



Law Society
of Scotland

Consultation Response

A new broadband Universal Service Obligation: consultation on design

October 2017



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

We welcome the opportunity to consider and respond to the Department for Digital, Culture, Media & Sport's consultation: *A new broadband Universal Service Obligation: consultation on design*.¹ This response has been prepared on behalf of the Law Society by members of our Consumer Law, Competition Law and Rural Affairs policy Committees and our Technology Law and Practice Committee.

General comment

We are not in a position to comment on the technical aspects of the bill or technological questions raised in the response. However, there are some legal and policy issues which merit further consideration, in terms of access to justice, social inclusion and operation of businesses in remote areas.

Response to questions

Question 4 - Is £3,400 the right level to set the cost threshold in order to balance the need to extend coverage as far as possible at reasonable cost?

We are concerned that the "universal service obligation" is not in fact intended to be universal. We anticipate that this will have a particularly negative impact in a Scottish context where there are a higher proportion of remote rural communities than in other parts of the UK. We consider that the service obligation should be truly universal to guard against the risks identified below.

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/634016/USO_consultation_document.pdf

We also note in this respect that connectivity solution should be technology neutral. Whilst we recognise that there needs to be a balance with cost to ensure reach, we are aware that third generation satellite and in due course mobile networks with greater capability (4G+) could go further and faster to achieving genuinely universal coverage. This would be of enormous benefit to rural communities in Scotland in particular.

We also note that many of these issues tie in with concerns which the Islands (Scotland) Bill,² currently moving through the Scottish Parliament, is seeking to address and in relation to which we specifically highlighted issues surrounding access to justice in rural areas.³

Question 5 - What other factors should be considered when determining eligibility?

AND

Question 6 - Are there any categories of premises which should be ineligible for a USO connection?

We consider that the following considerations should be taken into account when assessing the implementation of a universal service obligation in relation to provision of broadband services.

Access to justice

Access to justice is a key concern for us. In our response⁴ to the Scottish Government's Independent Strategic Legal Aid review earlier in the year, we noted that independently commissioned research had identified a risk that people in rural areas who were eligible for legal aid would not be able to find solicitors to provide advice. We cautioned that if steps are not taken to remedy this it could result in a two-tier justice system. Where it is not possible to obtain advice in person easily, it is perhaps even more important to have access to remote advice to fill the void.

We also note that courts and tribunal services are increasingly moving to online systems, for example employment tribunal cases are almost exclusively online. Individuals and businesses seeking access to justice or even wishing to defend a claim against them will therefore require a good internet connection.

² <http://www.parliament.scot/parliamentarybusiness/Bills/105168.aspx>

³ See our response available at [https://www.lawscof.org.uk/for-the-public/law-reform-consultations-and-bills/bills-201718/islands-\(scotland\)-bill/](https://www.lawscof.org.uk/for-the-public/law-reform-consultations-and-bills/bills-201718/islands-(scotland)-bill/)

⁴ <https://www.lawscof.org.uk/media/1179917/final-law-society-of-scotland-response-to-independent-strategic-legal-aid-review-call-for-evidence-aug-2017-corrected-.pdf>

However, it is not only formal legal processes for seeking redress which rely on technology: many company complaints procedures are handled through digital channels and can facilitate cheap and effective resolution of potential disputes.

Social inclusion

We are also concerned about wider social questions around inclusion where so many aspects of daily life rely upon internet access. This is not just a question of access to private goods and services but as outlined above can include access to justice. As outlined in the consultation document itself,⁵ there are many areas of life where online access is a necessity and some services – eg online banking – can in fact be more crucial to those in more remote communities.

Business activities

There is an increasing need for businesses, whether providing goods or services, to operate in an online environment. This applies to recruitment of personnel, sourcing of supplies and materials, communications with advisers (such as accountants or solicitors) as much as to customer-facing aspects of the business such as online sales and service provision. Failing to ensure access to efficient broadband services constrains the ability of businesses in remote communities – particularly SME's - to compete effectively with those in more populated areas. If they cannot compete then the businesses will either close or be forced to relocate, compounding existing problems of declining populations in rural Scotland.

Furthermore, the move to the online environment is also evident in the field of compliance. Monthly reporting for companies is also moving to an online system and HMRC⁶ online system is now the default option with a “reasonable excuse” required for using paper forms.⁷ Effective internet access is therefore essential to businesses to meet their legal requirements. An additional business issue which is particularly likely to affect those in remote rural areas is the fact that farmers are required to make claims for basic payment and other farming subsidy applications through online systems. Without a reliable internet connection, farmers could therefore find themselves unable to access funding essential to maintaining a viable business.

⁵ See for example the third paragraph on p7; “For individuals, this is about not missing out on chances to find employment, saving money on household bills, and keeping in touch with friends and family. It is about helping our children to do their homework and making sure that families can access a greater range of information and services, including public services, which are increasingly becoming ‘digital by default’. It is also about getting people in both rural and urban areas across the four nations of the UK online - enabling them to access services, work, shop and communicate without the need for travel. The benefits of greater connectivity are shared throughout communities, including by supporting small businesses to get online, compete and grow.”

⁶ <https://www.gov.uk/government/consultations/making-tax-digital-reforms-affecting-businesses>

⁷ <https://www.gov.uk/file-your-company-accounts-and-tax-return>

AFFORDABILITY

Question 11 - Do you agree that uniform pricing for the broadband connection and services should form part of the USO?

In line with the policy considerations around access to justice, access to services, social inclusion and business necessity outlines above, we conclude that uniform pricing should also be applied to provision of the service.

For further information, please contact:

Carolyn Thurston Smith

Policy Team

Law Society of Scotland

DD: 0131 476 8205

carolynthurstonsmith@lawscot.org.uk