another network provider, the Universal Service Provider must advise the consumer which network providers serve that address and give the consumer their contact details so the consumer can explore if the service is available and affordable in line with the eligibility threshold of £45 a month. The consumer must be told that if the price of the broadband service exceeds the eligibility threshold determined by Ofcom, the consumer could be eligible for a USO connection and may contact the Universal Service Provider again. We explain this earlier in this section where we discuss the process by which a Universal Service Provider checks if decent and broadband is available at a location.
- 6.96 Where a property is due to be covered by a publicly-funded broadband rollout scheme within a year of the request, we propose to require the Universal Service Provider to give the consumer the name of the local body responsible for the scheme and its contact details for public enquiries so the consumer can find out further information.
- 6.97 The consumer must also be advised that if the local body informs them that their premises is not due to be covered by a publicly-funded rollout plan within a year of their request, the scheme does not make a connection available within one year of the request, or the broadband service which becomes available as a result of the publicly-funded rollout scheme is not affordable in line with the eligibility threshold of £45 a month, they are entitled to contact the Universal Service Provider again. In these circumstances, the Universal Service Provider should reassess the eligibility of the

request, proceeding on the basis that the premises has met the criterion regarding coverage by a publicly-funded rollout programme.

- 6.98 If a request is declined by the Universal Service Provider because the costs of connecting the premises exceeds £3,400, we expect the Universal Service Provider to give the consumer a quotation which clearly explains the work required to deliver the specific connection and an explanation of the various costs involved. The Universal Service Provider should also set out that the consumer has the following options¹²³:
- a) paying any excess connection costs themselves;
 - b) doing some of the deployment work themselves to help reduce costs (e.g. digging a trench on their land); or
 - c) purchasing commercially available satellite broadband (outside the USO scheme).
- 6.99 If the consumer agrees to pay the excess costs, the Universal Service Provider is required to reinstate the request. In line with BT's response, we agree that payment of excess connection costs should be made by the consumer to the Universal Service Provider on delivery of the service as this incentivises the Universal Service Provider to deliver the service as quickly as possible.¹²⁴
- 6.100 Where excess connection costs are quoted by the Universal Service Provider, the consumer may wish to negotiate a more highly specified broadband service as part of the arrangement, providing that the consumer agrees to meet the relevant additional costs above £3,400. The payment of excess connection costs would be a commercial arrangement between the consumer and the Universal Service Provider outside the scope of the USO scheme.
- 6.101 Finally, as explained in Section 8, when confirming the outcome of a USO request, the Universal Service Provider must explain that the consumer may challenge an eligibility decision by making a complaint and include a link or copy to the Universal Service Provider's Customer Complaints Code for USO complaints.

Re-contacting a consumer who becomes eligible for the USO

- 6.102 We recognise that the estimated cost of connecting a premises will change over time, for instance because the:
- a) actual number of requests in a given area exceeds forecast take-up;
 - b) number of eligible premises in a given area expands because the Universal Service Provider's information on the number of eligible premises in a given area becomes more accurate; and/or
 - c) Universal Service Provider's infrastructure costs fall over time.

¹²³ These options are set out in the Government's consultation response. DCMS, [A new broadband Universal Service Obligation: Government's response to consultation on design](#), page 33.

¹²⁴ BT response to the June 2018 document, page 24.

- 6.103 This gives rise to the possibility that a consumer could become eligible for the USO several months or years after the consumer initially requested a connection.
- 6.104 Accordingly, if a consumer's request is declined because the costs of connecting the premises exceeds the £3,400 cost threshold and he or she declines to pay the excess connection cost, we propose that the Universal Service Provider should inform that consumer that there is a possibility they may nevertheless become eligible for the USO in due course. We expect the Universal Service Provider to offer that consumer the opportunity to be re-contacted should this occur. If the consumer consents to this, we would expect the Universal Service Provider's systems to keep track of the estimated connection cost so that it could inform the consumer of the change in circumstances as soon as reasonably practical. This would allow the consumer to make a new USO request as soon as possible.¹²⁵
- 6.105 Finally, we recognise that consumers may also become eligible for the USO (after initially having a request declined) for affordability reasons i.e. if the price of broadband services offered by third-party providers subsequently increases above our eligibility threshold. However, as we do not expect the Universal Service Provider to monitor third-party providers' prices, we would not expect it to proactively recontact consumers in these circumstances. Rather, a consumer would need to make a new USO request themselves.

Q7. Do you agree with our proposed approach to informing consumers of the outcome of their USO request?

Ensuring appropriate consumer awareness of the Broadband USO

- 6.106 As the USO is a right to request, rather than a rollout programme, consumers that may be eligible for the USO are more likely to benefit from a USO connection if they are aware that they have a legal right to request a connection from the Universal Service Provider. While we expect our demand aggregation approach to speed up the delivery of a USO connection once a request has been made, this would not benefit consumers who are unaware of their eligibility in the first place. It is therefore important that all eligible consumers are aware of this entitlement, including information on how they can request a connection, in order to improve digital inclusion.
- 6.107 It is the responsibility of the Universal Service Providers to make consumers aware that they have a right to request a USO connection. To ensure that this responsibility is met, we propose to introduce an obligation on the Universal Service Providers requiring them to take all reasonable steps to ensure they raise awareness of the USO. We will also require them to take into consideration the need to disseminate

¹²⁵ This is consistent with BT's proposed approach in circumstances where subsequent enquiries from other consumers lowers the cost of connecting a premises below £3,400, whereby "subject to the consumer's consent and compliance with applicable data protection requirements we would retain the relevant data and contact them proactively should any of these circumstances arise. After this, it would be incumbent on the consumer to raise a fresh enquiry". See BT response to June 2018 document, page 24.

information in appropriate formats and through appropriate channels for customers likely to be eligible for the USO.

- 6.108 We consider that this general requirement should be sufficient to ensure that information about the USO is targeted at eligible consumers as the Universal Service Providers are best placed to consider how to effectively market their services to potential customers.
- 6.109 As a minimum, we would consider that reasonable steps to market the USO would include the following:
- a) contacting likely eligible premises¹²⁶, including at least once by post, to let them know they may be able to receive a USO connection;
 - b) having clear information, in plain English, which is easily accessible and prominently displayed on the Universal Service Provider's website (i.e. no more than one click away from the homepage);
 - c) clearly displaying the contact number for the USO at the top of any correspondence or marketing material; and
 - d) working with relevant local authorities to raise consumer awareness of the USO in areas that have a high number of premises that are unable to receive 10Mbit/s download and 1Mbit/s upload sync speeds. The Universal Service Provider could also consider advertising in these areas through local radio and/or newspapers.
- 6.110 Our expectation is also that the Universal Service Provider would allow consumers to make USO requests via different channels, including through their website, by telephone or in writing. In addition, we would expect that the Universal Service Provider would make the different request routes clear in any direct communications or USO information.
- 6.111 Contacting eligible consumers by post and allowing requests to be made in writing or by phone may be especially important for consumers eligible for the USO, as they are less likely to have access to a reliable internet connection.
- 6.112 In addition, while it is primarily the responsibility of the Universal Service Providers to publicise the USO, we recognise that there is also a role for Ofcom and other third parties to raise awareness of this service. We plan to engage with Government and consumer bodies on consumer awareness of the USO in advance of the USO coming into effect.

¹²⁶ For instance, premises unable to receive a 10Mbit/s download and 1Mbit/s upload sync speeds service, as recorded in our Connected Nations data.

Q8. Do you agree with our proposal to include a universal service condition requiring Universal Service Providers to raise awareness of the USO?

Proposed universal service conditions and legal tests

- 6.113 Our proposals for determining the eligibility of requests made for USO connections and services set out above are captured in universal service conditions proposed for BT and KCOM.
- a) The proposed conditions specify the substantive requirements and process the Universal Service Providers must follow, including what information they must use as part of that process, to determine eligibility of each consumer who requests a USO connection and service. This includes the substantive requirement and process for checking the following:
 - i) whether a premises is a residence or a place of business;
 - ii) whether an affordable broadband service is available at each requested location;
 - iii) whether the location is due to be covered by a publicly-funded programme; and
 - iv) whether premises fall within the cost threshold of £3,400.
 - b) The proposed conditions also impose an obligation on the Universal Service Providers to respond to each consumer within 30 calendar days of his or her request, confirming whether the consumer is eligible to receive the USO connection and service and explaining the reasons for the provider's decision on eligibility.
 - c) In addition, the proposed conditions contain an obligation on the Universal Service Providers requiring them to take all reasonable steps to raise awareness of the USO.
 - d) We also propose to include the power for us to give directions, approvals and consent under this universal service conditions so that we are able to specify further detail concerning the substantive requirements and the process the Universal Service Providers should follow if appropriate. The conditions also include a requirement for the Universal Service Providers to comply with any such direction(s), approval(s) and consent so that any contravention would constitute a contravention of the conditions itself and would therefore be subject to enforcement action under sections 94 to 104 of the Act.
- 6.114 For the reasons set out above and summarised below, we are satisfied that that universal service conditions A.3, B.1 to B.11, G.1, H.1 and I.1 (as set out in Annex 6) meet the relevant tests set out in the Act. Our proposals in respect of the conditions form part of the process of implementing the Order as required by the Act. Once those conditions are imposed, their purpose will be to give effect to the terms of the Order.

6.115 When considering the imposition under sections 67 and 45 of the Act of universal service conditions in a particular case, we must be satisfied that the legal tests in section 47(2) of the Act are met. Conditions A.3, B.1 to B.11, G.1, H.1 and I.1 which we have proposed to impose are:

- a) objectively justifiable, as they seek to set clear substantive requirements and processes which the Universal Service Providers should follow to determine the eligibility of a request as defined by the Order within a timeframe that provides certainty to consumers; our proposed approach seeks to enable the Universal Service Providers to check the eligibility of consumers promptly so that consumer can start benefiting from the USO scheme within an appropriate time; our proposed obligation to raise awareness of the USO is aimed at ensuring that consumers are aware that they may benefit under the USO scheme; our proposed condition concerning treatment of information related to the USO seeks to ensure that the information related to the USO which the Universal Service Providers are proposed to have access to is only used for the purpose of complying with the universal service condition in order to ensure that the Universal Service Providers do not gain an advantage in areas not related to the USO;
- b) not unduly discriminatory, as the same obligations are proposed to be imposed only on BT and KCOM, as the proposed Universal Service Providers within their respective areas;
- c) proportionate, since we have taken account of comments raised by the stakeholders and balanced the need for the Universal Service Providers to have clear and workable criteria and processes, and the need for consumers to be able to easily understand, access and navigate the request route for the USO in order to find out quickly whether they are eligible; and
- d) transparent, in that the proposed conditions are clear in their intention and seek to ensure that the Universal Service Providers have clear and workable criteria and processes to determine eligibility, deliver USO connections and services, providing certainty about eligibility as soon as possible.

6.116 We also consider that the proposed conditions meet our duties and the Community requirements under sections 3 and 4 of the Act. We think that the proposed conditions further the interests of citizens in relation to the communications matters and the interests of consumers in the relevant markets as well as promote the interests of all EU citizens because they seek to ensure that all consumers and businesses find out whether they are eligible as soon as possible and that the eligibility checking process is easy to understand, access and navigate from consumers' perspective.

7. Delivering USO connections to eligible consumers

- 7.1 In this section we set out the proposed requirements with respect to the timeframes for delivering USO connections once Universal Service Providers have received confirmed orders from consumers. We also respond to comments regarding the technologies and use of third-party infrastructure to deliver the USO which we received in response to our June 2018 document.

Timeframe for delivering USO connections

- 7.2 In our June 2018 document, we recognised the trade-offs between ensuring that the USO is delivered as quickly as possible and ensuring that the cost of delivery is minimised, both of which form our primary objectives for implementing the USO. We also noted that Universal Service Providers may receive numerous requests, in different locations, at the same time. This is most likely to be the case when consumers are first able to request a USO connection. There may be trade-offs between delivering a greater number of USO connections quickly if the Universal Service Providers focus initial build in lower cost areas, and the speed of delivering connections to those hardest to reach premises, which could end up waiting longer for services even if they request them first.
- 7.3 We explained that we intended to set out clear timescales for delivering USO connections in the universal service conditions, namely a maximum period from the request date within which the eligible connection must be provided. We said that a period of one year or less may be appropriate.

Responses to our June 2018 document

- 7.4 BT described the proposal for a one-year delivery timeframe as arbitrary and unrealistic considering how markets work in practice and said that it could risk distracting from wider objectives on digital infrastructure. As set out in Section 3 and 5, BT suggested that its fixed wireless broadband service could reduce the footprint from 600k premises to 150k. Of these, BT expects that 110k will cost above the £3,400 cost threshold to connect and therefore will not be eligible for the USO.

- 7.5 BT set out different options it considered could be used to deliver the USO, specifically for the 40k premises which it expects will cost below the £3,400 cost threshold to connect.¹²⁷
- 7.6 We do not discuss its 'proactive' build option as BT is no longer pursuing this option and it is not relevant to our consideration of an appropriate timeframe for delivering USO connections.¹²⁸
- 7.7 Under its 'reactive' build option, BT would wait to be designated as Universal Service Provider before aggregating demand. Once an area reached a level to allow deployment, BT would commission Openreach to start building. Under this option, BT estimated network build would start to reach premises during 2021 through to the end of 2022 but 'on demand' orders from premises costing above the £3,400 cost threshold would roll into 2023.
- 7.8 BT suggested that where USO connections would be delivered using fixed solutions only, 300k premises would cost below the £3,400 cost threshold but a more extended fixed rollout would take longer because of a tightening of the labour market over the next 1-3 years. BT said that USO connections would need to be delivered on a planned basis as opposed to a 'first come, first served' basis and estimated that the fixed solution could start to be provided from mid-2020 and completion could be beyond 2023. BT considered that a similar timeframe would apply for delivering an option which would supplement its fixed solution with a fixed wireless solution.
- 7.9 We asked BT to provide more information on its expected delivery plan for USO eligible customers. BT provided us with indicative timings of a delivery programme based on typical timing for fibre deployments. BT set out that this would take 9-18 months from inception.¹²⁹
- 7.10 KCOM explained its commitment to completing its Next Generation Access ("NGA") by the end of March 2019 with the aim of ensuring approximately 95% of "on-net" customers having access to its full range of customer and business fibre broadband packages, increasing to 100% by March 2020. After this rollout, it expected that standard fibre connection times would apply but considered that the efficiency and associated costs of addressing exceptions to its NGA deployment could be impacted

¹²⁷ BT response to the June 2018 document, pages 16 and 27-31. BT has stated that the 110k and 40k premises figures were estimates derived from its own BT Group modelling that was based on a proactive network build. This modelling was based on a take-up assumption of 80% and relied on data available as of August 2018.

¹²⁸ Under its proposed 'proactive' build option, BT suggested using fixed technologies to reach the 40k premises that cost below the £3,400 cost threshold and build that would commence ahead of designation. Under this approach, BT sought assurances from Ofcom of our acceptance of the proposed delivery timeframe and also more certainty on the path to recovering costs from the proactive roll out.

¹²⁹ BT response to s135 Notice of 17 September 2018. BT stated that the 9-18 month estimate was based on a build project from planning stage to delivery. However it also stated the need for an inception stage to analyse and assimilate what projects would be triggered by a fixed network build. BT suggested that this could add a further 3-6 months depending on the demand assumptions to be confirmed as part of USO conditions.

by imposing the broadband USO in mid-2019. It stated that if it were required to provide connections at a faster rate than it currently provisions fibre broadband services, it would need to employ external contractors and potentially add additional operational resources to do so.¹³⁰

- 7.11 Cityfibre suggested that the one-year timeframe could become a bottleneck to full-fibre rollout and suggested extending it where deployment involves full-fibre.¹³¹ Gigaclear highlighted the difficulty with setting a delivery timeframe and securing access agreements with landowners. It suggested a delivery timeframe should only commence once required access agreements have been secured.¹³²

Our consultation proposal

Proposal for USO connections to be delivered within a 12-month timeframe

- 7.12 The Order establishes that consumers will have the right to request the USO where an affordable connection and service meeting the specification set out in the Order will not be provided by a publicly-funded rollout scheme in the next year. In the context of publicly-funded rollout schemes, the Government has recognised that there are good policy reasons why consumers may need to wait to receive connections, but this period has been limited to 12 months. We consider that it would be inconsistent with the terms of the Order if Ofcom proceeded on the basis that any consumers could be expected to wait longer than the 12-month timeframe which applies in areas subject to publicly-funded rollout schemes. To do so would introduce an unfair distinction between consumers dependent on whether their location was in an area subject to a publicly-funded rollout scheme or not.
- 7.13 For those reasons, we believe that 12 months should be the maximum time for the delivery of connections under the USO. However, given the requirements that any universal service conditions which we impose should be justifiable and proportionate, we have considered whether there are any factors or circumstances which suggest that we should deviate from the 12-month starting point.
- 7.14 KCOM stated that departing from its planned NGA deployment to provide connections at a faster rate than 12 months may require it to employ external contractors and additional operational resources. However, KCOM continues to progress its NGA deployment, with its expectation of 100% of its on-net customers having access to fibre-based services by the end of March 2020. Therefore, we expect the number of eligible customers to continue to fall and be relatively small in the Hull Area by the time the USO takes effect.
- 7.15 BT suggested that it would take 24 months to reach eligible premises and that the 12-month timeframe is unrealistic. While we recognise that there may be some

¹³⁰ KCOM response to the June 2018 document, pages 4-5.

¹³¹ CityFibre response to the June 2018 document, page 5.

¹³² Gigaclear response to the June 2018 document, page 11.

particularly difficult properties to reach, based on current evidence, we do not consider that the proposed 12-month timeframe is not possible. We have considered the following:

- a) BT's response suggests that the delivery of USO services may be a substantially smaller exercise than envisaged at the time of the Order and our June 2018 document. While there remains some uncertainty about the precise eligibility footprint, BT has suggested that the number of USO eligible premises will be substantially reduced to 40k premises that it estimates will cost below the £3,400 cost threshold to connect.¹³³
- b) BT said that it expected to receive staggered requests for connections from consumers. Therefore, the delivery of USO services will likely be spread over time depending on when consumers place orders. Staggered requests should enable the Universal Service Providers to manage and re-deploy resources as required.
- c) Our proposed approach to demand aggregation as set out in Section 6 is designed to facilitate a swift delivery of USO connections. We expect the Universal Service Providers to start building the network immediately if the cost of connecting the eligible premises falls below the £3,400 cost threshold when applying a 70% forecast take-up figure. If the Universal Service Provider receives a subsequent request for a connection within the same demand aggregation area, we expect the USO connections to be delivered in substantially quicker timeframes, as the Universal Service Providers would have already built out, or be in the process of building out, the required infrastructure to connect a premises from the earlier confirmed order.
- d) We are proposing to give the Universal Service Providers five months to prepare for the delivery of the USO from the date of our decision on the designation and universal service conditions. We consider that this implementation period should allow Universal Service Providers to develop their systems, as well as recruit and train staff. We also expect Universal Service Providers to use this time to prepare to start delivering the USO as soon as orders are placed.

7.16 In light of the above and taking account of our duties and policy objectives to deliver the USO as quickly as possible for the benefit of consumers, we consider that the Universal Service Providers should be subject to a general obligation to take all steps to deliver the USO as quickly as reasonably practicable, and in any event within a 12-month timeframe. However, as explained below, we have considered whether there are more specific circumstances under which exceptions to the 12 months might apply and have also reconsidered the starting point for the 12 month period.

¹³³ BT has stated that the 110k and 40k premises figures were estimates derived from its own BT Group modelling that was based on a proactive network build. This modelling was based on a take-up assumption of 80% and relied on data available as of August 2018.

Proposal for the 12-month delivery timeframe to commence on receipt of a confirmed order

- 7.17 In the June 2018 document, we said that the delivery period of 12 months should commence from the request date.
- 7.18 We have now considered this issue further and as explained in Section 6, our proposal is to allow Universal Service Providers 30 calendar days to undertake the eligibility assessment for each request. Once the Universal Service Provider has confirmed that a consumer is eligible, it will be for the consumer to place an order for the USO connection which, may not happen immediately.
- 7.19 We therefore propose that the timeframe for delivering connections to eligible consumers should commence once the consumer confirms an order rather than from the request date. As explained in Section 6, we propose to require the Universal Service Providers to make offers to eligible consumers as soon as they have confirmed their eligibility. We propose to define an order in the universal service conditions as a confirmation by a consumer to proceed with the USO order.
- 7.20 We are conscious that it should be as simple as possible for consumers to make that confirmation. We therefore propose that such confirmation can be communicated to the Universal Service Provider by any method of communication, including by telephone, letter, email or webchat. The Universal Service Providers should not impose any additional requirements on consumers to confirm their orders.
- 7.21 While we are proposing to set a maximum timeframe of 12 months within which the consumer will receive the connection, we consider that the Universal Service Provider should deliver this as quickly as possible within the 12-month period, and that consumers should have a clear understanding of when precisely within this period their connections will be delivered.
- 7.22 Once a confirmed order has been placed, the Universal Service Provider must provide written confirmation of the indicative connection and service delivery time. We would expect this to be a specific calendar month as a minimum. Nearer the time of delivery, the Universal Service Provider must confirm to the consumer in writing the specific customer service activation date.

Circumstances in which the 12-month delivery timeframe may not be achievable

- 7.23 We recognise that there may be some limited circumstances where there are legitimate reasons why the 12-month timeframe for delivery cannot be met. We therefore intend to allow for the 12-month timeframe not to apply where there are specific exceptional circumstances outside the control of the Universal Service Provider. We have proposed a condition to capture that exception.
- 7.24 We consider that it may be necessary to provide further detail through a direction given under the universal service condition or through guidance, in which case we would expect to engage with the proposed Universal Service Providers to develop a more detailed list of what we may consider to be exceptional circumstances in practice and consult further.

- 7.25 We consider that exceptional circumstances would only apply where there are external factors, beyond the Universal Service Provider's control, that have caused a significant delay leading to the 12-month delivery timeframe to be missed, in a situation where the Universal Service Provider would otherwise have met the obligation. We propose that exceptional circumstances would be limited to: environmental factors such as extremely difficult network build conditions; damage caused by exceptionally severe weather (for example floods or storm damage); restrictions to street access; and customer or other private wayleave which has the following characteristics:
- a) it is beyond the normal range of expectations;
 - b) it has a significant impact on either access or to existing infrastructure that causes prolonged delay; and
 - c) it is critical to delivery of the USO service.
- 7.26 We also consider that even in those limited circumstances the Universal Service Provider should still be subject to a requirement to deliver USO connections within a set time to ensure that consumers do not wait indefinitely even when exceptional circumstances apply. Therefore, we propose that the Universal Service Providers should be obliged to deliver the connection to the premises no later than 12 months plus the number of days caused by the delay.
- 7.27 We also propose that the Universal Service Provider provides sufficient and timely information to the consumer to keep them appropriately informed on:
- a) the prospect of a delay to the service activation date, ahead of the original activation date having passed;
 - b) a confirmed new service activation date; and
 - c) an explanation of why the delay occurred.

Interaction with the telephony USO

- 7.28 We have proposed to include the existing obligations on BT and KCOM to provide telephony services with the requirements to provide broadband given that both represent core universal service obligations as defined by the Secretary of State in secondary legislation and both may be provided using elements of the same infrastructure.¹³⁴ We have therefore proposed to revoke the specific telephony conditions applicable to BT and KCOM¹³⁵ and to capture the same obligations in proposed conditions A.1(a) and A.2. As explained in the notification set out in Annex 6, we have not proposed to make any substantive amendments to the remaining conditions, although we note that we will need to consider whether changes to these

¹³⁴ As set out in Section 2, telephony universal service is defined in the 2003 Order.

¹³⁵ As a result of the proposed revocations, we have also proposed certain consequential changes to the remaining conditions and definitions.

provisions may be required in light of any amendments to the UK legislation following the anticipated adoption of the European Electronic Communications Code.

- 7.29 We are also proposing to include a condition to ensure that Universal Service Providers' networks are installed, kept installed and run for the purposes of providing the broadband and telephony USO. We consider this is necessary to ensure that the Universal Service Providers comply with the core obligations to provide the broadband and telephony USO on request as required in the secondary legislation.

Q9. Do you agree with our proposals set out above, including to set a timeframe of 12 months for the delivery of USO connections unless exceptional circumstances have arisen?

Q10. Do you agree with our proposals on how exceptional circumstances should be defined and operate?

Proposed universal service conditions and legal tests

- 7.30 Our proposals on the timeframe for delivering USO connections set out above are captured in universal service conditions proposed for BT and KCOM.
- a) Unless exceptional circumstances arise, the Universal Service Providers will be subject to an obligation which requires them to deliver a USO connection and service to each eligible end-user as soon as reasonably practicable and, in any event, no later than 12 months from the date on which that end-user placed an order with the Universal Service Provider.
 - b) We envisage that exceptional circumstances would be limited to environmental factors such as extremely difficult network build conditions, damage caused by exceptionally severe weather (for example floods or storm damage), restrictions to street access and customer or other private wayleave which each has the following characteristics: it is beyond the normal range of expectations; it has a significant impact on either access or existing infrastructure that causes prolonged delay; and it is critical to delivery of the USO service. Where the exceptional circumstances arise, the 12-month delivery period may be extended to take account of any period of delay which is beyond the Universal Service Provider's control and arises despite the Universal Service Provider taking all measures within its control to seek to deliver a USO connection and service within the 12-month delivery period.
 - c) For the purposes of this condition, an order is proposed to be defined as a confirmed request for a USO connection and service which is submitted to the Universal Service Provider by an eligible end-user by any method of communication, including by telephone, email and letter.
 - d) We have proposed to include the power for us to give directions, approvals and consent under these universal service conditions. The conditions also include a requirement for the Universal Service Providers to comply with any such

direction(s), approval(s) and consent so that any contravention would constitute a contravention of the condition itself and would therefore be subject to enforcement action under sections 94 to 104 of the Act.

7.31 For the reasons set out above and summarised below, we are satisfied that universal service conditions A.1, A.2, A.4, C.5 to C.7 and I.1 (as set out in Annex 6) and revocations meet the relevant tests set out in the Act. Our proposals in respect of the conditions and revocations form part of the process of implementing the Order as required by the Act and ensure that core universal service obligations are set out clearly. Once those conditions are imposed, their purpose will be to give effect to the terms of the Order.

7.32 When considering the imposition and revocation under sections 67 and 45 of the Act of universal service conditions in a particular case, we must be satisfied that the legal tests in section 47(2) of the Act are met. Conditions A.1, A.2, A.4, C.5 to C.7 and I.1 which have proposed to impose are:

- a) objectively justifiable, in that they seek to ensure that a minimum set of broadband connections and services as defined in the Order are delivered to eligible consumers and businesses as soon as possible so that those consumers and businesses are no longer at a social and/or economic disadvantage;
- b) not unduly discriminatory, as the same obligations are proposed to be imposed only on BT and KCOM, as the proposed Universal Service Providers within their respective areas, such designation having been proposed in accordance with the procedure set out in the 2018 Designation Regulations;
- c) proportionate, since in proposing the 12-month delivery period we have taken account of our duty to implement the Order and comments raised by the stakeholders, in particular BT and KCOM, and proposed an obligation which ensures that eligible consumers and businesses can receive USO connections and services as soon as possible whilst recognising at the same time that there could be exceptional circumstances beyond the Universal Service Provider's control in which the 12-month delivery period should be extended; and
- d) transparent, in that the conditions are clear in their intention to ensure that the Universal Service Providers deliver USO connections and services as soon as possible for the benefit of eligible consumers and businesses.

7.33 We also consider that the proposed conditions and revocations meet our duties and the Community requirements under sections 3 and 4 of the Act. We think that our proposals further the interests of citizens in relation to the communications matters and the interests of consumers in the relevant markets as well as promote the interests of all EU citizens because they seek to ensure that all consumers and businesses who meet the eligibility criteria can receive USO connections and services as soon as possible following their requests. This will help ensure that those persons are no longer at a social and/or economic disadvantage and can benefit from having decent broadband.

Other issues raised by stakeholders relating to the delivery of USO connections

Technologies used to deliver the USO

- 7.34 We received several stakeholder responses about the underlying technologies to deliver the USO as summarised below.
- a) KCOM suggested that given the expectation that the technical specification would need to increase, fibre technologies would provide the ability to more easily upgrade USO services.¹³⁶
 - b) Gigaclear highlighted efficiency arguments for preferring full-fibre to other technologies in delivering the USO and suggested that we could take account of this by developing a formula that permits full-fibre technology to be chosen over an alternative technology.¹³⁷
 - c) CityFibre suggested that the delivery of the USO may conflict with the broader Government and Ofcom ambition for full-fibre rollout.¹³⁸ It also highlighted that wireless networks have a role to play in serving USO areas and this would make the USO less likely to lead to the deployment of obsolescent technology.¹³⁹
- 7.35 When introducing the USO, the Government stated that the specification for the USO had to be technology neutral, that is to say that we cannot specify the technologies that can be used to deliver it. Government set out that given the location and distribution of premises, and the cost of deployment, it is likely that a mix of technologies will be needed to connect USO customers.¹⁴⁰ This means that it will fall to Universal Service Providers to decide how to provide a USO connection to the consumer in a way which meets the Order. In particular, they should:
- a) ensure that their choice of technology, and the specific implementation of that technology, meets the technical requirements and can deliver connections to all eligible premises within the timeframes specified in the universal service conditions; and
 - b) demonstrate that the costs incurred in providing the USO connection were efficient, if any compensation is subsequently sought from an industry fund.
- 7.36 In some cases, we expect full-fibre to be the most efficient technology to deliver USO connections in a way which meets the technical specification in the Order. We also consider that there is potentially a role for wireless technologies. However, we do not

¹³⁶ KCOM response to June 2018 document, paragraph 1.2 and page 4.

¹³⁷ Gigaclear response to June 2018 document, page 2.

¹³⁸ CityFibre response to June 2018 document, pages 3-5. CityFibre noted that the forthcoming European Electronic Communications Code requires digital exclusion areas to be covered by very high capacity networks providing speeds of at least 100Mbit/s.

¹³⁹ CityFibre response to June 2018 document, page 4.

¹⁴⁰ DCMS, [A new broadband Universal Service Obligation: Government's response to consultation on design](#), page 23.

consider that it would be appropriate to determine in advance which technology would be most efficient in all cases, as it will depend on individual circumstances. This would not be in line with the principle of technology neutrality.

- 7.37 In Section 2, we explain that we would only compensate a net cost where it can be demonstrated that the costs incurred in providing connections were efficient. As part of our assessment of any unfair net cost claim by a Universal Service Provider, we will therefore consider whether the Universal Service Provider could have delivered the USO more efficiently using different technologies. In assessing the efficient technology choice, we would take account of the ongoing operating costs of the technology deployed, not just capital costs. Any such cost advantages of full-fibre deployment over other technologies, for instance due to lower maintenance costs, should be reflected in that assessment.
- 7.38 We consider that this approach is consistent with both the Order and the broader Government, regulatory and industry ambition to extend the reach of fibre capabilities to as much of the country as possible. As set out in our July 2018 document on *Regulatory certainty to support investment in full-fibre broadband*¹⁴¹, our strategy is to support investment in new full-fibre networks and to secure widespread availability of good broadband.

Use of third-party networks to deliver the USO

- 7.39 Several stakeholders said that Universal Service Providers should be encouraged or required to consider using alternative network infrastructure to deliver the USO.
- a) CityFibre said that using or extending pre-existing alternative network infrastructure (particularly core and spine networks) may be the most efficient delivery solution in certain regions or areas.
 - b) Gigaclear said that the most affordable and efficient means of connection in some USO areas is likely to be ‘in-filling’ the alternative network footprint, but that Universal Service Providers may have competitive incentives to use their own infrastructure e.g. in rural areas where the delivery of a full-fibre connection will secure future incumbency. As such, it said that USO funding should be made conditional on the Universal Service Provider presenting evidence that it has considered using pre-existing network infrastructure, for instance via a costing valuation of the alternative network. Gigaclear said that this process would not be cumbersome, as consideration of a cheaper means of delivery should be part of any assessment of efficient delivery.¹⁴²

¹⁴¹ Ofcom, July 2018. *Regulatory certainty to support investment in full-fibre broadband*.

https://www.ofcom.org.uk/data/assets/pdf_file/0025/116539/investment-full-fibre-broadband.pdf

¹⁴² Gigaclear response to June 2018 document, pages 1 and 6-7.

- c) The Internet Service Providers' Association said that there was an argument for introducing provisions for facilitating greater network sharing, to reduce costs and chance of overbuild and ensure that those in the hardest-to-reach areas are gaining the best connections they can, as quickly as possible.¹⁴³
- d) In its response to the September 2018 consultation, Methera Global said that provisions should be made for a Universal Service Provider to have open access to other operators' existing infrastructure.¹⁴⁴

- 7.40 We agree that using third-party infrastructure may in some cases be the most efficient approach to delivering USO connections and, as previously set out, we would only compensate a net cost where it can be demonstrated that the costs incurred in providing connections were efficient. However, it is not clear this approach would always deliver connections in shorter timeframes and at lower cost. For example, it could take time and involve additional costs to agree wholesale network access arrangements, as well as building and developing network and systems integration. This would be necessary for each alternative provider's network that the Universal Service Provider uses.
- 7.41 Notwithstanding these points, as part of our assessment of any unfair net cost claim by a Universal Service Provider, we would consider whether that provider could have delivered the USO more efficiently using alternative network infrastructure. This includes any viable alternative infrastructure, particularly if existing network sharing agreements are already in place or network access is already offered by alternative providers on commercial terms. In such circumstances, we would expect Universal Service Providers to utilise these arrangements unless there were specific reasons why they were less applicable in USO areas.
- 7.42 We expect to do this by assessing the reasonableness of the Universal Service Provider's overall technology and network design choices rather than by requiring a specific costing valuation of all alternative network options as suggested by Gigaclear. This is because we consider that this is a more proportionate way of ensuring that the USO has been delivered efficiently.
- 7.43 We welcome industry's desire for seeking shared solutions to improving broadband connectivity. We encourage alternative network providers to come forward and offer wholesale access arrangements that the Universal Service Providers could consider, to minimise the costs of network deployment, although any such agreements would be the result of commercial negotiation rather than on the basis of a regulatory obligation requiring the Universal Service Providers to purchase wholesale access from an alternative network where offered.

¹⁴³ ISPA response to June 2018 document, page 2.

¹⁴⁴ Methera Global Communications Ltd response to September 2018 consultation, page 2.

8. Proposed requirements to ensure USO premises receive a fair service

8.1 In this section, we explain how we propose to secure a fair outcome for USO consumers on pricing, quality of service and complaints handling. Our proposals aim to ensure that USO connections and services are affordable and priced in line with comparable services, and that USO customers receive the same quality of service as other customers connected on commercial networks. We also set out how consumers should be able to challenge a Universal Service Provider's decision about eligibility under the USO scheme.

Uniform and affordable pricing

8.2 In our June 2018 document, we explained that the Order states that Ofcom should ensure that the Universal Service Provider offers USO connections and services at prices that are *“(a) affordable; and (b) uniform throughout the United Kingdom, unless OFCOM has determined that there is clear justification for not doing so”*.

8.3 We asked prospective Universal Service Providers to provide information on the services they would expect to offer to premises connected through the USO and how they intended to price connections and ongoing services.

Responses to our June 2018 document

8.4 BT set out, at the time of their response to our June 2018 document, that customers on their sub-10Mbit/s copper-based broadband services paid £45.49 per month after its initial contract period, and that its fibre broadband services were typically priced at £44.49 to £58.99 per month after an initial contract period.¹⁴⁵ BT set out that its fixed wireless service, which is sold under the EE brand, delivers average speeds of 31Mbit/s with 100GB data allowance and was charged at £55 a month at the time of BT's response. However, we note that this has since been reduced to £35 a month.¹⁴⁶ With wider take-up of the fixed wireless product, BT said it expected that pricing would evolve in line with its wider consumer strategy.¹⁴⁷

¹⁴⁵ Since responding to our June 2018 document, BT has lowered its out of contract prices. Consumers signing up to new contracts on copper would now pay £32.99 per month after the initial contract period (compared to an in contract price of £24.99 per month for 18 months), whereas consumers signing up to fibre services can pay from £37.99 per month after the initial contract period (compared to an in contract price of £29.99 per month for 18 months). See <https://www.productsandservices.bt.com/broadband/deals/> for up-to-date information on BT pricing. All these prices include VAT. Prices correct as of 4 December 2018.

¹⁴⁶ Price correct as of 4 December 2018.

¹⁴⁷ BT response to June 2018 document, page 12.

- 8.5 BT said that it expected to deliver most USO connections with FTTP. It highlighted that consumers connected through this network would benefit from retail competition and have a choice of Internet Service Provider. It would therefore expect pricing to be the same as offered elsewhere in the country. In response to a subsequent information request, BT said that prices offered over FTTP start at a standard price of £44.99.¹⁴⁸
- 8.6 KCOM said that it did not currently propose to introduce a copper or fibre-based 10Mbit/s service for the USO, and that its intention would be to deliver the USO using either FTTP or FTTC.¹⁴⁹ It also noted that Ofcom can deviate from the application of uniform pricing throughout the UK where it determines that there is a justification for doing so, but that it did not consider it appropriate in this case. It considered that instead, Ofcom has clear justification for providing a degree of pricing flexibility where the underlying technology being deployed in the Hull Area is capable of meeting the technical specification of the current USO, but is also capable of supporting future changes to the parameters of the USO. KCOM stated that its current 30Mbit/s download service with a 100GB allowance is offered to consumers at £32 per month, with a standard £50 connection fee.¹⁵⁰

Our consultation proposal

- 8.7 As set out above, the Order states that the broadband connections and services under the USO scheme must be provided at prices that are:
- a) affordable; and
 - b) uniform throughout the UK, unless Ofcom has determined that there is clear justification for not doing so.¹⁵¹
- 8.8 Whether connections and services are affordable depends on the individual circumstances of each end-user; different end-users will be able to afford different prices dependent on their circumstances and will have different sets of products and prices available to them. Even at very low prices, there are likely to be some end-users who are unable to afford a service or who struggle to pay their bill. Our objective in implementing the Order is to ensure that people connected under the USO scheme pay no more for equivalent services than people in other parts of the country, and that a decent broadband service is affordable for the vast majority, as is the case in non-USO areas.

¹⁴⁸ Price including VAT. BT response to first s135, page 7. BT has subsequently reduced its prices. Consumers signing up to fibre services can now pay from £37.99 per month after the initial contract period. Price correct as of 4 December 2018.

¹⁴⁹ KCOM response to June 2018 document, pages 4 and 6.

¹⁵⁰ Prices including VAT. KCOM response to June 2018 document, page 6. KCOM now offers a standard fibre service with a download speed of 30Mbit/s and a data allowance of 150GB from £35 per month with a connection fee of £25. Price correct as of 4 December 2018.

¹⁵¹ Paragraphs 1 and 2 of Schedule 2 of the Order.

- 8.9 We propose to ensure that prices for USO connections and services will be affordable and uniform through an obligation which consists of two elements.
- a) First, a requirement that the Universal Service Providers offer broadband connections and services to USO customers at the same price that they offer to non-USO customers.
 - b) Second, a safeguard cap on the amount the Universal Service Providers can charge USO customers for a broadband connection and service. This cap would be set at £45 per month, including VAT, averaged over the fixed commitment period, including any upfront connection charges, monthly payments and other broadband charges.
- 8.10 This two-part obligation should ensure that end-users connected under the USO scheme pay no more for equivalent services than people in other parts of the country, subject to the safeguard.¹⁵²
- 8.11 We set out below in more detail our proposals for each element of this two-part obligation.

A Universal Service Provider must offer connections and services on its own network at the same price no matter where in the UK a customer is located

- 8.12 In our view, requiring USO connections and services to be priced the same as non-USO connections and services is the most effective way to ensure that USO prices are affordable and uniform, in line with the requirements set out under the Order.¹⁵³ Doing so should keep USO prices in line with current market prices and should ensure affordable broadband for the vast majority of USO customers.
- 8.13 The UK retail market for broadband currently delivers access to a wide variety of broadband products at a broad range of prices. Ofcom research indicates that few households in the UK face problems being able to afford a broadband connection and service. Our Affordability Tracker 2018 found that:
- only 2% of consumers with some responsibility for communications services said that they had difficulty paying for fixed broadband¹⁵⁴; and

¹⁵² DCMS, *A new broadband Universal Service Obligation: Government's response to consultation on design*, page 50.

¹⁵³ Therefore, if the same product is offered to non-USO customers then it should be priced the same for USO customers. If a unique USO product exists, it should be priced in line with similar tariffs that are offered to non-USO customers.

¹⁵⁴ We asked individuals with some responsibility for paying the bill to list which of their communications services they had experienced difficulties paying their bill for in the last year. We found, 1% of respondents said that they had difficulties paying for a fixed standard broadband service and a further 1% said that they had experienced difficulty paying for a fixed superfast broadband service. Ofcom, October 2018. *Affordability Tracker*, Data Tables, page 53. https://www.ofcom.org.uk/data/assets/pdf_file/0027/121977/affordability-tracker-2018-data-tables.pdf

- only 2% of consumers with some responsibility for communications services said that they did not have fixed broadband due to cost.¹⁵⁵

- 8.14 Hence, we consider that current prices in the market are generally affordable for the vast majority of consumers. Based on data provided by the largest four broadband providers, covering the third quarter of 2017, we estimate that prices for dual play broadband in the UK range from less than £20 per month for the cheapest standard broadband packages to around £55 per month for faster fibre products, particularly where customers are out of contract.¹⁵⁶ Within that range, the average price of a dual play broadband product is around £37 per month, with standard broadband priced on average at £32 per month and fibre and cable broadband at around £43 per month.
- 8.15 In practical terms, where the Universal Service Provider is required to charge its USO customers the same price as its non-USO customers, it will set prices on the basis of the cost of supplying both USO and non-USO premises. Where the ratio of USO to non-USO premises served by a network is small, prices will reflect conditions that prevail over the bulk of the network (i.e. non-USO areas). As a result, USO customers will be offered prices that track those that are currently available in the wider market.
- 8.16 Under this proposed requirement, where a USO service is delivered by BT over fibre, BT must charge that customer in line with its existing portfolio of products offered over fibre elsewhere in the UK. If the USO service offered by KCOM is over fibre, KCOM must charge the USO customer in line with its existing prices for fibre services.
- 8.17 In response to our June 2018 document and subsequent information requests, BT and KCOM provided the entry level packages on their proposed USO technologies. The monthly in-contract tariff prices and connection fees for these, as set out on BT and KCOM's websites at the time of publication, are set out below.¹⁵⁷ The below table also includes BT's fixed wireless service (marketed under the EE brand).¹⁵⁸

¹⁵⁵ Ofcom, October 2018. *Affordability Tracker Data Tables*, page 160.

¹⁵⁶ This data provided average revenue per user (ARPU) for dual play customers across the BT, Plusnet, Sky, TalkTalk and Virgin Media brands. The data covers the third quarter of 2017. Averages were provided for each brand split between standard and fibre/cable broadband and between in and out of contract customers respectively. These data were adjusted to remove calls revenue based on data from providers. A £1 per month adjustment (excluding VAT) was made to reflect fixed charges for calls packages. For in contract customers we have increased monthly prices to reflect the average monthly cost to the end-user of connection and activation fees over the fixed commitment period based on information collected from relevant provider websites. Retail prices are presented inclusive of VAT.

¹⁵⁷ See <https://www.productsandservices.bt.com/broadband/deals/> for BT pricing and <http://pricing.kcomhome.com/> for KCOM pricing.

¹⁵⁸ BT stated that it planned to cover 450k of their estimated 600k USO eligible premises by commercially deployed fixed wireless prior to the USO coming into effect.

Table 2: Prices for entry level packages on proposed USO technologies¹⁵⁹

	BT FTTP/FTTC	BT/EE fixed wireless	KCOM FTTP/FTTC
Average download speeds	36Mbit/s	31Mbit/s	30Mbit/s
Data usage	Unlimited	100GB	150GB
Fixed commitment period	18 months	18 months	12 months
Monthly in-contract price (inc. VAT)	£29.99	£35.00	£35.00
Connection fees (inc. VAT)	£29.99	£0/£100 if antenna required	£25

8.18 These prices would deliver USO connections and services within the range of prices we would be likely to consider affordable. As the number of USO premises is likely to be small compared to the overall size of BT and KCOM's fibre-based networks, we do not expect this USO requirement to lead to a material increase in BT and KCOM's prices. Therefore, we consider that this proposed pricing rule is likely to secure affordability for USO customers that are connected using fibre.

A USO connection and service must be offered at a price below a minimum safeguard level

8.19 We consider that there could be circumstances in which requiring a Universal Service Provider to offer the same prices to USO and non-USO customers may not deliver affordable broadband for USO customers. This could be the case where the Universal Service Provider deploys a technology that is mainly used in areas where there is little choice of alternative services or where average costs are high. For example, we expect the take-up of current fixed wireless services to be limited to where there are few alternative broadband services available. Therefore, if this led to high fixed wireless prices in non-USO areas, a requirement to charge USO customers the same price may not ensure affordable USO prices.

8.20 Considering this risk, we propose to set a threshold price as a safeguard to ensure that USO customers can access a decent broadband connection and service at an affordable price. When setting this safeguard, we have considered current market pricing and consumer research on affordability.

8.21 As set out above, most UK consumers can access a variety of products at prices ranging from around £20 to £55 per month, with an average price for dual play broadband of around £37 per month.¹⁶⁰ We note that the vast majority of consumers

¹⁵⁹ Prices correct as of 4 December 2018 and include VAT.

¹⁶⁰ Prices including VAT.

consider broadband to be affordable when they have access to this range of prices. Therefore, in order to set a safeguard, we must pick a point within the range of current market prices.

- 8.22 In our view, setting a safeguard cap below the average price for broadband in the UK is likely to result in prices that are lower than is necessary to ensure affordability, as USO customers would face lower average prices than those paid in the rest of the UK. This would be inconsistent with our objective to ensure that the cost of delivery, and therefore the impact on industry and consumers, is minimised.
- 8.23 We consider that setting a safeguard cap for the USO toward the upper-end of the distribution of prices is appropriate, as:
- a) the price consumers currently pay is informative about what prices they can afford and most consumers in the UK can afford the service they pay for. Furthermore, prices will in most cases be some way below the maximum level consumers are willing to pay, more so where prices are subject to competitive pressure. Therefore, most customers are likely to be able to afford higher prices than they currently pay; and
 - b) individual circumstances of USO customers may also differ from those of the rest of the UK. Socio-economic analysis of 2015 postcode data indicated that in 2015 people living in premises which could not get a 10Mbit/s download broadband service had on average higher household incomes than the rest of the UK. The survey found that 56% of these people earned £50,000 or more a year compared to 23% across the UK, and 2% earned less than £20,000 compared to 28% across the UK.¹⁶¹ While the USO footprint has reduced since 2015, and will continue to reduce until the USO comes into force, we do not see any compelling reason why that should systematically affect average income distribution of USO households.
- 8.24 We consider that setting a price at the top of the distribution carries a higher risk that a material proportion of consumers will find the USO unaffordable, especially as USO customers will not have access to the full range of broadband services and prices available to the vast majority of non-USO customers. This is particularly the case at price thresholds which encompass only a small proportion of broadband customers in the UK.
- 8.25 From the pricing information provided to us by BT, Sky, TalkTalk and Virgin Media, we estimate that around 40% of dual play customers pay a price in excess of £40 per month for their broadband over the lifetime of their contract (including any upfront connection charges, monthly payments and other broadband charges), and around 10% pay in excess of £50 per month.¹⁶²

¹⁶¹ This research was conducted with Experian and published alongside Ofcom's Technical Advice to Government on the USO. Ofcom, December 2016. *Technical Advice to Government, Annex 2: Socio-economic analysis of 2015 postcode data*. https://www.ofcom.org.uk/_data/assets/pdf_file/0034/95578/annex8.pdf

¹⁶² To derive these estimates, we have assumed a symmetric distribution of spend around the mean.

- 8.26 Based on the data currently available, in our judgement, a safeguard cap between £40 and £50 per month is likely to be sufficient to ensure that USO connections and services are affordable. For the purposes of this consultation we propose a safeguard of £45 per month, including VAT.
- 8.27 In practice, we do not expect the cap to influence the pricing of USO connections and services for a material number of households. This is because the technologies that are likely to be deployed to fulfil the USO, namely FTTC or FTTP, are in most cases currently priced below the safeguard (See Table 2 above).¹⁶³
- 8.28 As the USO is likely to be in place for several years, we propose to keep the level of the safeguard constant in real terms by updating it annually to reflect the consumer price index (“CPI”).¹⁶⁴ We may adjust the level of the safeguard from time to time to ensure that it remains effective.
- 8.29 We also note that the USO does not make provision for a social tariff for the most financially vulnerable in society. Both of the proposed Universal Service Providers currently offer a voluntary social tariff for broadband, albeit at a lower specification than the technical specification in the Order. We will be seeking voluntary commitments from BT and KCOM to offer their broadband social tariff to USO customers, and to upgrade the social tariff to meet the technical specification of the USO.

Universal service conditions on pricing

- 8.30 We therefore propose to include obligations in the universal service conditions on pricing which consist of two elements.
- a) The Universal Service Providers would be required to offer broadband connections and services to USO customers at the same prices as it offers to non-USO customers.
 - b) The Universal Service Providers would be required to offer at least one USO connection and service at a price that does not exceed £45 per month, including VAT, averaged over the fixed commitment period, including any upfront connection charges, monthly payments and other broadband charges.

¹⁶³ BT plans to fulfil USO requests using fibre-based technology, in most cases FTTP. See BT response to June 2018 document, pages 4-5 and page 15. KCOM also plan to meet USO requests using FTTP or FTTC. See KCOM response to June 2018 document, page 4.

¹⁶⁴ CPI is the measure of inflation we have chosen for any future increases in the safeguard cap.

Q11. Do you agree with our overall approach to ensuring USO connections and services are affordable, specifically on:

- a) our proposal to introduce a two-part obligation imposing (i) an equivalent pricing requirement, and (ii) a safeguard cap; and**
- b) setting the level of a safeguard cap at £45 per month (including VAT, averaged over the fixed commitment period, including any upfront connection charges, monthly payments and other broadband charges)?**

Proposed requirements to deliver good service quality

- 8.31 In our June 2018 document, we set out our expectation that homes and businesses, once connected under the USO, should receive the same quality of service levels as homes and businesses elsewhere in the UK. We explained that our objective is to ensure that premises connected under the USO will receive a service from the Universal Service Provider that is as good as customers receive in the rest of the UK.
- 8.32 Below, we outline the obligations that currently apply to the proposed Universal Service Providers and our proposals on additional quality of service obligations for customers receiving a USO service. We refer to these customer service expectations throughout this section as “quality of service”.
- 8.33 In this section, we do not address the quality of service of the initial provision of a USO connection, as we set out our expectations and obligations for provision in Sections 6 and 7 of this consultation.

Responses to our June 2018 document

- 8.34 BT proposed to establish a Universal Broadband Support Group to manage requests and ensure a consistent level of quality of service for USO customers which would replicate the quality of service levels that BT offers elsewhere in the UK on its commercial and publicly-funded networks.¹⁶⁵
- 8.35 Broadband Speedchecker stated that premises in remote areas are more likely to suffer extended downtime in the event of failure and argued that there need to be guidelines on expected service levels, particularly if they are going to be lower than the service levels obtained in non-USO areas.¹⁶⁶

Our consultation proposal

- 8.36 The quality of the ongoing service provided by BT to consumers is principally determined by the contractual terms that it offers. These contract terms define the

¹⁶⁵ BT response to June 2018 document, page 21.

¹⁶⁶ Broadband Speedchecker response to June 2018 document, page 1.

quality of service that consumers should receive. Consumer law and our General Conditions provide certain protections.

Wholesale Local Access Market Review

- 8.37 In the Wholesale Local Access Market Review 2018 (“WLA review 2018”), we reviewed the level of wholesale competition that exists in the broadband market and the infrastructure required to deliver a broadband service. The scope of the WLA review 2018 covers both FTTP and FTTC but does not include fixed wireless.
- 8.38 In the WLA review 2018, we found BT to have significant market power and imposed quality of service obligations on BT’s broadband services.¹⁶⁷ These obligations ensure that BT provides a good level of service quality in areas where there is limited competition from other operators at the wholesale level. These obligations set time limits for fault repairs and how often appointments must be met. However, for FTTP services there is only a reporting requirement, which allows Ofcom to monitor the level of service quality provided to customers connected by FTTP.
- 8.39 In the WLA review 2018, we also found KCOM to have significant market power and imposed a reporting requirement on KCOM, allowing Ofcom to monitor the level of service quality provided by KCOM.
- 8.40 Once USO connections have been provided, the obligations imposed through the WLA review 2018 will provide certain protections at the wholesale level. These protections should help ensure that BT and KCOM downstream operations are not prevented from providing an acceptable level of quality of service to USO consumers due to issues at the wholesale level. As we expect BT and KCOM to use FTTC and FTTP to deliver the USO, but with the possibility of BT also using fixed wireless, there is a risk that the requirements of the WLA alone may not be sufficient to ensure that consumers in USO areas will receive the same level of service as consumers in non-USO areas.

Automatic Compensation

- 8.41 In 2017, Ofcom proposed the introduction of automatic compensation for quality of service to further incentivise providers to deliver a high service quality standard, and to compensate consumers when standards drop below these levels.¹⁶⁸
- 8.42 In November 2017, Ofcom accepted a voluntary proposal put forward by industry to introduce an automatic compensation scheme. Under the scheme consumers will receive automatic compensation for loss of service (set at £8 per day), delayed provisioning (£5 per day) and missed appointments (£25 per incident). This scheme is intended to create incentives for providers to maintain an acceptable quality of

¹⁶⁷ Ofcom, March 2018. *Wholesale Local Access Market Review 2018*.

<https://www.ofcom.org.uk/consultations-and-statements/category-1/wholesale-local-access-market-review>

¹⁶⁸ Ofcom, November 2017. *Automatic compensation: Protecting consumers from service quality problems*.

<https://www.ofcom.org.uk/consultations-and-statements/category-1/automatic-compensation>

service for customers and will compensate those customers whose service falls below these levels.

8.43 This industry scheme was adopted by BT and will apply to services that are delivered via FTTC and FTTP (including USO services) from 1 April 2019. The scheme does not currently apply to services delivered using fixed wireless.

8.44 KCOM is not a signatory to the automatic compensation scheme so consumers in the Hull Area will not automatically receive compensation if KCOM’s level of service falls below the standards set out in the automatic compensation scheme.

Commercial pressure

8.45 Competitive forces can help to ensure that providers are incentivised to offer a good quality of service in their contracts with consumers due to the risk that their customers can switch to other providers. In USO areas, however, there is no or less commercial pressure than in other areas. The Universal Service Provider may therefore not have the same incentives to maintain a good quality of service.

Our proposals

8.46 Table 3 below summarises the existing service quality obligations and commitments that would apply to BT and KCOM’s USO services.

Table 3: Existing service quality obligations and commitments

Operator	Technology	WLA	Automatic Compensation
BT	FTTC	Y	Y
	FTTP	(Reporting only)	Y
	Fixed wireless	N	N
KCOM	FTTC	(Reporting only)	N
	FTTP	(Reporting only)	N

8.47 We have considered whether these existing obligations and commitments would be sufficient and appropriate to achieve our objectives for the USO. We consider that there remains a risk that USO customers may be given a different level of priority in terms of quality of service offered to them because they are based in more geographically challenging areas and/or there is no or less competitive pressure compared to non-USO areas.

8.48 Therefore, we consider that it is appropriate to propose an additional requirement to provide a safeguard for USO consumers which would tie the quality of service levels concerning faults, missed appointments and provision in USO areas to those offered in the rest of the UK. This would ensure that consumers in USO areas on average receive

at least the same level of service quality as those consumers in non-USO areas in each financial year, or another period that may be appropriate.

Q12. Do you agree with our proposal to ensure that USO customers receive at least the same quality of service as non-USO customers?

Complaints handling and dispute resolution

- 8.49 In our June 2018 document, we stated that consumers should be entitled to raise complaints regarding the USO to the relevant Universal Service Provider, for instance if a request for a connection is rejected or there are delays to the delivery of USO connections and services. We set out our intention to include an obligation in the universal service conditions requiring the Universal Service Providers to establish and comply with procedures for the handling of complaints specific to the USO, including referrals to an appropriate dispute resolution body whose decisions would be binding.
- 8.50 We also explained that the Universal Service Providers will have to manage complaints specific to the USO, for instance relating to eligibility disputes, the time taken to build network infrastructure or the quality of the connections and services. We asked prospective Universal Service Providers how they would handle the potential increase in complaints numbers resulting from USO specific complaints, and what procedures they intended to follow to resolve these complaints.

Responses to our June 2018 document

- 8.51 BT said that it envisaged USO complaints being handled in line with its existing complaints policy, which includes recourse to an alternative dispute resolution scheme. For transparency, BT also said that it would compile statistics on the number and outcomes of disputes on an annual basis for publication on its website.¹⁶⁹
- 8.52 KCOM did not anticipate an increase in complaint numbers were it to be designated as the Universal Service Provider for the Hull Area, given the small area it would cover, and its ongoing commercial rollout plans which would reduce the number of eligible premises. As a result, it expected that its existing complaints handling processes would be sufficient. It urged Ofcom, in considering whether to set specific procedures for USO complaints, to balance the level of competence in adjudication with the costs of compliance.¹⁷⁰
- 8.53 Broadband Speedchecker asked Ofcom to provide guidance on how consumers could appeal a decision made by the Universal Service Provider.¹⁷¹

¹⁶⁹ BT response to June 2018 document, page 24.

¹⁷⁰ KCOM response to June 2018 document, page 7.

¹⁷¹ Broadband Speedchecker response to June 2018 document, page 1.

Our consultation proposal

- 8.54 As set out in Section 2, Ofcom’s role is to ensure that the Order is implemented properly and effectively. The Order gives consumers a legal right to obtain USO connections and services provided they meet the eligibility criteria. Therefore, we must ensure that consumers are able to exercise this right effectively. We consider that this means that consumers should be able to challenge a Universal Service Provider’s decision if that decision does not appear to be valid or in accordance with the Universal Service Provider’s regulatory obligations, and that consumers should have free access to a dispute resolution body for an independent assessment. Without this protection there is a risk that consumers’ legal rights could be undermined.
- 8.55 Taking into account the views of responses to our June 2018 document set out above, we have considered whether existing complaints handling and dispute resolution procedures, as required by Condition C4 of Ofcom’s General Conditions of Entitlement (“General Condition C4”), which will apply in any event to the Universal Service Providers would be sufficient and appropriate to achieve our objectives for the USO.¹⁷²
- 8.56 General Condition C4 requires that providers handle complaints they receive from their domestic and small business customers, including those who seek to become their customers, in accordance with certain minimum procedural standards. It also requires providers to be members of an approved independent alternative dispute resolution scheme, to provide domestic and small business customers with free access to this scheme, and to comply with the decisions of that scheme. Ofcom currently approves two such schemes under the Alternative Dispute Resolution Regulations 2015 and section 54 of the Act: Ombudsman Services: Communications (“OS”) and the Communications and Internet Services Adjudication Scheme (“CISAS”).
- 8.57 The requirements in General Condition C4 apply to all providers and will therefore apply to the Universal Service Providers. These requirements were assessed in detail as part of our comprehensive review of the General Conditions which concluded in September 2017.¹⁷³ As a result of that review, we significantly strengthened the rules on complaints handling to ensure that providers deal with complaints from consumers promptly and effectively.
- 8.58 In light of that, we consider that these strengthened requirements should be the basis for any additional obligations imposed in universal service conditions concerning complaints handling and dispute resolution in respect of the USO.

¹⁷² Ofcom’s General Conditions of Entitlement are available here: <https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/telecoms-competition-regulation/general-conditions-of-entitlement>

¹⁷³ Ofcom, September 2017. *Review of the General Conditions of Entitlement*. Changes to the complaints handling and dispute resolution requirements are set out in Section 11.

https://www.ofcom.org.uk/data/assets/pdf_file/0026/106397/Statement-and-Consultation-Review-of-the-General-Conditions-of-Entitlement.pdf

- 8.59 We expect USO complaints to relate principally to the Universal Service Provider's assessment of a consumer's eligibility for a connection and service and, in particular, its assessment of whether a connection costs more than the £3,400 cost threshold and the consumer is asked to pay these excess connection costs. Complaints may also relate to the time taken to deliver new connections and services. Although USO complaints have the potential to be complex in nature, other complaints currently dealt with under General Condition C4 can also be complicated, for example in relation to broadband speeds disputes, so we consider the General Condition C4 procedural standards to be suitable as the basis for any additional obligation in respect of USO complaints.
- 8.60 We are conscious that the requirements in General Condition C4 have not been imposed for the purpose of ensuring appropriate resolution of complaints concerning the USO. We therefore consider it appropriate to ensure that the Universal Service Providers are subject to specific obligations based on the provisions contained in General Condition C4, which require them to have in place complaint handling processes and dispute resolution mechanisms which promptly and effectively address complaints concerning the USO.
- 8.61 In addition, General Condition C4 does not cover all those who could request a USO connection. The Order provides that fixed locations that are residences or places of business can request connections. However, if the Universal Service Providers were only subject to General Condition C4, they would be under no obligation to have procedures in place for the handling of complaints for businesses, other than small businesses where no more than ten individuals work or volunteer. There would also be no obligation on the Universal Service Providers to provide businesses, other than small businesses, with access to their appointed dispute resolution scheme free of charge.
- 8.62 We therefore consider that, in addition to the obligations in General Condition C4 concerning internal complaints handling and dispute resolution, it is appropriate and proportionate to propose specific obligations in the universal service conditions. We propose to base these on the obligations in General Condition C4 requiring the Universal Service Providers to: have and comply with internal procedures for the handling of USO complaints; and appoint an independent body to resolve disputes between consumers and the Universal Service Provider in relation to the USO.
- 8.63 We also propose that the Universal Service Providers should take appropriate steps to prevent the reoccurrence of any problems identified to ensure that complaints continue to be dealt with promptly and effectively.
- 8.64 The fact that consumers are proposed to have recourse to such body should not be taken as suggesting that Ofcom is less likely to enforce any potential non-compliance with one or more of the universal service conditions.

Complaints handling

- 8.65 In relation to complaints regarding connections and services under the USO scheme, we propose to impose obligations on the Universal Service Providers, based on General Condition C4.2, to ensure that they meet the following requirements to:
- a) have and comply with procedures for the handling of USO complaints that conform with the provisions of Section 1 of the Ofcom Approved Complaints Code set out in the annex to General Condition C4;
 - b) have and comply with a Customer Complaints Code in respect of USO complaints that conforms with the provisions of Section 2 of the Ofcom Approved Complaints Code; and
 - c) retain written records of USO complaints in conformity with the provisions of Section 3 of the Ofcom Approved Complaints Code.
- 8.66 As explained in Section 6, when a Universal Service Provider informs a consumer of the outcome of their request, they should also inform them of their right to challenge a Universal Service Provider's decision by making a complaint and include a weblink to, or physical copy of, the Universal Service Provider's Customer Complaints Code in respect of USO complaints.
- 8.67 We would expect the Universal Service Providers' internal complaints handling procedures to ensure that staff interacting with USO customers and handling USO complaints have sufficient training on the USO scheme. This should include the eligibility criteria. Staff should have access to technical advice, particularly on establishing connection costs taking into account the impact, in individual cases, of the proposed forecast approach to demand aggregation. In all other respects, we would expect these procedures to build on existing procedures, and to conform to the requirements of General Condition C4.

Dispute resolution

- 8.68 We propose to impose obligations on the Universal Service Providers, based on General Condition C4.3, to ensure that they meet the following requirements:
- a) be a member of an approved Alternative Dispute Resolution ("ADR") scheme;
 - b) comply with the ADR scheme, including abiding by any final decision of the body which administers the ADR scheme, within the time period specified in that final decision;
 - c) ensure that customers have the right to use the ADR scheme free of charge; and
 - d) provide information about the ADR scheme in customer bills.
- 8.69 Having free access to an ADR scheme will ensure that the cost of pursuing a complaint does not prevent consumers from effectively exercising their legal right to request USO connections and services.

- 8.70 As explained above, Ofcom has approved two schemes under the Alternative Dispute Resolution Regulations 2015 and section 54 of the Act for the resolution of disputes between providers and their domestic and small business customers for the purposes of the General Conditions. Ofcom is required to keep these approvals under review. We conducted our most recent review of the schemes in November 2017 and concluded that both OS and CISAS continued to meet the required criteria.¹⁷⁴
- 8.71 In addition to these criteria, section 54(7) of the Act requires Ofcom to have regard to the need to ensure that there is consistency between the schemes. We considered that the criteria were broadly consistent with the minimum standards set out in the ADR Regulations.
- 8.72 We believe that the criteria are equally applicable for our assessment of whether the schemes should be approved under the universal service conditions for resolving disputes in relation to the USO. In addition, we note that OS, the scheme both proposed Universal Service Providers are currently members of, has previous experience of considering complaints in relation to the telephony USO.
- 8.73 We last reviewed and re-approved both the schemes in November 2017 and concluded that they continued to meet the requirements of the ADR Regulations and they were performing satisfactorily against the approval criteria. On this basis, we propose to approve these schemes for resolving disputes in relation to the USO before the universal service conditions come into force. Once we have approved the schemes, the Universal Service Providers will be able to appoint an approved scheme under the proposed universal service conditions.
- 8.74 The proposed universal service conditions also require the Universal Service Providers to share information with their appointed dispute resolution scheme. This will be essential for the scheme to make decisions in individual cases. The proposed condition also requires the Universal Service Providers to provide their appointed scheme with any necessary training and support on the USO.
- 8.75 In proposing the above obligations, we have had regard to the need to strike a balance between the required level of competence in adjudication of complaints both by the Universal Service Provider and the dispute resolution body, and the need to minimise additional costs of compliance. We therefore consider that the proposed approval meets the legal tests in section 49(2) of the Act.

¹⁷⁴ The criteria was devised taking account of sections 52(3) and 54(2) of the Act. The criteria included accessibility, independence, fairness, efficiency, transparency, effectiveness, accountability and non-discrimination. In addition to these criteria, section 54(7) of the Act requires Ofcom to have regard to the need to ensure that there is consistency between the schemes. See Ofcom, November 2017. *Review of Ofcom's approval of Alternative Dispute Resolution Schemes*. https://www.ofcom.org.uk/data/assets/pdf_file/0018/108207/Review-of-ADR-Schemes-2017.pdf

Q13. Do you agree with our proposed approach to complaints handling and dispute resolution?

Q14. Do you agree with our proposal to approve the two Alternative Dispute Resolution schemes currently approved under the General Conditions (Ombudsman Services: Communications and the Communications and Internet Services Adjudication Scheme) for resolving disputes in relation to the USO?

Proposed universal service conditions and legal tests

- 8.76 Our proposals on pricing, quality of service and complaints handling set out above are captured in universal service conditions proposed for BT and KCOM.
- a) Pricing: The proposed conditions require the Universal Service Providers to: (i) offer broadband connections and services to USO customers at the same prices as they offer such connections and services to non-USO customers; and (ii) offer at least one USO connection and service at a price that does not exceed £45 per month, including VAT, averaged over the fixed commitment period, including any upfront connection charges, monthly payments and other broadband charges. In addition, we have proposed to include an obligation requiring the Universal Service Providers to ensure that the terms and conditions on which the USO is provided do not require consumers to pay for any additional service which is not necessary. We are required to impose that obligation in accordance with section 68(3) of the Act.
 - b) Quality of service: The proposed condition contains an obligation which requires the Universal Service Providers to provide on average at least the same quality of service levels concerning fault repair, missed appointments and provision in USO areas for services delivered as that offered by those providers in non-USO areas.
 - c) Complaints handling and dispute resolution: The proposed conditions contain obligations on the Universal Service Providers requiring them to: (i) have and comply with internal procedures for the handling of USO complaints similar to the handling of other complaints under General Condition C4; and (ii) appoint an independent body to resolve disputes between consumers and the Universal Service Provider in relation to the USO.
 - d) Under the above conditions, we also propose to include the power for us to give directions, approvals and consent so that we are able to specify further detail concerning pricing, quality of service and complaints handling if appropriate. The conditions also include a requirement for the Universal Service Providers to comply with any such direction(s), approval(s) or consent so that any contravention of a direction would constitute a contravention of the conditions itself and would therefore be subject to enforcement action under sections 94 to 104 of the Act. As explained above, we have proposed that OS and CISAS should be approved under condition E.2 to resolve disputes concerning the USO.

- 8.77 For the reasons set out above and summarised below, we are satisfied that universal service conditions D.1, D.2, E.1, E.2 and I.1 (as set out in Annex 6) and the proposed approvals of OS and CISAS meet the relevant tests set out in the Act. Our proposals in respect of the conditions form part of the process of implementing the Order as required by the Act. Once those conditions and approvals come into force, their purpose will be to give effect to the terms of the Order.
- 8.78 When considering making proposals for universal service conditions and approvals under sections 45, 49 and 67 of the Act in a particular case, we must be satisfied that the legal tests in section 47(2) and 49(2) of the Act are met. Conditions D.1, D.2, E.1, E.2 and I.1 and approvals which we have proposed are:
- a) objectively justifiable, in that they seek to ensure that USO customers receive a fair service and are not in any way treated in a less favourable way than non-USO customers; in particular, our proposed conditions aim to ensure that broadband connections and services as defined in the Order are delivered to eligible consumers and businesses at prices that are affordable and uniform which do not require them to pay for any unnecessary service, and that these consumers receive the same quality of service and access to appropriate complaints handling and dispute resolution services as other consumers connected on commercial networks;
 - b) not unduly discriminatory, as the same obligations are proposed to be imposed only on BT and KCOM, as the proposed Universal Service Providers within their respective areas;
 - c) proportionate, since we have taken account of comments raised by the stakeholders and balanced: the need to ensure the cost of delivery (and therefore impact on industry and consumers) is minimised and that the designated providers can reasonably meet the requirements placed on them, with the need to deliver affordable connections and services at a fair quality of service and with access to complaints handling; and
 - d) transparent, in that the conditions are clear in their intention and seek to ensure that consumers are in a clear position so that they can effectively exercise their legal right to request USO connections and services.
- 8.79 We also consider that the proposed conditions and approvals meet our duties and the Community requirements under sections 3 and 4 of the Act. We think that our proposals further the interests of citizens in relation to the communications matters and the interests of consumers in the relevant markets as well as promote the interests of all EU citizens because they seek to ensure that USO customers receive a fair service and are not treated in a less favourable way than non-USO customers. This will help ensure that people living in USO areas are no longer at a relative social and/or economic disadvantage and can benefit from having decent broadband.

9. Proposed obligations on performance reporting and maintaining records

9.1 In this section we set out the proposed requirements for the Universal Service Providers to publish adequate and up-to-date information about their performance in delivering the USO. We also set out our proposals to require the Universal Service Providers to maintain sufficient records to demonstrate compliance with the universal service conditions and to enable any net cost claim to be properly audited and verified.

Universal Service Provider performance reporting

9.2 In our June 2018 document, we explained that we must include in the universal service conditions a requirement for the Universal Service Providers to publish information about their compliance with the universal service conditions.

9.3 As a minimum these must be framed by reference to the parameters set out in the Universal Service Directive.¹⁷⁵ In line with the existing telephony universal service obligations, we envisaged requiring the reporting of this information publicly every six months. To enable further monitoring on the delivery of the USO, we also considered that the Universal Service Providers should report on parameters such as on the number of requests declined, the number of orders accepted, and the number of orders delivered to customers.

Responses to our June 2018 document

9.4 BT's response suggested annual reporting on its website would provide transparency of its performance in delivering the USO.¹⁷⁶ This would include information on the total number of consumer enquiries, outcomes at each step of the eligibility-checking process, and on the number and outcome of complaints.

9.5 No other respondents commented on this aspect of the June 2018 document.

Our consultation proposal

9.6 There are two main elements of our proposed reporting requirements:

- a) parameters which the Universal Service Directive requires us to impose on the Universal Service Providers; and

¹⁷⁵ Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services as amended by Directive 2009/136/EC <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32002L0022>

¹⁷⁶ BT response to June 2018 document, page 24.

- b) parameters which in our view would provide additional, necessary transparency on whether the Universal Service Providers are meeting their obligations set out in the universal service conditions.
- 9.7 In addition, we also describe Ofcom anticipated reporting and monitoring via our annual Connected Nations report.
- 9.8 As set out in our June 2018 document, we must include in the universal service conditions a requirement for the Universal Service Providers to publish adequate and up-to-date information about their performance in delivering the USO. The purpose of requiring the Universal Service Providers to report information about their performance is to increase transparency of the provider's performance to consumers, and to help to establish whether a Universal Service Provider is meeting its obligations.
- 9.9 As a minimum, the information to be reported publicly by the Universal Service Providers must be framed by reference to the parameters, definitions and measurement methods set out in the Universal Service Directive. In summary, the parameters are:
- a) **connection supply time** - the times by which the fastest 50%, 95% and 99% of orders are completed;
 - b) **fault rate per access line** - number of fault reports per fixed access line¹⁷⁷; and
 - c) **fault repair time** - the time by which the fastest 80% and 95% of valid faults on access lines are repaired and/or percentage of faults cleared any time stated as an objective by the service provider.
- 9.10 We propose that Universal Service Providers should report on these parameters for each month of the relevant reporting period. The definitions and measurement methods are set out in the relevant European Telecommunications Standards Institute standard.¹⁷⁸ Parameters should allow for performance to be analysed at a regional level.¹⁷⁹
- 9.11 In addition, to help establish whether a Universal Service Provider is meeting proposed obligations on confirming the outcome of a consumer's request and connection supply times; and to boost transparency of the Universal Service Provider's performance in relation to complaints handling, we consider that it is appropriate and proportionate to require the Universal Service Providers to report publicly the additional information below.

¹⁷⁷ For the purposes of this reporting parameter, we would consider 'fixed access line' to include any technology used to provide a USO service to a fixed location.

¹⁷⁸ ETSI ES 202 057-1 v2 1.1 (2013-01) sets out the relevant parameter definitions and measurement method: https://www.etsi.org/deliver/etsi_eg/202000_202099/20205701/01.03.01_60/eg_20205701v010301p.pdf

¹⁷⁹ The Universal Service Directive requires that parameters should allow for performance to be analysed at a regional level (i.e. no less than level 2 in the Nomenclature of Territorial Units for Statistics (NUTS) established by Eurostat.

Number of USO requests

- a) The number of USO requests received by the Universal Service Provider in each month of the relevant reporting period.
- b) The number of requests accepted (i.e. customer orders placed) by the Universal Service Provider in each month of the relevant reporting period.
- c) The number of requests rejected by the Universal Service Provider in each month of the relevant reporting period including an explanation of the reason why.¹⁸⁰

Timeframe for confirming outcome of broadband USO requests

- d) The number of USO requests in each month of the relevant reporting period where the Universal Service Provider confirmed the outcome of the request to the consumer in writing within 30 calendar days of the date of the request.
- e) The number of requests in each month of the relevant reporting period where the Universal Service Provider did not confirm the outcome of the request to the consumer in writing within 30 calendar days of the date of the request.

Connection and service supply time

- f) The number of connections and services delivered in each month of the relevant reporting period within 0-3 months; 3-6 months; 6-9 months; 9-12 months; 12-18 months; 18-24 months; and over 24 months, measured from the date on which the customer placed an order to the customer service activation date.

Complaints handling and dispute resolution

- g) The number of complaint cases in relation to the USO made to the Universal Service Provider in each month of the relevant reporting period.
- h) The number of USO complaints resolved to the customer's satisfaction in each month of the relevant reporting period.
- i) The proportion of USO complaints not resolved to the customer's satisfaction in each month of the relevant reporting period.
- j) The number of USO complaint cases not resolved to the customer's satisfaction in each month of the relevant reporting period that are accepted for investigation by the Universal Service Provider's alternative resolution scheme.

9.12 Further, we propose that where the Universal Service Provider does not meet the obligations: to confirm the outcome of a consumer's request in writing within 30 calendar days from the date of a request; to deliver connections by the agreed

¹⁸⁰ The reasons why USO requests are not accepted should be broken down by appropriate categories, for example: broadband service which meets technical specification of the USO already available at location; broadband service which meets technical specification of the USO due to be made available as result of a publicly-funded intervention within one year of request date; excess costs quoted and consumer does not agree to pay.

customer service activation date; or to deliver connections within 12 months of the date on which the consumer placed an order, the following information must be reported to Ofcom:

- a) for each case where the Universal Service Provider took longer than 30 calendar days from the date of the consumer's request to confirm in writing the outcome of the request, the reason(s) why this timeframe was not met;
- b) for each case where the Universal Service Provider has changed or missed the customer service activation date originally communicated to the customer, the reason(s) why that date has been changed or missed; and
- c) for each case where the Universal Service Provider took longer than 12 months from the date on which the customer placed an order to the customer service activation date, the reason(s) why this timeframe was not met. This must include an explanation of the exceptional circumstance leading to the rollout taking longer than 12 months, an explanation of how the Universal Service Provider sought to manage the risk of the circumstance arising, and how the Universal Service Provider sought to minimise the delay caused to the connection being delivered once the exceptional circumstance occurred.

9.13 We note BT's proposal to publish information annually on its website on the total number of enquiries, eligibility outcomes and the number and outcome of complaints. However, we do not consider that this would give consumers adequately up-to-date information and it would not enable Ofcom to effectively monitor a Universal Service Provider's progress and compliance with its obligations. Instead, we propose that the performance reporting information set out above should be published by the Universal Service Providers and provided to Ofcom as applicable as follows:

- first publication should occur no later than 30 calendar days after the expiry of the first 6-month period during which the USO obligations are in force; and
- each subsequent publication should occur no later than 30 calendar days after the expiry of each subsequent 6-month period.

9.14 This is in line with reporting requirements for the existing telephony universal service obligations.

9.15 In addition to our proposals on performance reporting, we consider that it is important that the Universal Service Providers are subject to a general obligation to maintain for 6 years adequate records which are relevant to the provision of USO connections and services (in addition to the obligations to maintain accounting records, as set out in the section below). This would ensure that they are able to demonstrate to Ofcom that they have complied with the universal service conditions.

9.16 We consider that the Universal Service Providers are best able to judge, in the first instance, what information needs to be recorded and maintained. We suggest this should include records of individual consumer requests, eligibility assessment outcomes and ongoing customer transactions once USO connections have been delivered.

Ofcom reporting and monitoring

- 9.17 As set out in the Government’s response, we intend to report on progress of the USO in our annual Connected Nations Report.¹⁸¹ We intend to use our information gathering powers to collect the following information from the Universal Service Providers and provide annual updates on the:
- a) number of USO connections delivered in the period; and
 - b) type of premises connected (home or business), and their location (urban or rural, and by UK Nation).
- 9.18 To monitor the services USO customers receive and to help establish if these services meet the technical specification of the USO, we consider that it is reasonable and proportionate to require the Universal Service Providers to facilitate any periodic future testing of USO connections requested by Ofcom. This will include the Universal Service Providers supporting the recruitment of an agreed representative sample of USO consumers, and the distribution of an Ofcom-appointed technical partner’s testing equipment to them.
- 9.19 Information collected from equipment connected to customers’ routers will enable Ofcom to make robust, evidence-based assessments of the performance delivered by the Universal Service Providers to USO consumers.

Q15. Do you agree with our proposed approach to how the Universal Service Providers should report on their performance and maintain records?

Q16. Do you agree with our approach to how Ofcom should report and monitor delivery of the USO?

Proposed obligations on maintaining accounting records

- 9.20 As set out in Section 2 and in our June 2018 document, the framework for USO funding is set out in the Universal Service Directive and implemented in the Act. The legislation specifies that *“the net cost of the universal service obligations is to be calculated as the difference between the net cost for a designated undertaking of operating with the universal service obligations and operating without the universal service obligations”*.¹⁸²
- 9.21 The legislation establishes the following key funding principles:
- a) only the net cost of providing the USO can be compensated;
 - b) for a net cost to be compensated, Ofcom must decide that it is an unfair burden on the Universal Service Providers;

¹⁸¹ DCMS, [A new broadband Universal Service Obligation: Government’s response to consultation on design](#), page 65.

¹⁸² Annex IV, Universal Service Directive.

- c) if an unfair net cost burden exists, Ofcom is required to set up an industry fund to compensate the Universal Service Providers for that unfair burden; and
- d) compensation from an industry fund occurs retrospectively and may only cover the unfair burden which has been incurred i.e. the Universal Service Providers must bear the upfront costs of delivering the USO and cannot be provided with funds in advance of network infrastructure deployment.

9.22 As we explained in our June 2018 document, to determine the net cost, the Universal Service Providers will calculate the direct costs, direct benefits and indirect benefits of the USO, and then subtract the combined benefits from the costs.

- a) **Direct costs** – these are the costs incurred by the Universal Service Providers from delivering the USO. These are costs the Universal Service Providers would have avoided had there been no USO. Costs that would have been incurred absent the USO, for example because they support another activity, are not relevant to the net cost calculation. The bulk of direct costs are likely to be related to building or upgrading network infrastructure to serve specific requests for USO connections. There may also be incremental ongoing costs associated with operating this network. In addition, the Universal Service Providers may incur costs directly associated with making eligible consumers aware of the USO service (i.e. marketing and advertising) or managing the USO scheme as a whole but not associated with a specific USO request.
- b) **Direct benefits** – these are the incremental benefits that accrue to the Universal Service Provider as a direct consequence of building and upgrading the network infrastructure to comply with the USO. Direct benefits will include incremental revenues from: customers who take up broadband for the first time as a result of the USO; existing broadband customers who switch to the Universal Service Providers to receive a USO connection; and existing broadband customers of the Universal Service Provider who, as a consequence of the network infrastructure upgrade to deliver the USO, choose to take up a higher-margin broadband product.¹⁸³
- c) **Indirect benefits** – these are benefits that do not have a direct causal link to the USO network infrastructure build and upgrade but are nonetheless a consequence of being designated as a Universal Service Provider; for example, these may include enhancements to the provider’s brand because of being designated as a Universal Service Provider.

¹⁸³ For example, a Universal Service Provider’s fixed wireless service may have a higher margin than below 10Mbit/s ADSL broadband due to a higher price, lower cost or both. Margin could also be increased by end-users buying an upgraded service, e.g. the increased speed offered by USO broadband is good enough to support a chargeable IPTV service.

- 9.23 If a net cost claim is submitted, Ofcom must audit and verify the accounts and/or other information serving as the basis for the calculation of the net cost of universal service obligations and then publish results of the cost calculation and the conclusions of the audit.¹⁸⁴

Our consultation proposal

- 9.24 In order to ensure that we have sufficient information to assess any possible future claims for funding, we consider that the Universal Service Providers must keep financial records to support any net cost claim which they may need to make. This information includes the underlying records necessary to enable Ofcom to perform an effective audit and verification.
- 9.25 Accurately estimating the net cost of providing the USO will help ensure that the Universal Service Providers recover any unfair net cost of the USO and that the funds drawn from industry accurately reflect such cost. The Universal Service Providers should therefore maintain records which will enable them to demonstrate to Ofcom the following:
- a) that direct costs were incurred, were necessary for the provision of the USO, and were efficiently incurred;
 - b) the net cost calculation took proper account of direct and indirect benefits; and
 - c) the counterfactual scenario of operating without the universal service obligations (as referred to in the Universal Service Directive) used in the net cost calculation is reasonable and is based on sound assumptions.
- 9.26 From our knowledge of the BDUK process, much of this information will be available to the Universal Service Provider in advance of any net cost claim, although it may take some time for the Universal Service Provider to collate the information to provide to Ofcom. In particular, the costs of building and upgrading network connections to comply with the USO will become available as the network is rolled out and can be recorded as that expenditure occurs.
- 9.27 Similarly, information that would provide valuable reference points regarding direct benefits and the counterfactual should be available in advance of a cost claim. For example, information on the revenue earned from USO connections, will become available as consumers take up the products that are delivered over that infrastructure.
- 9.28 We set out our proposed universal service conditions in Annex 6. In summary, they include the following main requirements.
- a) The Universal Service Providers must maintain records for a minimum period of 6 years from the date on which these records are created. These records must be

¹⁸⁴ We may appoint a third party to assist us in verification of all or a part of the net cost calculation.

sufficient to demonstrate their compliance with the universal service conditions. This proposed condition places a basic requirement on the Universal Service Providers to ensure that they retain sufficient information including source data such as invoices, vouchers, and timesheets.

- b) The Universal Service Providers must separately record incremental costs, revenues, and assets associated with the provision of USO services. This proposed condition requires the Universal Service Providers to process the source information referred to the paragraph above to determine the elements that are incremental to the provision of a USO service. The Universal Service Providers will also be expected to demonstrate how they have calculated the incremental cost and revenue elements, explain the transactions underlying the cost of providing USO connections and services and justify how the charges for those connections and services have been derived.
- c) The Universal Service Providers must record costs on a historical cost accounting (“HCA”) basis. We consider that HCA would be a more transparent and easier way to understand the calculations within a net cost claim and to carry out a verification exercise against invoices and source documentation. As the legislation requires any net cost claims to be assessed on an incremental cost basis, expenditure on a current cost accounting (“CCA”)¹⁸⁵ basis is unlikely to be materially different as from that on a HCA basis.

9.29 We have also proposed to include the power for us to give directions, approvals and consent under this condition. The condition also includes a requirement for the Universal Service Providers to comply with any such direction(s), approval(s) and consent so that any contravention would constitute a contravention of the condition itself and would therefore be subject to enforcement action under sections 94 to 104 of the Act.

Types of accounting information we expect Universal Service Providers to maintain

9.30 We consider that the Universal Service Providers are best able to judge, in the first instance, what accounting information needs to be recorded and maintained in order to support any net cost claim. However, we also think that it would be useful for us to set out what accounting information, as a minimum, we expect the Universal Service Providers to record and maintain.

¹⁸⁵ Current cost accounting (CCA): An accounting convention, where assets are valued and depreciated according to their current replacement cost whilst maintaining the operating or financial capital of the business entity.

Identification of premises affected by USO

- 9.31 We expect that most incremental direct costs and benefits will be traceable to a specific connection and a specific premises. To assess any net cost claim we will need to ensure that we have information on the number of premises affected by the USO. We believe these will fall into two main categories:
- a) premises that are eligible for and receive a USO connection; and
 - b) premises which upgrade to a broadband connection made possible by USO-related network investment.
- 9.32 If a customer or a group of customers request a USO connection from the Universal Service Provider, subject to meeting the eligibility criteria, the Universal Service Provider will carry out necessary works to fulfil such requests. This network upgrade may also enable other customers in the same area, including some premises that are not eligible for the USO because they already had access to a service that met the USO specification, to access a higher-grade broadband service. Where customers make use of these new network assets to access a higher-grade service, incremental revenues will be generated which can be directly linked to a network investment related to an earlier USO request. Therefore, to correctly calculate incremental costs and benefits related to all USO requests, information on both sets of customers needs to be recorded.

Information necessary for calculation of direct costs

- 9.33 As set out above, the Universal Service Directive provides that the main test for inclusion of specific costs in the net cost calculation is the question of whether the Universal Service Provider would avoid them if no USO was in place.
- 9.34 We envisage that the direct costs of delivering the USO can be grouped into the following broad categories:
- a) incremental costs related to a specific USO request or group of requests, or to upgrades made possible by the USO; and
 - b) incremental costs necessary for the Universal Service Provider to comply with the USO, but which cannot be reasonably associated with a specific USO request.

Incremental costs related to the USO

- 9.35 This comprises the incremental costs necessarily incurred in deploying and operating the physical network infrastructure that is required to provide a specific end-user with a broadband connection that meets the specification set out in the Order.
- 9.36 We expect that the bulk of these costs will be capital expenditure related to building or upgrading network infrastructure to serve requests for USO connections (network build capex).
- 9.37 The exact cost of providing the USO will be dependent on many factors, including the technology deployed. However, based on the work we did for our consultation as part

of the WLA review 2018 on recovering the costs of network expansion¹⁸⁶, we estimate that network build capex is likely to account for circa 70% of the cost of delivering the USO.¹⁸⁷ We expect that it will be straightforward for the Universal Service Providers to record detailed information on network build capex and given its likely importance to the net cost calculation, we would expect the Universal Service Providers to collect and record this information in sufficient detail.

- 9.38 In respect of network build capex, we would expect that for each USO area, once designated, the Universal Service Providers would record information that identifies the network build activity within each exchange area.
- 9.39 As the Universal Service Directive requires Ofcom to only consider expenditure that is incremental to the provision of a USO connection, we expect the Universal Service Providers to record costs in a manner that enables those costs to be identified as being incurred in building a USO asset linked to a pole or primary connection point within an exchange area in the designated USO area.
- 9.40 We expect that the Universal Service Providers should be able to provide an auditable trail between the source documentation (invoices, timesheets, vouchers etc) and the costs claimed. This auditable trail will need to provide a link between any element of network build expenditure that may be reported to Ofcom (based on the information the Universal Service Providers are required to maintain under the proposed universal service condition) and the asset constructed to provide the USO connection.
- 9.41 We believe that most significant cost elements will be straightforward to capture and accurately record on an incremental basis. We set out below the expected cost categories that we expect the Universal Service Providers to record. We have used the cost categories and descriptions that BT and KCOM currently report against in relation to BDUK funding as these will be familiar to BT and KCOM.

¹⁸⁶ On 9 August 2017 we published a consultation *Wholesale Local Access Market Review Recovering the costs of investment in network expansion*. https://www.ofcom.org.uk/data/assets/pdf_file/0022/105682/Recovering-the-costs-of-investment-in-network-expansion.pdf. The consultation set out how we proposed to amend our WLA charge control for additional relevant costs that BT would incur, if it entered into a clear and public agreement with the UK Government committing BT to make the investment in universal broadband (at least 10Mbit/s universal broadband for the entire country by the end of 2020). BT did not make a clear commitment to the UK Government and as a result the Government issued the Order.

¹⁸⁷ See "Cost -Recovery-Model.xls", the cost model we used when calculating the cost of providing 10Mbit/s USO Broadband as part of the Network Expansion Consultation. <https://www.ofcom.org.uk/consultations-and-statements/category-2/wholesale-local-access-market-review-recovering-the-costs-of-investment-in-network-expansion>

Table 4. Categories of network build capex

Cost Category	Description
Contractor	These costs relate to third party contractors, usually civil engineering involved in building the network.
Direct labour non-planning	These costs relate to the amount of time engineers spend on building the network in the field and at the exchange.
Direct labour planning	These costs relate to the time spent by network planners.
Project Management Office (PMO)	PMO costs for tasks, projects and timekeeping in relation to Field Engineers.
Equipment	These costs are primarily the electronic equipment purchased from third parties that is installed in the field.
Stores	These costs are for consumable items taken from stores, e.g. hand tools, copper cables and cable ties.
Commissioning delivery	Direct employees overseeing of project, include liaising directly with third party contractors.
Jeopardy management	The cost of implementing new delivery schedules when the original delivery schedules cannot be completed as planned due to circumstances not foreseen at the planning stage.
Project management	Costs for tasks and projects and timekeeping in relation to third-party contractors.
Other	Includes costs such as capitalised fuel and fleet costs.

Avoidable costs that cannot be reasonably associated with a specific USO request

- 9.42 These costs would include costs related to any increased capital expenditure and maintenance caused by providing USO connections, advertising and marketing necessary for the Universal Service Providers to deliver the USO, and costs related to setting up any accounting, information gathering, and project management systems directly caused by the USO. Although these costs are not incremental to a specific USO connection request, they would nevertheless be partially or fully avoided had there been no USO altogether.
- 9.43 As a minimum, we expect such records should be sufficient to demonstrate that:
- a) the costs were based on source documentation (e.g. invoice, timesheet);
 - b) such costs would not have been incurred absent the USO, or in practical terms were necessary to implement USO requests (or an upgrade made necessary by the USO), or to comply with the USO and would not have been incurred otherwise. We expect the Universal Service Providers to collect and record any relevant

information and evidence that these costs would have been avoided absent the USO¹⁸⁸; and

c) such costs were incurred efficiently.¹⁸⁹

Information necessary for calculation of direct benefits

- 9.44 Direct benefits are the incremental benefits as a direct consequence of building and upgrading the network infrastructure to comply with the USO.
- 9.45 Direct benefits include both the incremental revenues associated with USO requests and incremental revenues from other premises that are caused as a result of the network expansion necessary to comply with the USO. We therefore expect the Universal Service Providers to ensure that systems for reporting USO requests and connections are also designed to record the information related to such premises that would allow it to correctly calculate direct incremental benefits of the USO.
- 9.46 Identifying incremental revenues requires information relating to the service which these premises receive before and after the upgrade request, for example: contract type; revenue associated with their contract (if a retail customer); and wholesale revenue (if not a retail customer) to capture information on incremental USO revenue, i.e. the incremental portion of the revenue which the Universal Service Providers will receive from such customers, compared to the situation in which the USO does not exist.¹⁹⁰
- 9.47 Following a USO request from an end-user, we envisage that it is a specific premises that must be identified as 'affected by the USO', not just a specific end-user (customer). If a customer moves to a different area, and is replaced by a new customer, there may still be incremental revenues associated with that premises that would not have been earned absent the USO network spend.
- 9.48 In respect of benefits, we anticipate that other rentals, ancillary and value added incremental revenues should be straightforward to record where these are linked to the end-user.

¹⁸⁸ Where costs are related to a specific upgrade, the Universal Service Provider(s) should maintain records in a way that links costs with specific request(s) and specific premises.

¹⁸⁹ Annex IV of the Universal Service Directive states that "National regulatory authorities are to consider all means to ensure appropriate incentives for undertakings (designated or not) to provide universal service obligations cost efficiently".

¹⁹⁰ For example, if an end-user with another communications provider discovers the USO is available and decides to switch to BT/KCOM for the USO service, absent the USO, BT/KCOM only received Wholesale LLU revenue but with the USO they receive Retail USO revenue when the end-user subscribes to the USO service.

Other direct benefits

- 9.49 It is difficult to foresee all possible sources of benefits the Universal Service Providers may receive and which could be caused by the USO. For example, there may be incremental revenues in other markets, and to the extent that they are caused by a USO network build connection, they will be relevant to the net cost calculation.¹⁹¹ Where a Universal Service Provider seeks to exclude revenues that might be incremental to the USO, we would expect the Universal Service Provider to collect and record any relevant information and evidence that demonstrates that these revenues would have been received absent the USO.

Indirect benefits

- 9.50 Indirect benefits are additional benefits that do not have a direct causal link to the USO network infrastructure build and upgrade but are nonetheless a consequence of being designated as a Universal Service Provider.
- 9.51 For instance, the USO may generate brand-related benefits to the Universal Service Provider. These are benefits resulting from an enhanced corporate reputation, which allows the Universal Service Providers to gain and retain more customers in non-USO areas than it would in the absence of the USO.
- 9.52 Where the Universal Service Provider claims that the benefits are small or non-existent we would require evidence or reasoning from the Universal Service Provider (including any records maintained) to support this claim.

Information necessary to support a counterfactual scenario

- 9.53 Because the net cost of the USO is calculated as the difference between the net cost of operating with the USO and operating without the USO, we expect the Universal Service Providers to record information about counterfactual scenarios, i.e. what the costs and benefits would have been without the USO.

Q17. Do you agree with our proposed approach to require Universal Service Providers to maintain accounting records?

Proposed universal service conditions and direction and legal tests

- 9.54 Our proposal on maintaining records set out above are captured in the proposed conditions which impose obligations on the Universal Service Providers to maintain records, including accounting records, to:

¹⁹¹ For example, if BT upgrades its fixed wireless capacity to provide USO services, some of that capacity could be used to provide new or enhanced mobile services.

- a) show how those providers have complied with the universal service conditions; and
- b) ensure that Ofcom has sufficient information to assess any possible future claims for funding.

9.55 We also propose to include the power for us to give directions, approvals and consent under this condition so that we are able to specify further detail concerning obligations to report information and/or maintain sufficient records. The conditions also include a requirement for the Universal Service Providers to comply with any such direction(s), approval(s) or consent so that any contravention would constitute a contravention of the conditions itself and would therefore be subject to enforcement action under sections 94 to 104 of the Act.

9.56 As noted in Section 2, section 67(2) of the Act also requires Ofcom to include a condition obliging the Universal Service Providers to publish information about their performance in complying with the universal service conditions. We consider that it would be appropriate to capture our proposals concerning publication and provision of performance information to Ofcom in directions given to each BT and KCOM under proposed condition F.3 given that these requirements specify the level of detail at which this information must be published and provided.

9.57 For the reasons set out above and summarised below, we are satisfied that that universal service conditions F.1 to F.3 and direction (as set out in Annex 6) meet the relevant tests set out in the Act. Our proposals in respect of the conditions and directions form part of the process of implementing the Order as required by the Act. Once those conditions and directions are imposed, their purpose will be to give effect to the terms of the Order.

9.58 When considering the imposition of universal service conditions and directions under section 67, 45 and 49 of the Act in a particular case, we must be satisfied that the legal tests in sections 47(2) and 49(2) of the Act are met. Conditions F.1 to F.3 and directions which we have proposed to give are:

- a) objectively justifiable, in that they seek to ensure that the Universal Service Providers publish and provide stakeholders and Ofcom with adequate and up-to-date information about the Universal Service Providers' performance in delivering the USO so that Ofcom is able to establish whether a Universal Service Provider is meeting its obligations and that the Universal Service Provider's compliance with their obligations is transparent; the proposed obligation to maintain accounting records seeks to ensure that Ofcom has sufficient information to assess and verify any possible future claims for funding as required by the legislation;
- b) not unduly discriminatory, as the same obligations are proposed to be imposed only on BT and KCOM, as the proposed Universal Service Providers within their respective areas;
- c) proportionate, since in proposing the twice yearly requirements to publish and provide information to Ofcom, we have taken account of the need to ensure that

the obligations are not unduly burdensome for the Universal Service Providers and the need to deliver transparency on the Universal Service Provider's performance to consumers, providing assurance that a Universal Service Provider is meeting its obligations so that Ofcom can take appropriate action if required; the proposed obligation to maintain records recognises that it should be for the Universal Service Providers to decide in the first instance what information needs to be recorded; and

- d) transparent, in that the conditions and directions are clear about what information the Universal Service Providers are required to report and/or maintain and the format in which this information should be reported and/or maintained to provide transparency.

9.59 We also consider that the proposed conditions and directions meet our duties and the Community requirements under sections 3 and 4 of the Act. We think that these proposals further the interests of citizens in relation to the communications matters and the interests of consumers in the relevant markets as well as promote the interests of all EU citizens because they seek to ensure that there is transparency about the Universal Service Providers' compliance with their obligations and that we have sufficient information to assess and verify any future claims for funding. This will help ensure that Ofcom is able to intervene if there are any concerns about compliance with the universal service conditions.

10. Implementation period, consultation on funding and next steps

10.1 In this section we explain that we are proposing to give the Universal Service Providers five months to prepare for the delivery of the USO from the date of our decision on designation of the Universal Service Providers and the universal service conditions. We also explain the next steps in implementing the USO, including our intention to consult on the funding regulations in summer 2019.

Implementation period

10.2 One of our primary objectives, as set out in Section 2, is to deliver the broadband universal service as quickly as possible for the benefit of consumers. In light of this, we have considered the system and operational changes the Universal Service Providers will have to make to ensure they are ready to start delivering connections to eligible premises, in accordance with our proposed conditions, as soon as possible.

10.3 Some of these tasks will include the training of staff to deal with requests from end-users for a USO connection, putting the right monitoring systems in place to meet our proposed reporting obligations, and progressing network planning so that they are ready to start the network build as soon as orders are placed. We consider that a five-month implementation period from the date of our decision on designation of the Universal Service Providers is an appropriate implementation period. This will allow the Universal Service Providers to ensure that they have systems in place and staff are sufficiently trained to start processing requests for USO services as soon as they are made.

10.4 In this document, we set out our proposals for designation and the proposed obligations that will apply to the Universal Service Providers. This should give the proposed Universal Service Providers sufficient clarity over the form and framework of the USO. We also consider that the Universal Service Providers should be able to start some their preparations during the notification period to the European Commission, which is expected to last just over one month giving the Universal Service Providers over six months in total.

10.5 In its response to the June 2018 document, BT suggested that it intended to set up the Universal Broadband Support Group, which would be charged with handling of the initial customer contact to the delivery of services. It claimed it would need between 6 and 12 months to ready itself to start delivering the USO. It stated that it could prepare much of the Universal Broadband Support Group ahead of any decision on

designation, but that it needed clarity on the regulatory framework within which it will operate.¹⁹²

10.6 For the reasons set out above, we consider that the proposed 5-month implementation period provides sufficient time for the Universal Service Providers to prepare for delivery. This will allow the Universal Service Providers to ensure that they have the systems in place and staff are sufficiently trained to start processing requests for USO services.

10.7 To give effect to our proposed implementation period, we think that the following obligations should come into force on the expiry of the implementation period:

- obligations to respond to consumer requests for broadband USO as specified by Ofcom;
- obligations to deliver the USO to eligible consumers in accordance with Ofcom's requirements;
- obligations to install and maintain networks for the purpose of providing broadband USO;
- obligations to set price and non-price terms and conditions in accordance with Ofcom's requirements; and
- obligations to publish and provide to Ofcom specified information.¹⁹³

10.8 We consider that it will be appropriate for the remainder of the provisions set out below to come into force at the same time as we publish our decisions:

- obligations concerning complaint handling and dispute resolution;
- obligations relating to record keeping;
- obligations concerning treatment of information relating to the USO;
- obligations relating to raising awareness of the USO; and
- Ofcom's power to give directions, approvals and consent under the condition.¹⁹⁴

10.9 In addition, we consider that the obligation to provide the telephony USO and to install and maintain networks for that purpose should also take effect at the same time as the revocation of the conditions which are currently in force in order to ensure that BT and KCOM remain continuously subject to these obligations.¹⁹⁵

Proposed implementation period and legal tests

10.10 For the reasons set out above and summarised below, we are satisfied that our proposed 5-month implementation period meets the relevant tests set out in the Act.

¹⁹² BT's response to the June 2018 document, page 21.

¹⁹³ The above obligations are contained in: (i) conditions A.1(b), A.3, A.4 (to the extent it concerns broadband USO), B.1 to B.11, C.1 to C.8, D.1 and D.2; and (ii) directions; all set out in Annex 6.

¹⁹⁴ The above provisions are contained in: (i) conditions E.1, E.2, F.1, F.2, G.1, H.1 and I.1; and (ii) approvals; all set out in Annex 6.

¹⁹⁵ These obligations are proposed to be captured in conditions A.1(a), A.2 and A.4 (to the extent it concerns telephony USO), all set out in Annex 6.

Our proposal forms part of the process of implementing the Order as required by the Act.

- 10.11 When considering making proposals under sections 67 and 45 of the Act in a particular case, we must be satisfied that the legal tests in section 47(2) of the Act are met. We consider that our proposed implementation period is:
- a) objectively justifiable, in that it seeks to ensure that the Universal Service Providers have sufficient time to prepare for the delivery of the USO so that requests made by consumers can be dealt with properly and effectively as envisaged in the Order;
 - b) not unduly discriminatory, as the same implementation period is proposed for BT and KCOM, as the proposed Universal Service Providers within their respective areas;
 - c) proportionate, since the implementation period is proposed in recognition that the Universal Service Providers will require sufficient time to prepare for the delivery of the USO; and
 - d) transparent, in that the proposed implementation period is clear in its intention to ensure that the Universal Service Providers have sufficient time to prepare for the delivery of the USO.
- 10.12 We also consider that the proposed implementation period meets our duties and the Community requirements under sections 3 and 4 of the Act. We think that it furthers the interests of citizens in relation to the communications matters and the interests of consumers in the relevant markets as well as promote the interests of all EU citizens because it seeks to ensure that requests made by consumers can be dealt with properly and effectively as envisaged in the Order.

Consultation on funding of USO services

Responses to our June 2018 document

- 10.13 BT expressed a concern over the lack of certainty and clarity about cost recovery and the operation of the USO fund. In particular, BT sought clarity about: which costs can be included in the £3,400 cost threshold; whether the Universal Service Provider(s) can presume there will be a net cost burden; when the Universal Service Provider(s) will receive payments from the fund; and whether the Universal Service Provider(s) will be compensated for delivering services that are not in the Ofcom database of eligible premises or that are subsequently revised to have coverage from a third-party.

Ofcom's response on funding

- 10.14 The net cost of meeting USO obligations will be determined by a number of factors which, at this stage, are uncertain. These factors include the number of premises that are eligible for the USO, the technologies used to supply USO premises and the cost of building the infrastructure necessary to deliver the USO. Whether any funding is

appropriate, or the level of any funding, is determined by the level of the unfair net cost burden which is only assessed following a submission from the Universal Service Provider, which has been verified by Ofcom. This limits the extent to which Ofcom can provide certainty over the level of funding, if any, in advance of a verified submission.

10.15 We do not consider that prospective Universal Service Providers require information on funding arrangements in advance of making our designation decision because it should not affect how they will fulfil the obligations to deliver USO connections to eligible customers. We expect to consult on funding regulations in summer 2019 but we will review the position and provide an update at the time we publish our statement on designation. At that stage we will have the benefit of taking into account our decisions on who should be designated and what universal service obligations should apply to them.

10.16 In relation to the specific issues raised by BT:

- a) we have set out in Section 6 the costs that we anticipate will be included in the £3,400 cost threshold. In broad terms, these include any costs that accrue as a direct result of providing a USO connection to eligible premises;
- b) as set out in Section 2, any compensation occurs retrospectively and may only cover the unfair burden which has been incurred. This means that the Universal Service Providers must bear the upfront costs of delivering the USO and cannot be provided with funds in advance of network infrastructure deployment;
- c) the legislation requires Ofcom to set up an industry fund to compensate the Universal Service Provider(s) if it is established that an unfair net cost burden has arisen. In relation to when the Universal Service Provider(s) will receive payments from the fund, this will be subject to consultation if appropriate. We propose that the Universal Service Provider(s) should receive appropriate compensation to reflect the difference between the timing of the costs being incurred and the timing of the compensation paid; and
- d) the legislation makes clear that the Universal Service Provider(s) should be compensated for the net cost of complying with the USO as set out in the conditions. Where the conditions give rise to a cost, this would be relevant for the net cost calculation.

Next steps

10.17 We invite comments on our proposals by 13 February 2019. We intend to publish a Statement by early summer 2019 on designating Universal Service Providers and the final universal service conditions. We have proposed an implementation period to enable the Universal Service Providers to make necessary preparations for the USO, so we expect consumers to be able to make requests for connections from the end of 2019.

A1. Responding to this consultation

How to respond

- A1.2 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on 13 February 2019.
- A1.3 You can download a response form from <https://www.ofcom.org.uk/cymru/consultations-and-statements/category-1/delivering-broadband-universal-service>. You can return this by email or post to the address provided in the response form.
- A1.4 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 (<https://www.ofcom.org.uk/consultations-and-statements/consultation-response-coversheet>).
- A1.5 Responses may alternatively be posted to the address below, marked with the title of the consultation:
- Jack Gaches
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- A1.6 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.
- A1.7 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A1.8 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.
- A1.9 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.
- A1.10 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 4. 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.

- A1.11 If you want to discuss the issues and questions raised in this consultation, please contact Jack Gaches on 0207 783 4254, or by email to Jack.Gaches@ofcom.org.uk.

Confidentiality

- A1.12 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 our website, www.ofcom.org.uk, as soon as we receive them.
- A1.13 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.
- A1.14 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.
- A1.15 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 at <https://www.ofcom.org.uk/about-ofcom/website/terms-of-use>.

Next steps

- A1.16 Following this consultation period, Ofcom plans to publish a statement in early Summer 2019.
- A1.17 If you wish, you can register to receive email updates alerting you to new Ofcom publications; for more details please see <https://www.ofcom.org.uk/about-ofcom/latest/email-updates>

Ofcom's consultation processes

- A1.18 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 2.
- A1.19 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.

A1.20 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

A2. Ofcom's consultation principles

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

Before the consultation

A2.1 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

A2.2 We will be clear about whom we are consulting, why, on what questions and for how long.

A2.3 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.

A2.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.

A2.5 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.

A2.6 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

A2.7 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.

A3. 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)

A4. Consultation questions

Question 1: Do you agree with our proposal to designate KCOM in the Hull Area?

Question 2: Do you agree with our proposal to designate BT for the whole of the UK except for the Hull Area?

Question 3: Pursuant to paragraph 3(2)(c) of the 2018 Designation Regulations, are there alternative proposals from any other person to be designated as a Universal Service Provider instead of BT or KCOM?

Question 4: Do you agree that the threshold for an affordable price for the purposes of USO eligibility should be set at £45 a month (including VAT, connection charges, monthly payments and other broadband charges)?

Question 5: Do you agree with our proposed approach to how Universal Service Providers should check eligibility for the USO?

Question 6: Do you agree with our proposed approach to how Universal Service Providers should take account of shared connection costs?

Question 7: Do you agree with our proposed approach to informing consumers of the outcome of their USO request?

Question 8: Do you agree with our proposal to include a universal service condition requiring Universal Service Providers to raise awareness of the USO?

Question 9: Do you agree with our proposals set out above, including to set a timeframe of 12 months for the delivery of USO connections unless exceptional circumstances have arisen?

Question 10: Do you agree with our proposals on how exceptional circumstances should be defined and operate?

Question 11: Do you agree with our overall approach to ensuring USO connections and services are affordable, specifically on:

a) our proposal to introduce a two-part obligation imposing (i) an equivalent pricing requirement, and (ii) a safeguard cap; and

b) setting the level of a safeguard cap at £45 per month (including VAT, averaged over the fixed commitment period, including any upfront connection charges, monthly payments and other broadband charges)?

Question 12: Do you agree with our proposal to ensure that USO customers receive at least the same quality of service as non-USO customers?

Question 13: Do you agree with our proposed approach to complaints handling and dispute resolution?

Question 14: Do you agree with our proposal to approve the two Alternative Dispute Resolution schemes currently approved under the General Conditions (Ombudsman Services: Communications and the Internet Services Adjudication Scheme) for resolving disputes in relation to the USO?

Question 15: Do you agree with our proposed approach to how the Universal Service Providers should report on their performance and maintain records?

Question 16: Do you agree with our approach to how Ofcom should report and monitor delivery of the USO?

Question 17: Do you agree with our proposed approach to require Universal Service Providers to maintain accounting records?

A5. 2018 Designation Regulations

STATUTORY INSTRUMENTS

2018 No. 1231

ELECTRONIC COMMUNICATIONS

The Electronic Communications (Universal Service) (Broadband) Regulations 2018

Made - - - - *26th November 2018*

Coming into force - - *4th December 2018*

The Office of Communications (“OFCOM”), in exercise of the powers conferred by sections 66(1) and section 403(7) of the Communications Act 2003(a) (the “Act”), make the following Regulations.

Before making these Regulations, OFCOM have given notice of their proposal to do so in accordance with section 403(4)(a) of the Act, published notice of their proposal in accordance with section 403(4)(b) of the Act, and have considered the representations made to them before the time specified in the notice in accordance with section 403(4)(c) of the Act.

Citation and commencement

1. These Regulations may be cited as the Electronic Communications (Universal Service) (Broadband) Regulations 2018 and shall come into force on 4th December 2018.

Interpretation

2. In these Regulations—

- (a) “the Universal Service Order” means the Electronic Communications (Universal Service) (Broadband) Order 2018(b);
- (b) “the Act” means the Communications Act 2003;
- (c) “OFCOM” means the Office of Communications;
- (d) “the universal service” means the provision in the United Kingdom of the connections and services set out in Schedule 1 of the Universal Service Order; and
- (e) “a universal service provider” means a person designated to provide the whole or part of the universal service (and to whom universal service conditions under section 67 of the Act are applicable).

Designation of universal service provider

3.—(1) OFCOM shall propose the designation of such persons as they consider appropriate as universal service providers.

(a) 2003 c. 21.
(b) S.I. 2018/445.

(2) Proposals for designating any person as a universal service provider shall be by means of a notification published by OFCOM—

- (a) stating that they are proposing to designate that person as a universal service provider;
- (b) giving the reasons for making that proposal;
- (c) inviting alternative proposals from any other person to be designated as a universal service provider instead of the person stated in the notification; and
- (d) specifying the period within which representations about OFCOM's proposal, including any alternative proposals, may be made.

(3) The period specified for the purpose of paragraph (2)(d) must be one of not less than one month, beginning with the day after the day on which the notification was published.

(4) The publication of a notification under this regulation must be in such manner as appears to OFCOM to be appropriate for bringing it to the attention of the persons who, in OFCOM's opinion, are likely to have an interest in it, or be affected by it.

(5) Where following publication of a notification in accordance with paragraph (2), OFCOM receive, within the period specified for the purposes of paragraph (2)(d), an alternative proposal from a person to be designated as a universal service provider instead of the person state in the notice they shall—

- (a) consider that alternative proposal; and
- (b) determine whether or not, in their opinion, it would be appropriate to propose to designate that person as a universal service provider instead of the person stated in the notification.

(6) Where OFCOM determine, in accordance with paragraph (5)(b), that it would be appropriate to propose to designate another person as a universal service provider instead of the person stated in the notification, they must, before confirming that proposal, publish a notification in accordance with paragraph (2).

(7) If—

- (a) OFCOM have considered every representation about the proposals set out in a notification published under paragraph (2) that is made to them within the period specified in the notification; and
- (b) OFCOM have determined, in accordance with paragraph (5)(b), that it would not be appropriate to propose to designate another person as a universal service provider instead of the person stated in the notification,

OFCOM shall, by publication of a further notification, make the proposed designation, with or without modification.

Review of designation

4.—(1) Where OFCOM undertake a review of the designations in accordance with section 66(4) of the Act, they must first publish their intention to do so in such manner as appears to OFCOM to be appropriate for bringing it to the attention of the persons, who, in OFCOM's opinion, are likely to have an interest in it, or be affected by it.

(2) After publishing their intention, where OFCOM propose to make changes to the designation of any universal service provider, OFCOM shall follow a process with the same steps as those for designation set out in Regulations 3(2) to 3(7).

(3) Where, following a review of any designation in accordance with paragraphs (1) and (2), the universal service conditions applicable to a designated person are all revoked, the designation of that person as a universal service provider shall immediately cease to have effect.

26th November 2018

Jonathan Oxley
Group Director Competition Group
For and by the authority of the Office of Communications

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out the process by which the Office of Communications (“OFCOM”) shall designate the persons to whom broadband universal service conditions are to be applicable, in exercise of its powers under section 66 of the Communications Act 2003 (c 21) (the “Act”).

Regulation 3 provides for the procedure that OFCOM will adopt to propose and confirm the designation of a person as a universal service provider. Regulation 3(2) provides for certain information that OFCOM must provide in its proposals for designation. Regulation 3(3) provides for the timeframe in which to make representations on the proposed designation. Regulations 3(5) and 3(6) provide for what OFCOM must do in light of such representations. Regulation 3(7) provide for OFCOM to confirm the designation.

Regulation 4 sets out what OFCOM must do in reviewing such designation from time to time.

A full regulatory impact assessment of the effect that these Regulations will have on cost to business is available to the public from OFCOM’s website at <http://www.ofcom.org.uk> or from the OFCOM library at Riverside House, 2a Southwark Bridge Road, London SE1 9HA. Copies of this assessment have also been placed in the library of the House of Commons.

A6. Legal instruments

NOTIFICATION OF OFCOM'S PROPOSALS TO: DESIGNATE UNIVERSAL SERVICE PROVIDERS UNDER REGULATION 3(1) OF THE ELECTRONIC COMMUNICATIONS (UNIVERSAL SERVICE) REGULATIONS 2018; SET UNIVERSAL SERVICE CONDITIONS UNDER SECTIONS 45 TO 47, 48A, 48C, 67, 68(3) AND (4) OF THE COMMUNICATIONS ACT 2003; AND GIVE DIRECTIONS UNDER SECTIONS 49, 49A AND 49C OF THE COMMUNICATIONS ACT AND UNIVERSAL SERVICE CONDITIONS F.3 OF SCHEDULES 1 AND 3

Background

1. On 28 March 2018, the Secretary of State, in exercise of the powers conferred by section 65 of the Communications Act 2003 (the “**Act**”), made The Electronic Communications (Universal Service) (Broadband) Order 2018 (the “**Order**”).¹⁹⁶ The Order provides that affordable broadband connections and services must be made available to all eligible End-users in the United Kingdom (the “**USO**”).
2. Under section 66 of the Act, Office of Communications (“**Ofcom**”) may make provision by regulations for the designation of persons to whom universal service conditions are to be applicable (the “**Universal Service Providers**”). Ofcom has made The Electronic Communications (Universal Service) Regulations 2018 setting out the procedure for designation of Universal Service Providers (the “**2018 Regulations**”).¹⁹⁷
3. Pursuant to section 66 of the Act and Regulation 3(1) of the 2018 Regulations, Ofcom is now making proposals for the designation of particular Universal Service Providers as responsible for the provision of the USO and for universal service conditions, directions and approvals under sections 45 to 47, 48A, 48C, 49, 49A, 49C, 67 and 68(3) and (4) of the Act to apply to the Universal Service Providers.

Proposals

4. Ofcom is proposing to designate the following persons as Universal Service Providers under Regulation 3(1) of the 2018 Regulations:
 - a. BT to be designated for the Rest of the UK; and
 - b. KCOM to be designated for the Hull Area.
5. Ofcom is proposing to set conditions on the persons referred to in paragraph 4 as follows:
 - a. on BT, the conditions set out in Schedule 1;
 - b. on KCOM, the conditions set out in Schedule 3.
6. Ofcom is also proposing to give the following directions:

¹⁹⁶ The Order is available at <http://www.legislation.gov.uk/uksi/2018/445/contents/made>.

¹⁹⁷ The 2018 Regulations are available at Annex 5 of the consultation accompanying this Notification.

- a. a direction set out in Schedule 2 under proposed condition F.3 of Schedule 1 to be applied to BT to the extent specified in Schedule 2;
 - b. a direction set out in Schedule 4 under proposed condition F.3 of Schedule 3 to be applied to KCOM to the extent specified in Schedule 4.
7. In addition, Ofcom is proposing to approve the Ombudsman Services: Communications, and the Communications and Internet Services Adjudication Scheme as follows:
- a. under proposed condition E.2 of Schedule 1 for the purpose of resolving disputes between End-users and BT about matters concerning the USO; and
 - b. under proposed condition E.2 of Schedule 3 for the purpose of resolving disputes between End-users and KCOM about matters concerning the USO.

The approvals referred to above shall take effect on the date on which a statement containing Ofcom's decisions on designation and the conditions is published.

8. In consequence of its proposals referred to in paragraphs 4 to 7, Ofcom is also proposing to make the following modifications to the universal service conditions (the "**Telephony Conditions**") contained in the Notification dated 21 July 2003 made under Regulation 4(10) of the Electronic Communications (Universal Service) Regulations 2003, as amended (the "**2003 Notification**"):
- a. Telephony Condition 1.1 applied to BT as set out in Part 2 of the 2003 Notification is revoked.
 - b. Telephony Condition 1.1 applied to KCOM as set out in Part 3 of the 2003 Notification is revoked.
 - c. Telephony Condition 1.2 applied to BT as set out in Part 2 of the 2003 Notification and Telephony Condition 1.2 applied to KCOM as set out in Part 3 of the 2003 Notification is modified by deleting "the services referred to in paragraph 1.1" and inserting "the Telephony Services".
 - d. Telephony Conditions 8.1 and 8.3(a) applied to BT as set out in Part 2 of the 2003 Notification are modified by deleting "Universal Service Conditions 1, 2, 3, 4 and 7" and inserting "Conditions A.1(a) and A.2 set out in the Notification under Regulation 3(1) of the Electronic Communications (Universal Service) Regulations 2018 and Universal Service Conditions 2, 3, 4 and 7 set out in this Notification".
 - e. Telephony Conditions 6.1 and 6.3(a) applied to KCOM as set out in Part 3 of the 2003 Notification are modified by deleting "Universal Service Conditions 1, 2, and 3" and inserting "Conditions A.1(a) and A.2 set out in the Notification under Regulation 3(1) of the Electronic Communications (Universal Service) Regulations 2018 and Universal Service Conditions 2 and 3 set out in this Notification".
 - f. The definition of the Telephony Services set out in Part 1 of the 2003 Notification is replaced with the following: "Telephony Services" means either or both a connection at a fixed location to the Public Communications Network and access to Publicly Available Telephone Services.

9. Ofcom's reasons for making, and the effect of, the proposals set out in this Notification are contained in the consultation entitled "*Delivering the Broadband Universal Service: Proposals for designating providers and applying conditions*" which accompanies this Notification.

Ofcom's duties and legal tests

10. In making these proposals, Ofcom has considered and acted in accordance with its general duties under section 3 of the Act and the six Community requirements set out in section 4 of the Act. In addition, in making proposals in relation to the universal service conditions, directions and approvals, including the proposals to revoke and modify the Telephony Conditions, Ofcom has considered the requirements of sections 45 to 47, 48A, 48C, 49, 49A, 49C, 67 and 68(3) and (4) of the Act, as appropriate and relevant to each such condition, direction or approval.

Making representations

11. Representations may be made to Ofcom about any of the proposals set out in this Notification and the accompanying consultation document by no later than 13 February 2019.
12. Copies of this Notification and the accompanying consultation document have been sent to the Secretary of State in accordance with sections 48C(1) and 49C(1).

Interpretation

13. For the purpose of interpreting this Notification:
 - a. except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Notification, and otherwise any word or expression shall have the same meaning as it has in the Act or the Order;
 - b. words in the singular shall include the plural, and in the plural shall include the singular;
 - c. headings and titles shall be disregarded;
 - d. expressions cognate with those referred to in this Notification shall be construed accordingly; and
 - e. the Interpretation Act 1978 (c. 30) shall apply as if this Notification were an Act of Parliament.
14. In this Notification:
 - a. "**BT**" means British Telecommunications plc, whose registered company number is 01800000 and any British Telecommunications plc subsidiary or holding company, or any subsidiary of that holding company, all as defined in section 1159 of the Companies Act 2006;
 - b. "**Hull Area**" means the area defined as the "Licensed Area" in the licence granted on 30 November 1987 by the Secretary of State under section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and KCOM Group plc;
 - c. "**KCOM**" means KCOM Group plc, whose registered company number is 02150618, defined as "Kingston" in the 2003 Notification (as amended) and the Telephony Conditions, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined in section 1159 of the Companies Act 2006;

- d. **“Rest of the UK”** means the area consisting of the United Kingdom excluding the Hull Area;
- e. **“United Kingdom”** has the meaning given to it in the Interpretation Act 1978 (c. 30).

15. Schedules to this Notification shall form part of this Notification.



Selina Chadha (Consumer Policy Director), Ofcom

A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002

5 December 2018

SCHEDULE 1

UNIVERSAL SERVICE CONDITIONS FOR BT

Part 1: Application

1. The Conditions in Part 3 of this Schedule 1 shall:
 - a. apply to BT in the Rest of the UK; and
 - b. come into force:
 - i. in relation to Conditions A.1(a), A.2, A.4 (to the extent it concerns Telephony Services), E.1 to E.3 (inclusive), F.1 to F.3 (inclusive), G.1, H.1 and I.1 on [insert date on which a statement containing Ofcom's decisions on designation and the Conditions is published]; and
 - ii. in relation to Conditions A.1(b), A.3, A.4 (to the extent it concerns Broadband Services), B.1 to B.11 (inclusive), C.1 to C.8 (inclusive), D.1 and D.2 on [insert date 5 months after a statement containing Ofcom's decisions on designation and the Conditions].

Part 2: Definitions and interpretation

1. For the purpose of interpreting Schedule 1:
 - a. except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Schedule 1, and otherwise any word or expression shall have the same meaning as it has in the Act or the Order;
 - b. words in the singular shall include the plural, and in the plural shall include the singular;
 - c. headings and titles shall be disregarded;
 - d. expressions cognate with those referred to in this Schedule 1 shall be construed accordingly; and
 - e. the Interpretation Act 1978 (c. 30) shall apply as if this Schedule 1 were an Act of Parliament.
2. In Schedule 1:
 - a. **"2003 Notification"** means the Notification dated 21 July 2003 made under Regulation 4(10) of the Electronic Communications (Universal Service) Regulations 2003 (as amended);
 - b. **"Act"** means the Communications Act 2003 (c. 21);
 - c. **"Alternative Broadband Services"** means either or both a connection and a service provided either on a commercial basis or through a publicly-funded intervention, each of which has all of the following characteristics: (a) a download sync speed of at least 10 megabits per second; (b) an upload sync speed of at least 1 megabit per second; (c) a contention ratio of no higher than 50:1; (d) latency which is capable of allowing the End-user to make and receive voice calls over the connection effectively; (e) the capability to allow data usage of at least 100 gigabytes per month;
 - d. **"Alternative Dispute Resolution Scheme"** or **"ADR Scheme"** means any dispute procedures for which Ofcom gives its approval for the resolution of disputes in relation to any Complaints between BT and USO Customers;

- e. **“Bill”** means the information issued, or made available, by BT to an Eligible USO Customer about the charges levied and due for payment or the debits and credits applied to the Eligible USO Customer’s account;
- f. **“Broadband Connection”** means a connection provided by BT to an Eligible USO Customer under these Conditions which has all of the following characteristics: (a) a download sync speed of at least 10 megabits per second; (b) an upload sync speed of at least 1 megabit per second; (c) a contention ratio of no higher than 50:1; (d) latency which is capable of allowing the Eligible USO Customer to make and receive voice calls over the connection effectively; (e) the capability to allow data usage of at least 100 gigabytes per month;
- g. **“Broadband Services”** means both a Broadband Connection and a service provided by BT to an Eligible USO Customer under these Conditions, each of which has all of the following characteristics: (a) a download sync speed of at least 10 megabits per second; (b) an upload sync speed of at least 1 megabit per second; (c) a contention ratio of no higher than 50:1; (d) latency which is capable of allowing the Eligible USO Customer to make and receive voice calls over the connection effectively; (e) the capability to allow data usage of at least 100 gigabytes per month;
- h. **“BT”** means British Telecommunications plc, whose registered company number is 01800000 and any British Telecommunications plc subsidiary or holding company, or any subsidiary of that holding company, all as defined in section 1159 of the Companies Act 2006;
- i. **“Complaint”** means: (a) an expression of dissatisfaction made by a USO Customer to BT related to either: (i) matters relating to BT’s obligations under these Conditions; (ii) the complaint-handling process itself; or (iii) the level of customer service experienced by the USO Customer; and (b) where a response or resolution is explicitly or implicitly expected;
- j. **“Condition”** means any of the universal service conditions imposed by Ofcom under sections 45 to 47, 67 and 68(3) and (4) of the Act and set out in Schedule 1;
- k. **“Confirmed Order”** means an order for a Broadband Service made by an Eligible USO Customer which is communicated to BT by any method of communication, including by telephone, letter, email or webchat;
- l. **“Consumer Prices Index”** means the index of prices compiled by an agency or a public body on behalf of Her Majesty’s Government or a governmental department (which is the Office for National Statistics at the time of publication of this Notification) from time to time in respect of all items;
- m. **“Cost of Provision of Infrastructure”** means the costs directly attributable to providing the physical network infrastructure over which Broadband Services are provided to an individual Premises, excluding any equipment costs associated with that individual Premises;
- n. **“Customer Complaints Code”** means a code of practice containing relevant information about how Complaints from USO Customers are handled and how, and when, USO Customers can take their unresolved Complaints to an ADR Scheme;
- o. **“Eligibility Threshold”** means:
 - i. In the First Year, the amount of £45 per month, which is inclusive of VAT and calculated as a monthly average payment over the fixed commitment period inclusive of any charges for a connection, monthly payments and any other payments for Alternative Broadband Services;
 - ii. In Subsequent Years, the amount calculated as:

$$P_t = P_{t-1} * (1 + CPI_t)$$

which is inclusive of VAT and calculated as a monthly average payment over the fixed commitment period inclusive of any charges for a connection, monthly payments and any other payments for Alternative Broadband Services rounded to the nearest 10p;

Where:

P_t means the Eligibility Threshold for the Relevant Year;

P_{t-1} means the Eligibility Threshold for the Prior Year;

CPI_t means the change in the Consumer Prices Index in the 12 months ending 3 months immediately before the beginning of the Relevant Year expressed as a percentage;

- p. **“Eligible USO Customer”** means a USO Customer whose Request for a Broadband Service meets the criteria in Condition A.3;
- q. **“Exceptional Circumstances”** means any environmental factor, restriction to street access, or customer or third party wayleave process which has the following characteristics: (i) it is beyond BT’s control; (ii) it is beyond the normal range of expectations; (iii) it has a significant impact on either access or existing infrastructure that causes prolonged delay to the delivery of Broadband Services; and (iv) it is critical to the delivery of Broadband Services;
- r. **“Hull Area”** means the area defined as the “Licensed Area” in the licence granted on 30 November 1987 by the Secretary of State under section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and KCOM Group plc;
- s. **“Ofcom”** means the Office of Communications as established under section 1 of the Office of Communications Act 2002;
- t. **“Ofcom Approved Complaints Code”** means the code of practice, as amended from time to time, annexed to Ofcom’s General Condition of Entitlement C4¹⁹⁸ and entitled *“Ofcom approved complaints code of practice for customer service and complaints handling”*; except that references to the definitions used in the Ofcom Approved Complaints Code contained in an annex to Ofcom’s General Condition of Entitlement C4 shall be treated as references to the definitions and terms used in these Conditions as follows:
 - i. references to the Complaints Handling Procedures shall be treated as references to procedures for the handling of Complaints as defined in these Conditions that BT must have and comply with pursuant to Condition E.1(a);
 - ii. references to the Regulated Provider shall be treated as references to BT;
 - iii. references to a Complaint shall be treated as references to a Complaint as defined in these Conditions;
 - iv. references to a Relevant Customer shall be treated as references to a USO Customer;

¹⁹⁸ The current unofficial consolidated version of Ofcom’s General Conditions of Entitlement is available at: https://www.ofcom.org.uk/_data/assets/pdf_file/0021/112692/Consolidated-General-Conditions.pdf

- v. references to a Complainant shall be treated as references to a USO Customer who makes a Complaint as defined in these Conditions to BT;
- vi. references to a Customer Complaints Code shall be treated as references to a code of practice containing relevant information about how Complaints as defined in these Conditions from USO Customers are handled and how, and when, USO Customers can take their unresolved Complaints to an ADR Scheme as defined in these Conditions;
- vii. references to an ADR Scheme shall be treated as references to an ADR Scheme as defined in these Conditions;
- viii. references to an ADR Letter shall be treated as references to a notification issued from BT to a USO Customer concerning the USO Customer's right to take their Complaint to an ADR Scheme as defined in these Conditions; and
- ix. references to a Bill shall be treated as references to a Bill as defined in these Conditions;
- u. **"Order"** means The Electronic Communications (Universal Service) (Broadband) Order 2018;
- v. **"Ordnance Survey's AddressBase Product"** means the most up-to-date versions of: (a) Ordnance Survey's AddressBase Premium dataset for the United Kingdom except Northern Ireland; and (b) Ordnance Survey's AddressBase Islands dataset for Northern Ireland¹⁹⁹;
- w. **"Premises"** means either a USO Customer's residence or a place of business;
- x. **"Prior Year"** means the 12 months ending on [insert date 5 months after a statement containing Ofcom's decisions on designation and the Conditions] before the commencement of each Relevant Year;
- y. **"Public Communications Network"** has the same meaning as in the 2003 Notification;
- z. **"Publicly Available Telephone Service"** has the same meaning as in the 2003 Notification;
- aa. **"Relevant Year"** means each period of 12 months as follows:
 - i. the First Year, which starts on [insert date 5 months after a statement containing Ofcom's decisions on designation and the Conditions] and ends on [insert date 17 months after a statement containing Ofcom's decisions on designation and the Conditions] (inclusive); and
 - ii. Subsequent Years, which are each of the 12 month periods subsequent to the First Year, beginning on [insert date 17 months after a statement containing Ofcom's decisions on designation and the Conditions];
- bb. **"Request"** means the point of first contact by a USO Customer with BT to enquire about a Broadband Service pursuant to Condition A.1(b);
- cc. **"Rest of the UK"** means the area consisting of the United Kingdom excluding the Hull Area;
- dd. **"Safeguard Cap"** means:
 - i. In the First Year, the amount of £45 per month, which is inclusive of VAT and calculated as a monthly average payment over the fixed commitment period inclusive of any charges for a Broadband Connection, monthly payments and any other payments for Broadband Services;

¹⁹⁹ The information concerning the Ordnance Survey's AddressBase Product is available at: See: <https://www.ordnancesurvey.co.uk/business-and-government/products/addressbase-products.html>

- ii. In Subsequent Years, the amount calculated as:

$$P_t = P_{t-1} * (1 + CPI_t)$$

which is inclusive of VAT and calculated as a monthly average payment over the fixed commitment period inclusive of any charges for a Broadband Connection, monthly payments and any other payments for Broadband Services rounded to the nearest 10p;

Where:

P_t means the Safeguard Cap for the Relevant Year;

P_{t-1} means the Safeguard Cap for the Prior Year;

CPI_t means the change in the Consumer Prices Index in the 12 months ending 3 months immediately before the beginning of the Relevant Year expressed as a percentage.

- ee. **“Telephony Service”** means either or both a connection at a fixed location to the Public Communications Network and access to Publicly Available Telephone Services, including the ability to make and receive calls and facsimile;
- ff. **“United Kingdom”** has the meaning given to it in the Interpretation Act 1978 (c. 30);
- gg. **“USO Customer”** means an End-user who has requested a Broadband Service from BT including Eligible USO Customers; and
- hh. **“VAT”** means value added tax chargeable under or pursuant to the Value Added Tax Act 1994, including any amendment to, or replacement of, the Value Added Tax Act 1994, and/or any similar tax.

Part 3: Conditions

Section 1: Conditions applicable to Telephony Services and Broadband Services

Conditions A.1 to A.4 – Provision of Telephony Services and Broadband Services

- A.1 BT must provide one or both of the following upon request:
- a) subject to Condition A.2, Telephony Services;
 - b) subject to Condition A.3, Broadband Services.
- A.2 BT is required to provide Telephony Services where the request in respect of the Telephony Services is reasonable.
- A.3 Subject to the Conditions in Section 2, BT is required to provide Broadband Services where all of the following criteria are met:
- a) the Broadband Connection requested is to a fixed location which is a Premises;
 - b) Alternative Broadband Services at a price less than, or equal to, the Eligibility Threshold:
 - (i) are not available to that location; and
 - (ii) will not be made available to that location through a publicly-funded intervention within the period of one year beginning with the date on which the Request is made;
 - c) the provision of the Broadband Connection requested:
 - (i) will cost no more than £3,400 excluding VAT; or
 - (ii) will cost more than £3,400 excluding VAT, but any costs in excess of £3,400 excluding VAT will be paid by the USO Customer.
- A.4 BT must ensure that its Electronic Communications Networks are installed, kept installed and run for the purpose of providing Broadband Services and/or Telephony Services.

Section 2: Conditions applicable to Broadband Services only

Condition B.1 – Eligibility assessment under Condition A.3(a)

- B.1 In order to make an assessment under Condition A.3(a) of whether a Request is for a fixed location which is a Premises, BT must first use the Ordnance Survey's AddressBase Product or another dataset as approved by Ofcom. Where the dataset used does not contain information in relation to that Premises, BT must:
- a) ask the USO Customer to provide evidence of liability in respect of that Premises for either council tax or non-domestic (business) rates; and
 - b) proceed on the basis that the criterion in Condition A.3(a) is met where the USO Customer provides that evidence.

Conditions B.2 to B.5 – Eligibility assessment under Condition A.3(b)(i)

- B.2 In order to make an assessment under Condition A.3(b)(i), BT must use any relevant information held by BT and the information provided by Ofcom for the purpose of determining whether the criterion referred to in Condition A.3(b)(i) is met.
- B.3 If BT concludes that an Alternative Broadband Service provided by BT is available to the USO Customer at the Premises at a price less than, or equal to, the Eligibility Threshold, BT must offer a Broadband Service to the USO Customer provided the remaining criteria in Condition A.3 are met unless BT offers to provide such an Alternative Broadband Service to the USO Customer within the period of up to and including 30 calendar days from the Request.
- B.4 If BT concludes that an Alternative Broadband Service provided by one or more third parties is available to the USO Customer at the Premises:
- a) BT may assume for the purposes of making an assessment under Condition A.3(b)(i) that any such Alternative Broadband Service is available at a price less than, or equal to, the Eligibility Threshold and can be provided within the period of up to and including 30 calendar days;
 - b) BT must provide the name and contact details of such third parties to the USO Customer as soon as reasonably practicable; and
 - c) BT must inform the USO Customer as soon as reasonably practicable that in the event that an Alternative Broadband Service at a price less than, or equal to, the Eligibility Threshold is not available from any such third party within the period of up to and including 30 calendar days, the USO Customer should consider making another Request for a Broadband Service.
- B.5 BT must proceed on the basis that the criterion in Condition A.3(b)(i) is met where a USO Customer who has previously received information from BT under Condition B.4(c):
- a) informs BT that Alternative Broadband Services are not available to the USO Customer at a price less than, or equal to, the Eligibility Threshold from any third party within the period of up to and including 30 calendar days; and
 - b) makes another Request for a Broadband Service.

Conditions B.6 to B.7 – Eligibility assessment under Condition A.3(b)(ii)

- B.6 In order to make an assessment under Condition A.3(b)(ii), BT must use the information provided by Ofcom for the purpose of determining whether the criterion referred to in Condition A.3(b)(ii) is met. If BT concludes on the basis of that information that an Alternative Broadband Service will be made available to a Premises through a publicly-funded intervention within the period of one year beginning with the date on which a USO Customer made a Request:
- a) BT may assume that any Alternative Broadband Service available to the Premises will be available at a price less than, or equal to, the Eligibility Threshold;
 - b) BT must provide the name and contact details of the organisation which is responsible for delivery of that publicly-funded intervention to the USO Customer as soon as reasonably practicable; and
 - c) BT must inform the USO Customer as soon as reasonably practicable that in the event that an Alternative Broadband Service at a price less than, or equal to, the Eligibility Threshold has

not been, or will not be, made available by that organisation within the period of one year beginning with the date on which the USO Customer made the Request to BT, the USO Customer should consider making another Request.

- B.7 BT must proceed on the basis that the criterion in Condition A.3(b)(ii) is met where a USO Customer who has previously received information from BT under Condition B.6(c):
- a) informs BT that an Alternative Broadband Service at a price less than, or equal to, the Eligibility Threshold has not, or will not be, made available by that organisation within the period of one year beginning with the date on which the USO Customer made the Request to BT; and
 - b) makes another Request.

Conditions B.8 to B.9 – Eligibility assessment under Conditions A.3(c)

- B.8 In order to make an assessment under Condition A.3(c), BT must, where the provision of a Broadband Connection to a Premises involves the deployment of infrastructure which is capable of serving more than one potentially eligible premises, calculate the share of costs that is attributed to that individual Premises as follows:

Total Cost of Provision of Infrastructure which is capable of being shared

Number of relevant residences and/or places of business

where the number of relevant residences and/or places of business is the highest of:

- (i) 70% of the total number of potentially eligible residences and/or places of business which can be served by that infrastructure; or
 - (ii) the actual number of Premises which can be served by that infrastructure and in respect of which Requests which meet the criteria in Condition A.3 have been made.
- B.9 In order to make an assessment under Condition A.3(c), BT must use any relevant information held by BT and the information provided by Ofcom for the purpose of determining whether the criterion referred to in Condition A.3(c) is met.
- B.10 Where BT concludes that the provision of the Broadband Connection requested will cost more than £3,400 excluding VAT, BT must:
- a) inform the USO Customer of the amount of costs in excess of £3,400 excluding VAT that it estimates will be incurred in providing the Broadband Connection, together with an explanation of the nature of the costs involved;
 - b) provide a Broadband Service to the USO Customer if the USO Customer agrees to pay the sum of: (i) the amount of costs in excess of £3,400 excluding VAT (the “Increment”); and (ii) VAT on the Increment, on delivery of that Broadband Service; and
 - c) if the USO Customer does not agree to pay the sum referred to in Condition B.10(b), inform the USO Customer that the costs of the provision of the Broadband Connection may change over time and ask the USO Customer for consent to be contacted by BT at a later date in the event that BT concludes that the criterion in Condition A.3(c) may be met in respect of the Premises.

B.11 BT must regularly review assessments under the criterion in Condition A.3(c) in respect of which:

- a) BT concluded that the criterion in Condition A.3(c) was not met; and
- b) the USO Customer who made the Request did not agree to pay the sum referred to in Condition B.10(b).

If on such review BT concludes that the criterion in Condition A.3(c) may be met in respect of a Premises, BT must contact the USO Customer as soon as reasonably practicable after reaching that conclusion to inform the relevant USO Customer that he or she should consider making another Request for a Broadband Service, unless the USO Customer did not give consent to be contacted by BT pursuant to Condition B.10(c).

Condition C.1 to C.8 – Responding to Requests, delivering and provisioning Broadband Services

C.1 BT must act reasonably in making an assessment of whether the criteria set out in Condition A.3 are met in relation to each Request.

C.2 Where BT receives a Request from a USO Customer, subject to Condition C.3, BT must make the assessments referred to in Conditions B.1 to B.10 and inform the USO Customer of whether the criteria set out in Condition A.3 are met as soon as reasonably practicable and, in any event, no later than 30 calendar days starting from the date of that Request.

C.3 Where BT requests evidence from a USO Customer under Condition B.1(a) and that evidence is not provided by that USO Customer within 5 calendar days, the period of 30 calendar days referred to in Condition C.2 may be extended by the additional number of calendar days for which BT awaited a response from that USO Customer.

C.4 In informing a USO Customer under Condition C.2, BT must:

- a) where the criteria set out in Condition A.3 are met, on the same date as informing the Eligible USO Customer, make an offer to provide a Broadband Service to the Eligible USO Customer;
- b) where the criteria set out in Condition A.3 are not met, explain which of the criteria are not met and why; and
- c) inform the USO Customer that he or she is entitled to bring a Complaint and provide either an electronic copy, or a physical copy, of the Customer Complaints Code.

C.5 Unless Exceptional Circumstances have arisen, BT must provide a Broadband Service to an Eligible USO Customer who has placed a Confirmed Order as soon as reasonably practicable and, in any event, no later than the period of 12 months from the date on which the Eligible USO Customer placed the Confirmed Order.

C.6 Where Exceptional Circumstances have arisen, the period of 12 months referred to in Condition C.5 may be extended by the period of delay caused by those Exceptional Circumstances.

C.7 BT must, as soon as reasonably practicable, inform and keep each Eligible USO Customer who has placed a Confirmed Order updated of the following:

- a) the anticipated date of delivery of the Broadband Service; and
- b) any change to the anticipated delivery date referred to in Condition C.7(a) including the provision of the following:

- (i) a revised date of delivery of the Broadband Service; and
- (ii) an explanation of the reason for the change to the anticipated delivery date referred to in Condition C.7(a).

C.8 In each financial year or any other period approved by Ofcom, BT must provide Broadband Services to Eligible USO Customers to at least the same quality of service levels relating to: (a) fault repair; (b) missed appointments; and (c) the provision of Broadband Services as BT meets in providing Alternative Broadband Services in that same period.

Condition D.1 to D.2 – Price and non-price terms and conditions relating to Broadband Services

D.1 Subject to Condition D.2, BT must ensure that:

- a) any Broadband Service provided to an Eligible USO Customer is provided at a price no higher than the price at which BT provides the equivalent Alternative Broadband Service or in the absence of the equivalent Alternative Broadband Service, the most comparable Alternative Broadband Service; and
- b) the terms and conditions upon which a Broadband Service is provided to an Eligible USO Customer do not require that Eligible USO Customer to pay for any additional service which is not necessary for the purpose of providing the Eligible USO Customer with that Broadband Service.

D.2 BT must offer to provide at least one Broadband Service to each Eligible USO Customer at a price less than, or equal to, the Safeguard Cap.

Condition E.1 to E.3 – Complaints Handling and Dispute Resolution

E.1 BT must:

- a) have and comply with procedures for the handling of Complaints brought by USO Customers that conform with Section 1 of the Ofcom Approved Complaints Code;
- b) have and comply with a Customer Complaints Code that conforms with Section 2 of the Ofcom Approved Complaints Code; and
- c) retain written records of Complaints in conformity with Section 3 of the Ofcom Approved Complaints Code.

E.2 BT must:

- a) be a member of an ADR Scheme approved by Ofcom under these Conditions;
- b) comply with the ADR Scheme, including abiding by any final decision of the body which administers the ADR Scheme, within the time period specified in that final decision;
- c) ensure that USO Customers have the right to use the ADR Scheme free of charge;
- d) provide information in Bills about the ADR Scheme in conformity with Section 4 of the Ofcom Approved Complaints Code; and
- e) provide the ADR Scheme with all training, information and support necessary for resolving Complaints brought by USO Customers in relation to any matter relating to BT's obligations under these Conditions.

- E.3 BT must monitor its compliance with Conditions E.1 and E.2 and the Ofcom Approved Complaints Code, including compliance by all staff who interact with USO Customers and/or handle Complaints, and take appropriate steps to prevent the recurrence of any problems identified.

Condition F.1 to F.3 – Reporting and record keeping

- F.1 BT must maintain records, including records of all Requests made by USO Customers, for a period of 6 years from the date on which those records have been created, which must be sufficient to:
- a) demonstrate BT's compliance with these Conditions; and
 - b) provide adequate evidence and explanations in support of any potential request made by BT for compensation for complying in relation to any matter relating to BT's obligations under these Conditions.
- F.2 BT must ensure that it has a historical cost accounting system which is adequate to:
- a) separately record and calculate the incremental costs, revenues, assets and liabilities associated with the provision of Broadband Services; and
 - b) show and explain the transactions underlying the provision of Broadband Services.
- F.3 BT must comply with all such reporting requirements as Ofcom may from time to time direct in relation to matters relating to BT's obligations under these Conditions.

Condition G.1 – Treatment of information

- G.1 In respect of any information which is either provided by Ofcom to BT for the purpose of performing its obligations under these Conditions or otherwise collected by BT in connection with performing its obligations under these Conditions, BT must:
- a) ensure that such information is used only for the purpose of performing its obligations under these Conditions; and
 - b) put in place measures to prevent access to such information by any employee or agent of BT who is not directly involved in any matters relating to BT's obligations under these Conditions.

Condition H.1 – Raising awareness of Broadband Services

- H.1 BT must take all reasonable steps, including disseminating information in appropriate formats through appropriate channels, to raise awareness of the potential availability of Broadband Services under these Conditions among members of the public.

Condition I.1 – Directions, approvals and consents

- I.1 Ofcom may from time to time give, under these Conditions, a direction, approval or consent requiring BT to comply with additional requirements under these Conditions.

SCHEDULE 2

DIRECTION UNDER CONDITION F.3 OF SCHEDULE 1 TO BT

Part 1: Application

1. The Direction in Part 3 of this Schedule 2 shall:
 - a. apply to BT in the Rest of the UK; and
 - b. come into force on [insert date 5 months after a statement containing Ofcom's decisions on designation and the Conditions].

Part 2: Definitions and interpretation

1. For the purpose of interpreting Schedule 2:
 - a. except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Schedule 2, and otherwise any word or expression shall have the same meaning as it has in the Act or the Order;
 - b. words in the singular shall include the plural, and in the plural shall include the singular;
 - c. headings and titles shall be disregarded;
 - d. expressions cognate with those referred to in this Schedule 2 shall be construed accordingly; and
 - e. the Interpretation Act 1978 (c. 30) shall apply as if this Schedule 2 were an Act of Parliament.
2. In Schedule 2:
 - a. "**Act**" means the Communications Act 2003 (c. 21);
 - b. "**Alternative Dispute Resolution Scheme**" or "**ADR Scheme**" means any dispute procedures for which Ofcom gives its approval for the resolution of disputes in relation to any Complaints between BT and USO Customers;
 - c. "**Broadband Connection**" means a connection provided by BT to an Eligible USO Customer under the Conditions which has all of the following characteristics: (a) a download sync speed of at least 10 megabits per second; (b) an upload sync speed of at least 1 megabit per second; (c) a contention ratio of no higher than 50:1; (d) latency which is capable of allowing the Eligible USO Customer to make and receive voice calls over the connection effectively; (e) the capability to allow data usage of at least 100 gigabytes per month;
 - d. "**Broadband Services**" means both a Broadband Connection and a service provided by BT to an Eligible USO Customer under the Conditions, each of which has all of the following characteristics: (a) a download sync speed of at least 10 megabits per second; (b) an upload sync speed of at least 1 megabit per second; (c) a contention ratio of no higher than 50:1; (d) latency which is capable of allowing the Eligible USO Customer to make and receive voice calls over the connection effectively; (e) the capability to allow data usage of at least 100 gigabytes per month;
 - e. "**BT**" means British Telecommunications plc, whose registered company number is 01800000 and any British Telecommunications plc subsidiary or holding company, or any subsidiary of that holding company, all as defined in section 1159 of the Companies Act 2006;

- f. **“Complaint”** means: (a) an expression of dissatisfaction made by a USO Customer to BT related to either: (i) matters relating to BT’s obligations under the Conditions; (ii) the complaint-handling process itself; or (iii) the level of customer service experienced by the USO Customer; and (b) where a response or resolution is explicitly or implicitly expected;
- g. **“Condition”** means any of the universal service conditions imposed by Ofcom under sections 45 to 47, 67 and 68(3) and (4) of the Act and set out in Schedule 1;
- h. **“Confirmed Order”** means an order for a Broadband Service made by an Eligible USO Customer which is communicated to BT by any method of communication, including by telephone, letter, email or webchat;
- i. **“Customer Complaints Code”** means a code of practice containing relevant information about how Complaints from USO Customers are handled and how, and when, USO Customers can take their unresolved Complaints to an ADR Scheme;
- j. **“Direction”** means the direction given under section 49 of the Act and Condition F.3 of Schedule 1 and set out in this Schedule 2;
- k. **“Eligible USO Customer”** means a USO Customer whose request for a Broadband Service meets the criteria in Condition A.3;
- l. **“Exceptional Circumstances”** means any environmental factor, restriction to street access, or customer or third party wayleave process which has the following characteristics: (i) it is beyond BT’s control; (ii) it is beyond the normal range of expectations; (iii) it has a significant impact on either access or existing infrastructure that causes prolonged delay to the delivery of Broadband Services; and (iv) it is critical to the delivery of Broadband Services;
- m. **“Hull Area”** means the area defined as the “Licensed Area” in the licence granted on 30 November 1987 by the Secretary of State under section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and KCOM Group plc;
- n. **“Ofcom”** means the Office of Communications as established under section 1 of the Office of Communications Act 2002;
- o. **“Order”** means The Electronic Communications (Universal Service) (Broadband) Order 2018;
- p. **“Premises”** means either a USO Customer’s residence or a place of business;
- q. **“Relevant Period”** means each period of 6 months as follows:
 - (i) the First 6 Month Period, which starts on [insert date 5 months after a statement containing Ofcom's decisions on designation and the Conditions] and ends on [insert date 11 months after a statement containing Ofcom's decisions on designation and the Conditions] (inclusive); and
 - (ii) Subsequent 6 Month Periods, which are each of the 6 month duration subsequent to the First 6 Month Period, beginning on [insert date 11 months after a statement containing Ofcom's decisions on designation and the Conditions];
- r. **“Request”** means the point of first contact by a USO Customer with BT to enquire about a Broadband Service pursuant to Condition A.1(b);
- s. **“Rest of the UK”** means the area consisting of the United Kingdom excluding the Hull Area;
- t. **“United Kingdom”** has the meaning given to it in the Interpretation Act 1978 (c. 30); and
- u. **“USO Customer”** means an End-user who has requested a Broadband Service from BT including Eligible USO Customers.

Part 3: Direction

1. For each Relevant Period, BT shall prepare and publish:
 - a. in relation to Requests received by BT:
 - i. the number of Requests received in each month;
 - ii. the number of Confirmed Orders received in each month;
 - iii. the number of Requests rejected in each month, together with an explanation of the reason(s) why each Request was rejected;
 - b. in relation to the time period for responding to Requests:
 - i. the number of requests in each month in respect of which BT informed USO Customers of whether the criteria set out in Condition A.3 were met within the period of up to and including 30 calendar days of the date of the Request;
 - ii. the number of Requests in each month in respect of which BT informed USO Customers of whether the criteria set out in Condition A.3 were met in the period exceeding 30 calendar days from the date of the Request;
 - c. in relation to the provision of Broadband Services:
 - i. the number of Broadband Services delivered in each month;
 - ii. the number of Broadband Services delivered in each month within the following periods from the dates on which Confirmed Orders were placed: 0 up to and including 3 months; more than 3 months up to and including 6 months; more than 6 months up to and including 9 months; more than 9 months up to and including 12 months; more than 12 months up to and including 18 months; more than 18 months up to and including 24 months; and more than 24 months;
 - iii. the supply time of Broadband Services from the date of the Confirmed Order in each month;
 - iv. the fault rate per access line for all Broadband Services in each month;
 - v. the fault repair time for all Broadband Services in each month;
 - d. in relation to the handling of Complaints and dispute resolution:
 - i. number of Complaints received by BT in each month;
 - ii. number of Complaints resolved by BT under Condition E.1 to the satisfaction of USO Customers in each month;
 - iii. number of Complaints not resolved under Condition E.1 to the satisfaction of USO Customers in each month;
 - iv. number of Complaints referred by USO Customers to the ADR Scheme under Condition E.2 in each month.
2. The information referred to in paragraphs 1(c)(iii), 1(c)(iv) and 1(c)(v) of this Direction shall be prepared and published in accordance with the quality of service parameters, definitions and measurement methods set out in Annex 1 to this Schedule 2.
3. For each Relevant Period, BT shall prepare and deliver to Ofcom the following:
 - a. in relation to any Request in respect of which BT did not inform the USO Customer of whether the criteria set out in Condition A.3 were met within the period of up to

and including 30 calendar days starting from the date of that Request, the reason(s) why that information was not provided within the time period specified in Condition C.2;

- b. in relation to any Request in respect of which BT changed one or more of anticipated dates of delivery of a Broadband Service referred to in Condition C.7, the reason(s) why BT changed the anticipated delivery date(s);
 - c. in relation to any Request in respect of which BT provided a Broadband Service after the period of 12 months from the date on which an Eligible USO Customer placed a Confirmed Order, the reason(s) why that Broadband Service was not provided within the 12 month time period specified in Condition C.5, including the following:
 - i. an explanation of any steps taken by BT to manage a risk of those Exceptional Circumstances arising; and
 - ii. an explanation of any steps taken by BT to reduce the period of delay once those Exceptional Circumstances arose.
4. The information referred to in paragraphs 1 and 3 must be published or provided to Ofcom (as applicable) as follows:
 - a. the first publication and provision to Ofcom must occur no later than 30 calendar days after the First 6 Month Period; and
 - b. each subsequent publication and provision to Ofcom must occur no later than 30 calendar days after the expiry of each Subsequent 6 Month Period.
 5. For the purpose of paragraph 1 of this Direction, publication shall be effected by:
 - a. placing a copy of the relevant information in a prominent place on any relevant publicly available website operated or controlled by BT; and
 - b. sending a copy of the relevant information to any person at that person's written request.
 6. Provision of information to Ofcom under paragraph 3 of this Direction shall be effected by sending an email to a person designated by Ofcom, in the form notified by Ofcom from time to time.

ANNEX 1

QUALITY OF SERVICE PARAMETERS

Quality of service parameters, definitions and measurement methods referred to in paragraph 1(c) of the Direction

For BT providing Broadband Services

PARAMETER (Note 1)	DEFINITION	MEASUREMENT METHOD
Supply time for initial connection	ETSI EG 202 057	ETSI EG 202 057
Fault rate per access line	ETSI EG 202 057	ETSI EG 202 057
Fault repair time	ETSI EG 202 057	ETSI EG 202 057

Note 1

Parameters should allow for performance to be analysed at a regional level (i.e. no less than level 2 in the Nomenclature of Territorial Units for Statistics (NUTS) established by Eurostat).

SCHEDULE 3

UNIVERSAL SERVICE CONDITIONS FOR KCOM

Part 1: Application

1. The Conditions in Part 3 of this Schedule 3 shall:
 - a. apply to KCOM in the Hull Area; and
 - b. come into force:
 - i. in relation to Conditions A.1(a), A.2, A.4 (to the extent it concerns Telephony Services), E.1 to E.3 (inclusive), F.1 to F.3 (inclusive), G.1, H.1 and I.1 on [insert date on which a statement containing Ofcom's decisions on designation and the Conditions is published]; and
 - ii. in relation to Conditions A.1(b), A.3, A.4 (to the extent it concerns Broadband Services), B.1 to B.11 (inclusive), C.1 to C.8 (inclusive), D.1 and D.2 on [insert date 5 months after a statement containing Ofcom's decisions on designation and the Conditions].

Part 2: Definitions and interpretation

1. For the purpose of interpreting Schedule 3:
 - a. except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Schedule 3, and otherwise any word or expression shall have the same meaning as it has in the Act or the Order;
 - b. words in the singular shall include the plural, and in the plural shall include the singular;
 - c. headings and titles shall be disregarded;
 - d. expressions cognate with those referred to in this Schedule 3 shall be construed accordingly; and
 - e. the Interpretation Act 1978 (c. 30) shall apply as if this Schedule 3 were an Act of Parliament.
2. In Schedule 3:
 - a. **"2003 Notification"** means the Notification dated 21 July 2003 made under Regulation 4(10) of the Electronic Communications (Universal Service) Regulations 2003 (as amended);
 - b. **"Act"** means the Communications Act 2003 (c. 21);
 - c. **"Alternative Broadband Services"** means either or both a connection and a service provided either on a commercial basis or through a publicly-funded intervention, each of which has all of the following characteristics: (a) a download sync speed of at least 10 megabits per second; (b) an upload sync speed of at least 1 megabit per second; (c) a contention ratio of no higher than 50:1; (d) latency which is capable of allowing the End-user to make and receive voice calls over the connection effectively; (e) the capability to allow data usage of at least 100 gigabytes per month;
 - d. **"Alternative Dispute Resolution Scheme"** or **"ADR Scheme"** means any dispute procedures for which Ofcom gives its approval for the resolution of disputes in relation to any Complaints between KCOM and USO Customers;

- e. **“Bill”** means the information issued, or made available, by KCOM to an Eligible USO Customer about the charges levied and due for payment or the debits and credits applied to the Eligible USO Customer’s account;
- f. **“Broadband Connection”** means a connection provided by KCOM to an Eligible USO Customer under these Conditions which has all of the following characteristics: (a) a download sync speed of at least 10 megabits per second; (b) an upload sync speed of at least 1 megabit per second; (c) a contention ratio of no higher than 50:1; (d) latency which is capable of allowing the Eligible USO Customer to make and receive voice calls over the connection effectively; (e) the capability to allow data usage of at least 100 gigabytes per month;
- g. **“Broadband Services”** means both a Broadband Connection and a service provided by KCOM to an Eligible USO Customer under these Conditions, each of which has all of the following characteristics: (a) a download sync speed of at least 10 megabits per second; (b) an upload sync speed of at least 1 megabit per second; (c) a contention ratio of no higher than 50:1; (d) latency which is capable of allowing the Eligible USO Customer to make and receive voice calls over the connection effectively; (e) the capability to allow data usage of at least 100 gigabytes per month;
- h. **“Complaint”** means: (a) an expression of dissatisfaction made by a USO Customer to KCOM related to either: (i) matters relating to KCOM’s obligations under these Conditions; (ii) the complaint-handling process itself; or (iii) the level of customer service experienced by the USO Customer; and (b) where a response or resolution is explicitly or implicitly expected;
- i. **“Condition”** means any of the universal service conditions imposed by Ofcom under sections 45 to 47, 67 and 68(3) and (4) of the Act and set out in Schedule 3;
- j. **“Confirmed Order”** means an order for a Broadband Service made by an Eligible USO Customer which is communicated to KCOM by any method of communication, including by telephone, letter, email or webchat;
- k. **“Consumer Prices Index”** means the index of prices compiled by an agency or a public body on behalf of Her Majesty’s Government or a governmental department (which is the Office for National Statistics at the time of publication of this Notification) from time to time in respect of all items;
- l. **“Cost of Provision of Infrastructure”** means the costs directly attributable to providing the physical network infrastructure over which Broadband Services are provided to an individual Premises, excluding any equipment costs associated with that individual Premises;
- m. **“Customer Complaints Code”** means a code of practice containing relevant information about how Complaints from USO Customers are handled and how, and when, USO Customers can take their unresolved Complaints to an ADR Scheme;
- n. **“Eligibility Threshold”** means:
 - i. In the First Year, the amount of £45 per month, which is inclusive of VAT and calculated as a monthly average payment over the fixed commitment period inclusive of any charges for a connection, monthly payments and any other payments for Alternative Broadband Services;
 - ii. In Subsequent Years, the amount calculated as:

$$P_t = P_{t-1} * (1 + CPI_t)$$

which is inclusive of VAT and calculated as a monthly average payment over the fixed commitment period inclusive of any charges for a connection,

monthly payments and any other payments for Alternative Broadband Services rounded to the nearest 10p;

Where:

P_t means the Eligibility Threshold for the Relevant Year;

P_{t-1} means the Eligibility Threshold for the Prior Year;

CPI_t means the change in the Consumer Prices Index in the 12 months ending 3 months immediately before the beginning of the Relevant Year expressed as a percentage.

- o. **“Eligible USO Customer”** means a USO Customer whose Request for a Broadband Service meets the criteria in Condition A.3;
- p. **“Exceptional Circumstances”** means any environmental factor, restriction to street access, or customer or third party wayleave process which has the following characteristics: (i) it is beyond KCOM’s control; (ii) it is beyond the normal range of expectations; (iii) it has a significant impact on either access or existing infrastructure that causes prolonged delay to the delivery of Broadband Services; and (iv) it is critical to the delivery of Broadband Services;
- q. **“Hull Area”** means the area defined as the “Licensed Area” in the licence granted on 30 November 1987 by the Secretary of State under section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and KCOM Group plc;
- r. **“KCOM”** means KCOM Group plc, whose registered company number is 02150618, defined as “Kingston” in the 2003 Notification, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined in section 1159 of the Companies Act 2006;
- s. **“Ofcom”** means the Office of Communications as established under section 1 of the Office of Communications Act 2002;
- t. **“Ofcom Approved Complaints Code”** means the code of practice, as amended from time to time, annexed to Ofcom’s General Condition of Entitlement C4²⁰⁰ and entitled *“Ofcom approved complaints code of practice for customer service and complaints handling”*; except that references to the definitions used in the Ofcom Approved Complaints Code contained in an annex to Ofcom’s General Condition of Entitlement C4 shall be treated as references to the definitions and terms used in these Conditions as follows:
 - i. references to the Complaints Handling Procedures shall be treated as references to procedures for the handling of Complaints as defined in these Conditions that KCOM must have and comply with pursuant to Condition E.1(a);
 - ii. references to the Regulated Provider shall be treated as references to KCOM;
 - iii. references to a Complaint shall be treated as references to a Complaint as defined in these Conditions;

²⁰⁰ The current unofficial consolidated version of Ofcom’s General Conditions of Entitlement is available at: https://www.ofcom.org.uk/_data/assets/pdf_file/0021/112692/Consolidated-General-Conditions.pdf

- iv. references to a Relevant Customer shall be treated as references to a USO Customer;
- v. references to a Complainant shall be treated as references to a USO Customer who makes a Complaint as defined in these Conditions to KCOM;
- vi. references to a Customer Complaints Code shall be treated as references to a code of practice containing relevant information about how Complaints as defined in these Conditions from USO Customers are handled and how, and when, USO Customers can take their unresolved Complaints to an ADR Scheme as defined in these Conditions;
- vii. references to an ADR Scheme shall be treated as references to an ADR Scheme as defined in these Conditions;
- viii. references to an ADR Letter shall be treated as references to a notification issued from KCOM to a USO Customer concerning the USO Customer's right to take their Complaint to an ADR Scheme as defined in these Conditions; and
- ix. references to a Bill shall be treated as references to a Bill as defined in these Conditions;
- u. **"Order"** means The Electronic Communications (Universal Service) (Broadband) Order 2018;
- v. **"Ordnance Survey's AddressBase Product"** means the most up-to-date versions of: (a) Ordnance Survey's AddressBase Premium dataset for the United Kingdom except Northern Ireland and (b) and Ordnance Survey's AddressBase Islands dataset for Northern Ireland²⁰¹;
- w. **"Premises"** means either a USO Customer's residence or a place of business;
- x. **"Prior Year"** means the 12 months ending on [insert date 5 months after a statement containing Ofcom's decisions on designation and the Conditions] before the commencement of each Relevant Year;
- y. **"Public Communications Network"** has the same meaning as in the 2003 Notification;
- z. **"Publicly Available Telephone Service"** has the same meaning as in the 2003 Notification;
- aa. **"Relevant Year"** means each period of 12 months as follows:
 - i. the First Year, which starts on [insert date 5 months after a statement containing Ofcom's decisions on designation and the Conditions] and ends on [insert date 17 months after a statement containing Ofcom's decisions on designation and the Conditions] (inclusive); and
 - ii. Subsequent Years, which are each of the 12 month periods subsequent to the First Year, beginning on [insert date 17 months after a statement containing Ofcom's decisions on designation and the Conditions];
- bb. **"Request"** means the point of first contact by a USO Customer with KCOM to enquire about a Broadband Service pursuant to Condition A.1(b);
- cc. **"Rest of the UK"** means the area consisting of the United Kingdom excluding the Hull Area;
- dd. **"Safeguard Cap"** means:

²⁰¹ The information concerning the Ordnance Survey's AddressBase Product is available at:

<https://www.ordnancesurvey.co.uk/business-and-government/products/addressbase-products.html>

- i. In the First Year, the amount of £45 per month, which is inclusive of VAT and calculated as a monthly average payment over the fixed commitment period inclusive of any charges for a Broadband Connection, monthly payments and any other payments for Broadband Services;
- ii. In Subsequent Years, the amount calculated as:

$$P_t = P_{t-1} * (1 + CPI_t)$$

which is inclusive of VAT and calculated as a monthly average payment over the fixed commitment period inclusive of any charges for a Broadband Connection, monthly payments and any other payments for Broadband Services rounded to the nearest 10p;

Where:

P_t means the Safeguard Cap for the Relevant Year;

P_{t-1} means the Safeguard Cap for the Prior Year;

CPI_t means the change in the Consumer Prices Index in the 12 months ending 3 months immediately before the beginning of the Relevant Year expressed as a percentage;

- ee. "**Telephony Service**" means either or both a connection at a fixed location to the Public Communications Network and access to Publicly Available Telephone Services, including the ability to make and receive calls and facsimile;
- ff. "**United Kingdom**" has the meaning given to it in the Interpretation Act 1978 (c. 30);
- gg. "**USO Customer**" means an End-user who has requested a Broadband Service from KCOM including Eligible USO Customers; and
- hh. "**VAT**" means value added tax chargeable under or pursuant to the Value Added Tax Act 1994, including any amendment to, or replacement of, the Value Added Tax Act 1994, and/or any similar tax.

Part 3: Conditions

Section 1: Conditions applicable to Telephony Services and Broadband Services

Conditions A.1 to A.4 – Provision of Telephony Services and Broadband Services

- A.1 KCOM must provide one or both of the following upon request:
- a) subject to Condition A.2, Telephony Services;
 - b) subject to Condition A.3, Broadband Services.
- A.2 KCOM is required to provide Telephony Services where the request in respect of the Telephony Services is reasonable.
- A.3 Subject to the Conditions in Section 2, KCOM is required to provide Broadband Services where all of the following criteria are met:
- a) the Broadband Connection requested is to a fixed location which is a Premises;
 - b) Alternative Broadband Services at a price less than, or equal to, the Eligibility Threshold:
 - (i) are not available to that location; and
 - (ii) will not be made available to that location through a publicly-funded intervention within the period of one year beginning with the date on which the Request is made;
 - c) the provision of the Broadband Connection requested:
 - (i) will cost no more than £3,400 excluding VAT; or
 - (ii) will cost more than £3,400 excluding VAT, but any costs in excess of £3,400 excluding VAT will be paid by the USO Customer.
- A.4 KCOM must ensure that its Electronic Communications Networks are installed, kept installed and run for the purpose of providing Broadband Services and/or Telephony Services.

Section 2: Conditions applicable to Broadband Services only

Condition B.1 – Eligibility assessment under Condition A.3(a)

- B.1 In order to make an assessment under Condition A.3(a) of whether a Request is for a fixed location which is a Premises, KCOM must first use the Ordnance Survey's AddressBase Product or another dataset as approved by Ofcom. Where the dataset used does not contain information in relation to that Premises, KCOM must:
- a) ask the USO Customer to provide evidence of liability by that Premises for either council tax or non-domestic (business) rates; and
 - b) proceed on the basis that the criterion in Condition A.3(a) is met where the USO Customer provides that evidence.

Conditions B.2 to B.5 – Eligibility assessment under Condition A.3(b)(i)

- B.2 In order to make an assessment under Condition A.3(b)(i), KCOM must use any relevant information held by KCOM and the information provided by Ofcom for the purpose of determining whether the criterion referred to in Condition A.3(b)(i) is met.
- B.3 If KCOM concludes that an Alternative Broadband Service provided by KCOM is available to the USO Customer at the Premises at a price less than, or equal to, the Eligibility Threshold, KCOM must offer a Broadband Service to the USO Customer provided the remaining criteria in Condition A.3 are met unless KCOM offers to provide such an Alternative Broadband Service to the USO Customer within the period of up to and including 30 calendar days from the Request.
- B.4 If KCOM concludes that an Alternative Broadband Service provided by one or more third parties is available to the USO Customer at the Premises:
- a) KCOM may assume for the purposes of making an assessment under Condition A.3(b)(i) that any such Alternative Broadband Service is available at a price less than, or equal to, the Eligibility Threshold and can be provided within the period of up to and including 30 calendar days;
 - b) KCOM must provide the name and contact details of such third parties to the USO Customer as soon as reasonably practicable; and
 - c) KCOM must inform the USO Customer as soon as reasonably practicable that in the event that an Alternative Broadband Service at a price less than, or equal to, the Eligibility Threshold is not available from any such third party within the period of up to and including 30 calendar days, the USO Customer should consider making another.
- B.5 KCOM must proceed on the basis that the criterion in Condition A.3(b)(i) is met where a USO Customer who has previously received information from KCOM under Condition B.4(c):
- a) informs KCOM that Alternative Broadband Services are not available to the USO Customer at a price less than, or equal to, the Eligibility Threshold from any third party within the period of up to and including 30 calendar days; and
 - b) makes another Request for a Broadband Service.

Conditions B.6 to B.7 – Eligibility assessment under Condition A.3(b)(ii)

- B.6 In order to make an assessment under Condition A.3(b)(ii), KCOM must use the information provided by Ofcom for the purpose of determining whether the criterion referred to in Condition A.3(b)(ii) is met. If KCOM concludes on the basis of that information that an Alternative Broadband Service will be made available to a Premises through a publicly-funded intervention within the period of one year beginning with the date on which a USO Customer made a Request:
- a) KCOM may assume that any Alternative Broadband Service available to the Premises will be available at a price less than, or equal to, the Eligibility Threshold;
 - b) KCOM must provide the name and contact details of the organisation which is responsible for delivery of that publicly-funded intervention to the USO Customer as soon as reasonably practicable; and

- c) KCOM must inform the USO Customer as soon as reasonably practicable that in the event that an Alternative Broadband Service at a price less than, or equal to, the Eligibility Threshold has not been, or will not be, made available by that organisation within the period of one year beginning with the date on which the USO Customer made the Request to KCOM, the USO Customer should consider making another Request.
- B.7 KCOM must proceed on the basis that the criterion in Condition A.3(b)(ii) is met where a USO Customer who has previously received information from KCOM under Condition B.6(c):
- a) informs KCOM that an Alternative Broadband Service at a price less than, or equal to, the Eligibility Threshold has not, or will not be, made available by that organisation within the period of one year beginning with the date on which the USO Customer made the Request to KCOM; and
 - b) makes another Request.

Conditions B.8 to B.9 – Eligibility assessment under Conditions A.3(c)

- B.8 In order to make an assessment under Condition A.3(c), KCOM must, where the provision of a Broadband Connection to a Premises involves the deployment of infrastructure which is capable of serving more than one potentially eligible premises, calculate the share of costs that is attributed to that individual Premises as follows:

Total Cost of Provision of Infrastructure which is capable of being shared

Number of relevant residences and/or places of business

where the number of relevant residences and/or places of business is the highest of:

- (i) 70% of the total number of potentially eligible residences and/or places of business which can be served by that infrastructure; or
 - (ii) the actual number of Premises which can be served by that infrastructure and in respect of which Requests which meet the criteria in Condition A.3 have been made.
- B.9 In order to make an assessment under Condition A.3(c), KCOM must use any relevant information held by KCOM and the information provided by Ofcom for the purpose of determining whether the criterion referred to in Condition A.3(c) is met.
- B.10 Where KCOM concludes that the provision of the Broadband Connection requested will cost more than £3,400 excluding VAT, KCOM must:
- a) inform the USO Customer of the amount of costs in excess of £3,400 excluding VAT that it estimates will be incurred in providing the Broadband Connection, together with an explanation of the nature of the costs involved;
 - b) provide a Broadband Service to the USO Customer if the USO Customer agrees to pay the sum of: (i) the amount of costs in excess of £3,400 excluding VAT (the “Increment”); and (ii) VAT on the Increment, on delivery of that Broadband Service; and
 - c) if the USO Customer does not agree to pay the sum referred to in Condition B.10(b), inform the USO Customer that the costs of the provision of the Broadband Connection may change over time and ask the USO Customer for consent to be contacted by KCOM at a later date in

the event that KCOM concludes that the criterion in Condition A.3(c) may be met in respect of the Premises.

- B.11 KCOM must regularly review assessments under the criterion in Condition A.3(c) in respect of which:
- a) KCOM concluded that the criterion in Condition A.3(c) was not met; and
 - b) the USO Customer who made the Request did not agree to pay the sum referred to in Condition B.10(b).

If on such review KCOM concludes that the criterion in Condition A.3(c) may be met in respect of a Premises, KCOM must contact the USO Customer as soon as reasonably practicable after reaching that conclusion to inform the relevant USO Customer that he or she should consider making another Request for a Broadband Service, unless the USO Customer did not give consent to be contacted by KCOM pursuant to Condition B.10(c).

Condition C.1 to C.8 – Responding to Requests, delivering and provisioning Broadband Services

- C.1 KCOM must act reasonably in making an assessment of whether the criteria set out in Condition A.3 are met in relation to each Request.
- C.2 Where KCOM receives a Request from a USO Customer pursuant to Condition A.1(b), subject to Condition C.3, KCOM must make the assessments referred to in Conditions B.1 to B.10 and inform the USO Customer of whether the criteria set out in Condition A.3 are met as soon as reasonably practicable and, in any event, no later than 30 calendar days starting from the date of that Request.
- C.3 Where KCOM requests evidence from a USO Customer under Condition B.1(a) and that evidence is not provided by that USO Customer within 5 calendar days, the period of 30 calendar days referred to in Condition C.2 may be extended by the additional number of calendar days for which KCOM awaited a response from that USO Customer.
- C.4 In informing a USO Customer under Condition C.2, KCOM must:
- a) where the criteria set out in Condition A.3 are met, on the same date as informing the Eligible USO Customer, make an offer to provide a Broadband Service to the Eligible USO Customer;
 - b) where the criteria set out in Condition A.3 are not met, explain which of the criteria are not met and why; and
 - c) inform the USO Customer that he or she is entitled to bring a Complaint and provide either an electronic copy, or a physical copy, of the Customer Complaints Code.
- C.5 Unless Exceptional Circumstances have arisen, KCOM must provide a Broadband Service to an Eligible USO Customer who has placed a Confirmed Order as soon as reasonably practicable and, in any event, no later than the period of 12 months from the date on which the Eligible USO Customer placed the Confirmed Order.
- C.6 Where Exceptional Circumstances have arisen, the period of 12 months referred to in Condition C.4 may be extended by the period of delay caused by those Exceptional Circumstances.

- C.7 KCOM must, as soon as reasonably practicable, inform and keep each Eligible USO Customer who has placed a Confirmed Order updated of the following:
- a) the anticipated date of delivery of the Broadband Service; and
 - b) any change to the anticipated delivery date referred to in Condition C.7(a) including the provision of the following:
 - (i) a revised date of delivery of the Broadband Service; and
 - (ii) an explanation of the reason for the change to the anticipated delivery date referred to in Condition C.7(a).
- C.8 In each financial year or any other period approved by Ofcom, KCOM must provide Broadband Services to Eligible USO Customers to at least the same quality of service levels relating to: (a) fault repair; (b) missed appointments; and (c) the provision of Broadband Services as KCOM meets in providing Alternative Broadband Services in that same period.

Condition D.1 to D.2 – Price and non-price terms and conditions relating to Broadband Services

- D.1 Subject to Condition D.2, KCOM must ensure that:
- a) any Broadband Service provided to an Eligible USO Customer is provided at a price no higher than the price at which KCOM provides the equivalent Alternative Broadband Service or in the absence of the equivalent Alternative Broadband Service, the most comparable Alternative Broadband Service; and
 - b) the terms and conditions upon which a Broadband Service is provided to an Eligible USO Customer do not require that Eligible USO Customer to pay for any additional service which is not necessary for the purpose of providing the Eligible USO Customer with that Broadband Service.
- D.2 KCOM must offer to provide at least one Broadband Service to each Eligible USO Customer at a price less than, or equal to, the Safeguard Cap.

Condition E.1 to E.3 – Complaints Handling and Dispute Resolution

- E.1 KCOM must:
- a) have and comply with procedures for the handling of Complaints brought by USO Customers that conform with Section 1 of the Ofcom Approved Complaints Code;
 - b) have and comply with a Customer Complaints Code that conforms with Section 2 of the Ofcom Approved Complaints Code; and
 - c) retain written records of Complaints in conformity with Section 3 of the Ofcom Approved Complaints Code.
- E.2 KCOM must:
- a) be a member of an ADR Scheme approved by Ofcom under these Conditions;
 - b) comply with the ADR Scheme, including abiding by any final decision of the body which administers the ADR Scheme, within the time period specified in that final decision;
 - c) ensure that USO Customers have the right to use the ADR Scheme free of charge;
 - d) provide information in Bills about the ADR Scheme in conformity with Section 4 of the Ofcom Approved Complaints Code; and

- e) provide the ADR Scheme with all training, information and support necessary for resolving Complaints brought by USO Customers in relation to any matter relating to KCOM's obligations under these Conditions.
- E.3 KCOM must monitor its compliance with Conditions E.1 and E.2 and the Ofcom Approved Complaints Code, including compliance by all staff who interact with USO Customers and/or handle Complaints, and take appropriate steps to prevent the recurrence of any problems identified.

Condition F.1 to F.3 – Reporting and record keeping

- F.1 KCOM must maintain records, including records of all Requests made by USO Customers, for a period of 6 years from the date on which those records have been created, which must be sufficient to:
- a) demonstrate KCOM's compliance with these Conditions; and
 - b) provide adequate evidence and explanations in support of any potential request made by KCOM for compensation for complying in relation to any matter relating to KCOM's obligations under these Conditions.
- F.2 KCOM must ensure that it has a historical cost accounting system which is adequate to:
- a) separately record and calculate the incremental costs, revenues, assets and liabilities associated with the provision of Broadband Services; and
 - b) show and explain the transactions underlying the provision of Broadband Services.
- F.3 KCOM must comply with all such reporting requirements as Ofcom may from time to time direct in relation to matters relating to KCOM's obligations under these Conditions.

Condition G.1 – Treatment of information

- G.1 In respect of any information which is either provided by Ofcom to KCOM for the purpose of performing its obligations under these Conditions or otherwise collected by KCOM in connection with performing its obligations under these Conditions, KCOM must:
- a) ensure that such information is used only for the purpose of performing its obligations under these Conditions; and
 - b) put in place measures to prevent access to such information by any employee or agent of KCOM who is not directly involved in any matters relating to KCOM's obligations under these Conditions.

Condition H.1 – Raising awareness of Broadband Services

- H.1 KCOM must take all reasonable steps, including disseminating information in appropriate formats through appropriate channels, to raise awareness of the potential availability of Broadband Services under these Conditions among members of the public.

Condition I.1 – Directions, approvals and consents

- I.1 Ofcom may from time to time give, under these Conditions, a direction, approval or consent requiring KCOM to comply with additional requirements under these Conditions.

SCHEDULE 4

DIRECTION UNDER CONDITION F.3 OF SCHEDULE 3 TO KCOM

Part 1: Application

1. The Direction in Part 3 of this Schedule 4 shall:
 - a. apply to KCOM in the Hull Area; and
 - b. come into force on [insert date 5 months after a statement containing Ofcom's decisions on designation and the Conditions].

Part 2: Definitions and interpretation

1. For the purpose of interpreting Schedule 4:
 - a. except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Schedule 4, and otherwise any word or expression shall have the same meaning as it has in the Act or the Order;
 - b. words in the singular shall include the plural, and in the plural shall include the singular;
 - c. headings and titles shall be disregarded;
 - d. expressions cognate with those referred to in this Schedule 4 shall be construed accordingly; and
 - e. the Interpretation Act 1978 (c. 30) shall apply as if this Schedule 4 were an Act of Parliament.
2. In Schedule 4:
 - a. **"2003 Notification"** means the Notification dated 21 July 2003 made under Regulation 4(10) of the Electronic Communications (Universal Service) Regulations 2003 (as amended);
 - b. **"Act"** means the Communications Act 2003 (c. 21);
 - c. **"Alternative Dispute Resolution Scheme"** or **"ADR Scheme"** means any dispute procedures for which Ofcom gives its approval for the resolution of disputes in relation to any Complaints between KCOM and USO Customers;
 - d. **"Broadband Connection"** means a connection provided by KCOM to an Eligible USO Customer under the Conditions which has all of the following characteristics: (a) a download sync speed of at least 10 megabits per second; (b) an upload sync speed of at least 1 megabit per second; (c) a contention ratio of no higher than 50:1; (d) latency which is capable of allowing the Eligible USO Customer to make and receive voice calls over the connection effectively; (e) the capability to allow data usage of at least 100 gigabytes per month;
 - e. **"Broadband Services"** means both a Broadband Connection and a service provided by KCOM to an Eligible USO Customer under the Conditions, each of which has all of the following characteristics: (a) a download sync speed of at least 10 megabits per second; (b) an upload sync speed of at least 1 megabit per second; (c) a contention ratio of no higher than 50:1; (d) latency which is capable of allowing the Eligible USO Customer to make and receive voice calls over the connection effectively; (e) the capability to allow data usage of at least 100 gigabytes per month;

- f. **“Complaint”** means: (a) an expression of dissatisfaction made by a USO Customer to KCOM related to either: (i) matters relating to KCOM’s obligations under the Conditions; (ii) the complaint-handling process itself; or (iii) the level of customer service experienced by the USO Customer; and (b) where a response or resolution is explicitly or implicitly expected;
- g. **“Condition”** means any of the universal service conditions imposed by Ofcom under sections 45 to 47, 67 and 68(3) and (4) of the Act and set out in Schedule 3;
- h. **“Confirmed Order”** means an order for a Broadband Service made by an Eligible USO Customer which is communicated to KCOM by any method of communication, including by telephone, letter, email or webchat;
- i. **“Customer Complaints Code”** means a code of practice containing relevant information about how Complaints from USO Customers are handled and how, and when, USO Customers can take their unresolved Complaints to an ADR Scheme;
- j. **“Direction”** means the direction given under section 49 of the Act and Condition F.3 of Schedule 3 and set out in this Schedule 4;
- k. **“Eligible USO Customer”** means a USO Customer whose request for a Broadband Service meets the criteria in Condition A.3;
- l. **“Exceptional Circumstances”** means any environmental factor, restriction to street access, or customer or third party wayleave process which has the following characteristics: (i) it is beyond KCOM’s control; (ii) it is beyond the normal range of expectations; (iii) it has a significant impact on either access or existing infrastructure that causes prolonged delay to the delivery of Broadband Services; and (iv) it is critical to the delivery of Broadband Services;
- m. **“Hull Area”** means the area defined as the “Licensed Area” in the licence granted on 30 November 1987 by the Secretary of State under section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and KCOM Group plc;
- n. **“KCOM”** means KCOM Group plc, whose registered company number is 02150618, defined as “Kingston” in the 2003 Notification, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined in section 1159 of the Companies Act 2006;
- o. **“Ofcom”** means the Office of Communications as established under section 1 of the Office of Communications Act 2002;
- p. **“Order”** means The Electronic Communications (Universal Service) (Broadband) Order 2018;
- q. **“Premises”** means either a USO Customer’s residence or a place of business;
- r. **“Relevant Period”** means each period of 6 months as follows:
 - i. the First 6 Month Period, which starts on [insert date 5 months after a statement containing Ofcom's decisions on designation and the Conditions] and ends on [insert date 11 months after a statement containing Ofcom's decisions on designation and the Conditions] (inclusive); and
 - ii. Subsequent 6 Month Periods, which are each of the 6 month duration subsequent to the First 6 Month Period, beginning on [insert date 11 months after a statement containing Ofcom's decisions on designation and the Conditions];
- s. **“Request”** means the point of first contact by a USO Customer with KCOM to enquire about a Broadband Service pursuant to Condition A.1(b);
- t. **“United Kingdom”** has the meaning given to it in the Interpretation Act 1978 (c. 30); and

- u. **“USO Customer”** means an End-user who has requested a Broadband Service from KCOM including Eligible USO Customers.

Part 3: Direction

1. For each Relevant Period, KCOM shall prepare and publish:
 - a. in relation to Requests received by KCOM:
 - i. the number of Requests received in each month;
 - ii. the number of Confirmed Orders received in each month;
 - iii. the number of Requests rejected in each month, together with an explanation of the reason(s) why each Request was rejected;
 - b. in relation to the time period for responding to Requests:
 - i. the number of requests in each month in respect of which KCOM informed USO Customers of whether the criteria set out in Condition A.3 were met within the period of up to and including 30 calendar days of the date of the Request;
 - ii. the number of Requests in each month in respect of which KCOM informed USO Customers of whether the criteria set out in Condition A.3 were met in the period exceeding 30 calendar days from the date of the Request;
 - c. in relation to the provision of Broadband Services:
 - i. the number of Broadband Services delivered in each month;
 - ii. the number of Broadband Services delivered in each month within the following periods from the dates on which Confirmed Orders were placed: 0 up to and including 3 months; more than 3 months up to and including 6 months; more than 6 months up to and including 9 months; more than 9 months up to and including 12 months; more than 12 months up to and including 18 months; more than 18 months up to and including 24 months; and more than 24 months;
 - iii. the supply time of Broadband Services from the date of the Confirmed Order in each month;
 - iv. the fault rate per access line for all Broadband Services in each month;
 - v. the fault repair time for all Broadband Services in each month;
 - d. in relation to the handling of Complaints and dispute resolution for each month:
 - i. number of Complaints received by KCOM in each month;
 - ii. number of Complaints resolved by KCOM under Condition E.1 to the satisfaction of USO Customers in each month;
 - iii. number of Complaints not resolved under Condition E.1 to the satisfaction of USO Customers in each month;
 - iv. number of Complaints referred by USO Customers to the ADR Scheme under Condition E.2 in each month.
2. The information referred to in paragraphs 1(c)(iii), 1(c)(iv) and 1(c)(v) of this Direction shall be prepared and published in accordance with the quality of service parameters, definitions and measurement methods set out in Annex 1 to this Schedule 4.
3. For each Relevant Period, KCOM shall prepare and deliver to Ofcom the following:
 - a. in relation to any Request in respect of which KCOM did not inform the USO Customer of whether the criteria set out in Condition A.3 were met within the

- period of up to and including 30 calendar days starting from the date of that Request, the reason(s) why that information was not provided within the time period specified in Condition C.2;
- b. in relation to any Request in respect of which KCOM changed one or more of anticipated dates of delivery of a Broadband Service referred to in Condition C.7, the reason(s) why KCOM changed the anticipated delivery date(s);
 - c. in relation to any Request in respect of which KCOM provided a Broadband Service after the period of 12 months from the date on which an Eligible USO Customer placed a Confirmed Order, the reason(s) why that Broadband Service was not provided within the 12 month time period specified in Condition C.5, including the following:
 - i. an explanation of any steps taken by KCOM to manage a risk of those Exceptional Circumstances arising; and
 - ii. an explanation of any steps taken by KCOM to reduce the period of delay once those Exceptional Circumstances arose.
4. The information referred to in paragraphs 1 and 3 must be published or provided to Ofcom (as applicable) as follows:
 - a. the first publication and provision to Ofcom must occur no later than 30 calendar days after the First 6 Month Period; and
 - b. each subsequent publication and provision to Ofcom must occur no later than 30 calendar days after the expiry of each Subsequent 6 Month Period.
 5. For the purpose of paragraph 1 of this Direction, publication shall be effected by:
 - a. placing a copy of the relevant information in a prominent place on any relevant publicly available website operated or controlled by KCOM; and
 - b. sending a copy of the relevant information to any person at that person's written request.
 6. Provision of information to Ofcom under paragraph 3 of this Direction shall be effected by sending an email to a person designated by Ofcom, in the form notified by Ofcom from time to time.

ANNEX 1

QUALITY OF SERVICE PARAMETERS

Quality of service parameters, definitions and measurement methods referred to in paragraph 1(c) of the Direction

For KCOM providing Broadband Services

PARAMETER (Note 1)	DEFINITION	MEASUREMENT METHOD
Supply time for initial connection	ETSI EG 202 057	ETSI EG 202 057
Fault rate per access line	ETSI EG 202 057	ETSI EG 202 057
Fault repair time	ETSI EG 202 057	ETSI EG 202 057

Note 1

Parameters should allow for performance to be analysed at a regional level (i.e. no less than level 2 in the Nomenclature of Territorial Units for Statistics (NUTS) established by Eurostat).

A7. Glossary

Access network An electronic communications network which connects end-users to a service provider running from the end-user's premises to a local access node and supporting the provision of access-based services. It is sometimes referred to as the 'local loop' or the 'last mile'.

Bandwidth The maximum amount of data that can be transmitted along a channel.

BDUK Broadband Delivery UK, part of the Department for Digital, Culture, Media and Sport.

Broadband A service or connection generally defined as being 'always on', providing a bandwidth greater than narrowband.

Broadband speed The speed at which data are transmitted over a broadband connection, usually measured in megabits per second (Mbit/s).

Core network The central part of any network aggregating traffic from multiple backhaul and access networks.

Contention ratio The degree to which bandwidth is shared between different end-users at the same network node. When more end-users share the same bandwidth within a network this can lead to a slowdown in performance.

Connection charge The fee a broadband provider charges customers when it installs a new line to connect their premises to its network, or the fee a broadband provider charges customers when it takes over the fixed broadband line serving their premises. This fee is often waived or reduced if customers also take up certain retail broadband packages with the provider.

Decent broadband A broadband connection that enables full and effective social and economic participation in a digital society, which we currently define as a line capable of delivering 10Mbit/s download and 1Mbit/s upload sync speeds.

Download speed Also downlink or downstream speed. Rate of data transmission from a network operator's access node to a customer, typically measured in Megabits per second (Mbit/s).

DCMS Department for Digital, Culture, Media and Sport.

Eligibility threshold A threshold price to determine whether a consumer has access to an affordable broadband service and connection (which we propose to set at £45 per month inclusive of VAT and calculated over the fixed commitment period as an average of all charges including any charges for connection, monthly payments and any other broadband payments). If a consumer cannot access a decent broadband service for a price below this threshold, they may be eligible for a USO service, subject to the other eligibility criteria.

Excess costs The fee a Universal Service Provider may charge a customer to connect their premises to its network if the cost of the works to connect the premises is higher than the reasonable cost threshold of £3,400 set by Government in the Order.

Exchange The local telephone exchange is the building where consumers' copper telephone lines are connected to enable telephone calls to be switched, and where network equipment is installed which enables consumers' data traffic to be routed via an operator's core network to its destination.

Fibre to the Cabinet (FTTC) Access network consisting of optical fibre extending from the access node to the street cabinet. The street cabinet is usually located only a few hundred metres from the subscribers' premises. The remaining segment of the access network from the cabinet to the customer is usually a copper pair.

Fibre to the Premises (FTTP) A form of fibre optic communication delivery in which the optical signal reaches the end-user's home or business. Also known as full-fibre broadband.

Fixed broadband Broadband delivered over a fixed line to a customer's premises.

Fixed commitment period The fixed period of time over which the provider and a customer have entered into an agreement for communications services and for which an early termination charge may be payable by the customer if they cancel their contract during this period. Also known as minimum contract period.

Fixed wireless Broadband delivered over radio waves to a customer's premises.

Latency The time it takes a single packet of data to travel from a user's PC to a third-party server and back again. The figure is most commonly measured in milliseconds, and a connection with low latency will feel more responsive for simple tasks like web browsing.

Long Term Evolution (LTE) This is a 4G technology which is designed to provide faster upload and download speeds for data on mobile networks.

Mbit/s Megabits per second. A unit measuring the bit-rate.

Net cost The cost of providing the broadband USO less any direct and indirect benefits.

Next Generation Access (NGA) New or upgraded networks. Can use a number of technologies including cable, FTTC and FTTP. Most often used to refer to networks using fibre optic technology in whole or in part.

Cost threshold The £3,400 cost threshold set by Government in the Order to be applied to USO connections, beyond which a Universal Service Provider is not obliged to supply a USO service, unless the end-user pays the excess costs over £3,400.

Safeguard cap The maximum amount that a Universal Service Provider can charge a USO customer for its cheapest USO service and connection (which we propose to set at £45 per month, inclusive of VAT and calculated over the fixed commitment period as an average of all charges including any charges for connection, monthly payments and any other broadband payments).

Satellite broadband Broadband services delivered over a satellite connection. The broadband data is transmitted via an uplink from the Earth to the satellite and then back to Earth to customers. Current satellite broadband services use satellites in geostationary orbits.

Superfast broadband The next generation of faster broadband services, which delivers headline download speeds of greater than 30Mbit/s. The UK Government defines superfast broadband as broadband services which deliver download speeds of greater than 24Mbit/s.

Sync speed The modem sync speed is the maximum speed achievable between a consumer's premises and their internet service provider's network.

TV white spaces (TVWS) Broadband services delivered using gaps in the radio spectrum in frequency bands mainly used for digital terrestrial television and programme making and special events.

Universal Service Directive European Parliament and Council Directive (EC) 2002/22 (OJ L108, 24.4.2002) on universal service and users' rights relating to electronic communications networks and services.

USO Universal Service Obligation.

The Order The Electronic Communications (Universal Service) (Broadband) Order which came into force on 23 April 2018.

Upload speed Also uplink or upstream speed. Rate of data transmission from a customer's connection to a network operator's access node, typically measured in Megabits per second (Mbit/s).