

**EXPLANATORY MEMORANDUM TO**  
**THE OFFICE OF COMMUNICATIONS (MEMBERSHIP) (MODIFICATION)**  
**ORDER 2022**

**2022 No. 1033**

**1. Introduction**

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

**2. Purpose of the instrument**

- 2.1 This instrument will increase the maximum number of members of the Ofcom Board from twelve to thirteen by amending Section 1(2) of the Office of Communications Act 2002.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is the United Kingdom.  
4.2 The territorial application of this instrument is the United Kingdom.

**5. European Convention on Human Rights**

- 5.1 The Minister of State has made the following statement regarding Human Rights: “In our view the provisions of the Office of Communications (Membership) (Modification) Order 2022 are compatible with the Convention rights.”

**6. Legislative Context**

- 6.1 Section 1 of the Office of Communications Act 2002 establishes Ofcom as a statutory corporation; originally this legislation provided for a minimum of three and a maximum of six members of Ofcom. The Secretary of State is given power to make orders, subject to negative resolution procedure, to alter those limits in Section 1(7) of the Office of Communications Act 2002.
- 6.2 Most recently the maximum number of members was modified by the Office of Communications (Membership) (Modification) Order 2016 (S.I. 2016/706) to twelve. That is revoked by this instrument.
- 6.3 Previously, the maximum number of members was modified by the Office of Communications (Membership) Order 2002 (S.I. 2002/2956) to nine, and by the Office of Communications (Membership) Order 2005 (S.I. 2005/2718) to ten, but those Orders did not make textual amendments to section 1(2) of the Office of Communications Act 2002 and have already been revoked.

## **7. Policy background**

### *What is being done and why?*

- 7.1 The Online Safety Bill is currently passing through Parliament, following introduction in March 2022. The Bill sets out a new regulatory framework for certain internet services and gives Ofcom new powers to act as the independent regulator.
- 7.2 At present it would only be possible to appoint one individual with online safety expertise to the Ofcom Board. Increasing the number of maximum Ofcom board members by one will allow for two new members to be appointed with the appropriate skills and expertise to support the successful implementation of the online safety regulatory framework alongside Ofcom's existing responsibilities, including the regulation of video sharing platforms.

### *Explanations*

#### What did any law do before the changes to be made by this instrument?

- 7.3 The existing legislation requires that the Ofcom board consists of not more than twelve and not less than three members.

#### Why is it being changed?

- 7.4 Ofcom's maximum board size is capped at twelve, though there are currently eleven members. At present it would therefore only be possible to appoint one individual with online safety expertise.

#### What will it now do?

- 7.5 Increasing the number of board members will allow DCMS to contribute to boosting Ofcom's capability to deliver the new online safety regulatory regime.

## **8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

- 9.1 Consolidation is not being done.

## **10. Consultation outcome**

- 10.1 A consultation has not taken place because it would not be proportionate to the change delivered by this instrument.

## **11. Guidance**

- 11.1 Guidance is not required.

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument because no significant impact on the private, voluntary or public sectors is foreseen.

**13. Regulating small business**

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

**14. Monitoring & review**

14.1 The instrument does not include a statutory review clause as it only seeks to amend existing legislation. Section 1 of the Office of Communications Act 2002 establishes Ofcom as a statutory corporation with not more than 12 and not less than 3 members. The power to make appointments is conferred upon the Secretary of State. The Secretary of State is given power to make orders, subject to negative resolution procedure, to alter those limits, by virtue of Section 1(7) of the Office of Communications Act 2002. The instrument will allow the Secretary of State to appoint a second board member with online harms expertise.

**15. Contact**

15.1 George Cutts at the Department for Digital, Culture, Media and Sport. Telephone: 07710025629 or email: george.cutts@dcms.gov.uk can be contacted with any queries regarding the instrument.

15.2 Daniel Okubo, Deputy Director for Online Harms - Programmes & International, at the Department for Digital, Culture, Media and Sport can confirm that this Explanatory Memorandum meets the required standard. Email: daniel.okubo@dcms.gov.uk.

15.3 Minister of State for Media, Data, and Digital Infrastructure at the Department for Culture, Media and Sport can confirm that this Explanatory Memorandum meets the required standard.