

Regulatory Implications of the Proposal

There are a number of constraints under which Janet and its funding bodies, and all publicly funded organisations using Janet, must operate. To inform the consultation, these are explored briefly here.

Janet Connection Policy

The Janet Connection Policy is owned by the Janet higher and further education funding bodies, acting through the JISC. It sets out what types of organisation are eligible for a connection to Janet, and at a very high level for what purpose this eligibility pertains. Its primary purpose is to protect the Janet funding bodies' collective investment in Janet, by stipulating by whom and for what purpose that funding may be applied. The full policy can be found on the Janet web-site, but in summary it currently categorises the following as eligible for a Janet connection:

- organisations involved primarily with the delivery or support of education and research;
- organisations working with, supplying to or linked with education or research or with other public sector activities;
- organisations wishing to receive or deliver educational or research services from or to those connected to Janet;
- public-sector organisations wishing to use Janet for purposes other than teaching, learning or collaborative research.

With the exception of the final category, it is immaterial in terms of this policy whether the organisation concerned is publicly or privately funded, or if it is operating for profit or otherwise. In practice the vast majority of organisations connected to Janet are public-sector. If the proposal being consulted upon here is implemented the Janet Connection Policy will be amended to make it clear that business and community engagement stands alongside the education or research purposes summarised above. The JISC would need formally to ratify this amendment but we understand that it would be supportive of doing so.

State Aid Considerations

There is a risk that providing Janet services to organisations outside the public sector might contravene state-aid regulations. (The provision of Janet services to public-sector organisations also carries this risk where the provider is acting in the marketplace, as an "economic undertaking". But in practice the risk is generally regarded as much lower in these cases, and there are established precedents in the area of aggregated public-sector procurements to support this.) It is unfortunately the case that there is considerable uncertainty in the interpretation of state-aid regulations, and that uncertainty inevitably leaves unanswered at this time a number of questions around this proposal.

From information already obtained, it is clear that the risks, if any, would apply to the university or college using Janet to make publicly-funded facilities available to a business or

community engagement partner. It would not apply to Janet itself other than in respect to its own activities, if any, in this context. It is likely that any formal advice will include a stipulation that all such facilities should be charged for at the prevailing market rate, other than for fairly limited exceptions. This would also include provision via a trading subsidiary of the university or college: in this case the subsidiary would need to “purchase” the facilities from its parent body at a market rate if it is to avoid an accusation of inappropriate public subsidy.

Janet will consult formally with the Department of Business, Innovation and Skills (BIS) in this respect, once this consultation is complete and the exact nature of the proposal to be implemented is settled. Recent government encouragement to re-use publicly funded assets in technology transfer and rural broadband initiatives may influence the advice received.

Janet’s Regulatory Status

Janet is considered to be a “private” network, in the sense that a connection is available only to certain categories of user organisation, via its Connection Policy. This status excuses it from some of the regulatory requirements on a “public” network (i.e. one where the only constraint on an individual obtaining a connection is an ability to pay the charges levied by the operator). As some of these requirements would be costly to implement, and might curtail some other activities of Janet users, it is desirable that the private-network status of Janet is retained.

We believe that it should be possible to maintain Janet’s status as a private network whilst allowing it to be used in the way described in this consultation.

Recovery of Costs of Use of Janet

There are two considerations under this heading. The first concerns any constraints that might arise from a state-aid requirement to charge use of Janet at a market rate. Determining a market rate for Internet services is not easy in abstract terms, but it would of course be possible for a university or college simply to ask suitable ISPs for specific quotes. Janet also publishes its connection tariffs, which could also act as a guide in determining an appropriate charge.

(At present the only tariffs published are for a “primary” connection – i.e. a package of all Janet services. We are shortly to introduce a separate tariff for an “IP only” service which may be a more appropriate tariff.)

Therefore this proposal does imply that the university or college makes its own decision on charging, subject to state-aid constraints. Part of that decision will of course be the extent to which it wishes not only to recover its own costs but also make a margin on the services it is providing. Janet does not intend to introduce any guidance on this latter aspect, as we believe that this is a matter wholly for the university or college concerned.

The second consideration is of the additional costs placed on Janet in meeting possible significant increases in bandwidth to and from the university or college as a result of its business and community engagement activities. As the essence of the proposal is to treat these forms of activity identically to teaching and research activities, it seems inappropriate that there should be a particular charge levied by Janet on the university or college for its business and community engagement activities, above any charge already levied for the use of Janet.

Therefore we propose to make no specific charge of this sort, abolishing the charge associated with the Sponsored Connection licence. In practice, if the overall use of Janet does in future exceed the central funding available, it will become inevitable that there is some form of charging out to universities and colleges a proportion of overall costs, over and above current schemes in place.

In our opinion, whether this happens will most likely be determined by the present public-funding constraints, and by trends such as the move to much greater out-sourcing of IT services by universities and colleges. It is unlikely to be due solely to an expansion in business and community engagement activities within the sector. If or when an element of charging out does have to be introduced, our view is that this should be determined by the university or college's use of Janet resources, to maintain fairness and so that each can make its own business decision as to how much Janet resource it wishes to consume in business and community engagement.

Inappropriate Partners

There are also two considerations as to what might constitute an "inappropriate" business or community partner to which to provide Janet services. The first concerns behaviour and consequently reputational risk. Any organisation using Janet must do so within the terms of the Janet Acceptable Use Policy and Janet Security Policy. Both these policies are designed to protect Janet and its user base from operational, reputational or possibly legal disruption or damage. It will be incumbent upon the university or college to ensure that all of its business or community partners to whom it has provided Janet do act within these policies, as any breach would be treated in the same way as a breach by one of the university or college's own members.

The second consideration is whether the university or college would wish to provide Janet services to the business or community partner in the first place. In our view, the test for this should be whether, if Janet was not available for the purpose, the university or college would nevertheless provide the services but using a commercial ISP instead. If the answer is "yes", then it should be possible to do so using Janet, subject to the state-aid constraint outlined above.

We have considered, but do not believe it would be appropriate for Janet to attempt to set a national framework for what types of organisation are suitable. This must be determined by each university or college depending on the circumstances involved. In doing so however, we would expect the university or college to make the normal assessment of fit with institutional strategy, reputational and financial risk, and similar considerations.

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