

Local Government Association Briefing

Digital Economy Bill

House of Lords, Second Reading

13 December 2016



KEY MESSAGES

The Universal Service Obligation (Clause 1)

- The Government's proposed creation of a broadband Universal Service Obligation (USO) as a safety net for those residents and businesses not connected is a positive development. The LGA has worked with the Government and Parliament to raise councils' ongoing concerns over residents' lack of access to fast and reliable broadband.
- While the recent announcement in the Autumn Statement of new investment for digital infrastructure is good news, the Government must not lose sight of the needs of communities, particularly in rural areas, already struggling to receive a basic broadband service.
- Access to fast and reliable digital connectivity is a necessity for households and businesses in the UK and is a major driver behind growth, jobs and the emerging creative industries. It is essential the USO is implemented as quickly as possible to ensure all residents in the UK have access to a minimum standard of connection.
- A 10Mbps minimum download speed is a step in the right direction. In the longer term standards must keep pace with national average speeds and the expectations of households, especially at peak times.
- Download speed should only be one of a basket of indicators the USO must meet. The USO specification should obligate suppliers to provide consistent uploads speeds at a minimum of 2Mbps with the aim of doubling that figure over the next 10 years.
- We would like to see a new clause in the Bill to include a reporting function which would compel the Government to report annually on the progress, success and take up of the USO.

Switching providers (Clause 2)

- We support the Government's ambitions to empower consumers to more easily switch providers to help reduce household bills and encourage price competition in the market. As part of this, Ofcom should explore the viability of collective switching initiatives in the communications market.

Consumer compensation (Clause 3)

- We welcome moves to allow consumers to receive compensation when their broadband services are below standard. The compensation process should be as simple as possible and the ultimate obligation to resolve issues should be on providers. To prevent residents and businesses suffering from long term broadband outages, the Bill should be amended to include a

Briefing

specific obligation for providers to fix faults with connections within appropriate timescales.

Digital infrastructure and the Electronic Communications Code (Part 2 and Schedules 1, 2 and 3)

- We support the revision of the Electronic Communications Code to simplify the process of installing or upgrading digital infrastructure. It is important commercial operators work in partnership with councils, who maintain the best overview of local areas' digital connectivity needs, to find the most viable locations for new infrastructure and ensure communities are properly engaged.
- The Government's Impact Assessment of the reform of the Electronic Communications Code conservatively estimates that the communications sector is likely to see benefits of £1 billion over a 20 year period from decreased rental charges as a result of new measures. We are seeking clarity from the Government on how it will ensure this money is re-invested into extending mobile provision across the country and welcome assurances from the Minister at Committee Stage that the Government will hold operators to account on the delivery of digital infrastructure.

Digital exclusion (New Clause 85)

- The Government's commitment to upskill people with basic digital skills training is a step in the right direction, and one which we welcome. Any new training requirements should be matched by additional funding from central Government. The courses should also be locally routed and commissioned.
- In order to prevent further digital exclusion, the Government should put in place a social tariff, in a similar manner to the telephony USO, for those who would face undue hardship having to pay for broadband services.

BACKGROUND INFORMATION

Access to digital services (Part 1)

The Universal Service Obligation (Clause 1)

Clause 1 clarifies the Government's powers to include broadband within the scope of the Universal Service Obligation ('USO'). This would give all citizens the legal right to request a broadband connection, similar to the way the existing USO operates to request a telephone line or arrangements for the installation of utilities. The Bill's explanatory notes highlight the Government's ambition to give people the legal right to request a broadband connection with speeds of 10Mbps by the end of the Parliament. The Government intends to set out this minimum download speed, along with other specific USO performance requirements, separately in secondary legislation.

The Government's proposed creation of a broadband USO is a positive development. The LGA has worked with Government and Parliament to raise councils ongoing concerns over residents' lack of access to fast and reliable broadband. Many rural areas, in particular, struggle with speeds of less than 2Mbps while others are unable to receive broadband at all. While the recent announcement in the Autumn Statement of new investment for digital infrastructure is good news, the Government must not lose sight of the needs of communities already struggling to receive a basic broadband service.

Access to fast and reliable digital connectivity is a necessity for households and businesses in the UK, enabling them to utilise online services such as bill payments and online shopping, to access public services such as telehealth care and filing electronic tax returns. Excellent digital connectivity is also a major driver behind growth, jobs and the emerging creative industries. This is particularly important to rural communities and businesses as it enables them to reach their full potential and compete online.

It is essential the USO is implemented as quickly as possible to ensure all residents in the UK have access to a minimum standard of connection.

The USO will underpin the Government's ambitions to deliver more services online at less cost including major transformation programmes like Universal Credit and Troubled Families and to make the NHS paperless by 2020. It will also be vital for the public sector workforce and elected representatives to operate more effectively and productively while working remotely.

Councils are best placed to understand the digital needs of local areas and have strongly supported the extension of access to fast and reliable connectivity through the Superfast Broadband Programme. Many councils are aiming to extend provision beyond the Programme's target of passing 95 per cent of premises and, in some places, are hoping to achieve closer to 100 per cent by using funding from claw-back clauses in supplier contracts. Despite this, there will inevitably be some premises, mainly from remote rural areas, that won't be reached by the current tranches of work. As such, we welcome the creation of a broadband USO as a safety net for those residents and businesses not connected.

A 10Mbps minimum download speed is a step in the right direction, but in the longer term this should increase in line with national average speeds. Over the next five years, commercial roll outs in our towns and cities (such as Virgin Media's Project Lightning) will almost certainly see national average download speeds rise sharply. By 2020, it is likely that over 60 per cent of residents will be able to access services of 300Mbps and faster, with over 95 per cent of premises being able to access at least 30Mbps. For this reason minimum standards must keep pace with national average speeds and the expectations of households, especially at peak times.

The Government will outline the USO's performance requirements in secondary legislation. The LGA has argued that download speed should only be one of a basket of indicators the Universal Service Obligation (USO) must meet. In our view, it will be imperative that the USO has specific obligations on upload speed. Fast and reliable upload speed is a growing requirement for rural businesses which utilise cloud services, video conferencing and send large data files. However, a survey conducted by The Federation of Small Businesses found over half of businesses (61 per cent) were dissatisfied with the upload speed they were receiving from their connection.¹ With this in mind, the USO specification should obligate suppliers to provide consistent uploads speeds at a minimum of 2Mbps with the aim of doubling that figure over the next 10 years.

To prevent residents and businesses suffering from long term broadband outages, there should be a specific obligation within the USO for Universal Service Providers (USPs) to fix faults with connections within appropriate timescales.

We would like to see a new clause in the Bill to include a reporting function which would compel the Government to report annually on the progress, success and take

¹ Federation of Small Businesses, [A two-speed digital economy](#), January 2015

up of the USO. The annual report should include information on the number of premises that have been supplied with 10Mbps+ connections as a result of the USO including the number of premises that have been required to cover some of the cost of connection and the average cost of connection per premise.

Switching providers (Clause 2)

Clause 2 gives Ofcom the power to obligate communications providers to make the switching process easier, especially in cases where they have bought bundled packages, for example broadband, mobile and television combined. We support the Government's ambitions to empower consumers to more easily switch providers to help reduce household bills and encourage price competition in the market.

As part of this, Ofcom should explore the viability of collective switching initiatives in the communications market. This would aggregate demand across consumers to negotiate with suppliers on their behalf. By using such initiatives in the energy market, local government was able to save residents an average of £232 on household energy bills following council-led collective switching auctions.

Consumer compensation (Clause 3)

The proposal in Clause 3, to allow consumers to receive compensation when their broadband services are below standard, is a positive step. The compensation process should be as simple as possible and the ultimate obligation to resolve issues should be on providers. To prevent residents and businesses suffering from long term broadband outages, the Bill should be amended to include a specific obligation for providers to fix faults with connections within appropriate timescales.

Digital infrastructure and the Electronic Communications Code (Part 2 and Schedules 1, 2 and 3)

Part 2 of the Bill, and related Schedules, amends the Electronic Communications Code which permits operators to construct infrastructure on public land and grants rights to install equipment on private land. The code pre-dates the introduction of mobile networks and is widely considered to be in need of reform. Part 2 reforms the underpinning rights that communications providers have to acquire land, moving to a "no scheme" regime that ensures property owners will be fairly compensated for use of their land but restricts their ability to profit from the public need for communications infrastructure. This will put the telecommunications sector on a similar footing to other public utilities, including electricity and water, and should reduce overall costs of providing communications infrastructure.

Building the physical infrastructure required to support excellent mobile coverage across the country is key to ensuring all residents have access to 21st century digital connectivity, especially in some of the country's most rural areas. To accelerate the roll out of mobile coverage, we support the revision of the Electronic Communications Code to simplify the process of installing or upgrading digital infrastructure. However, it is important commercial operators work in partnership with councils, who maintain the best overview of local areas' digital connectivity needs, to find the most viable locations for new infrastructure and ensure communities are properly engaged.

The Government's Impact Assessment of the reform of the Electronic Communications Code conservatively estimates that the communications sector is likely to see benefits of £1 billion over a 20 year period from decreased rental

charges as a result of new measures, which the Government says will “create an environment significantly more conducive to investment.”² We will seek clarity from Government on how it will ensure this money is pumped back into extending mobile provision across the country.

Online pornography (Part 3)

Clause 15 restricts the availability of online pornographic materials to people under the age of 18 by requiring online commercial providers of pornography to put in place age verification controls. Councils have a responsibility to safeguard and promote the welfare of children and young people living in their area. There is growing concern about the exposure of children to inappropriate online material and the LGA welcomes Government action aimed at preventing children from accessing online pornography.

Digital Government (Part 5)

Public service delivery, civil registration, debt owed to the public sector, fraud against the public sector, sharing for research and statistical purposes

Part 5 provides the necessary legal framework to enable data sharing for a public benefit. It provides a single gateway to enable public authorities to share personal information where its purpose is to improve the welfare of the individual or a household in question. Part 5 contains a number of powers to make regulations to specify the objectives of information sharing and with whom information may be shared.

On 19 October 2016 the Government published draft Codes of Practice intended to provide clarity and transparency over how the powers in the Bill will operate. The content of these Codes are not legally binding, though public bodies will be required to have regard to the Codes when making use of these powers. These codes make clear all information shared and used under the new provisions must be handled in accordance with the framework of rules set out in the Data Protection Act 1998. In particular, steps have to be taken to ensure that data sharing proposals are balanced and proportionate and come under an appropriate level of scrutiny. There are also specific safeguards introduced in the Bill to ensure personal information is handled appropriately.

Effective sharing of information is essential for the delivery of better, joined-up public services. Local authorities are one of the key local service providers working across multiple agencies to deliver services and to support vulnerable and disadvantaged people. This legislative framework will provide some legal framework for sharing data, the lack of which often leads to uncertainty in local authorities about what can and cannot be shared.

County councils and district councils in England and London boroughs have been identified as organisations which may disclose or receive information using the data sharing gateway. The Bill should be amended to include Combined Authorities in this list of organisations.

Ofcom reports (Part 6)

Part 6 of the Bill provides Ofcom with broader information collection and reporting powers that the Government envisages could be used to obtain address-level data on broadband line speeds and monitor the progress of 4G coverage across the

² [Electronic Communications Code Impact Assessment](#), May 2016

country. This would allow Ofcom to use this data for monitoring speed prediction accuracy and for third party intermediaries to use to present comparisons to consumers. Clauses 69 and 70 grant Ofcom new powers to help consumers access better information and enable them to act on that information through easier switching of communications provider, especially in cases where broadband service is part of a bundled package.

At present, broadband suppliers do not provide open access to their address-level data on broadband line speeds. This means there is no single place that consumers can compare side by side estimates of the broadband speeds that could be supplied to their home. Consumers can only get a true assessment of the speed their premise will achieve by conducting a line speed test on a broadband provider's website. This makes it much harder to choose the best package as it does not provide a simple view of the market.

We welcome Government action which would promote competition in the telecommunications sector and provide consumers with the knowledge and power to easily switch providers and find the best deal. Ofcom should look to share all its data publicly by default and abide by appropriate open data standards to allow third parties utilise the data in new and innovative ways.

The potential commercially sensitive nature of some data sets, for example the planned roll out of mobile infrastructure, should not preclude local government, as the main representative of communities, from having access in some form. Councils are best placed to understand the digital needs of local areas and access to such data would help inform local digital strategies and interventions going forward.

Councils also remain concerned at the representative nature of Ofcom's mobile data – often mobile connectivity data shared by Ofcom is not reflective of the situation in many rural areas on the ground. Any measures to improve the frequency of the data is shared, and the quality of mobile data sets, would be welcomed.

Digital skills and exclusion (Clause 85)

This clause, added in Committee, enshrines the Government's commitment to provide publicly-funded basic digital skills training free of charge to adults in England who need it.³ Courses will be delivered by colleges and other adult education providers, and training will be funded from the existing Adult Education Budget (AEB).

The Government's commitment to upskill people with basic digital skills training is a step in the right direction, and one which we welcome. In an increasingly digital society, it is right that everyone has access to digital skills so they can to play an active economic and social role.

The Government's announcement made clear that the new training will be funded through the £1.5 billion a year Adult Education Budget across England. The AEB is already the result of three reduced and consolidated funds and is being progressively devolved to combined authorities. Further devolution of the AEB is a step in the right direction. For many areas, it will be stretched, particularly in places with high unemployment and low skills levels where a large proportion of the budget will be spent on statutory entitlements.

³ [DCMS Press release, 'Government plans to make the UK one of the most digitally-skilled nations', 1 October 2016](#)

Current statutory entitlements covered by the AEB account for £0.5 billion to help prepare people for life and work and we know it is likely to include Maths, English, ESOL and digital. The budget for this was set prior to the recent skills announcement so it is not yet clear what further analysis has been done to qualify how free training for all will increase the entitlements element of AEB. Nor are we clear if it will fully fund Level 2 training for 19-23 year olds.

It is crucial that the Government provides clarity as to how this programme will be funded as resources are limited. Councils are working hard to support adults' skills in a range of ways including through European Social Fund. ESF funding is due to end in 2020, and between now and then stricter criteria has been imposed on its spend. Local authorities are also working with colleges and other training and employment providers to create a more coherent employment and skills system to meet local economic needs, with some involved in 'Universal Support delivered Locally' to enable residents to access Universal Credit online. Local areas need maximum freedom and flexibility to determine how the AEB will be spent locally. The Government should ensure the AEB has adequate additional funding to match this new commitment. The programme should also locally routed and commissioned.

In order to prevent further digital exclusion, the Government should put in place a social tariff, in a similar manner to the telephony USO, for those who would face undue hardship having to pay for broadband services. This will ensure a basic service of at least 10Mbps is available at an affordable price, so that as many people as possible have access to this essential service. Research commissioned by Ofcom in 2014 demonstrated "marked relationships between socio-economic deprivation and [poor] broadband availability in cities".⁴ Our members also report similar correlations in rural areas potentially signalling that demand amongst the low income demographic could be high.

⁴ ["Impact analysis of socio-economic factors and broadband availability"](#), Final report for Ofcom, May 2014