

EXPLANATORY MEMORANDUM TO
THE OFFICE OF COMMUNICATIONS (MEMBERSHIP) (MODIFICATION)
ORDER 2016

2016 No. 706

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Culture, Media and Sport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument increases the maximum membership of the board of the Office of Communications (Ofcom) to twelve. This will be an increase from the current ten.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Ofcom was established by the Office of Communications Act 2002 (“the Act”). The original legislation provided for a minimum of three and a maximum of six members of Ofcom.
- 4.2 The maximum number of members was increased from six to nine by The Office of Communications (Membership) Order 2002 and then to ten by The Office of Communications (Membership) Order 2005. Both orders will be revoked.
- 4.3 In 2014 the Smith Commission recommended a number of measures to allow the Scottish Government to scrutinise and hold Ofcom to greater accountability in regards to Scottish interests. “Scotland in the UK: An enduring settlement” set out the Government’s intentions and these were delivered through the Scotland Act 2016. Section 65 of the Scotland Act devolves various measures relating to Ofcom, including that the Scottish Government may appoint a member to the Ofcom board. The Scotland Act received Royal Assent in March 2016, and section 65 is being commenced as a result of this Order increasing the size of the Ofcom board.
- 4.4 The measures agreed with Scotland have been similarly replicated in the Wales Bill, including provisions for the Welsh Government to appoint a member to the Ofcom board. Equivalent provisions are also included within the Digital Economy Bill to provide the same power for the Northern Ireland Executive.

4.5 This Order modifies the Act by increasing the maximum number of members to twelve. This, along with a current open space on the board, will provide for each of the devolved administration's appointed member.

5. Extent and Territorial Application

5.1 The extent of this instrument is the whole of the United Kingdom.

5.2 The territorial application of this instrument is the whole of the United Kingdom.

6. European Convention on Human Rights

6.1 The Secretary of State has made the following statement regarding Human Rights:

“In my view the provisions of the Office of Communications (Membership) (Modification) Order 2016 are compatible with the Convention rights.”

7. Policy background

What is being done and why

7.1 Increasing the size of the Ofcom board will ensure that a member for each of the three devolved administrations can be appointed, in consultation with the Secretary of State. The individuals appointed by the devolved administrations will have the same UK-wide responsibilities as other non-executive Members of the board. They will represent the interests of their respective nations and will also bring further expertise to the board. This will also allow Ofcom to better manage additional regulatory work they are undertaking.

Consolidation

7.2 None

8. Consultation outcome

8.1 No consultation has taken place.

9. Guidance

9.1 No guidance is required.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument, as no impact on business is expected.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The Secretary of State has made the following statement regarding monitoring and review:

“In my view the provisions of the Office of Communications (Membership) (Modification) Order 2016 does not require a review clause.”

- 12.2 The object of this instrument is to increase the maximum number of members who may be appointed to the Ofcom board to twelve, of which three will be appointed by the devolved administrations. There are no plans for a specific monitoring or review of this increase. However all new board members will be held to the current Code of Practice which all Ofcom board members follow. Additionally the Secretary of State retains oversight of the membership of the Ofcom board on a regular basis, by virtue of his power to appoint and remove all non-executive board members.

13. Contact

- 13.1 Nicola Aitken at the Department for Culture, Media and Sport Telephone: 02072116484 or email: nicola.aitken@culture.gov.uk can answer any queries regarding the instrument.