

Digital Scotland – Reaching 100% Programme

December 2020

PUBLIC CONSULTATION

Digital Scotland – Reaching 100% Programme

Contract Extension(s) to further extend coverage of Next Generation Access (NGA) Broadband as far as possible as part of the Scottish Government’s commitment to deliver superfast broadband access to 100% of premises in Scotland.

1. INTRODUCTION AND BACKGROUND

The Reaching 100% Programme (“**R100**”) is striving to extend the availability of NGA broadband infrastructure to meet the Scottish Government’s commitment to deliver superfast broadband access to 100% of premises in Scotland.

To achieve this, the Scottish Government has procured coverage of NGA broadband infrastructure (capable of delivering download speeds of at least 30 Mbps) in areas where such broadband is currently unavailable. The procurement was split into three geographic lots, with Lot 1 (North) covering the north of Scotland and the islands, Lot 2 (Central) covering the central belt and Lot 3 (South) covering southern Scotland. All three lots were awarded to BT plc.

Scottish Government identified the eligible areas for investment by first conducting an Open Market Review (“**OMR**”) to define a draft Intervention Area (“**IA**”) and then testing that IA via a State Aid Public Consultation¹. The IA was subsequently amended to take account of the Public Consultation response ahead of procurement in line with the 2016 National Broadband Scheme for the UK which was approved by the European Commission as compliant with European State Aid Legislation² and a Public Consultation report published to outline these amendments³.

The Scottish Government maintained a rolling OMR with operators to ensure that any contracts remain compliant with State Aid and as such issued an amended Public Consultation report in August 2020⁴.

¹ <https://www.gov.scot/publications/digital-scotland-reaching-100-programme/>

² https://ec.europa.eu/competition/state_aid/cases/263954/263954_1760328_135_4.pdf

³ <https://www.gov.scot/publications/digital-scotland-reaching-100-programme-public-consultation-report/>

⁴ <https://www.gov.scot/publications/digital-scotland-reaching-100-programme-public-consultation-report-revised/>

2. MARKET ENGAGEMENT AND ANALYSIS OF EXISTING COVERAGE

Throughout the procurement period, the Scottish Government has remained in regular contact with broadband infrastructure providers across Scotland and continue to engage as part of the overall R100 Programme. This has ensured that the R100 IA remains current and the contracts awarded under the Programme comply with State Aid requirements.

This engagement has included both commercial coverage by existing and prospective NGA broadband infrastructure providers and coverage procured under the existing Digital Scotland Superfast Broadband contracts with BT Group plc.

It is now more than three years since the original Public Consultation and as such, the Scottish Government is now consulting on the current IA to ensure continued compliance with State Aid. The purpose is to allow for possible extension/s to the existing contracts into eligible premises within the IA in accordance with the Public Contracts (Scotland) Regulations 2015 and EU Public Procurement Directives and the 2016 National Broadband Scheme ("**NBS 2016**").

This public consultation sets out that IA, so as to enable all interested stakeholders (including the public, businesses, internet service providers and broadband infrastructure operators) to comment on the proposals. In particular, this provides an opportunity for broadband infrastructure operators to review Scottish Government's mapping to ensure that it correctly represents the information provided by them in the course of our rolling OMR.

All responses to the public consultation will be carefully considered and where necessary will be incorporated into the final map of the intervention area. The final intervention area maps and a summary report confirming details of the changes made to the proposed intervention area will be published on the Scottish Government website shortly after the close of the consultation period. Where responses to the consultation are received, the Scottish Government will respond to these and provide an explanation of how the information submitted has been treated. The finalised intervention area will then be submitted to BDUK's National Competence Centre ("**NCC**") to confirm ongoing compatibility of the project with State aid Framework and in particular the NBS 2016.

3. STATE AID FRAMEWORK AND RULES

This section provides a brief introduction to the State aid Framework for the purpose of informing responses to the public consultation. Respondents may wish to obtain their own professional/legal advice on the application of the State aid Framework and rules that relate to this proposal.

The European Commission has published '*EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks*' (2013/C 25/01).⁵ These guidelines summarise the principles of the Commission's policy in applying the State aid rules of the Treaty to measures that support the deployment of broadband networks, and seek to ensure that State aid schemes for broadband are well-designed so that they target market failures and minimise negative effects on competition.

The guidelines require public interventions to be targeted so as to limit the risk of crowding out private investments, of altering commercial investment incentives and ultimately of distorting competition.

Planned public interventions can seek State aid approval directly from the Commission, or (as is the case with this proposal) seek clearance under a national scheme which has been pre-approved by the Commission.

Projects under the 2016 NBS will need to demonstrate their State aid compliance (in accordance with the terms of the scheme) in order to receive clearance from BDUK's National Competence Centre.

The Commission's guidelines distinguish between two types of broadband networks, namely basic broadband and NGA networks.

Basic broadband networks are generally those based on currently widely-deployed technologies such as fixed wired telephony networks (using ADSL/ADSL2+ technologies), non-enhanced cable TV networks (eg DOCSIS 2.0), mobile networks (2G/3G (UMTS)), some fixed wireless access (FWA) networks, and satellite networks.

NGA networks rely wholly or partly on optical elements (optical fibre) and are capable of delivering an enhanced broadband capability compared to existing basic broadband networks. Current qualifying NGA technologies are fibre-based networks (FTTx), advanced upgraded cable networks (DOCSIS 3.0) and certain advanced wireless access networks capable of delivering reliable high speeds.

Guidance on the characteristics of qualifying NGA technologies is available from BDUK.⁶

The Commission's guidelines also require that public intervention should be able to ensure a 'step change' in broadband availability. This is demonstrated by:

- Significant new investments in the broadband network;

⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52013XC0126%2801%29>

⁶ <https://www.gov.uk/government/publications/2016-nbs-tech-guidelines>

- The new infrastructure brings significant new capabilities to the market in terms of broadband service availability and capacity, speeds and competition⁷;

The 'step change' in broadband availability shall be compared to that of existing as well as concretely planned networks.

The Commission's guidelines also distinguish between geographic areas on the basis of their existing or planned broadband infrastructure:

- 'White' areas are those in which there is no qualifying broadband infrastructure and none is likely to be developed within 3 years;
- 'Grey' areas are those where only one network is present or is to be deployed within the coming 3 years; and
- 'Black' areas are those where at least two networks of different operators exist or will be deployed in the coming 3 years.

This geographic mapping of White/Grey/Black areas is carried out separately in relation to basic broadband and NGA networks. NGA networks are mapped on the basis that, amongst other things, they have substantially higher upload speeds (compared to basic broadband networks)⁸ and are able to deliver broadband services at an access (download) speed of more than 30Mbps.

Public intervention can only take place in white NGA areas under the 2016 NBS. White NGA areas are those in which there are no NGA networks and none is likely to be developed within the next 3 years.

4. PROPOSED INTERVENTION

In the absence of premise level data from some broadband infrastructure operators, the Scottish Government has mapped areas as white, grey or black at a postcode level, using the following criteria:

For basic broadband,

- The previous Public Consultation demonstrated that there were no white postcodes for basic broadband. This document is therefore focussed only on NGA broadband.

For NGA,

⁷ See Footnote 66 of the Commission's Guidelines - this sets out that the subsidised network should be pro-competitive (i.e. allow for effective access at different levels of the infrastructure).

⁸ Substantially higher upload speeds means at least a doubling of the maximum upload speed available on current generation access network(s) for given 'up to' packages available on basic broadband networks in the relevant intervention area.

- A postcode is turned grey if there is only one broadband infrastructure operator providing NGA services (with speeds greater than 30Mbps) to that entire postcode.
- A postcode is turned black if there are at least two broadband infrastructure operators providing NGA services (with speeds greater than 30Mbps) to that entire postcode.
- All other postcodes remain white.

In addition, the proposed intervention area includes a number of “under review” areas (coloured blue on the map). These areas have previously been indicated to have planned commercial coverage for NGA broadband (i.e. mapped as grey or black NGA), but those plans have been reported through the OMR as being ‘at risk’ (or have otherwise been deemed by Scottish Government as being ‘at risk’) of not being completed. These areas are subject to continued monitoring and verification of supplier plans by Scottish Government and in the event that these commercial plans fall away these premises will be mapped as white NGA and form part of the proposed intervention area and eligible for intervention via this aid measure.⁹

The mapping analysis of existing and planned coverage, taking account of the continued monitoring described above, has identified remaining ‘white NGA’ areas. The outcome before taking account of the R100 contractual coverage is summarised in terms of NGA White, Grey, Black and ‘Under Review’ premises below:

Postcode Classification	Number of Postcodes	Number of Black Premises	Number of Grey Premises	Number of White Premises	Number of Under Review Premises
White	24,924	12,227	138,074	178,381	24,778
Grey	77,539	364,280	1,141,004	-	-
Black	31,186	607,399	-	-	-
Under Review	17,535	15,295	111,576	-	215,321

As noted above, if commercial plans fall away in the ‘under review’ areas then these will be considered as eligible for intervention and considered as ‘white NGA’ areas.

This consultation is focussed only on the white postcodes remaining once the contracted coverage has been removed. The Scottish Government will then

⁹ See paragraph 65 of the Commission’s guidelines.

retain an option to extend coverage to target the remaining 'white NGA' areas by amending existing contracts under the 2016 NBS (and in accordance with the Public Contracts (Scotland) Regulations 2015).

The postcodes subject to this Public Consultation are therefore a subset of the above national summary and are available in a separate file. The breakdown of postcodes to premises is summarised below:

	Number of Postcodes	Number of In-Scope Premises	Number of Premises out of scope
In-Scope of Consultation	30,084	259,583	256,564
Out of Scope of Consultation	121,100	-	2,292,188

Where possible, the Scottish Government has made coverage information available at a premises level within the identified white postcode areas to suppliers to ensure that any contract extension can target those premises without NGA broadband coverage efficiently. This will include information at a premises level received in response to this consultation.

It should be noted that whilst this consultation includes mapping of basic broadband coverage, any contract change will not deploy basic broadband technologies. The intention is to provide suppliers with details of all the areas where there is basic broadband coverage so as to ensure, so far as possible, that these areas are only overbuilt by NGA broadband infrastructure where the premises will receive over 30Mbps or at least a doubling of speeds, in accordance with the requirements of the 2016 NBS. Where doubling is not possible, the supplier will be obliged to demonstrate that the design is optimised to limit the overbuild of existing basic broadband networks with speeds that are below 30Mbps.

4.1. **Procurement**

The procurement undertaken by the Scottish Government has been carried out in accordance with the Public Contracts (Scotland) Regulations 2015 and EU Public Procurement Directives. It utilised the Competitive Dialogue Procedure and was conducted in a transparent and non-discriminatory manner, as required by the 2016 NBS.

Any additional build into the IA finalised by this consultation will be procured via contract change/s to the current contract/s.

The Scottish Government's priority is to ensure that the available public funding is used most effectively by ensuring coverage of premises

currently getting relatively slow broadband speeds. However, areas with higher speeds may be targeted, subject to the need to provide a 'step change' in broadband capability (as outlined above).

A range of public funding sources will be utilised in support of R100 procurement activity – the Scottish Government, UK Government, local authorities (including through City Regional Deals) and the European Union.

5. Timescales

This consultation will be open until 24 January 2021.

Once the consultation is closed and the Scottish Government has finalised the intervention area, current contract/s may be amended in line with procedures outlined

6. State Aid Public Consultation

This consultation is being undertaken to meet the specific requirements of the 2016 NBS to hold a public consultation in order to validate the intervention area mapping by allowing all interested stakeholders an opportunity to comment on the planned aid measure.

The purpose of this document is to validate that the residual areas of the intervention area remain NGA White to allow for possible extension/s to the existing contracts into eligible premises within the IA and seek feedback from all interested stakeholders. The mapping for basic broadband and the areas under consultation for NGA broadband are shown in the attached maps at Appendix A.

The production of the map of the in-scope postcodes for consultation is based on the definitions of white, grey and black areas, as set out in the EU Guidelines (and as summarised above). All in-scope postcodes have previously been determined as NGA white or under review. The Scottish Government will only target the areas identified as in-scope on the map, subject to the outcome of this consultation, when considering extending existing contracts..

This State Aid Public Consultation and the list of postcodes associated with the maps are available to all stakeholders on the Scottish Government www.gov.scot and will also be available via BDUK's website at [BDUK Table of local broadband projects](#).

7. Responding to this State Aid Public Consultation

Scottish Government is requesting information and supporting evidence in relation to basic and NGA broadband infrastructure within the project area

and wish to hear from all relevant stakeholders (including residents, businesses as well as broadband infrastructure operators), particularly in relation to areas to be targeted as part of the NGA intervention area at Annex A.

For the avoidance of doubt, there is no need to respond to this public consultation if you have no comment to make.

For residents and businesses, where this relates to the ability to receive an NGA service, any information provided in response to this State Aid public consultation should as a minimum include (but need not be limited to) the address of the property or area that the submission relates to and the nature of the concern.

If the response is from an infrastructure provider and comments on the white, grey and/or black or under review classifications within the attached maps or data, or on the wholesale products to be offered via the subsidised network, then the submission should also include the specific information set out in Section 8.

For all submissions, the Scottish Government would be grateful if you would contact Scottish Government to register your intention to submit a response and could confirm in your submission the following:

- Your organisation's name (if applicable)
- Your organisation's address (if applicable)
- Your name
- Position
- Contact telephone number
- Email Address

Scottish Government will then arrange access to the Response Template (or subset thereof if you are reporting on a specific area).

Scottish Government also requests confirmation from an authorised signatory that the information provided is suitably accurate and up to date.

Please send your responses no later than 24 January 2021 to R100@gov.scot

Please note that the data you provide in your response will be treated as commercially confidential to your organisation. However, it may be necessary to share some/all of your response data with our professional advisers and/or DCMS/BDUK, Ofcom, the National Competence Centre and the European Commission in the course of seeking State aid approval.

It should also be noted that it is a State aid requirement to use this information to produce State aid maps to define white, grey and black areas for basic and

NGA broadband. However, the published maps will show the aggregated White/Grey/Black NGA and Basic Broadband areas, not the data provided on a per-operator basis. The final maps that will be used for procurement purposes will be published shortly after the conclusion of this State aid public consultation and once approved by the National Competence Centre.

If you have any questions about any of the above, please contact the Scottish Government by email as above.

8. Information Requested

This section specifies the information you are requested to provide in response to this State aid public consultation in relation to the presence of broadband infrastructure.

The Scottish Government is requesting information on, and supporting evidence for, any current or planned (within the next 3 years) investment in broadband infrastructure in Scotland, where this may not be already included within the proposed NGA and Basic broadband intervention area maps attached.

For any current or planned coverage not included within the proposed State aid intervention areas shown on the attached map, Scottish Government is requesting information at premise level, using the template issued by Scottish upon request to show existing or planned coverage by your broadband infrastructure investment. By 'covered' (or 'passed') Scottish Government means that fixed network infrastructure is or will be available to the premises, potentially subject to a final drop connection, or that the premises are able to receive a suitable quality radio signal over the air interface, potentially subject to the installation of a suitable antenna.

Any information provided in response to this State aid public consultation should include, but need not be limited to:

- Detailed maps for NGA broadband showing existing and planned coverage, for at least the next 3 years.
- Details of premises covered or passed that fixed network infrastructure is or will be available to the premises within the next 3 years, potentially subject to a final drop connection, or that the premises are able to receive a suitable quality radio signal over the air interface, potentially subject to the installation of a suitable antenna.
- A detailed description of the technology solution(s) deployed (or to be deployed) in your broadband infrastructure, demonstrating how they meet the minimum standards as set out in the BDUK NGA Technology Guidelines.
- A description of the services/products currently offered, and separately those services/products to be offered within the next 3 years.
- Installation, annual/monthly subscription, and additional volume or per-service tariffs for those services/products (identifying whether such tariffs are inclusive or exclusive of VAT).

- Upload and download speeds typically experienced by end-users, and how these may vary by factors such as distance, increased take-up or demand, contention, etc.
- Appropriate indicators of the quality of services (e.g. contention ratios, bandwidth allocation per user, etc), including any characteristics (e.g. latency, jitter) that are required to support advanced services such as video conferencing or HD video streaming.
- Evidence to substantiate actual or planned coverage claims, including business cases and evidence of available funding to enable plans to be fulfilled.
- Details and planned timing of roll-out of any future investments, including further investments required to cope with future increases in take-up or demand.

Please supplement the required information above with any supporting evidence as you consider appropriate (e.g. links to public websites).

9. Next Steps

Following any responses received to this State Aid public consultation by the closing date of 24 January 2021, the Scottish Government plans to publish the final Intervention Area maps as part of a formal Public Consultation Report shortly after the close of the consultation period.

Information about the R100 Programme can be found at: www.scotlandsuperfast.com

Any queries on this document or the process described within it should be directed to:

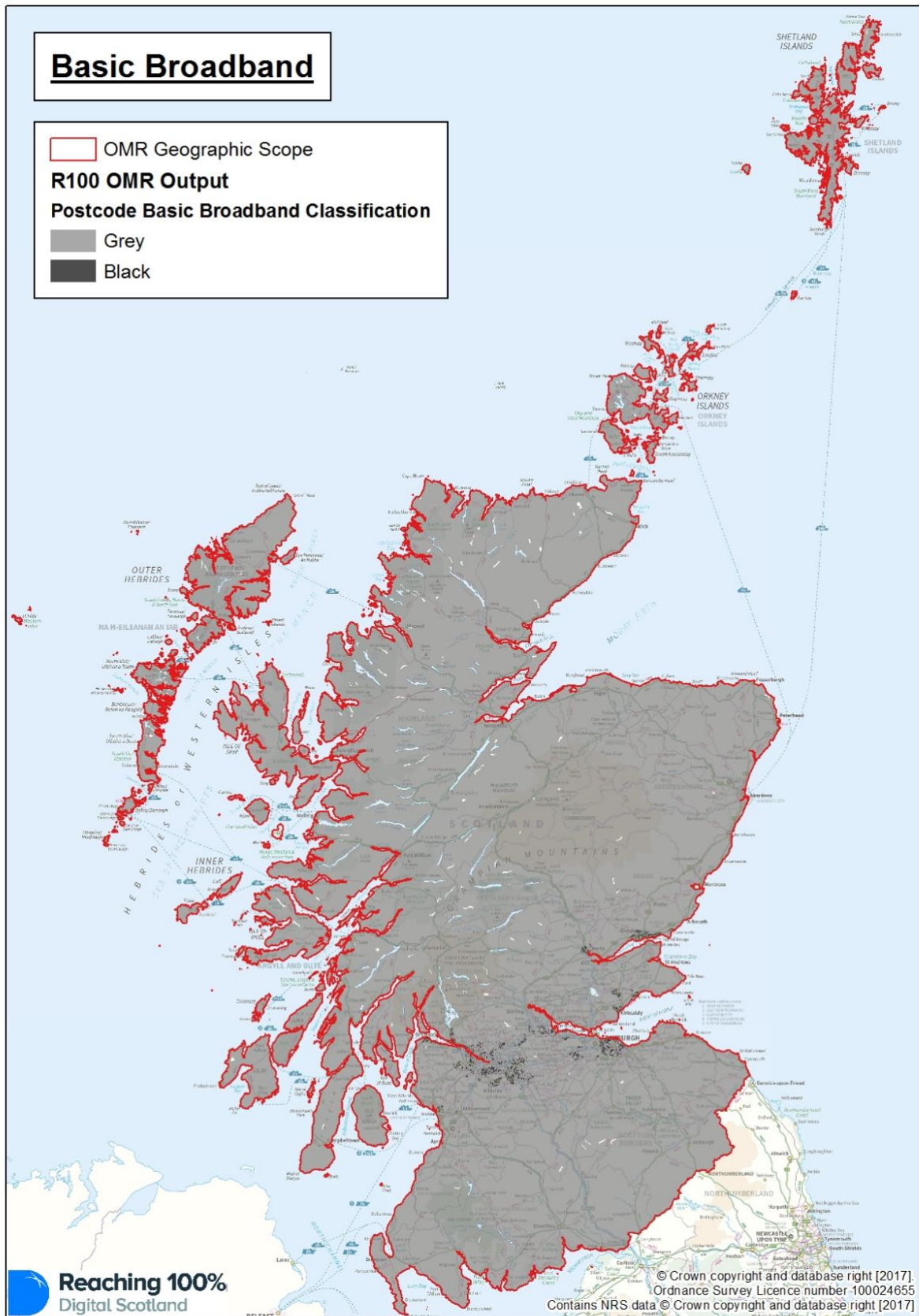
Duncan Nisbet

R100 Stakeholder Director

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Appendix A

Basic Broadband and In-Scope Maps





Next Generation Access

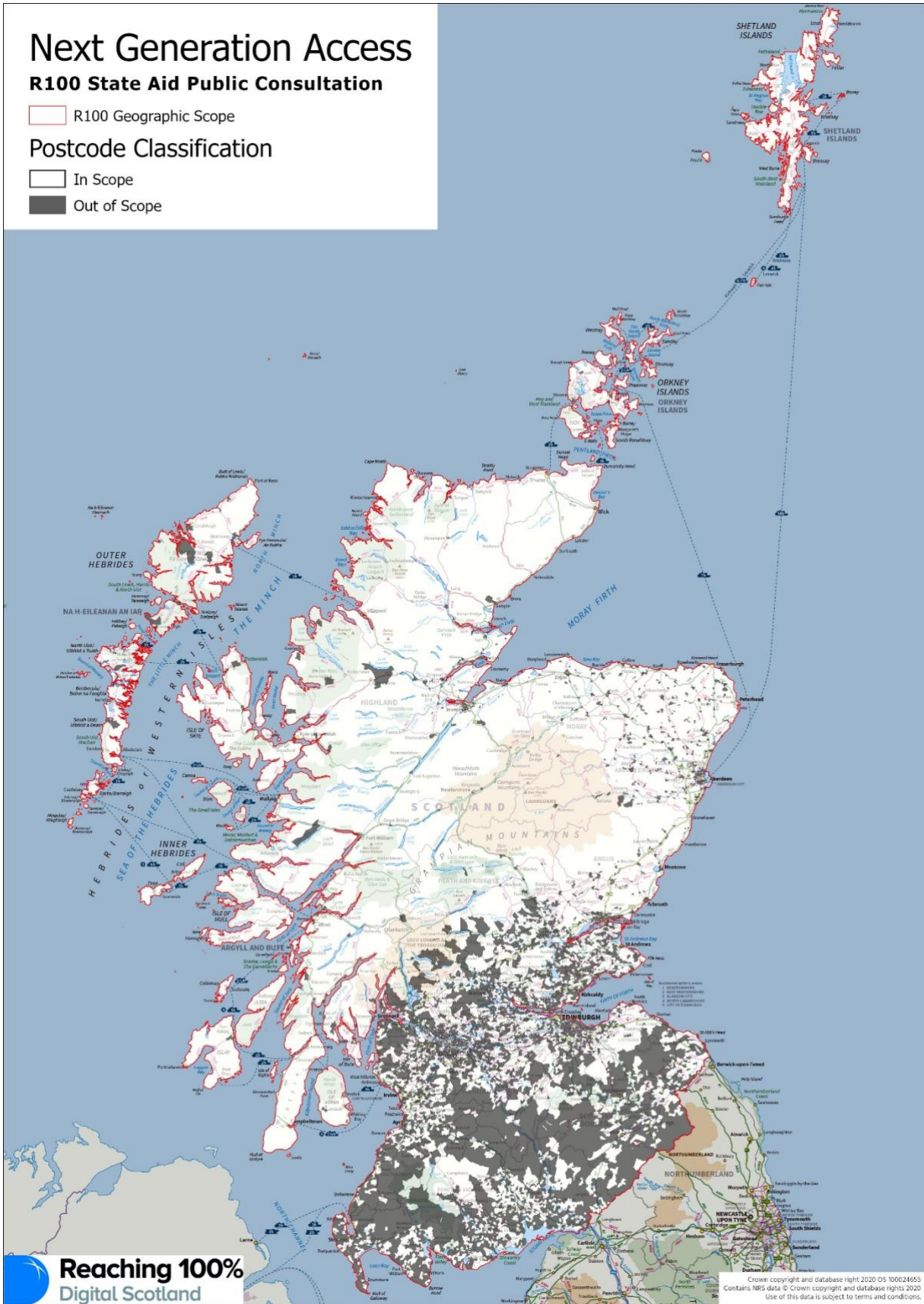
R100 State Aid Public Consultation

 R100 Geographic Scope

Postcode Classification

 In Scope

 Out of Scope



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